

2009 No. 1547

CHILDREN AND YOUNG PERSONS, ENGLAND

The Childcare (Disqualification) Regulations 2009

<i>Made</i>	- - - -	<i>22nd June 2009</i>
<i>Laid before Parliament</i>		<i>29th June 2009</i>
<i>Coming into force</i>		
	<i>for the purpose of paragraph 4 of Schedule 1</i>	<i>19th October 2009</i>
	<i>for all other purposes</i>	<i>1st September 2009</i>

The Secretary of State for Children, Schools and Families makes the following Regulations in exercise of the powers conferred by sections 59, 67, 74(2), 75 and 104(2) of the Childcare Act 2006(a).

In accordance with sections 59(2) and 67(2) of that Act, the Secretary of State has consulted Her Majesty's Chief Inspector of Education, Children's Services and Skills.

Citation and commencement

- 1.—(1) These Regulations may be cited as the Childcare (Disqualification) Regulations 2009.
- (2) Subject to paragraph (3), these Regulations shall come into force on 1st September 2009.
- (3) Paragraph 4 of Schedule 1 comes in to force on 19th October 2009.

Interpretation

- 2.—(1) In these Regulations—

“the Act” means the Childcare Act 2006;

“the 1989 Act” means the Children Act 1989(b);

“the 2000 Act” means the Criminal Justice and Court Services Act 2000(c);

“direction” means a direction made, or which has effect as if made, under section 142 of the Education Act 2002(d) on the grounds set out in subsection (4)(a), (b) or (d) of that section;

“relevant order” and “senior court” have the same meanings as in section 30(1) of the 2000 Act.

- (2) In these Regulations a person has been “found to have committed” an offence if that person has been—

(a) 2006 c. 21. The meaning of ‘prescribed’ and ‘regulations’ is set out in section 98(1). Section 75(3) of the Childcare Act 2006 was amended by the Safeguarding Vulnerable Groups Act 2006 (c. 47).

(b) 1989 c. 41.

(c) 2000 c. 43.

(d) 2002 c. 32.

- (a) convicted of an offence;
- (b) found not guilty of an offence by reason of insanity;
- (c) found to be under a disability and to have done the act charged against them in respect of such an offence; or
- (d) on or after 6th April 2007, given a caution^(a) in respect of an offence by a police officer after admitting that offence.

(3) In these Regulations a person has been found to have committed an offence that is “related to” an offence if that person has been found to have committed an offence of—

- (a) attempting, conspiring or incitement to commit that offence; or
- (b) aiding, abetting, counselling or procuring the commission of that offence.

Revocation

3. The Childcare (Disqualification) Regulations 2007^(b) and the Childcare (Disqualification) (Amendment) Regulations 2008^(c) are revoked.

Care of children and offences against children or adults

4.—(1) Subject to paragraphs (9) and (10) and regulation 10, a person (“P”) is disqualified from registration if any of paragraphs (2) to (8) apply.

(2) Any of the orders or other determinations specified in Schedule 1 has been made—

- (a) with respect to P;
- (b) which prevents P from being registered in relation to any facility in which children are looked after or from being involved in the management of or otherwise concerned with the provision of any such facility; or
- (c) with respect to a child who has been in P’s care.

(3) An order has been made with respect to P under section 104 of the Sexual Offences Act 2003^(d).

(4) P has been found to have committed an offence against a child within the meaning of section 26(1) of the 2000 Act.

(5) P—

- (a) has been found to have committed any offence specified in paragraph 1 of Schedule 2 or an offence that is related to such an offence; or
- (b) falls within paragraph 2 of that Schedule,

despite the fact that the statutory offences in that Schedule have been repealed.

(6) P has been found to have committed any offence other than an offence referred to in paragraph (4) or (5) involving bodily injury to, or death of, a child.

(7) P has been found to have committed any offence specified in Schedule 3 or an offence that is related to such an offence.

(8) P has been—

- (a) found to have committed any offence, committed against a person aged 18 or over, mentioned in paragraph 2 of Schedule 4 to the 2000 Act or an offence that is related to such an offence; or

(a) Section 75(6) of the Childcare Act 2006 provides that “caution” includes a reprimand or warning within the meaning of section 65 of the Crime and Disorder Act 1998 (c. 37).

(b) S.I. 2007/723.

(c) S.I. 2008/1740.

(d) 2003 c. 42.

- (b) charged with any offence, committed against a person aged 18 or over, mentioned in paragraph 2 of Schedule 4 to the 2000 Act or an offence that is related to such an offence in respect of which a relevant order has been imposed by a senior court.

(9) P shall not be disqualified from registration under paragraphs (1) to (8) in respect of any order, determination or offence if—

- (a) P has successfully appealed against the order, determination or conviction;
- (b) a caution in respect of that offence has been withdrawn or set aside; or
- (c) a direction based wholly or in part on the offence has been revoked.

(10) P shall not be disqualified from registration under paragraph (2) in respect of any refusal or cancellation of registration under the provisions set out in paragraph 19(c) of Schedule 1 if the sole reason for such refusal or cancellation was the failure to pay any fee prescribed under Part 3 of the Act.

Overseas offences

5.—(1) Subject to regulation 10, a person (“P”) is disqualified from registration if P has been found to have done an act which—

- (a) constituted an offence under the law in force in a country outside the United Kingdom; and
- (b) would constitute an offence requiring disqualification from registration under these Regulations if it had been done in any part of the United Kingdom.

(2) In paragraph (1) P has been “found to have done an act which constituted an offence” if, under the law in force in a country outside the United Kingdom—

- (a) P has been convicted of an offence (whether or not P has been punished for it);
- (b) P has been cautioned in respect of an offence;
- (c) a court exercising jurisdiction under that law has made in respect of an offence a finding equivalent to a finding that P is not guilty by reason of insanity; or
- (d) such a court has made in respect of an offence a finding equivalent to a finding that P is under a disability and did the act charged against P.

(3) A person shall not be disqualified from registration under paragraph (1) in respect of any finding if, under the law in force in the country concerned, such finding has been reversed.

(4) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of this regulation however it is described in that law.

Protection of Children Act list

6. A person who is included in the list kept under section 1 of the Protection of Children Act 1999(a) (list of those considered by the Secretary of State unsuitable to work with children) is disqualified from registration.

Direction in relation to the employment of teachers etc.

7.—(1) Subject to regulation 10, a person (“P”) is disqualified from registration if any of the following provisions of this regulation apply to P.

- (2) P is subject to a direction.

(a) 1999 c. 14.

(3) P's name is on any list kept for the purposes of regulations made under article 70(2)(e) or 88A(1) and (2)(b) of the Education and Libraries (Northern Ireland) Order 1986(a).

Persons barred from regulated activity relating to children

8. A person who is barred from regulated activity relating to children within the meaning of section 3(2) of the Safeguarding Vulnerable Groups Act 2006 is disqualified from registration.

Persons living or working on premises where a disqualified person lives

9. Subject to regulation 10, a person who lives—

- (a) in the same household as another person who is disqualified from registration; or
- (b) in a household in which any such person is employed,

is disqualified from registration.

Waivers

10.—(1) Subject to paragraph (4), where a person (“P”) would be disqualified from registration by virtue of regulation 4, 5, 7(1) and 7(3) or 9 but has disclosed to the Chief Inspector the facts which would otherwise cause P to be disqualified, the Chief Inspector may give consent to waive the disqualification for any or all of the following purposes—

- (a) voluntary registration under Chapter 4 of Part 3 of the Act;
- (b) the provision of early years or later years provision to which section 76 of the Act applies;
- (c) direct concern in the management of early years or later years provision to which section 76 of the Act applies;
- (d) employment in connection with the provision of early years or later years provision to which section 76 of the Act applies.

(2) When the Chief Inspector gives consent under paragraph (1), P shall not, in respect of the facts so disclosed, be regarded as disqualified from registration for the purposes specified in the Chief Inspector's consent.

(3) Any consent given by the Chief Inspector under paragraph (1) shall be in writing and shall specify the extent to which the disqualification from registration is waived.

(4) In relation to a person who would be disqualified from registration by virtue of regulation 4(4), this regulation shall not apply where a court has made an order under section 28(4), 29(4) or 29A(2) of the 2000 Act.

Appeals

11. Any determination made by the Chief Inspector as to whether to give consent under regulation 10 is a prescribed determination for the purposes of section 74(2) of the Act.

Duty of disclosure

12.—(1) A person who is registered under Chapter 3 or 4 of Part 3 of the Act (“registered person”) must provide the following information to the Chief Inspector—

- (a) details of any order, determination, conviction or other ground for disqualification from registration made or applying in relation to a person listed in paragraph (2) which results in that person being disqualified from registration under these Regulations;

(a) S.I. 1986/594 (N.I.3). Article 70(2)(e) was substituted by article 8 of the Education (Northern Ireland) Order 1987 (S.I. 1987/167) (N.I.2). The 1986 Order was amended by article 15 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (S.I. 2003/417) (N.I.4).

- (b) the date when the order, determination or conviction was made or when any other ground for disqualification from registration arose;
- (c) the body or court by which the order, determination or conviction was made and the sentence, if any, imposed;
- (d) in relation to an order or conviction, a certified copy of the relevant order or court order.

(2) The persons in respect of whom the information referred to in paragraph (1) must be provided are—

- (a) the registered person; and
- (b) any person who lives in the same household as the registered person or who is employed in that household.

(3) The information referred to in paragraph (1) must be provided to the Chief Inspector as soon as reasonably practicable, but in any event within 14 days of the time when the registered person became aware of that information or ought reasonably to have become aware of it if the registered person had made reasonable enquiries.

(4) Any allegation that a registered person has failed to meet the requirements prescribed in this regulation may be taken into account by the Chief Inspector in the exercise of the Chief Inspector's functions under Part 3 of the Act.

(5) Any allegation that a registered person has failed to meet the requirements prescribed in this regulation may be taken into account in any proceedings under Part 3 of the Act.

Dawn Primarolo
Minister of State

22nd June 2009

Department for Children Schools and Families

SCHEDULE 1

Regulation 4(2)

ORDERS ETC. RELATING TO THE CARE OF CHILDREN

1. An order under section 31(1)(a) of the 1989 Act (care order).
2. An order under article 50(1)(a) of the Children (Northern Ireland) Order 1995 (care order)(a).
3. An order under section 3(3) of the Children and Young Persons (Guernsey) Law 1967 (fit person order or special care order)(b).
4. An order made further to an application as permitted under section 48(3) of the Children (Guernsey and Alderney) Law 2009 (community parenting order)(c).
5. An order under section 31(1)(a) of the Children and Young Persons Act 2001 (an Act of Tynwald)(d).
6. An order or determination specified in Schedule 4 to the Children (Jersey) Law 2002(e).
7. Any order that would have been deemed to be a care order by virtue of paragraph 15 of Schedule 14 to the 1989 Act (transitional provisions for children in compulsory care) had it been in force immediately before the day on which Part 4 of the 1989 Act came into force(f).

(a) S.I. 1995/755 (N.I.2).

(b) Orders in Council Volume XXI p.34. Section 3 was amended by the Children and Young Persons (Amendment) (Guernsey) Law 1971, Volume XXIII p.3 and by the Juvenile Court (Guernsey) Law 1989, Volume XXXI p.326.

(c) Order in Council No. XIV of 2009.

(d) 2001 c. 20 (Isle of Man).

(e) Jersey Law 50/2002.

(f) Part 4 of the 1989 Act came into force on 14th October 1991.

8. A supervision order which imposes a residence requirement under paragraph 5 of Schedule 6 to the Powers of Criminal Courts (Sentencing) Act 2000(**a**) or section 12AA of the Children and Young Persons Act 1969 (requirement to live in local authority accommodation)(**b**).

9. A fit person order, a parental rights order or a training school order under the Children and Young Persons Act (Northern Ireland) 1968(**c**).

10. A child protection order under section 57 of the Children (Scotland) Act 1995(**d**).

11. An exclusion order under section 76 of the Children (Scotland) Act 1995(**e**).

12. A supervision order which imposes a residence requirement under paragraph 5 of Schedule 9 to the Children and Young Persons Act 2001 (an Act of Tynwald) (requirement to live in accommodation provided by the Department of Health and Social Security).

13. An order made at any time imposing a supervision requirement with respect to a child so as to remove that child from P's care, under—

- (a) section 44 of the Social Work (Scotland) Act 1968(**f**); or
- (b) section 70 of the Children (Scotland) Act 1995(**g**).

14. An order made at any time vesting P's rights and powers with respect to a child in a local authority in Scotland—

- (a) under section 16 of the Social Work (Scotland) Act 1968(**h**); or
- (b) pursuant to a parental responsibilities order under section 86 of the Children (Scotland) Act 1995(**i**).

15. In relation to registration of a children's home—

- (a) a refusal of P's application for registration under section 13 of the Care Standards Act 2000;
- (b) cancellation of P's registration under section 14 or 20(1) of the Care Standards Act 2000;
- (c) cancellation of the registration of any person under section 14 or 20(1) of the Care Standards Act 2000 in relation to a children's home which P has been concerned in the management of, or had any financial interest in; or
- (d) refusal of P's application for registration or cancellation of P's registration under the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003(**j**).

16. Refusal at any time of P's application for registration in relation to a voluntary home or a children's home, or cancellation of the registration of a voluntary home or children's home which was carried on by P or which P was otherwise concerned with the management of, or had any financial interest in, under, as the case may be—

- (a) paragraph 1 of Schedule 5 to the 1989 Act(**k**);

(a) 2000 c. 6.

(b) 1969 c. 54. Section 12AA was inserted by the 1989 Act and was repealed by the Powers of Criminal Courts (Sentencing) Act 2000.

(c) 1968 c. 34 (N.I.). The provisions relating to these orders were repealed by the Children (Northern Ireland) Order 1995 and the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504) (N.I.9).

(d) 1995 c. 36.

(e) Section 76 was repealed (in part) by S.S.I. 2003/583.

(f) 1968 c. 49. Section 44 was repealed by the Children (Scotland) Act 1995.

(g) Section 70 was amended by sections 135 and 136 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).

(h) Section 16 was repealed by the Children (Scotland) Act 1995.

(i) Section 86 was amended by paragraphs 83 and 84 of Schedule 3 to the Adoption and Children Act 2002 (c. 38).

(j) S.I. 2003/431 (N.I.9).

(k) This provision, and those mentioned in paragraph (b) were repealed by the Care Standards Act 2000 with effect from 1st April 2002.

- (b) paragraph 1 or 4 of Schedule 6 to the 1989 Act;
- (c) section 127 of the Children and Young Persons Act (Northern Ireland) 1968(a);
- (d) article 80, 82, 96 or 98 of the Children (Northern Ireland) Order 1995;
- (e) Part 1 of the Regulation of Care (Scotland) Act 2001(b) (care home services); or
- (f) paragraph 2 or 4 of Schedule 2 to the Children and Young Persons Act 2001 (an Act of Tynwald).

17. A prohibition imposed at any time under—

- (a) section 69 of the 1989 Act, section 10 of the Foster Children Act 1980(c) or section 4 of the Children Act 1958 (power to prohibit private fostering)(d);
- (b) article 110 of the Children (Northern Ireland) Order 1995 (power to prohibit private fostering);
- (c) section 10 of the Foster Children (Scotland) Act 1984 (power to prohibit the keeping of foster children)(e); or
- (d) section 59 of the Children and Young Persons Act 2001 (an Act of Tynwald) (power to prohibit or impose restrictions upon private fostering).

18. A notice in writing given by a Health and Social Services Board under section 1(3) of the Children and Young Persons Act (Northern Ireland) 1968 (withholding consent to the care and maintenance of the child being undertaken by a person).

19. Refusal at any time of registration in respect of the provision of nurseries, day care, child minding or other provision of childcare, disqualification from such registration or cancellation of any such registration under—

- (a) section 1 or section 5 of the Nurseries and Child-Minders Regulation Act 1948(f);
- (b) Part 10 or Part 10A of the 1989 Act(g);
- (c) Chapter 2, 3 or 4 of Part 3 of the Act;
- (d) Part XI of the Children (Northern Ireland) Order 1995;
- (e) section 11(5) or section 15 of the Children and Young Persons Act (Northern Ireland) 1968;
- (f) Part 1 of the Regulation of Care (Scotland) Act 2001;
- (g) section 1 of the Nurseries and Child Minders Regulation Act 1974 (an Act of Tynwald);
- (h) section 65 or 66 of, or Schedule 7 to, the Children and Young Persons Act 2001 (an Act of Tynwald); or
- (i) Part III of the Child Protection (Guernsey) Law 1972(h).

20. Disqualification from working with children at any time under the Protection of Children (Scotland) Act 2003(i).

21. Refusal at any time of P's application for registration or cancellation of P's registration under section 62 of the Social Work (Scotland) Act 1968 (registration of residential and other establishments)(j).

(a) This section was repealed by the Children (Northern Ireland) Order 1995.
 (b) 2001 asp 8.
 (c) 1980 c. 6. The Foster Children Act 1980 was repealed by the 1989 Act.
 (d) 1958 c. 65. Section 4 was repealed by the Foster Children Act 1980.
 (e) 1984 c.56 (S.).
 (f) 1948 c.53 (S.). That Act was repealed by the 1989 Act.
 (g) Part 10 of the Children Act 1989 ceased to apply to England in 2001. Part 10A was inserted by the Care Standards Act 2000 (c. 14) and ceased to apply in England on 1st September 2008. Part 10 was repealed in relation to Scotland by Schedule 4 to the Regulation of Care (Scotland) Act 2001 (asp 8) with effect from 1st April 2002.
 (h) Orders in Council Volume XXIII p.238 as amended by the Children and Young Persons (Amendment) (Guernsey) Law 2000, Order in Council No. III of 2001.
 (i) 2003 asp 5.
 (j) Section 62 was repealed by paragraph 1 of Schedule 4 to the Regulation of Care (Scotland) Act 2001.

22. Refusal at any time of P's application for registration as a provider of a child care agency under section 7 of the Regulation of Care (Scotland) Act 2001 or cancellation of any such registration under section 12 or 18 of that Act.

23. Inclusion of P's name at any time on a list of persons unsuitable to work with children under article 3 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003(a) or disqualification from working with children under Chapter II of Part II of that Order.

SCHEDULE 2

Regulation 4(5)

REPEALED STATUTORY OFFENCES

- 1.—(1) An offence under any of the following sections of the Sexual Offences Act 1956(b)—
- (a) section 1 (rape)(c);
 - (b) section 2 or 3 (procurement of woman by threats or false pretences);
 - (c) section 4 (administering drugs to obtain or facilitate intercourse);
 - (d) section 5 (intercourse with a girl under 13);
 - (e) section 6 (intercourse with a girl under 16)(d);
 - (f) section 14 or 15 (indecent assault);
 - (g) section 16 (assault with intent to commit buggery);
 - (h) section 17 (abduction of women by force or for the sake of her property);
 - (i) section 19 or 20 (abduction of girl under 18 or 16);
 - (j) section 24 (detention of woman in brothel or other premises);
 - (k) section 25 or 26 (permitting girl under 13, or between 13 and 16, to use premises for intercourse)(e);
 - (l) section 28 (causing or encouraging prostitution of, intercourse with or indecent assault on, girl under 16).
- (2) An offence under section 1 of the Indecency with Children Act 1960 (indecent conduct towards young child)(f).
- (3) An offence under section 54 of the Criminal Law Act 1977 (inciting girl under 16 to incest)(g).
- (4) An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of trust)(h).
- (5) An offence under section 70 of the 1989 Act, section 16 of the Foster Children Act 1980 or section 14 of the Children Act 1958 (offences relating to private fostering)(i).
- (6) An offence under section 63(10) of, paragraph 1(5) of Schedule 5 to, or paragraph 2(3) of Schedule 6 to, the 1989 Act (offences relating to voluntary homes and children's homes)(j).

(a) S.I. 2003/417 (N.I.4).

(b) 1956 c. 69.

(c) Section 1 was substituted by section 142 of the Criminal Justice and Public Order Act 1994 (c. 33) ("the 1994 Act") and repealed by paragraph 11 of Schedule 6 to the Sexual Offences Act 2003 (c. 42) ("the 2003 Act"). Sections 2 to 6, 14 to 17, 19, 20, 24 to 26 and 28 were also repealed by this provision of the 2003 Act.

(d) Section 6 was repealed in part by Schedule 2 to the Criminal Law Act 1967 (c. 58) and in full by the 2003 Act.

(e) Section 26 was repealed in part by section 10 of, and Schedule 2 to, the Criminal Law Act 1967 and in full by the 2003 Act.

(f) 1960 c. 33. Section 1 was amended by section 39 of the 2000 Act and repealed by the 2003 Act.

(g) 1977 c. 45. Section 54 was repealed by the 2003 Act.

(h) 2000 c. 44. Section 3 extends to Scotland and Northern Ireland (see section 7(2) and (4)) but was repealed in relation to England and Wales and Northern Ireland by the 2003 Act.

(i) Section 14 was repealed by the Foster Children Act 1980.

(j) Each of these provisions was repealed by the Care Standards Act 2000 (c. 14).

2. P falls within this paragraph if P has been found to have committed an offence under any of the following provisions committed against or involving a child—

- (a) section 7 of the Sexual Offences Act 1956 (intercourse with defective);
- (b) section 9 of that Act (procurement of defective);
- (c) section 10 of that Act (incest by a man);
- (d) section 11 of that Act (incest by a woman);
- (e) section 12 of that Act (buggery)(a) except if the other party to the act of buggery was aged 16 or over and consented to the act;
- (f) section 13 of that Act (indecent between men)(b) except if the other party to the act of gross indecency was aged 16 or over and consented to the act;
- (g) section 21 of that Act (abduction of defective from parent or guardian);
- (h) section 22 of that Act (causing prostitution of women);
- (i) section 23 of that Act (procurement of girl under 21);
- (j) section 27 of that Act (permitting defective to use premises for intercourse);
- (k) section 29 of that Act (causing or encouraging prostitution of defective);
- (l) section 30 of that Act (man living on earnings of prostitution);
- (m) section 31 of that Act (woman exercising control over prostitute);
- (n) section 128 of the Mental Health Act 1959 (sexual intercourse with patients)(c);
- (o) section 4 of the Sexual Offences Act 1967 (procuring others to commit homosexual acts)(d);
- (p) section 5 of that Act (living on earnings of male prostitution);
- (q) section 9(1)(a) of the Theft Act 1968 (burglary); or
- (r) an offence that is related to an offence specified in sub-paragraphs (a) to (q).

SCHEDULE 3

Regulation 4(7)

SPECIFIED OFFENCES

Offences in England and Wales

1.—(1) An offence under section 49 or 50(9) of the 1989 Act (offences relating to the abduction of a child in care).

(2) An offence under any of the following provisions of the Sexual Offences Act 2003—

- (a) section 62 or 63 (committing an offence or trespassing with intent to commit a sexual offence);
- (b) section 64 or 65 (sex with an adult relative);
- (c) section 69 (intercourse with an animal); or
- (d) section 70 (sexual penetration of a corpse).

(3) An offence in relation to a children's home under or by virtue of any of the following provisions of the Care Standards Act 2000—

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- (a) Section 12 was amended by section 143 of the 1994 Act and sections 1 and 2 of the Sexual Offences (Amendment) Act 2000 (c. 44) and repealed by the 2003 Act.
 - (b) Section 13 was amended by section 2 of the Sexual Offences (Amendment) Act 2000 and repealed by the 2003 Act.
 - (c) 1959 c. 72; section 128 was amended by section 1(4) of the Sexual Offences Act 1967 (c. 60) and by other provisions including paragraph 2 of Schedule 4 to the Care Standards Act 2000, and was repealed by the 2003 Act.
 - (d) 1967 c. 60; sections 4 and 5 were repealed by the 2003 Act.

- (a) section 11(1) (failure to register);
- (b) section 24 (failure to comply with conditions);
- (c) section 25 (contravention of regulations);
- (d) section 26 (false descriptions of establishments and agencies); or
- (e) section 27 (false statements in applications).

Offences in Scotland

- 2.**—(1) An offence of rape.
- (2) An offence specified in Schedule 1 to the Criminal Procedure (Scotland) Act 1995(a).
 - (3) The common law offence of plagiary (theft of a child below the age of puberty).
 - (4) An offence under section 52 or 52A of the Civic Government (Scotland) Act 1982 (offences relating to indecent photographs of children)(b).
 - (5) An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of trust)(c).
 - (6) An offence under any of the following—
 - (a) section 81, 83 or 89 of the Children (Scotland) Act 1995 or section 17(8) or 71 of the Social Work (Scotland) Act 1968 (harbouring offences)(d);
 - (b) section 6 of the Child Abduction Act 1984 (taking or sending child out of United Kingdom)(e); or
 - (c) section 15 of the Foster Children (Scotland) Act 1984 (offences relating to private fostering).
 - (7) An offence under or by virtue of section 60(3), 61(3) or 62(6) of the Social Work (Scotland) Act 1968 (offences relating to residential and other establishments)(f).
 - (8) An offence in relation to a care home service, child minding or day care of children, under or by virtue of any of the following provisions of the Regulation of Care (Scotland) Act 2001(g)—
 - (a) section 21 (offences in relation to registration);
 - (b) section 22 (false statements in applications); or
 - (c) section 29(10) (offences under regulations).

Offences in Northern Ireland

- 3.**—(1) An offence of rape.
- (2) An offence under section 66, 69 or 70 of the Sexual Offences Act 2003.
 - (3) An offence under article 70, 73 or 74 of the Sexual Offences (Northern Ireland) Order 2008(h).
 - (4) An offence specified in Schedule 1 to the Children and Young Persons Act (Northern Ireland) 1968.

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- (a) 1995 c. 46.
 - (b) 1982 c. 45. Section 52 was amended by section 84 of the 1994 Act, Schedule 4 of the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40) and section 19 of the Criminal Justice (Scotland) Act 2003 (asp 7). Section 52A was inserted by section 161 of the Criminal Justice Act 1988 (c. 33) and was amended by section 19 of the Criminal Justice (Scotland) Act 2003. Both sections 52 and 52A were amended by section 16 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9).
 - (c) 2000 c. 44; section 3 was amended in relation to Scotland by paragraph 62 of Part 4 of Schedule 28 to the Civil Partnership Act 2004 (c. 33).
 - (d) Sections 17(8) and 71 of the 1968 Act were repealed by the Children (Scotland) Act 1995.
 - (e) 1984 c. 37; section 6 was amended in relation to Scotland by paragraph 34(c) of Schedule 4 to the Children (Scotland) Act 1995.
 - (f) Sections 60 to 68 were repealed by Schedule 4 to the Regulation of Care (Scotland) Act 2001 (asp 8) with effect from 1st April 2002 (S.S.I. 2002/162).
 - (g) 2001 asp 8.
 - (h) S.I. 2008/1769 (N.I. 2).

(5) An offence under article 3 of the Protection of Children (Northern Ireland) Order 1978 (indecent photographs)(a).

(6) An offence contrary to article 9 of the Criminal Justice (Northern Ireland) Order 1980 (inciting girl under 16 to have incestuous sexual intercourse)(b).

(7) An offence contrary to article 15 of the Criminal Justice (Evidence etc.) (Northern Ireland) Order 1988 (possession of indecent photographs of children)(c).

(8) An offence under sections 16 to 19 of the Sexual Offences Act 2003 (abuse of position of trust).

(9) An offence under Part 3 of the Sexual Offences (Northern Ireland) Order 2008 (sexual offences against children).

(10) An offence under any of the following—

- (a) article 68 or 69(9) of the Children (Northern Ireland) Order 1995 (offences relating to the abduction of a child in care);
- (b) article 132 of the Children (Northern Ireland) Order 1995, or section 14 of the Children and Young Persons Act (Northern Ireland) 1968 (offences relating to child minding and day care)(d);
- (c) article 117 of the Children (Northern Ireland) Order 1995, or section 9(1) of the Children and Young Persons Act (Northern Ireland) 1968 (offences relating to private fostering); or
- (d) article 79(3), 81(4), 95(3) or 97(4) of the Children (Northern Ireland) Order 1995, or section 127(5) or 129(3) of the Children and Young Persons Act (Northern Ireland) 1968 (offences relating to voluntary homes and children's homes).

Offences in Jersey

4. An offence contrary to—

- (a) Part 7 of the Children's Jersey Law 1969(e);
- (b) Schedule 4 of the Children (Jersey) Law 2002(f); or
- (c) The Day Care of Children (Jersey) Law 2002(g).

Offences in Guernsey

5. An offence contrary to—

- (a) the 'Loi pour la Punition d'Inceste' (Law for the Punishment of Incest) 1909(h);
- (b) the 'Loi relative a la protection des Femmes et des Filles Mineures' (Law for the Protection of Women and Young Girls) 1914(i);
- (c) the 'Loi relative a la Sodomy' (Law relating to Sodomy) 1929(j);

(a) S.I.1978/1047 (N.I.17). Article 3 was amended by section 84(10) of the 1994 Act, section 41(2) of the 2000 Act and Schedule 1, paragraph 8 of the Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247) (N.I.13).

(b) S.I.1980/704 (N.I.6).

(c) S.I.1988/1847 (N.I.17). Article 15 was amended by sections 84(11) and 86(2) of the 1994 Act and section 41(4) of the 2000 Act.

(d) This section and the sections of the Children and Young Persons Act (Northern Ireland) 1968 referred to in paragraphs (10)(c) and (d) were repealed by the Children (Northern Ireland) Order 1995.

(e) Jersey Law 16/1969.

(f) Jersey Law 50/2002.

(g) Jersey Law 51/2002.

(h) Orders in Council Volume IV p.288.

(i) Orders in Council Volume V p.74.

(j) Orders in Council Volume VIII p. 273.

- (d) article 7, 9, 10, 11 or 12, section 1 of article 41 or section 1, 2, 3 or 4 of article 51 of the ‘Loi ayant rapport a la Protection des Enfants et des Jeunes Personnes’ (Law relating to the Protection of Children and Young Persons) 1917(a);
- (e) the Children and Young Persons (Guernsey) Law 1967;
- (f) the Protection of Children (Bailiwick of Guernsey) Law 1985(b).

Offences in the Isle of Man

6. An offence specified in Schedule 8 to the Children and Young Persons Act 2001 (an Act of Tynwald).

Other Offences

7.—(1) An offence contrary to section 170 of the Customs and Excise Management Act 1979(c) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876(d) (prohibitions and restrictions) where the prohibited goods included indecent photographs of a child.

(2) An offence by virtue of—

- (a) section 72 of the Sexual Offences Act 2003 (offences outside the United Kingdom); or
- (b) section 16B of the Criminal Law (Consolidation) (Scotland) Act 1995 (commission of certain sexual offences outside the United Kingdom)(e).

(3) An offence contrary to section 32(3) of the Children and Young Persons Act 1969 (detention of absentees)(f).

(a) Orders in Council Volume V p. 342 as amended by Loi Supplémentaire a la Loi ayant rapport a la Protection des Enfants et des Jeunes Personnes 1937, Orders in Council Volume XI p.116 and The Protection of Children and Young Persons (Amendment) Law 1955, Orders in Council Volume XVI p. 277.

(b) Orders in Council Volume XXIX p. 103 as amended by The Administration of Justice (Bailiwick of Guernsey) Law 1991, Orders in Council Volume XXXIII p. 49, the Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law 2002, Order in Council No. I of 2003 and the Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2006, Order in Council No. XIII of 2006.

(c) 1979 c. 2.

(d) 1876 c. 36.

(e) 1995 c. 39.

(f) 1969 c. 54.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace, with modifications, the Childcare (Disqualification) Regulations 2007 and the Childcare (Disqualification) (Amendment) Regulations 2008.

These Regulations set out the categories of persons who are disqualified from registration in England as providers of early years or later years childminding or other early years or later years provision under Part 3 of the Childcare Act 2006 (c.21) (“the 2006 Act”).

Regulation 4 together with Schedule 1 of these Regulations sets out orders and determinations for the care and supervision of children in connection with which a person is disqualified from registration. Regulation 4 together with Schedules 2 and 3, also sets out categories of offences against or involving children or adults in respect of which a person is disqualified from registration.

Disqualification from registration applies to offences committed overseas which are comparable to the offences set out in these Regulations (see regulation 5).

Under these Regulations persons included on the list kept under section 1 of the Protection of Children Act 1999 (c. 14), persons in respect of whom a direction has been made under section 142 of the Education Act 2002 (c. 32) (known as List 99) and persons barred from regulated activity relating to children under section 3(2) of the Safeguarding Vulnerable Groups Act 2006 (c. 47) are disqualified from registration (see regulations 6, 7(1) and (2) and 8).

Regulation 10 sets out the circumstances in which disqualification may be waived by Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (the “Chief Inspector”). There is no power of waiver by the Chief Inspector where the disqualification arises from inclusion on List 99 or the list kept under section 1 of the Protection of Children Act 1999, being barred from regulated activity relating to children under the Safeguarding Vulnerable Groups Act 2006 or where a court has ordered that a person must not work in contact with children following a conviction for certain offences against children (see regulation 10(1) and 10(4)).

By virtue of regulation 11, a right of appeal lies to the First-tier Tribunal^(a) in relation to any determination made by the Chief Inspector as to whether to give consent to waive disqualification under regulation 10.

Regulation 12 provides that a person registered under Chapter 3 or 4 of Part 3 of the 2006 Act has a duty to provide information to the Chief Inspector about the details of any order, determination, conviction or other ground for disqualification from registration under these Regulations. That obligation applies to information relating to the registered person and to any person living in the same household as the registered person or employed in that household.

(a) The First-tier Tribunal was established under section 3 of the Tribunals, Courts and Enforcement Act 2007 c. 15.

STATUTORY INSTRUMENTS

2009 No. 1547

CHILDREN AND YOUNG PERSONS, ENGLAND

The Childcare (Disqualification) Regulations 2009

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