

CHILDREN ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Advisory and Support Services for Family Proceedings

Private fostering

Section 44: Amendments to notification scheme

173. The law on private fostering arrangements and the role of local authorities with respect to them is set out in Part 9 of, and Schedule 8 to, the Children Act 1989 and in the Children (Private Arrangements for Fostering) Regulations 1991.
174. A privately fostered child is one who is under the age of 16 (under 18 if he is disabled) and who is cared for and accommodated by someone other than a parent, other person with parental responsibility or close relative. A child is not privately fostered if the person caring for them has done so for fewer than 28 days and does not intend to do so longer than that. There are a number of exemptions from this definition set out in Schedule 8 to the Children Act 1989.
175. The current legislative provisions relating to private fostering, referred to in these notes as the notification scheme, require those involved in a private fostering arrangement to give the local authority advance notice of it. Privately fostered children are not 'looked after' children in the terms of section 22 of the Children Act 1989 and local authorities do not get involved in the making of such arrangements, but they have to satisfy themselves that the welfare of privately fostered children in their area is satisfactorily safeguarded and promoted. They also have powers to impose requirements on arrangements and to prohibit them altogether.
176. The amendments in *subsections (2) to (5)* extend the duties of local authorities in cases where a child is proposed to be, but is not yet, privately fostered.
177. *Subsection (2)* amends section 67(1) of the Children Act 1989, under which local authorities are required to satisfy themselves that the welfare of privately fostered children is being satisfactorily safeguarded and promoted, so that the duty also applies in respect of children who are proposed to be privately fostered.
178. *Subsection (2)* also amends the duty on local authorities under section 67(1), which requires them to secure that such advice is given to those caring for privately fostered children as appears to the authorities to be needed. The amendment extends the duty to include advice to prospective foster carers and/or to parents. The intention is that local authorities should be able to give such advice, for example, where one proposed fostering arrangement has been prohibited by the local authority and no other is currently contemplated. The parents may need advice then on what alternative arrangements can be made for the care of their child.
179. Section 67(2) of the Children Act 1989 gives the Secretary of State the power to make regulations about visits by the local authority to privately fostered children and

*These notes refer to the Children Act 2004 (c.31)
which received Royal Assent on 15th November 2004*

imposing requirements which are to be met by local authorities in carrying out their functions under section 67.

180. The new subsection (2A), inserted by section 44(3), provides that the regulations made under section 67(2)(b) may say what local authorities have to do when they are told that a child is going to be privately fostered. The intention is that these regulations will require local authorities to carry out proper checks on, and satisfy themselves of the suitability of, a proposed arrangement or exercise their powers to prohibit, or impose requirements on, the arrangement before the child is privately fostered.
181. *Subsection (4)* amends section 67(3) of the Children Act 1989. The existing reference in this section to a person authorised “to visit privately fostered children” was not very apt for a case where he is, under this provision, inspecting premises for children who are proposed to be privately fostered.
182. *Subsection (5)* amends section 67(5) so that the current duties of a local authority where it is not satisfied that the welfare of a privately fostered child is being satisfactorily safeguarded or promoted will apply in the case of children who are proposed to be privately fostered.
183. New section 67(6), inserted by *subsection (6)*, gives the Secretary of State the power to make regulations requiring local authorities to monitor the way in which they discharge their functions under Part 9 of the Children Act 1989. It is intended that such monitoring might include keeping a record of notifications received, monitoring compliance with timescales for visits and recording any prohibitions or requirements imposed along with reports of any visits and the outcomes of notifications. This information could then be collated in an annual report to Local Safeguarding Children Boards. The intention of this provision is to increase the focus of local authorities on private fostering.
184. *Subsection (7)* inserts a new paragraph 7A into Schedule 8 of the Children Act 1989. This will require local authorities to raise public awareness of the requirement to notify the local authority of private fostering arrangements.
185. *Subsection (8)* provides that the new regulation-making powers inserted into the Children Act 1989 by this section will, with respect to Wales, be exercised by the National Assembly for Wales.