



# 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.

#### **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 children’s services 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 children’s services 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 children’s services 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 children's services 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 children's services 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 children's services 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—
- (a) authorise a children's services 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.

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- (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 children's services 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.

#### **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 children's services 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 children's services authority in England of references to a children's services authority in Wales.
- (3) Subsection (16) of that section applies for the purposes of this section.

#### **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 four years beginning with the day on which this Act is passed.

### *Child minding and day care*

## **48 Child minding and day care**

Schedule 4 (which makes provision amending Part 10A of the Children Act 1989 (c. 41) in relation to child minding and day care) has effect.

### *Local authority services*

## **49 Payments to foster parents**

- (1) The appropriate person may by order make provision as to the payments to be made—
  - (a) by a children’s services authority in England or Wales or a person exercising functions on its behalf to a local authority foster parent with whom any child is placed by that authority or person under section 23(2)(a) of the Children Act 1989;
  - (b) by a voluntary organisation to any person with whom any child is placed by that organisation under section 59(1)(a) of that Act.
- (2) In subsection (1)—
  - “appropriate person” means—
    - (a) the Secretary of State, in relation to a children’s services authority in England;
    - (b) the Assembly, in relation to a children’s services authority in Wales;
  - “local authority foster parent” and “voluntary organisation” have the same meanings as in the Children Act 1989.
- (3) In section 23(2)(a) of the Children Act 1989, at the end insert “(subject to section 49 of the Children Act 2004)”.
- (4) In section 59(1)(a) of that Act, at the end insert “(subject to section 49 of the Children Act 2004)”.

## **50 Intervention**

- (1) Section 497A of the Education Act 1996 (c. 56) (power to secure proper performance of a local education authority’s functions) applies in relation to—
  - (a) the relevant functions of a children’s services authority in England, and
  - (b) the relevant functions of a children’s services authority in Wales,as it applies in relation to the functions of a local education authority referred to in subsection (1) of that section.
- (2) For the purposes of this section, the relevant functions of a children’s services authority in England or Wales are—

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- (a) functions conferred on or exercisable by the authority which are social services functions, so far as those functions relate to children;
  - (b) the functions conferred on the authority under sections 23C to 24D of the Children Act 1989 (so far as not falling within paragraph (a)); and
  - (c) the functions conferred on the authority under sections 10, 12 and 17 above (in the case of a children's services authority in England) or under sections 25, 26 and 29 above (in the case of a children's services authority in Wales).
- (3) In subsection (2)(a) "social services functions" has the same meaning as in the the Local Authority Social Services Act 1970 (c. 42).
- (4) Sections 497AA and 497B of the Education Act 1996 apply accordingly where powers under section 497A of that Act are exercised in relation to any of the relevant functions of a children's services authority in England or Wales.
- (5) In the application of sections 497A(2) to (7), 497AA and 497B of that Act in relation to the relevant functions of a children's services authority in England or Wales, references to the local education authority are to be read as references to the children's services authority in England or Wales.
- (6) In subsection (5) of section 497A of that Act, the reference to functions to which that section applies includes (for all purposes) relevant functions of a children's services authority in England or Wales.

## 51 Inspection of local education authorities

In section 38 of the Education Act 1997 (c. 44) (inspection of LEAs), for subsection (2) substitute—

- “(2) An inspection of a local education authority in England under this section shall consist of a review of the way in which the authority are performing any function conferred on them in their capacity as a local education authority, other than a function falling within the remit of the Adult Learning Inspectorate under section 53 of the Learning and Skills Act 2000 (c. 21).
- (2A) An inspection of a local education authority in Wales under this section shall consist of a review of the way in which the authority are performing—
- (a) any function conferred on them in their capacity as a local education authority; and
  - (b) the functions conferred on them under sections 25 and 26 so far as relating to education, training or youth support services (within the meaning of section 123 of the Learning and Skills Act 2000).”

## 52 Duty of local authorities to promote educational achievement

In section 22 of the Children Act 1989 (c. 41) (general duty of local authority in relation to children looked after by them), after subsection (3) insert—

- “(3A) The duty of a local authority under subsection (3)(a) to safeguard and promote the welfare of a child looked after by them includes in particular a duty to promote the child's educational achievement.”

### **53      Ascertaining children's wishes**

- (1) In section 17 of the Children Act 1989 (provision of services to children), after subsection (4) insert—

“(4A) Before determining what (if any) services to provide for a particular child in need in the exercise of functions conferred on them by this section, a local authority shall, so far as is reasonably practicable and consistent with the child's welfare—

- (a) ascertain the child's wishes and feelings regarding the provision of those services; and
- (b) give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain.”

- (2) In section 20 of that Act (provision of accommodation for children: general), in subsection (6)(a) and (b), after “wishes” insert “and feelings”.

- (3) In section 47 of that Act (local authority's duty to investigate), after subsection (5) insert—

“(5A) For the purposes of making a determination under this section as to the action to be taken with respect to a child, a local authority shall, so far as is reasonably practicable and consistent with the child's welfare—

- (a) ascertain the child's wishes and feelings regarding the action to be taken with respect to him; and
- (b) give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain.”

### **54      Information about individual children**

In section 83 of the Children Act 1989 (c. 41) (research and returns of information), after subsection (4) insert—

“(4A) Particulars required to be transmitted under subsection (3) or (4) may include particulars relating to and identifying individual children.”

### **55      Social services committees**

- (1) Sections 2 to 5 of the Local Authority Social Services Act 1970 (c. 42) (social services committees) shall cease to have effect.

- (2) In Schedule 1 to that Act (enactments conferring functions assigned to social services committees), for the heading substitute “SOCIAL SERVICES FUNCTIONS”.

- (3) In section 63(8) of the Health Services and Public Health Act 1968 (c. 46) (instruction), in paragraph (a) of the definition of “relevant enactments”, for the words from “for the time being” to “section 2” substitute “are social services functions within the meaning”.

- (4) In Schedule 1 to the Local Government and Housing Act 1989 (c. 42) (political balance on committees), in paragraph 4(1), in paragraph (a) of the definition of “ordinary committee”, for the words from “the authority's” to “any other committee” substitute “any committee”.

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- (5) In section 102 of the Local Government Act 2000 (c. 22) (social services functions)—
- (a) omit subsection (1);
  - (b) in subsection (2), for “that Act” substitute “the Local Authority Social Services Act 1970”.

## **56 Social services functions**

In Schedule 1 to the Local Authority Social Services Act 1970 (c. 42) (functions which are social services functions), at the end insert—

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“Children Act 2004

Sections 13 to 16 and 31 to 34

Functions relating to Local Safeguarding  
Children Boards.”

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### *Other provisions*

## **57 Fees payable to adoption review panel members**

In section 12 of the Adoption and Children Act 2002 (c. 38) (independent review of determinations), in subsection (3)(d) (power to make provision as to the payment of expenses of members of a panel) for “expenses of” substitute “fees to”.

## **58 Reasonable punishment**

- (1) In relation to any offence specified in subsection (2), battery of a child cannot be justified on the ground that it constituted reasonable punishment.
- (2) The offences referred to in subsection (1) are—
  - (a) an offence under section 18 or 20 of the Offences against the Person Act 1861 (c. 100) (wounding and causing grievous bodily harm);
  - (b) an offence under section 47 of that Act (assault occasioning actual bodily harm);
  - (c) an offence under section 1 of the Children and Young Persons Act 1933 (c. 12) (cruelty to persons under 16).
- (3) Battery of a child causing actual bodily harm to the child cannot be justified in any civil proceedings on the ground that it constituted reasonable punishment.
- (4) For the purposes of subsection (3) “actual bodily harm” has the same meaning as it has for the purposes of section 47 of the Offences against the Person Act 1861.
- (5) In section 1 of the Children and Young Persons Act 1933, omit subsection (7).

## **59 Power to give financial assistance**

- (1) Section 14 of the Education Act 2002 (c. 32) (power of Secretary of State and Assembly to give financial assistance for purposes related to education or childcare) is amended as specified in subsections (2) to (4).



(2) In subsection (2) of that section (purposes for which assistance may be given), at the end insert—

- “(j) the promotion of the welfare of children and their parents;
- (k) the provision of support for parenting (including support for prospective parents).”

(3) After that subsection insert—

“(2A) In subsection (2)(j), “children” means persons under the age of twenty.”

(4) In the heading to that section, for “childcare” substitute “children etc”.

(5) In the heading to Part 2 of that Act, for “childcare” substitute “children etc”.

## **60 Child safety orders**

(1) The Crime and Disorder Act 1998 (c. 37) is amended as follows.

(2) In section 8(1)(a) (power to make parenting order where a child safety order is made), at the end insert “or the court determines on an application under section 12(6) below that a child has failed to comply with any requirement included in such an order”.

(3) In section 11(4) (maximum period permitted for child safety orders), for the words from “three months” to the end substitute “twelve months”.

(4) In section 12, omit subsections (6)(a) and (7) (power to make care order on breach of child safety order).

## **61 Children’s Commissioner for Wales: powers of entry**

In the Care Standards Act 2000 (c. 14), in section 76 (further functions of Children’s Commissioner for Wales), at the end insert—

“(8) The Commissioner or a person authorised by him may for the purposes of any function of the Commissioner under section 72B or 73 or subsection (4) of this section at any reasonable time—

- (a) enter any premises, other than a private dwelling, for the purposes of interviewing any child accommodated or cared for there; and
- (b) if the child consents, interview the child in private.”

## **62 Publication of material relating to legal proceedings**

(1) In section 97(2) of the Children Act 1989 (c. 41) (privacy for children involved in certain proceedings), after “publish” insert “to the public at large or any section of the public”.

(2) In section 12(4) of the Administration of Justice Act 1960 (c. 65) (publication of information relating to proceedings in private), at the end insert “(and in particular where the publication is not so punishable by reason of being authorised by rules of court)”.

(3) In section 66 of the Adoption Act 1976 (c. 36) (rules of procedure), after subsection (5) insert—

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- “(5A) Rules may, for the purposes of the law relating to contempt of court, authorise the publication in such circumstances as may be specified of information relating to proceedings held in private involving children.”
- (4) In section 145(1) of the Magistrates' Courts Act 1980 (c. 43) (rules: supplementary), after paragraph (g) insert—
- “(ga) authorising, for the purposes of the law relating to contempt of court, the publication in such circumstances as may be specified of information relating to proceedings referred to in section 12(1)(a) of the Administration of Justice Act 1960 which are held in private;”.
- (5) In section 40(4) of the Matrimonial and Family Proceedings Act 1984 (c. 42) (family proceedings rules), in paragraph (a) after “County Courts Act 1984;” insert—
- “(aa) authorise, for the purposes of the law relating to contempt of court, the publication in such circumstances as may be specified of information relating to family proceedings held in private;”.
- (6) In section 141 of the Adoption and Children Act 2002 (c. 38) (rules of procedure) at the end insert—
- “(6) Rules may, for the purposes of the law relating to contempt of court, authorise the publication in such circumstances as may be specified of information relating to proceedings held in private involving children.”
- (7) In section 76 of the Courts Act 2003 (c. 39) (Family Procedure Rules: further provision) after subsection (2) insert—
- “(2A) Family Procedure Rules may, for the purposes of the law relating to contempt of court, authorise the publication in such circumstances as may be specified of information relating to family proceedings held in private.”

## **63 Disclosure of information by Inland Revenue**

- (1) In Schedule 5 to the Tax Credits Act 2002 (c. 21) (use and disclosure of information), after paragraph 10 insert—

*“Provision of information by Board for purposes relating to welfare of children*

- 10A (1) This paragraph applies to information, other than information relating to a person's income, which is held for the purposes of functions relating to tax credits, child benefit or guardian's allowance—
- (a) by the Board, or
  - (b) by a person providing services to the Board, in connection with the provision of those services.
- (2) Information to which this paragraph applies may be supplied to—
- (a) a local authority in England and Wales for use for the purpose of any enquiry or investigation under Part 5 of the Children Act 1989 relating to the welfare of a child;
  - (b) a local authority in Scotland for use for the purpose of any enquiry or investigation under Chapter 3 of Part 2 of the Children (Scotland) Act 1995 relating to the welfare of a child;

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- (c) an authority in Northern Ireland for use for the purpose of any enquiry or investigation under Part 6 of the Children (Northern Ireland) Order 1995 ([S.I. 1995/755 \(N.I.2\)](#)) relating to the welfare of a child.
- (3) Information supplied under this paragraph is not to be supplied by the recipient to any other person or body unless it is supplied—
  - (a) for the purpose of any enquiry or investigation referred to in sub-paragraph (2) above,
  - (b) for the purpose of civil or criminal proceedings, or
  - (c) where paragraph (a) or (b) does not apply, to a person to whom the information could be supplied directly by or under the authority of the Board.
- (4) Information may not be supplied under sub-paragraph (3)(b) or (c) without the authority of the Board.
- (5) A person commits an offence if he discloses information supplied to him under this paragraph unless the disclosure is made—
  - (a) in accordance with sub-paragraph (3),
  - (b) in accordance with an enactment or an order of a court,
  - (c) with consent given by or on behalf of the person to whom the information relates, or
  - (d) in such a way as to prevent the identification of the person to whom it relates.
- (6) It is a defence for a person charged with an offence under sub-paragraph (5) to prove that he reasonably believed that his disclosure was lawful.
- (7) A person guilty of an offence under sub-paragraph (5) is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both;
  - (b) on summary conviction in England and Wales, to imprisonment for a term not exceeding twelve months, to a fine not exceeding the statutory maximum or to both;
  - (c) on summary conviction in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.
- (8) In sub-paragraph (2) “child” means a person under the age of eighteen and—
  - (a) in paragraph (a), “local authority” has the meaning given by section 105(1) of the Children Act 1989;
  - (b) in paragraph (b), “local authority” has the meaning given by section 93(1) of the Children (Scotland) Act 1995; and
  - (c) in paragraph (c), “authority” has the meaning given by Article 2 of the Children (Northern Ireland) Order 1995 ([S.I. 1995/755 \(N.I.2\)](#)).
- (9) The reference to an enactment in sub-paragraph (5)(b) includes a reference to an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.”

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- (2) In relation to an offence committed under sub-paragraph (5) of paragraph 10A of Schedule 5 to the Tax Credits Act 2002 (c. 21) (as inserted by subsection (1) above) before the commencement of section 154 of the Criminal Justice Act 2003, the reference in sub-paragraph (7)(b) of that paragraph to twelve months shall be read as a reference to six months.