



Children Act 2004

2004 CHAPTER 31

PART 5

MISCELLANEOUS

Private fostering

44 Amendments to notification scheme

- (1) Section 67 of the Children Act 1989 (c. 41) (welfare of privately fostered children) is amended as specified in subsections (2) to (6).
- (2) In subsection (1)—
 - (a) after “who are” insert “ or are proposed to be ”;
 - (b) after “is being” insert “ or will be ”;
 - (c) for “caring for” substitute “ concerned with ”.
- (3) After subsection (2) insert—

“(2A) Regulations under subsection (2)(b) may impose requirements as to the action to be taken by a local authority for the purposes of discharging their duty under subsection (1) where they have received notification of a proposal that a child be privately fostered.”
- (4) In subsection (3) for “to visit privately fostered children” substitute “ for the purpose ”.
- (5) In subsection (5)—
 - (a) after “child who is” insert “ or is proposed to be ”;
 - (b) after “is being” insert “ or will be ”.
- (6) After subsection (5) insert—

“(6) The Secretary of State may make regulations requiring a local authority to monitor the way in which the authority discharge their functions under this

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Part (and the regulations may in particular require the authority to appoint an officer for that purpose).”

(7) In Schedule 8 to that Act (privately fostered children) after paragraph 7 insert—

“7A Every local authority must promote public awareness in their area of requirements as to notification for which provision is made under paragraph 7.”

(8) The reference to that Act in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) is to be treated as referring to that Act as amended by this section.

Commencement Information

- II** S. 44 wholly in force at 1.4.2006; s. 44 not in force at Royal Assent see s. 67(7); s. 44 in force for E. for certain purposes at 1.4.2005 and in force at 1.7.2005 in so far as not yet in force by [S.I. 2005/394](#), [art. 2\(2\)\(3\)](#); s. 44 in force for W. at 1.4.2006 by [S.I. 2006/885](#), [art. 2\(2\)](#)

45 Power to establish registration scheme in England

- (1) The Secretary of State may by regulations require any person who fosters a child privately in the area of a [F1local authority] in England to be registered for private fostering by that authority in accordance with the regulations.
- (2) Regulations under this section may make supplementary provision relating to the registration of persons for private fostering, including provision as to—
 - (a) how a person applies for registration and the procedure to be followed in considering an application;
 - (b) the requirements to be satisfied before a person may be registered;
 - (c) the circumstances in which a person is disqualified from being registered;
 - (d) the circumstances in which an application for registration may or must be granted or refused;
 - (e) the payment of a fee on the making or granting of an application for registration;
 - (f) the imposition of conditions on registration and the variation or cancellation of such conditions;
 - (g) the circumstances in which a person’s registration may be, or be regarded as, cancelled;
 - (h) the making of appeals against any determination of a [F1local authority] in England in relation to a person’s registration;
 - (i) temporary registration, or circumstances in which a person may be regarded as registered;
 - (j) requirements to be complied with by a [F1local authority] in England or a person registered under the regulations.
- (3) The provision which may be made under subsection (2)(a) includes provision that any person who, in an application for registration under the regulations, knowingly makes a statement which is false or misleading in a material particular is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

- (4) The requirements for which provision may be made under subsection (2)(b) include requirements relating to—
- (a) the suitability of the applicant to foster children privately;
 - (b) the suitability of the premises in which it is proposed to foster children privately (including their suitability by reference to any other person living there).
- (5) The provision which may be made under subsection (2)(c) includes provision that a person may be disqualified where—
- (a) an order of a kind specified in the regulations has been made at any time with respect to him;
 - (b) an order of a kind so specified has been made at any time with respect to any child who has been in his care;
 - (c) a requirement of a kind so specified has been imposed at any time with respect to any such child, under or by virtue of any enactment;
 - (d) he has been convicted of a criminal offence of a kind so specified, or a probation order has been made in respect of him for any such offence or he has been discharged absolutely or conditionally for any such offence;
 - (e) a prohibition has been imposed on him under any specified enactment;
 - (f) his rights and powers with respect to a child have at any time been vested in a specified authority under a specified enactment;
 - (g) he lives in the same household as a person who is himself disqualified from being registered or in a household in which such a person is employed.
- (6) The provision which may be made under subsection (2)(c) also includes provision for a [^{F1}local authority] in England to determine whether a person is or is not to be disqualified.
- (7) The conditions for which provision may be made under subsection (2)(f) include conditions relating to—
- (a) the maintenance of premises in which children are, or are proposed to be, privately fostered;
 - (b) any other persons living at such premises.
- (8) The provision which may be made under subsection (2)(j) includes—
- (a) a requirement that a person registered under the regulations obtain the consent of the [^{F1}local authority] in England by whom he is registered before privately fostering a child;
 - (b) provision relating to the giving of such consent (including provision as to the circumstances in which, or conditions subject to which, it may or must be given).
- (9) The provision which may be made under subsection (2)(j) also includes—
- (a) a requirement for a [^{F1}local authority] in England to undertake annual inspections in relation to persons registered under the regulations (whether in fact privately fostering children or not); and
 - (b) provision for the payment of a fee by registered persons in respect of such inspections.
- (10) Regulations under this section may—

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- (a) authorise a [^{F1}local authority] in England to issue a notice to any person whom they believe to be fostering a child privately in their area without being registered in accordance with the regulations; and
 - (b) provide that a person who, without reasonable excuse, fosters a child privately without being registered in accordance with the regulations while such a notice is issued in respect of him is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (11) Regulations under this section may provide that a person registered under the regulations who without reasonable excuse contravenes or otherwise fails to comply with any requirement imposed on him in the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (12) Regulations under this section may provide that a person who fosters a child privately while he is disqualified from being registered is guilty of an offence unless—
- (a) he is disqualified by virtue of the fact that he lives in the same household as a person who is himself disqualified from being registered or in a household in which such a person is employed; and
 - (b) he did not know, and had no reasonable grounds for believing, that that person was so disqualified.
- (13) Where regulations under this section make provision under subsection (12), they must provide that a person who is guilty of the offence referred to in that subsection is liable on summary conviction to—
- (a) a fine not exceeding level 5 on the standard scale, or
 - (b) a term of imprisonment not exceeding 51 weeks (or, in the case of an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), not exceeding six months), or
 - (c) both.
- (14) Regulations under this section may—
- (a) make consequential amendments (including repeals) to sections 67(2) to (6) and 68 to 70 of, and paragraphs 6 to 9 of Schedule 8 to, the Children Act 1989 (c. 41);
 - (b) amend Schedule 1 to the Local Authority Social Services Act 1970 (c. 42) (social services functions) as to add functions of a [^{F1}local authority] in England under this section to the functions listed in that Schedule.
- (15) Nothing in this section affects the scope of section 66(1).
- (16) For the purposes of this section references to a person fostering a child privately have the same meaning as in the Children Act 1989.

Textual Amendments

F1 Words in s. 45 substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), arts. 1, 5(1), **Sch. 2 para. 55(6)**

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46 Power to establish registration scheme in Wales

- (1) The Assembly may by regulations require any person who fosters a child privately in the area of a [^{F2}local authority] in Wales to be registered for private fostering by that authority in accordance with the regulations.
- (2) Subsections (2) to (15) of section 45 apply in relation to regulations under this section as they apply in relation to regulations under that section with the substitution for references to a [^{F2}local authority] in England of references to a [^{F2}local authority] in Wales.
- (3) Subsection (16) of that section applies for the purposes of this section.

Textual Amendments

- F2** Words in s. 46 substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), arts. 1, 5(1), **Sch. 2 para. 55(6)**

47 Expiry of powers in sections 45 and 46

- (1) If no regulations have been made under section 45 by the relevant time, that section shall (other than for the purposes of section 46(2) and (3)) cease to have effect at that time.
- (2) If no regulations have been made under section 46 by the relevant time, that section shall cease to have effect at that time.
- (3) In this section, the relevant time is the end of the period of [^{F3}seven] years beginning with the day on which this Act is passed.

Textual Amendments

- F3** Word in s. 47(3) substituted (12.2.2009 for E. and 6.4.2009 for W.) by [Children and Young Persons Act 2008 \(c. 23\)](#), **ss. 35, 44(3)-(5)**; S.I. 2009/268, **art. 3**; S.I. 2009/728, **art. 2**

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