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STATUTORY INSTRUMENTS

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**1997 No. 2308**

**CHILDREN AND YOUNG PERSONS**

**The Children (Protection from Offenders)  
(Miscellaneous Amendments) Regulations 1997**

<i>Made</i>	- - - -	<i>25th September 1997</i>
<i>Laid before Parliament</i>		<i>25th September 1997</i>
<i>Coming into force</i>	- -	<i>17th October 1997</i>

The Secretary of State, in exercise of the powers conferred by section 9(2) and (3) of the Adoption Act 1976<sup>(1)</sup> and sections 23(2)(a) and 68(1) and (2) of, and paragraph 4(1) and (2) of Schedule 4, paragraphs 7(1) and (2) and 8 of Schedule 5, paragraph 10(1) and (2) of Schedule 6 and paragraph 2(1) and (2) of Schedule 9 to, the Children Act 1989<sup>(2)</sup> and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Children (Protection from Offenders) (Miscellaneous Amendments) Regulations 1997 and shall come into force on 17th October 1997.

**Amendment of the Adoption Agencies Regulations 1983**

2.—(1) The Adoption Agencies Regulations 1983<sup>(3)</sup> are amended in accordance with the following provisions of this regulation.

(2) In regulation 1 (interpretation), at the end of paragraph (3) insert—

““specified offence” means an offence specified in Schedule 2.”.

(3) In regulation 8 (adoption agency’s duties in respect of a prospective adopter), in paragraph (2)

- (a) after “procedures referred to in paragraph (1)” insert “and subject to regulation 8A”;
- (b) in sub-paragraph (a) after “by virtue of this regulation” insert “and regulation 8A”;
- (c) in sub-paragraph (h) after “within 28 days” insert “beginning with the date on which the notification was sent.”.

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(1) 1976 c. 36.  
(2) 1989 c. 41.  
(3) S.I.1983/1964, amended by S.I. 1997/649.

(4) After regulation 8 insert the following new regulation—

**“Criminal convictions of a prospective adopter**

**8A.—**(1) An adoption agency shall, so far as practicable, take steps to obtain information about any previous criminal convictions and any cautions given by a constable in respect of criminal offences which relate to a prospective adopter and other members of his household over the age of 18 when considering under regulation 8(1) whether a person may be suitable to be an adoptive parent.

(2) An adoption agency shall not consider a person to be suitable to be an adoptive parent or, as the case may be, shall consider a person no longer to be suitable, if he or any member of his household over the age of 18—

- (a) has been convicted of a specified offence; or
- (b) has been cautioned by a constable in respect of a specified offence which, at the time the caution was given, he admitted.

(3) The adoption agency shall notify a prospective adopter in writing as soon as possible after becoming aware that, by virtue of paragraph (2), he is not (or, as the case may be, is no longer) considered suitable to be an adoptive parent and the notification shall specify the conviction or, as the case may be, the caution in question.”

(5) In regulation 11A (adoption agency decisions and notifications— prospective adopters) in paragraph (4), at the beginning insert “Except in a case where paragraph (2) of regulation 8A applies,”.

(6) In regulation 12 (placement for adoption) in paragraph (2)(e) at the beginning insert “Subject to regulation 8A,”.

(7) In regulation 14 (confidentiality and preservation of court records), in paragraph (4)—

- (a) after “paragraphs (2) and (3)” insert “is suitable to”; and
- (b) for “etc” substitute “(together with any indices not part of the records)”.

(8) After regulation 17 insert the following new regulation—

**“Local authority reports in non agency cases**

**17A.** A local authority which is required by section 22(2) of the Act to investigate an application for an adoption order in respect of a child who was not placed with the applicant by an adoption agency shall, so far as practicable, take steps to obtain information about any previous criminal convictions and any cautions given by a constable in respect of criminal offences which relate to the applicant and other members of his household over the age of 18.”.

(9) After the Schedule insert as Schedule 2 the Schedule to these Regulations.

**Amendment of the Foster Placement (Children) Regulations 1991**

**3.—**(1) The Foster Placement (Children) Regulations 1991(4) are amended in accordance with the following provisions of this regulation.

(2) In regulation 1 (interpretation), at the end of paragraph (2) insert—

““specified offence” means an offence specified in Schedule 4”.

(3) In regulation 3 (approval of foster parents)—

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(4) S.I. 1991/910, amended by S.I. 1995/2015.

- (a) in paragraph (2), for “Subject to paragraph (3)” substitute “Subject to paragraphs (3), (4) and (4A)”;
- (b) after paragraph (4) insert the following new paragraph—
  - “(4A) A person shall not be regarded as suitable to act as a foster parent if he or any member of his household over the age of 18—
    - (a) has been convicted of a specified offence; or
    - (b) has been cautioned by a constable in respect of any such offence which, at the time the caution was given, he admitted.”.
- (4) In Schedule 1 (information as to prospective foster parent and other members of his household and family) for paragraph 9 substitute the following paragraph—
  - “9. Any previous criminal convictions and any cautions given by a constable in respect of criminal offences relating either to him or other member of his household over the age of 18.”.
- (5) After Schedule 3 insert as Schedule 4 the Schedule to these Regulations.

#### **Amendment of the Children’s Homes Regulations 1991**

- 4.—(1) The Children’s Homes Regulations 1991<sup>(5)</sup> are amended in accordance with the following provisions of this regulation.
- (2) In regulation 5 (staffing of children’s homes), after paragraph (2) insert the following paragraph—
  - “(3) Before employing or engaging the services of any person in a children’s home in a position which involves substantial and unsupervised access to children on a sustained or regular basis, the responsible authority shall, so far as practicable, take steps to obtain information about his previous criminal convictions (if any) and any cautions given by a constable in respect of criminal offences.”.

#### **Amendment of the Disqualification for Caring for Children Regulations 1991**

- 5.—(1) The Disqualification for Caring for Children Regulations 1991<sup>(6)</sup> are amended in accordance with the following provision of this regulation.
- (2) In the Schedule (offences which disqualify persons from private fostering and registering under section 71 of the Children Act<sup>(7)</sup>), for paragraph 1 substitute the offences listed in the Schedule to these Regulations save that the exemptions specified in paragraphs 2(a) and 13(a) in the Schedule to these Regulations (exemptions for common assault and battery) are omitted.

#### **Transitional provisions in relation to prospective adopters**

- 6. Not more than 12 weeks after the date on which these Regulations come into force, an adoption agency shall, so far as practicable, take steps to obtain information about—
  - (a) any previous criminal convictions of each person with whom a child is currently placed for adoption or with whom it proposes to place a child for adoption (“the prospective adopter”) and each member of those persons' households over the age of 18; and
  - (b) any caution given by a constable in respect of criminal offences to any person mentioned in paragraph (a),

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<sup>(5)</sup> S.I. 1991/1506, amended by S.I. 1993/3069, S.I. 1994/1511 and S.I. 1996/692.

<sup>(6)</sup> S.I. 1991/2094.

<sup>(7)</sup> 1989 c. 41.

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unless that information was obtained by the agency, or another adoption agency, at the time when that agency was considering whether the prospective adopter was suitable to be an adoptive parent in accordance with regulation 8 of the Adoption Agencies Regulations 1983<sup>(8)</sup>.

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<sup>(8)</sup> S.I. 1983/1964 amended by S.I. 1997/649.

## SCHEDULE

Regulations 2(9), 3(5) and 5(2)

To be inserted as Schedule'2 (definition of “specified offence”) to the Adoption Agencies Regulations 1983 and as Schedule'4 (definition of “specified offence”) to the Foster Placement (Children) Regulations 1991 and to be substituted, subject to the modifications in regulation'5(2), for paragraph 1 of the Schedule to the Disqualification for Caring for Children Regulations 1991.

### Offences in England and Wales

1. An offence under section 1 of the Sexual Offences Act 1956 (rape)(9)(a).
2. An offence specified in Schedule 1 to the Children and Young Persons Act 1933(10) except for—
  - (a) the offence of common assault or battery; or
  - (b) in a case where the offender was under 20 at the time the offence was committed, an offence contrary to sections 6, 12 or 13 of the Sexual Offences Act 1956 (sexual intercourse with a girl between 13 and 16, buggery or indecency between men).
3. An offence under section 1(1) of the Indecency with Children Act 1960 (indecent conduct towards young child)(11).
4. An offence under section 54 of the Criminal Law Act 1977 (inciting a girl under 16 to have incestuous sexual intercourse)(12).
5. An offence contrary to section 1 of the Protection of the Children Act 1978 (indecent photographs of children)(13).
6. An offence contrary to section 160 of the Criminal Justice Act 1988 (the possession of indecent photographs of children)(14).
7. An offence contrary to section 170 of the Customs and Excise Management Act 1979(15) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876(16) (prohibitions and restrictions relating to pornography) where the prohibited goods included indecent photographs of children under the age of 16.

### Offences in Scotland

8. An offence of rape.
9. An offence specified in Schedule 1 to the Criminal Procedure (Scotland) Act 1995(17) other than, in a case where the offender was under 20 at the time the offence was committed, an offence contrary to section 5 of the Criminal Law (Consolidation) (Scotland) Act 1995(18) (intercourse with a girl between 13 and 16), an offence of shameless indecency between men or an offence of sodomy.
10. An offence under section 170 of the Customs and Excise Management Act 1979 in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (prohibitions and restrictions relating to pornography) where the prohibited goods included indecent photographs of children under the age of 16.

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(9) 1956 c. 69. Section 1 was substituted by the Criminal Justice and Public Order Act 1994, section 142.

(10) 1933 c. 12.

(11) 1960 c. 33.

(12) 1977 c. 45.

(13) 1978 c. 37.

(14) 1988 c. 33.

(15) 1979 c. 2.

(16) 1876 c. 36.

(17) 1995 c. 46.

(18) 1995 c. 39.

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11. An offence under sections 52 and 52A of the Civic Government (Scotland) Act 1982 (indecent photographs)(19).

### **Offences in Northern Ireland**

12. An offence of rape.

13. An offence specified in Schedule 1 to the Children and Young Persons Act (Northern Ireland) 1968(20), except for—

- (a) the offence of common assault or battery; or
- (b) other than, in a case where the offender was under 20 at the time the offence was committed, an offence contrary to sections 5 or 11 of the Criminal Law Amendment Act 1985(21) (unlawful carnal knowledge of a girl under 17 and gross indecency between males), or an offence contrary to section 61 of the Offences against the Person Act 1861(22) (buggery).

14. An offence specified in the Homosexual Offences (Northern Ireland) Order 1982(23).

15. An offence under Article 3 of the Protection of Children (Northern Ireland) Order 1978 (indecent photographs)(24).

16. An offence contrary to Article 9 of the Criminal Justice (Northern Ireland) Order 1980 (inciting girl under 16 to have incestuous sexual intercourse)(25).

17. An offence contrary to Article 15 of the Criminal Justice (Evidence etc) (Northern Ireland) Order 1988 (possession of indecent photographs of children)(26).

18. An offence contrary to section 170 of the Customs and Excise Management Act 1979 in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (prohibitions and restrictions relating to pornography) where the prohibited goods included indecent photographs of children under the age of 16.

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(19) 1982 c. 45.

(20) 1968 c. 34(N.I.).

(21) 1885 c. 69.

(22) 1861 c. 100.

(23) S.I. 1982/1536 (N.I.19).

(24) S.I. 1978/1047 (N.I.17).

(25) S.I. 1980/1704 (N.I.6).

(26) S.I. 1988/1847 (N.I.17).

Signed by authority of the Secretary of State for Health

25th September 1997

*Paul Boateng*  
Parliamentary Under Secretary of State,  
Department of Health

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Adoption Agencies Regulations 1983, the Foster Placement (Children) Regulations 1991, the Children's Homes Regulations 1991 and the Disqualification for Caring for Children Regulations 1991.

The main purpose of the Regulations is to ensure that those with convictions for serious offences against children or who have been cautioned in relation to such offences do not adopt or foster children.

Regulation 2 provides that an adoption agency is required to obtain information about any criminal convictions and cautions when considering whether a person may be suitable to be an adoptive parent. Regulation 2 further provides that a person is not to be regarded as suitable to be an adoptive parent if he has been convicted of or given a caution in respect of certain serious offences against children or rape. These offences are defined as "specified offences" and are listed in the Schedule. The local authority must also carry out a police check when investigating an application for an adoption order in non agency cases.

Regulation 3 provides that local authorities are not to regard a person who has been convicted of or given a caution in respect of a specified offence as suitable to act as a foster parent.

Regulation 4 provides that information about criminal convictions is to be obtained before any person is employed or engaged to provide services in a children's home in a position involving contact with children.

Regulation 5 amends the Disqualification for Caring for Children Regulations 1991 to add to the list of convictions which disqualify a person from fostering a child privately, being registered as a child minder or being involved in certain other activities involving children, a conviction for or caution in respect of any of the offences which would prevent such a person from being considered suitable to adopt or foster a child.

Regulation 6 makes certain transitional provision in relation to prospective adopters with whom an agency has placed or proposes to place a child for adoption and in respect of whom police checks were not carried out at the time when the agency assessed whether they were suitable to be adoptive parents.

These Regulations also make minor drafting amendments and impose no costs on business.