

STATUTORY INSTRUMENTS

2005 No. 1533

CHILDREN AND YOUNG PERSONS, ENGLAND

SOCIAL CARE, ENGLAND

The Children (Private Arrangements for Fostering) Regulations 2005

Made 9th June 2005

Laid before Parliament 10th June 2005

Coming into force 1st July 2005

The Secretary of State, in exercise of the powers conferred on her by sections 67(2), (2A) and (6) and 104(4) of, and paragraph 7 of Schedule 8 to, the Children Act 1989[1], hereby makes the following Regulations—

Citation, commencement and application

1. —(1) These Regulations may be cited as the Children (Private Arrangements for Fostering) Regulations 2005 and shall come into force on 1st July 2005.

(2) These Regulations apply to England only.

Interpretation

2. In these Regulations—

"the Act" means the Children Act 1989;

"appropriate local authority" means—

(i) the local authority within whose area the child is being fostered privately; or

(ii) in the case of a proposal to foster a child privately, the local authority within whose area it is proposed that he will be fostered privately;

"private foster carer" means a person who fosters a child privately; and

"working day" means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971[2].

Notification of proposal to foster a child privately

3. —(1) A person who proposes to foster a child privately must notify the appropriate local authority of the proposal—

(a) at least six weeks before the private fostering arrangement is to begin; or

(b) where the private fostering arrangement is to begin within six weeks, immediately.

(2) Any person who is involved (whether or not directly) in arranging for a child to be fostered privately must notify the appropriate local authority of the arrangement as soon as possible after the arrangement has been made.

(3) A parent of a child, and a person who is not a parent of his but who has parental responsibility for a child, who is not involved (whether or not directly) in arranging for the child to be fostered privately but who knows that it is proposed that the child should be fostered privately must notify the appropriate local authority of the proposal as soon as possible after he becomes aware of the arrangement.

(4) Notification given under paragraphs (1) to (3) must contain such of the information specified in Schedule 1 as the person giving the notification is able to provide.

Action to be taken by local authority on receipt of notification of proposal to foster a child privately

4. —(1) Where a local authority have received notification under regulation 3 they must, for the purposes of discharging their duty under section 67(1) of the Act (welfare of privately fostered children), arrange for an officer of the authority within

seven working days to—

- (a) visit the premises where it is proposed that the child will be cared for and accommodated;
- (b) visit and speak to the proposed private foster carer and to all members of his household;
- (c) visit and speak to the child, alone unless the officer considers it inappropriate;
- (d) speak to and, if it is practicable to do so, visit every parent of or person with parental responsibility for the child; and
- (e) establish such matters listed in Schedule 2 as appear to the officer to be relevant.

(2) Having completed his functions under paragraph (1) the officer must make a written report to the local authority.

Notification by person already fostering a child privately

5. —(1) A person who is fostering a child privately and has not given notification to the appropriate local authority in accordance with regulation 3 must notify the appropriate local authority immediately.

(2) Notification given under paragraph (1) must contain such of the information specified in Schedule 1 as the person giving the notification is able to provide.

Notification of a child going to live with private foster carer

6. —(1) A person who has given notification under regulation 3(1) must, within 48 hours of the start of the arrangement, notify the appropriate local authority of the fact.

(2) A parent of a child, and any other person who has parental responsibility for the child, who has given notification under regulation 3(2) or 3(3) must within 48 hours of the child's going to live with a private foster carer, notify the appropriate local authority of the fact.

Action to be taken by local authority on receipt of notification about a child being fostered privately

7. —(1) Where a local authority have received a notification under regulation 5 or 6 they must for the purposes of discharging their functions under section 67(1) of the Act, arrange for an officer of the authority within seven working days to—

- (a) visit the premises where the child is being cared for and accommodated;
- (b) visit and speak to the private foster carer and to all members of his household;
- (c) visit and speak to the child, alone unless the officer considers it inappropriate;
- (d) speak to and, if it is practicable to do so, visit every parent of or person with parental responsibility for the child; and
- (e) establish such matters listed in Schedule 3 as appear to the officer to be relevant.

(2) Having completed his functions under paragraph (1) the officer must make a written report to the local authority.

Subsequent visits to children who are being fostered privately

8. —(1) Each local authority must arrange for an officer of the authority to visit every child who is being fostered privately in their area—

- (a) in the first year of the private fostering arrangement, at intervals of not more than six weeks; and
- (b) in any second or subsequent year, at intervals of not more than 12 weeks.

(2) In addition to visits carried out in accordance with paragraph (1) the local authority must arrange for every child who is fostered privately in their area to be visited by an officer when reasonably requested to do so by the child, the private foster carer, a parent of the child or any other person with parental responsibility for the child.

- (3) When carrying out a visit under this regulation the officer must speak to the child alone unless he considers it inappropriate.
- (4) When carrying out a visit under this regulation the officer must establish such matters listed in Schedule 3 as appear to him to be relevant.
- (5) The officer must make a written report to the local authority after each visit carried out in accordance with this regulation.
- (6) For the purposes of this regulation, the private fostering arrangement is deemed to begin when the local authority become aware of it.

Notification of change of circumstances

9. —(1) A private foster carer must notify the appropriate local authority of—

- (a) any change of his address;
- (b) any further offence of which he or a person who is part of or employed at his household has been convicted;
- (c) any further disqualification imposed on him or a person who is part of or employed at his household under section 68 of the Act;
- (d) any person who begins to be part of or employed at his household, and any offence of which that person has been convicted, and any disqualification or prohibition imposed on him under section 68 or 69 of the Act or under any previous enactment of either of those sections; and
- (e) any person who ceases to be part of or employed at his household.

(2) A notification under paragraph (1) must be given—

- (a) in advance if practicable;
 - (b) in any other case, not more than 48 hours after the change of circumstances.
- (3) If the private foster carer's new address is in the area of another local authority, or of a local authority in Scotland, Wales or Northern Ireland, the authority to whom the notification is given under this regulation must pass on to the authority for the area—
- (a) the name and new address of the private foster carer;
 - (b) the name of the child who is being fostered privately; and
 - (c) the name and address of the child's parents or any other person who has parental responsibility for him.
- (4) The parent of a privately fostered child, and any other person who has parental responsibility for the child, who knows that the child is being fostered privately, must notify the appropriate local authority of any change of his own address.

Notification of the end of a private fostering arrangement

10. —(1) Subject to paragraphs (2) and (3), any person who has been fostering a child privately but has ceased to do so must notify the appropriate local authority within 48 hours and must include in the notification the name and address of the person into whose care the child was received and that person's relationship with the child.

(2) Where a person has been fostering a child privately but has ceased to do so because of the death of the child he must in his notification to the local authority indicate that that is the reason.

(3) Paragraph (1) shall not apply where the private foster carer intends to resume the private fostering arrangement after an interval of not more than 27 days but if—

- (a) he subsequently abandons his intention; or
 - (b) the interval expires without his having given effect to his intention,
- he must notify the local authority within 48 hours of abandoning his intention or, as

the case may be, the expiry of the interval.

(4) Any parent of a privately fostered child, and any other person who has parental responsibility for a child, who has given notification to the local authority under regulation 3(2) or (3) must notify the appropriate local authority of the ending of the private fostering arrangement and must include in the notification the name and address of the person into whose care the child was received and that person's relationship with the child.

Form of notification

11. Any notification required under these Regulations must be given in writing and may be sent by post.

Monitoring the discharge of functions under Part 9 of the Act

12. Each local authority must monitor the way in which they discharge their functions under Part 9 of the Act and must appoint an officer of the authority for that purpose.

Revocation and transitional provision

13. The Children (Private Arrangements for Fostering) Regulations 1991[3] in so far as they apply to England are revoked, save that any notification given under those Regulations before the coming into force of these Regulations shall be treated as if it had been given under these Regulations.

Signed by the Secretary of State for Education and Skills

Maria Eagle

Parliamentary Under Secretary of State Department for Education and Skills

9th June 2005

SCHEDULE 1

Regulations 3 and 5

Information to be provided in Notification

1. The information referred to in regulations 3(4) and 5(2) is—

- (a) the name, sex, date and place of birth, religious persuasion, racial origin and cultural and linguistic background of the child;
- (b) the name and current address of the person giving the notice and his addresses within the previous five years;
- (c) the name and current address of the proposed or current private foster carer and his addresses within the previous five years;
- (d) the name and current address of the parents of the child and of any other person who has parental responsibility for the child and (if different) of any person from whom the child is to be, or was, received;
- (e) the name and current address of the minor siblings of the child, and details of the arrangements for their care;
- (f) the name and current address of any person, other than a person specified in subparagraph (d), who is or was involved (whether or not directly) in arranging for the child to be fostered privately;
- (g) the date on which it is intended that the private fostering arrangement will start, or on which it did start; and
- (h) the intended duration of the private fostering arrangement.

2. In the case of a person giving notice under regulation 3(1) or 5(1) the information referred to in regulations 3(4) and 5(2) also includes—

- (a) any offence of which he has been convicted;
- (b) any disqualification or prohibition imposed on him under section 68 or 69 of the

Act or under any previous enactment of either of those sections;
(c) any such conviction, disqualification or prohibition imposed on any other person living in or employed at the same household;
(d) any order of a kind specified in regulations under section 68 of the Act made at any time with respect to him;
(e) any order of a kind specified in regulations under section 68 of the Act made at any time with respect to a child who has been in his care; and
(f) any rights or power with respect to a child that have been at any time vested in an authority specified in regulations under section 68 of the Act under an enactment specified in those regulations.

SCHEDULE 2

Regulation 4

Welfare of children who are to be fostered privately

1. The matters referred to in regulation 4(1)(e) are—

- (a) that the intended duration of the arrangement is understood by and agreed between—
 - (i) the parents of the child or any other person with parental responsibility for the child; and
 - (ii) the proposed private foster carer;
- (b) the wishes and feelings of the child about the proposed arrangement (considered in the light of his age and understanding);
- (c) the suitability of the proposed accommodation;
- (d) the capacity of the proposed private foster carer to look after the child;
- (e) the suitability of other members of the proposed private foster carer's household;
- (f) that arrangements for contact between the child and his parents, any other person with parental responsibility for him, and other persons who are significant to him, have been agreed and understood and that those arrangements will be satisfactory for the child;
- (g) that the parents of the child or any other person with parental responsibility for him and the proposed private foster carer have agreed financial arrangements for the care and maintenance of the child;
- (h) that consideration has been given to, and necessary steps taken to make arrangements for, care of the child's health;
- (i) that consideration has been given to, and necessary steps taken to make arrangements for, the child's education;
- (j) how decisions about the care of the child will be taken; and
- (k) whether the proposed private foster carer, the parents of the child, any other person with parental responsibility for the child, or any other person concerned with the child are being given such advice as seems to the authority to be needed.

SCHEDULE 3

Regulations 7 and 8

Welfare of children who are fostered privately

1. The matters referred to in regulations 7(1)(e) and 8(4) are—

- (a) that the intended duration of the fostering arrangement is understood and agreed between—
 - (i) the parents of the child or any other person with parental responsibility for the child; and
 - (ii) the private foster carer;

- (b) the wishes and feelings of the child about the arrangement (considered in the light of his age and understanding);
- (c) that the child's physical, intellectual, emotional, social and behavioural development is appropriate and satisfactory;
- (d) that the child's needs arising from his religious persuasion, racial origin, and cultural and linguistic background are being met;
- (e) that the financial arrangements for the care and maintenance of the child are working;
- (f) the capacity of the private foster carer to look after the child;
- (g) the suitability of the accommodation;
- (h) that the arrangements for care of the child's health are in place and, in particular, that the child is included on the list of a person who provides primary medical services pursuant to Part 1 of the National Health Service Act 1977[4];
- (i) the arrangements for the child's education;
- (j) the standard of the care which the child is being given;
- (k) the suitability of members of the private foster carer's household;
- (l) whether the contact between the child and his parents, or any other person with whom contact has been arranged, is satisfactory for the child;
- (m) how decisions about the child's care are being taken; and
- (n) whether the private foster carer, the parents of the child, any other person with parental responsibility for the child, or any other person concerned with the child are being given such advice as appears to the authority to be needed.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Children (Private Arrangements for Fostering) Regulations 1991 in relation to England, following amendments to the private fostering notification scheme made by section 44 of the Children Act 2004. Regulation 3 requires any person proposing to foster a child privately, any person involved (whether directly or not) in arranging for the child to be fostered privately, and a parent of the child or other person with parental responsibility for the child who knows that it is proposed to foster the children privately, to notify the appropriate local authority in advance of the arrangement starting. Notification by the proposed private foster carer has to be given at least six weeks before the private fostering arrangement is to begin, or where the arrangement is to begin within six weeks then immediately. Others required to give notification under regulation 3 must do so as soon as possible after the arrangement has been made, or as soon as possible after they become aware of the arrangement.

The notification should contain such of the information set out in Schedule 1 as the person giving the notification is able to provide.

Having received a notification the local authority then have to arrange for an officer of the authority to visit the place where the child will live and speak to the proposed private foster carer, members of his household, the child and others (regulation 4) and establish such matters as are listed in Schedule 2 as appear relevant to the officer. The officer then has to make a written report to the authority.

Regulation 5 sets out the requirement to notify the local authority of the arrangement where notification under regulation 3 has not been given. Regulation 6 sets out the requirement to notify the local authority when a private fostering arrangement of which they have been notified under regulation 3 actually starts. Having received

notification under either regulation 5 or 6, the local authority must arrange for an officer to carry out visits and establish such matters listed in Schedule 3 as appear to him to be relevant (regulation 7).

Regulation 8 is concerned with local authority visits to the child once the private fostering arrangement has started. It provides for when the visits should take place and what the officer of the authority should do when carrying out a visit. After each visit he is required to make a written report to the local authority.

Private foster carers are required to notify the local authority of certain changes in circumstances, such as a change of address or when someone leaves or joins their household. If the private foster carer moves to the area of another local authority then certain information is required to be passed to the local authority for the new area by the local authority for the old. The parent of a privately fostered child, or other person with parental responsibility for the child, who knows that the child is being fostered privately must notify the local authority of a change of their address (regulation 9).

Regulation 10 is concerned with notification of the end of the arrangement. A person who has been fostering privately a child must notify the local authority within 48 hours of him ceasing to foster the child privately, and if the reason for the ending of the arrangement is that the child has died then he must tell the local authority that that is the reason.

All notifications given under these Regulations must be in writing (regulation 11).

Regulation 12 requires local authorities to monitor the way in which they discharge their functions in respect of privately fostered children and to appoint an officer of the local authority for that purpose.

Notes:

[1] 1989 c.41; section 67 was amended by the Children Act 2004 (c. 31), section 44.

[2] 1971 c.80.

[3] S.I. 1991/2050, as amended in relation to England by S.I. 2004/865.

[4] 1977 c.49; section 16CC (inserted by section 174 of the Health and Social Care (Community Health and Standards) Act 2003 (c.43) imposes a duty on primary care trusts to provide or secure provision of primary medical services.