

# CHILDREN ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 4 – Advisory and Support Services for Family Proceedings**

##### **Private fostering**

##### *Section 45: Power to establish registration scheme in England*

186. *Subsection (1)* gives the Secretary of State the power to set up through regulations a scheme for the registration of private foster carers. More detail of the scheme is provided in the rest of the section.
187. *Subsection (2)* provides for regulations to make supplementary provision relating to the registration of people for private fostering and sets out some matters in relation to which such provision can be made.
188. *Subsection (2)(a)* says that the regulations may make provision as to how a person applies for registration and as to the procedure to be followed by the authority in considering an application. It is supplemented by *subsection (3)*, which highlights that the regulations may make it an offence for a person, in an application for registration as a private foster carer, knowingly to make a statement which is false or misleading in a material way.
189. *Subsection (2)(b)*, which makes for provision in the regulations as to the requirements to be satisfied before a person may be registered, is supplemented by *subsection (4)*, which sets out some detail of what these requirements might include. These are the requirements with which all prospective private foster carers will need to comply in order to be registered.
190. *Subsection (2)(c)*, which concerns the circumstances in which a person is disqualified from being registered, is supplemented by *subsection (5)*, which sets out in more detail the circumstances in which regulations may say that a person is disqualified. *Subsection (6)* allows the regulations to provide that the authority may determine whether a person is or is not disqualified. This means that even if someone might otherwise be disqualified the authority could decide that nevertheless they should be able to be registered.
191. *Subsection (2)(f)*, which makes provision in the regulations as to the imposition by a local authority of conditions on registration and as to the variation or cancellation of conditions, is supplemented by *subsection (7)*, which makes provision for what these conditions might include. These conditions are requirements imposed at the discretion of local authorities only on particular people. For example, a condition would be appropriate where a local authority wanted a particular person to do something to become suitable for private fostering (e.g. does something to their premises).
192. *Subsection 2(j)* makes for provision in the regulations as to other requirements that might be imposed on local authorities or registered persons. It is supplemented by

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

*subsection (8)*, which makes provision for a requirement that a registered private foster carer obtain the consent of the authority before privately fostering a child so that the authority can check on the appropriateness of the arrangement for that particular child. If the authority is not satisfied with the arrangements for that child, then they may prevent the care of that child with that private foster carer. This will not affect the registered status of the private foster carer. *Subsection (8)* also makes provision relating to the giving of such consent by the authority.

193. In relation to *subsection 2(j)*, *subsection (9)* makes provision for a requirement that authorities undertake annual inspections in relation to registered private foster carers (whether or not they are at the time privately fostering children) and for the payment of fees by registered persons in respect of such inspections.
194. *Subsections (10) to (13)* deal with offences. *Subsection (10)* makes provision for regulations which may authorise a local authority to issue a notice to any person whom they believe to be privately fostering a child in their area while unregistered; and which may provide that a person would be guilty of an offence if, without reasonable cause, he/she continued to privately foster a child when such a notice was in force.
195. *Subsection (11)* makes provision for regulations which may provide for the offence of breach of requirements without reasonable excuse.
196. *Subsection (12)* makes provision for regulations which may provide for an offence where a person who is disqualified from registration fosters a child privately, unless he is disqualified because he lives in the same household as someone who is disqualified or in a household in which such a person is employed and did not know and had no reasonable grounds for believing that the other person was disqualified. This offence carries a more severe penalty, including possible imprisonment, reflecting the greater seriousness of the offence.
197. There is no offence merely for breach of a condition imposed by the local authority. If there was breach of a condition, the local authority would have to de-register the person before any criminal offence could bite.
198. *Subsection (14)* will enable the repeal of those parts of the Children Act 1989 which will be incompatible with the registration scheme and to add functions under this provision to the functions listed in Schedule 1 of the Local Authority Social Services Act 1970 (making them social services functions).