



# Replacement Children Act 1989 Guidance on Private Fostering

**Every Child Matters**

# Contents

<b>CHAPTER 1</b>	<b>INTRODUCTION</b>	<b>4</b>
<b>CHAPTER 2</b>	<b>NEW STATUTORY REQUIREMENTS – A SUMMARY</b>	<b>6</b>
2.1-2.3	Introduction	6
2.4- 2.7	Promoting Awareness	7
2.8-2.10	Extension of the Duties Under Sections 67(1) and 67(5) of the Children Act 1989	7
2.11-2.13	The Children (Private Arrangements for Fostering) Regulations 2005	8
2.14-2.17	Notification of a Proposal to Privately Foster a Child	8
2.18-2.20	Action to be taken by Local Authority on Receipt of Notification of a Proposal to Privately Foster a Child	10
2.21-2.22	Notification by a Person Already Privately Fostering a Child	11
2.23-2.25	Notification of a Child Going to Live with a Private Foster Carer	12
2.26-2.27	Action to be taken by Local Authority on Receipt of Notification About a Child Being Privately Fostered	12
2.28-2.33	Subsequent Visits to Privately Fostered Children	13
2.34-2.38	Notification of Change of Circumstances	14
2.39-2.42	Notification of the End of a Private Fostering Arrangement	15
2.43	Form of Notification	16
2.44-2.46	Monitoring the Discharge of Functions under Part 9 of the Children Act 1989	161
<b>CHAPTER 3</b>	<b>OTHER CHILDREN ACT 1989 DUTIES</b>	<b>19</b>
3.1-3.2	Considering Whether a Privately Fostered Child is a Child in Need	19
3.3	Meeting Needs	20
3.4-3.5	Services for Disabled Children	20
3.6-3.8	After Care	20
3.9-3.12	Decisions About the Child’s Care – Parental Responsibility	21

<b>CHAPTER 4</b>	<b>SUITABILITY OF THE PRIVATE FOSTERING ARRANGEMENT</b>	<b>22</b>
4.1	Introduction	22
4.2-4.4	Capacity to Look After the Child and Suitability of Household	22
4.5-4.6	Preparation	23
4.7	Intended Duration of the Arrangement	24
4.8	Capacity of Private Foster Carers to Respond to the Child's Developmental Needs	24
4.9-4.11	Wishes and Feelings of the Child	24
4.12-4.15	Physical, Intellectual, Emotional, Social and Behavioural Development	25
4.16-4.17	Health Care	26
4.18	Personal Child Health Record	26
4.19	Child's Medical History	26
4.20-4.22	Consent to Medical Examination or Treatment	27
4.23	Registration with General Medical Practitioner	28
4.24-4.25	Education	28
4.26-4.30	Religious Persuasion, Racial Origin and Cultural and Linguistic Background	29
4.31-4.34	Contact	29
4.35-4.38	Continuity and Change	30
4.39	Specific Areas of the Private Foster Carer's Capacity to Respond to the Child's Needs	31
4.40	Discipline	32
4.41	Lifestyle	32
4.42	Household Relationships	32
4.43-4.45	Enhanced Criminal Records Bureau and Other Checks	32
4.46-4.50	Suitability of Accommodation	33
4.51-4.52	Financial Arrangements	34
4.53	Standard of Care	34
<b>CHAPTER 5</b>	<b>ADVICE AND SUPPORT</b>	<b>35</b>
5.1-5.2	For Parents	35
5.3-5.6	For Private Foster Carers	35
5.7	Recording the Child's Development and Progress	37
5.8-5.9	For Children	37

<b>CHAPTER 6</b>	<b>THE ROLE AND FUNCTIONS OF LOCAL AUTHORITIES</b>	<b>38</b>
6.1-6.4	Local Authorities' Approach to Private Fostering	38
6.5-6.7	Visits	39
6.8	Refusal to Allow Visits	39
6.9-6.10	Seeing the Child Alone	40
6.11-6.12	Written Report	40
6.13-6.17	Local Authority Powers: Requirements	41
6.18-6.19	Limit on the Number of Foster Children	41
6.20-6.24	Local Authority Powers: Prohibitions	42
6.25-6.26	Cancellation of Prohibitions	42
6.27-6.29	Disqualification	43
6.30	Appeals	43
6.31-6.36	Unsatisfactory Care	44
6.37	Offences	45
<b>CHAPTER 7</b>	<b>RECORDS TO BE KEPT BY LOCAL AUTHORITIES</b>	<b>46</b>
7.1	Introduction	46
7.2-7.3	Contents	46
7.4	Case Records	47
7.5	Safekeeping of Records	47
<b>CHAPTER 8</b>	<b>INTERNATIONAL ASPECTS</b>	<b>48</b>
8.1-8.4	Immigration and Nationality	48
8.5-8.6	Living Abroad	49
8.7	Lone Children without a Right of Abode	50
8.8	EEA Nationals	50
8.9	Non-EEA Nationals	50
8.10-8.11	Entitlement to Health Services for Children from Overseas	50
<b>ANNEXES</b>		
Annex A	The Children (Private Arrangements for Fostering) Regulations 2005	51
Annex B	Suitability Declaration Form	58



## CHAPTER 1

# Introduction

- 1.1** The Children Act 1989 brings together the law relating to children's welfare within a single coherent legislative framework. It aims to strike a balance between the duty of parents to exercise their responsibilities towards their children and the duty of the state to intervene to ensure that children's welfare is safeguarded and promoted.
- 1.2** The legislation relevant to private fostering is set out in Part 9 of, and Schedule 8 to, the Children Act 1989, and regulations made under Part 9 of that Act.
- 1.3** Section 67 of, and Schedule 8 to, the Children Act 1989 have been amended by section 44 of the Children Act 2004 which came into force on 1 July 2005. The Children (Private Arrangements for Fostering) Regulations 2005 which came into force on the same date replaced the Children (Private Arrangements for Fostering) Regulations 1991. The regulations are attached at Annex A.
- 1.4** The attention of local authorities is drawn to the publication: 'The Care of Children: Principles and Practice in Regulations and Guidance' which was published by the Department of Health in 1989. This publication will assist managers to relate the law to practice and to understand the context in which regulations and guidance are issued.
- 1.5** This guidance replaces Chapter One of Volume 8 (Private Fostering and Miscellaneous) of the Children Act 1989 guidance, which was first published in 1991, and incorporates guidance on the new measures in the Children Act 2004, and in the Children (Private

Arrangements for Fostering) Regulations 2005. It is issued in the context of the Government's *Every Child Matters: Change for Children* programme, which sets out the outcomes which all children are expected to achieve. It is issued under section 7 of the Local Authority Social Services Act 1970, which requires local authorities in their social services functions to act under the general guidance of the Secretary of State. As such, this document does not have full force of statute, but should be complied with unless local circumstances indicate exceptional reasons which justify a variation. It came into effect on 18 July 2005, along with National Minimum Standards for private fostering.

- 1.6** A private fostering arrangement is essentially one that is made privately (that is to say without the involvement of a local authority) for the care of a child under the age of 16 (under 18, if disabled) by someone other than a parent or close relative with the intention that it should last for 28 days or more. Private foster carers may be from the extended family, such as a cousin or great aunt. However, a person who is a relative under the Children Act 1989 i.e. a grandparent, brother, sister, uncle or aunt (whether of the full or half blood or by marriage) or step-parent will not be a private foster carer. A private foster carer may be a friend of the family, the parent of a friend of the child, or someone previously unknown to the child's family who is willing to privately foster a child. The period for which the child is cared for and accommodated by the private foster carer should be continuous, but that continuity is not broken by the occasional short break. Exemptions to this definition are set out in Schedule 8 to the Children Act 1989.
- 1.7** Private fostering arrangements can be a positive response from within the community to difficulties experienced by families. Nonetheless, privately fostered children remain a diverse and potentially vulnerable group.
- 1.8** The private foster carer becomes responsible for providing the day to day care of the child in a way which will promote and safeguard his welfare. Overarching responsibility for safeguarding and promoting the welfare of the privately fostered child remains with the parent or other person with parental responsibility. Local authorities do not formally approve or register private foster carers. However, it is the duty of local authorities to satisfy themselves that the welfare of children who are, or will be, privately fostered within their area is being, or will be, satisfactorily safeguarded and promoted. It is the local authority in whose area the privately fostered child resides which has legal duties in respect of that child.
- 1.9** Local authorities will need to distinguish between private arrangements made between parents and carers, and arrangements in which they, with the consent of the parents, have been involved where the child concerned is legally defined as 'accommodated' under section 20 of the Children Act 1989, thus being a looked after child.
- 1.10** Social workers should have access to a named person within the local authority who has expertise in private fostering.



## CHAPTER 2

# New Statutory Requirements – A Summary

### INTRODUCTION

- 2.1** The measures in section 44 of the Children Act 2004 and the Children (Private Arrangements for Fostering) Regulations 2005 are intended to strengthen and enhance the Children Act 1989 private fostering notification scheme. Along with the National Minimum Standards, they are intended to focus local authorities' attention on private fostering by requiring them to take a more proactive approach to identifying arrangements in their area. The new measures are expected to improve notification rates and compliance with the existing legislative framework for private fostering – and, therefore, to address the key problems identified with the scheme: low notification rates, late notification and a perceived lack of consistent local authority commitment to meeting the needs of privately fostered children.
- 2.2** There is, however, a need for local authorities to take a much broader approach to private fostering by engaging with local communities and private foster carers, and developing a better understanding of private fostering arrangements and good practice in this complex area.
- 2.3** From April 2006, local authorities' performance against the regulations and National Minimum Standards will be inspected by the Commission for Social Care Inspection.

## SECTION 44 OF THE CHILDREN ACT 2004

### PROMOTING AWARENESS

- 2.4** A new paragraph (7A) of Schedule 8 to the Children Act 1989, inserted by section 44 of the Children Act 2004, places a duty on local authorities to promote public awareness, in their area, of the notification requirements. Local authorities need to ensure that they promote awareness within their communities of the notification requirements. Local authorities need to develop a programme of communication activities, including for local authority staff, and a range of up to date publicity materials. They also need to make available information on the notification requirements and may wish to design notification forms which reflect the requirements of Schedule 1 to the Children (Private Arrangements for Fostering) Regulations 2005.
- 2.5** Local authorities, when undertaking awareness-raising activities, should involve other agencies, such as schools and GPs' surgeries, so as to enable professionals in turn to encourage private foster carers and parents to notify the local authority. Other agencies need also to be aware that failure by a private foster carer or parent to notify a local authority of a private fostering arrangement is an offence, and if local authorities are not aware of such arrangements they cannot carry out their duty to satisfy themselves that the welfare of the children concerned is being satisfactorily safeguarded and promoted.
- 2.6** Education, health and other professionals should notify the local authority of a private fostering arrangement that comes to their attention, where they are not satisfied that the local authority have been, or will be, notified of the arrangement, so that the local authority can then discharge its duty to satisfy itself that the welfare of the privately fostered child concerned is satisfactorily safeguarded and promoted. This is, of course, a matter of good practice.
- 2.7** For further detailed information on how to promote awareness of the notification requirements see the 'What Works' guide at [www.everychildmatters.gov.uk](http://www.everychildmatters.gov.uk).

### EXTENSION OF THE DUTIES UNDER SECTIONS 67(1) AND 67(5) OF THE CHILDREN ACT 1989

- 2.8** Section 44 of the Children Act 2004 amends section 67(1) of the Children Act 1989 to extend the duty of local authorities to satisfy themselves that the welfare of children who are privately fostered within their area is being satisfactorily safeguarded and promoted to include children who are proposed to be, but not yet, privately fostered.
- 2.9** Section 44 of the Children Act 2004 also amends section 67(1) to extend the duty of local authorities to secure that such advice is given to those caring for privately fostered children as appears to them to be needed, to include all those concerned

with a child who is proposed to be, or who is, privately fostered. This means that, where appropriate, local authorities should give advice to parents or other persons with parental responsibility, those proposing to privately foster a child, private foster carers themselves and/or any other person concerned with the child. The intention is that local authorities should be able to give such advice, for example, where one proposed private fostering arrangement has been prohibited by the local authority and no other is contemplated by the parents. In such cases, the parents may need advice on what alternative arrangements can be made for the care of their child.

- 2.10** Section 44 of the Children Act 2004 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 and promoted, will apply in the case of children who are proposed to be privately fostered.

#### **THE CHILDREN (PRIVATE ARRANGEMENTS FOR FOSTERING) REGULATIONS 2005**

- 2.11** Regulation 1(1) makes provision for the regulations to be cited as the Children (Private Arrangements for Fostering) Regulations 2005, and for them to come into force on 1 July 2005.
- 2.12** Regulation 1(2) makes provision for the regulations to apply to England only.
- 2.13** Regulation 2 makes provision as to the interpretation of certain terms within the regulations.

#### **NOTIFICATION OF A PROPOSAL TO PRIVATELY FOSTER A CHILD**

- 2.14** Regulation 3(1) provides that a person who proposes to privately foster a child must notify the appropriate local authority of the proposal at least 6 weeks before the date on which the private fostering arrangement is to begin or immediately where the arrangement is to begin within 6 weeks.
- 2.15** Regulation 3(2) provides that any person, including a parent or other person with parental responsibility for a child, who is involved (whether or not directly) in arranging for the child to be privately fostered (such as a language school arranging for a student to be privately fostered by a host family) must notify the appropriate local authority of the arrangement as soon as possible after the arrangement has been made.
- 2.16** Regulation 3(3) provides that a parent of a child, and a person who is not a parent but who has parental responsibility for a child, who is not involved (whether or not directly) in arranging for the child to be privately fostered, but who knows that it is proposed that the child should be privately fostered, must notify the appropriate local authority of the proposal as soon as possible after he becomes aware of the arrangement.

**2.17** Regulation 3(4) provides that the notification given under Regulations 3(1)–3(3) must contain such of the following information (as specified in Schedule 1 to the regulations) as the person giving the notification is able to provide:

- the name, sex, date and place of birth, religious persuasion, racial origin and cultural and linguistic background of the child;
- the name and current address of the person giving the notice and his addresses within the previous 5 years;
- the name and current address of the proposed or current private foster carer and his addresses within the previous five years;
- 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;
- the name and current address of the minor siblings of the child, and details of the arrangements for their care;
- the name and current address of any person, other than the parents of the child, any other person who has parental responsibility for the child or (if different) any person from whom the child is to be, or was, received, who is or was involved (whether or not directly) in arranging for the child to be privately fostered;
- the date on which it is intended that the private fostering arrangement will start, or on which it did start; and
- the intended duration of the private fostering arrangement.

Additional information to be provided by a person who proposes to privately foster a child (and who gives notification under Regulation 3(1)) is:

- any offence of which he has been convicted;
- any disqualification or prohibition imposed on him under section 68 or 69 of the Children Act 1989 (or under any previous enactment of either of those sections under similar provisions in legislation which they replaced);
- any such conviction, disqualification or prohibition imposed on any other person living in, or employed at, his household;
- any order of a kind specified in regulations under section 68 of the Children Act 1989 made at any time with respect to him;
- any order of a kind specified in regulations under section 68 of the Children Act 1989 made at any time with respect to a child who has been in his care; and

- 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 Children Act 1989 or under an enactment specified in those regulations.

#### **ACTION TO BE TAKEN BY LOCAL AUTHORITY ON RECEIPT OF NOTIFICATION OF A PROPOSAL TO PRIVATELY FOSTER A CHILD**

**2.18** Regulation 4(1) provides that where a local authority have received notification of a proposal to privately foster a child they must, for the purposes of discharging their duty under section 67(1) of the Children Act 1989, arrange for an officer of the authority within seven working days to:

- visit the premises where it is proposed that the child will be cared for and accommodated;
- visit and speak to the proposed private foster carer and to all members of his household;
- visit and speak to the child whom it is proposed will be privately fostered, alone unless the officer considers it inappropriate. (An interpreter who is independent of the child's parents and of the private foster carer should always be used where the child's preferred language is not English);
- speak to and, if it is practicable to do so, visit the parents of, or other person with parental responsibility for, the child; and
- establish such of the following matters (as listed in Schedule 2 to the regulations) as appear to the officer in the particular circumstances to be relevant:
  - that the intended duration of the private fostering arrangement is understood by, and agreed between, the parents of the child (or any other person with parental responsibility for him) and the proposed private foster carer;
  - the wishes and feelings of the child about the proposed arrangement (considered in the light of his age and understanding);
  - the suitability of the proposed accommodation;
  - the capacity of the proposed private foster carer to look after the child;
  - the suitability of other members of the proposed private foster carer's household;

- 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 (e.g. siblings, other family members, close friends) have been agreed and understood, and that those arrangements will be satisfactory for the child;
- 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;
- that consideration has been given to, and necessary steps taken to make arrangements for, care of the child’s health;
- that consideration has been given to, and necessary steps taken to make arrangements for, the child’s education;
- how decisions about the day to day care of the child will be taken; and
- whether the proposed private foster carer, the parents of the child, any other person with parental responsibility for him, or any other person concerned with the child are being given such advice as seems to the authority to be needed.

**2.19** The intention of Regulation 4(1) is to provide additional safeguards for children whom it is proposed should be privately fostered by requiring local authorities to check out a proposed arrangement and satisfy themselves that it will be suitable – or otherwise to exercise their powers to prohibit or to impose requirements – before it begins.

**2.20** Regulation 4(2) provides that the officer, having completed his functions under Regulation 4(1), must make a written report to the local authority. This should include the conclusions drawn, whether the child was seen alone and, where appropriate, the reasons why the officer considered it inappropriate to see the child alone.

#### **NOTIFICATION BY A PERSON ALREADY PRIVATELY FOSTERING A CHILD**

**2.21** Regulation 5(1) provides that any person who is privately fostering a child and has not given notification in accordance with Regulation 3(1) must notify the appropriate local authority immediately. The intention of this provision is to pick up arrangements which were made in an emergency, cases where a person was caring for and accommodating a child who becomes privately fostered, and arrangements which should have been but, for whatever reason, were not notified under Regulation 3.

**2.22** Regulation 5(2) provides that the notification given under Regulation 5(1) must contain such of the information contained in Schedule 1 to the regulations (see Paragraphs 2.17) as the person giving the notification is able to provide.

#### **NOTIFICATION OF A CHILD GOING TO LIVE WITH A PRIVATE FOSTER CARER**

**2.23** Regulation 6(1) provides that a person who has given notification under Regulation 3(1) about a proposed private fostering arrangement must, within 48 hours of the start of the arrangement, notify the appropriate local authority that the arrangement has begun.

**2.24** Regulation 6(2) provides that a parent of a child, and any other person who has parental responsibility for him, 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 that the arrangement has begun.

**2.25** The intention of these provisions is to trigger local authority action under Regulation 7, but in any case where a notification has been received under Regulation 3 the authority need to check whether the child has gone to live with the proposed private foster carer, if they have not heard by the date the arrangement is due to start.

#### **ACTION TO BE TAKEN BY LOCAL AUTHORITY ON RECEIPT OF NOTIFICATION ABOUT A CHILD BEING PRIVATELY FOSTERED**

**2.26** Regulation 7(1) provides that 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 Children Act 1989, arrange for an officer of the authority within seven working days to:

- visit the premises where the child is being cared for and accommodated;
- visit and speak to the private foster carer and to all members of his household;
- visit and speak to the child, alone unless the officer considers it inappropriate. (An interpreter who is independent of the child's parents and of the private foster carer should always be used where the child's preferred language is not English.);
- speak to and, where practicable, visit the parents, or other person with parental responsibility for the child; and
- establish such of the following matters (as listed in Schedule 3 to the Regulations) as appear to the officer in the particular circumstances to be relevant:
  - that the intended duration of the private fostering arrangement is understood and agreed between the parents of the child, or any other person with parental responsibility for him, and the private foster carer;

- the wishes and feelings of the child about the arrangement (considered in the light of his age and understanding);
- that the child’s physical, intellectual, emotional, social and behavioural development is appropriate and satisfactory;
- that the child’s needs arising from his religious persuasion, racial origin, and cultural and linguistic background are being met;
- that the financial arrangements for the care and maintenance of the child are working;
- the capacity of the private foster carer to look after the child;
- the suitability of the accommodation;
- that the arrangements for the care of the child’s health are in place and, in particular, that the child is included on the list of a General Practitioner;
- the arrangements for the child’s education;
- the standard of the care which the child is being given;
- the suitability of members of the private foster carer’s household (including children already resident);
- whether the contact between the child and his parents, or any other person with whom contact has been arranged, is satisfactory for the child;
- how decisions about the child’s day to day care are being taken; and
- 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.

**2.27** Regulation 7(2) provides that the officer, having completed his functions under Regulation 7(1), must make a written report to the local authority. This should include the conclusions drawn, whether the child was seen alone and, where appropriate, the reasons why the officer considered it inappropriate to see the child alone.

#### **SUBSEQUENT VISITS TO PRIVATELY FOSTERED CHILDREN**

**2.28** Regulation 8(1) provides that each local authority must arrange for an officer of the authority to visit every privately fostered child in their area in the first year after the arrangement has become known to the local authority, at intervals of not more than six weeks; and in any second or subsequent year, at intervals of not more than 12 weeks.

- 2.29** Regulation 8(2) provides that, in addition to the visits carried out in accordance with Regulation 8(1), the local authority must arrange for every child who is privately fostered in their area to be visited by an officer when reasonably requested to do so by the child, private foster carer, a parent of the child or any other person with parental responsibility for him.
- 2.30** Regulation 8(3) provides that when carrying out a visit under Regulation 8(1) or 8(2) the officer must speak to the child alone, unless he considers it inappropriate. (An interpreter who is independent of the child's parents and of the private foster carer should always be used where the child's preferred language is not English.)
- 2.31** Regulation 8(4) provides that when carrying out a visit under Regulations 8(1) or 8(2), the officer must establish such of the matters in Schedule 3 to the regulations (see Paragraph 1.2.29) as appear to him to be relevant.
- 2.32** Regulation 8(5) provides that the officer must make a written report to the local authority after each visit carried out under Regulation 8(1) and 8(2). This should include the conclusions drawn, whether the child was seen alone and, where appropriate, the reasons why the officer considered it inappropriate to see the child alone.
- 2.33** Regulation 8(6) provides that for the purposes of Regulation 8 the private fostering arrangement is deemed to begin when the local authority became aware of it. The intention of this provision is to ensure that local authorities carry out visits at least every six weeks for the first year after they become aware of an arrangement, even if at that time the arrangement has in fact been going on for some years.

#### **NOTIFICATION OF CHANGE OF CIRCUMSTANCES**

- 2.34** Regulation 9(1) provides that a private foster carer must notify the appropriate local authority of:
- any change of his address;
  - any further offence of which he or a person who is part of, or employed at, his household has been convicted;
  - any further disqualification imposed on him or a person who is part of, or employed at, his household under section 68 of the Children Act 1989;
  - 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 Children Act 1989 (or under any previous enactment of either of those sections); and
  - any person who ceases to be part of, or employed at, his household.

- 2.35** Regulation 9(2) provides that a notification of a change of circumstances under Regulation 9(1) must be given in advance if practicable and, in any other case, not more than 48 hours after the change of circumstances.
- 2.36** Regulation 9(3) provides that 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 Regulation 9(1) must pass on to the authority of the new address:
- the name and new address of the private foster carer;
  - the name of the child who is being privately fostered; and
  - the name and address of the child's parents or any other person who has parental responsibility for him.
- 2.37** In informing another local authority that a private foster carer has moved to their area it is good practice to draw the authority's attention to any important matters relating to the welfare of the child (e.g. a disability or health condition), special educational needs or the suitability of the private foster carer. It is also good practice for the local authority to notify other agencies of a change in address, e.g. the Primary Care Trust if the child has special health needs.
- 2.38** Regulation 9(4) provides that the parent of a privately fostered child, and any other person who has parental responsibility for him, who knows that the child is being privately fostered, must notify the appropriate local authority of any change of his own address.

#### **NOTIFICATION OF THE END OF A PRIVATE FOSTERING ARRANGEMENT**

- 2.39** Regulation 10(1) provides that, subject to Regulation 10(2) and 10(3), any person who ceases to privately foster a child 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.
- 2.40** Regulation 10(2) provides that where a person ceases to privately foster a child because of the death of the child he must in his notification to the appropriate local authority indicate that that is the reason. The local authority should ensure that the parent is notified immediately. The local authority may need to assist the private foster carer with the formalities and in any event will need to consider the implications of what has happened. When a privately fostered child dies the local authority needs to follow the procedures operated by the relevant Area Child Protection Committee (or successor body, the Local Safeguarding Children Board).
- 2.41** Regulation 10(3) provides that notification under Regulation 10(1) will not be necessary where the private foster carer intends to resume the private fostering

arrangement after an interval of not more than 27 days. However, if he subsequently abandons his intention or 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.

- 2.42** Regulation 10(4) provides that any parent of a privately fostered child, and any other person with parental responsibility for him, who has given notification under Regulations 3(2) or 3(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**

- 2.43** Regulation 11 provides that any notification required under the regulations must be given in writing and may be sent by post.

#### **MONITORING THE DISCHARGE OF FUNCTIONS UNDER PART 9 OF THE CHILDREN ACT 1989**

- 2.44** Regulation 12 provides that each local authority must monitor the way in which they discharge their functions under Part 9 of the Children Act 1989, and must appoint an officer of the authority for that purpose. This does not need to be a new appointment. Local authorities can designate this role to a post already in place within the authority. It is expected that the officer would be of a similar level of seniority to the manager of the local authority's reviewing/quality assurance team. The intention of this provision is to increase the focus of local authorities on private fostering and to improve compliance with the existing legislative framework for private fostering.

- 2.45** Local authorities are expected to monitor their compliance with all their duties and functions in relation to private fostering. In doing so they need to ensure that:

- they promote awareness of the requirements as to notification within their area, including with other agencies and with local authority staff;
- they respond appropriately to notifications received and within required timescales;
- they handle disqualifications effectively;
- they implement effectively a policy and process for prohibiting private fostering arrangements and imposing requirements where appropriate;

- where they are not satisfied that the welfare of a privately fostered child is being, or would be, satisfactorily safeguarded or promoted, they take steps to secure that the child is looked after by a parent or relative of his, or someone else with parental responsibility, and consider the extent to which (if at all) they should exercise any of their functions under the Children Act 1989 with respect to the child;
- they handle effectively appeals against relevant decisions, including to refuse to consent to a disqualified person privately fostering a child, and to impose requirements and prohibitions;
- they deal effectively with situations where a private fostering arrangement has come to their attention but has not been notified in accordance with the regulations, and ensure that an appropriate decision is taken where it appears that an offence has been committed, bearing in mind the best interests of the child;
- they determine effectively the suitability of all aspects of a private fostering arrangement in accordance with the regulations;
- they assess the capacity of the proposed or actual private foster carer to look after the child and the suitability of household members, and determine whether the child who is, or is proposed to be, privately fostered poses any risk of harm to children already living in the private foster carer's household, and whether those children pose a risk of harm to him, using the dimensions and domains in the *Framework for the Assessment of Children in Need and their Families* (2000) to structure this process and assist decision making;
- when they have concerns that a privately fostered child may not be achieving a satisfactory level of health or development without the provision of services, they undertake an assessment under section 17 of the Children Act 1989 in accordance with the *Framework for the Assessment of Children in Need and their Families* (2000);
- decisions about the overall suitability of arrangements are taken within required timescales and are signed-off at managerial level;
- they comply with the required timescales for subsequent visits;
- that an additional visit is made to a privately fostered child when reasonably requested by the child, the private foster carer, the child's parents or any other person with parental responsibility for him;
- privately fostered children are seen alone at each visit, unless it is considered inappropriate, and an interpreter who is independent of the child's parents and of the private foster carer is used where the child's preferred language is not English;
- written reports are made in accordance with the regulations;

- advice and support is provided to private foster carers, proposed private foster carers, the parents of the child, any other person with parental responsibility for the child, or any other person concerned with the child as appears to the local authority to be needed; and
- information and support is provided to privately fostered children.

As part of the monitoring of compliance, local authorities should:

- review a sample of individual child and private foster carer records regularly to check such matters as compliance with required timescales for action to be taken on receipt of a notification, decisions about the overall suitability of arrangements and subsequent visits; that additional visits are made when reasonably requested; that children are seen alone, unless it is considered inappropriate (and with an independent interpreter where the child's preferred language is not English); that written reports are made in accordance with the regulations; that decisions about the suitability of arrangements are signed-off at managerial level; that any concerns raised by privately fostered children are addressed; and the satisfactory operation of all its procedures, and the effectiveness of its actions, in relation to private fostering;
- investigate any patterns of concern raised by privately fostered children;
- take action to improve practice where this is indicated as necessary;
- provide annually to the Director of Children's Services an evaluation of the outcomes of their work in relation to privately fostered children in their area; and
- report annually to the Chair of the Area Children Protection Committee (or its successor body, the Local Safeguarding Children Board) on how they satisfy themselves that the welfare of privately fostered children in their area is satisfactorily safeguarded and promoted, including how they co-operate with other agencies in this connection.

**2.46** Regulation 13 provides that any notification given under the Children (Private Arrangements for Fostering) Regulations 1991 (i.e. before the Children (Private Arrangements for Fostering) Regulations 2005 came into force) shall be treated as if it had been given under the 2005 regulations. This provision is intended to ensure that those who have given notification under the 1991 regulations do not have to re-notify under the 2005 regulations.



## CHAPTER 3

# Other Children Act 1989 Duties

### CONSIDERING WHETHER A PRIVATELY FOSTERED CHILD IS A CHILD IN NEED

**3.1** Section 17(10) of the Children Act 1989 gives local authorities a general duty to safeguard and promote the welfare of children in need in their area and to promote the upbringing of such children by their families, so far as this is consistent with the welfare duty to the child. The definition of 'need' in the Act is deliberately wide to reinforce the emphasis on preventive support and services. It has three categories:

- reasonable state of health (physical or mental health) or development;
- significant impairment of health or development; and
- disability.

**3.2** Where the local authority considers that the child's developmental needs are not being, or will not be, met, it should undertake an assessment as to whether the child is in need of services under section 17 of the Children Act 1989, in accordance with the *Framework for the Assessment of Children in Need and their Families (2000)*. This also provides the opportunity to consider where support and services can be provided to increase the capacity of the private foster carer to meet the child's needs. Where a 'child in need' plan is put in place, this should be reviewed at minimum intervals of six months.

## MEETING NEEDS

**3.3** Section 17 of, and Part 1 of Schedule 2 to, the Children Act 1989 set out the specific duties and powers of local authorities in relation to support services for children within their families. Under section 17(1) local authorities have a general duty to provide a range and level of services appropriate to the children in their area who are 'in need' in order to safeguard and promote their welfare and, so far as is consistent with that aim, promote their upbringing by their families. Local authorities have to ensure that a range of services is available to meet the extent and nature of need identified within their areas.

## SERVICES FOR DISABLED CHILDREN

**3.4** Paragraph 2(2) of Schedule 2 to the Children Act 1989 requires local authorities to open and maintain a register of disabled children in their area. Paragraph 6 of Schedule 2 to the Act places a separate duty on local authorities to provide services for children with disabilities designed to minimise the effect of their disabilities and give such children the opportunity to lead lives as normal as possible. The register and services should help in the identification, diagnosis, assessment and treatment of privately fostered children who are disabled. This may include provision of equipment such as communication aids and interpreters.

**3.5** In co-operation with relevant agencies, local authorities need to consider the overall development needs of a disabled child who is privately fostered. Advice and help on home aids, equipment and adaptations can be obtained from the Disabled Living Foundation. Contact a Family runs a free phone advice service for parents and carers of disabled children on 0808 808 3555.

## AFTER CARE

**3.6** Under Section 24 of the Children Act 1989 a disabled person who is under 21 and who was (but is no longer) privately fostered at any time after his sixteenth birthday qualifies for advice and assistance from the local authority in whose area he is residing.

**3.7** The local authority may advise, assist and befriend such a young person if he asks for help and his previous private foster carers do not have the necessary facilities to advise or befriend him. Assistance may be in kind or, in exceptional circumstances, in cash which may also be conditional on repayment, except where a person is in receipt of certain benefits.

**3.8** The guidance to Section 24 of the Children Act 1989 (Chapter 2.16) includes reference to privately fostered children and should be consulted for guidance on principles and practice. It is important to note that local authorities only have a responsibility to advise and assist young disabled people who have previously been privately fostered. The powers of local authorities to contribute to expenses related

to education, employment and training set out at section 24B of the Act are not applicable to young disabled people who were formerly privately fostered.

#### **DECISIONS ABOUT THE CHILD'S CARE – PARENTAL RESPONSIBILITY**

- 3.9** Parental responsibility is one of the key underpinning concepts of the Children Act 1989. Because parents have the legal responsibility for their children they should be encouraged to participate in all decisions made in relation to a private fostering arrangement. The Children Act 1989 defines 'parental responsibility' to include all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property (section 3(1)).
- 3.10** A person with parental responsibility may, arrange, under section 2(9) of the Children Act 1989 for a private foster carer to meet that responsibility by acting on his behalf, for example, by delegating responsibility for consent to medical examination or treatment. Such an arrangement may prove useful in situations where the parent of the child is unable to exercise his responsibilities. However, (under section 2(11)) such an arrangement does not affect any liability of the person with parental responsibility which may follow from a failure to meet that responsibility.
- 3.11** Whilst the day to day care of the child can be delegated to the private foster carer, parental responsibility remains with the parent. How they exercise this is a matter for agreement with the private foster carer at the start of the arrangement. However, parents should be encouraged to remain as closely involved as possible in their child's life. Without this, the position of the child could become uncertain and allow the arrangement to be regarded as a quasi adoption in which the child feels uncertain as to which family he belongs. The parents should be encouraged to keep the child up to date with happenings in the family, either directly or through the private foster carer.
- 3.12** If the parents, or those with parental responsibility, are failing to exercise their responsibilities e.g. failing to pay maintenance or to keep in touch, the social worker should try to locate them and find out if there is a problem, give advice and take appropriate action as necessary. Where they cannot be contacted over a sustained period of time, the local authority should consider the extent to which (if at all) they should exercise any of their functions under the Children Act 1989 with respect to the child.



## CHAPTER 4

# Suitability of the Private Fostering Arrangement

### INTRODUCTION

**4.1** Local authorities need to have in place and implement effectively procedures for determining the suitability of all aspects of a private fostering arrangement and for ascertaining that private foster carers, and their household and premises, provide an environment in which the child's welfare will be safeguarded and promoted. Local authorities are expected to make a decision about the suitability of all aspects of an arrangement within 42 working days from notification or as soon as the outcome of the CRB check(s) is known, whichever is the sooner. This timescale relates to that needed to undertake both initial and core assessments in accordance with the *Framework for the Assessment of Children in Need and their Families* (2000).

### CAPACITY TO LOOK AFTER THE CHILD AND SUITABILITY OF HOUSEHOLD

**4.2** In order to assess the capacity of a proposed or actual private foster carer to look after a child, the suitability of household members and whether the privately fostered child or any child already residing in the household has any behavioural or other difficulties which could prejudice the welfare of other children, an assessment should be undertaken using the dimension headings of the *Framework for the Assessment of Children in Need and their Families* (2000) as a guide. The purpose of this assessment is two-fold – to assess the capacity of the proposed or actual private

foster carer to look after the child and to assess whether the child is a child in need under section 17 of the Children Act 1989. Depending on the circumstances of the child and the proposed or actual private foster carer, a more in-depth core assessment may also be required.

- 4.3** In assessing the capacity of the proposed or actual private foster carer to look after the child, local authorities should consult with appropriate agencies who may already be involved with the child, the proposed or actual private foster carer or members of his household. The health visitor may, for example, be able to provide information about the person's experience of caring for children of different age groups, children of particular ethnic minority groups, children with special needs or caring for children in general. The person who is, or is proposing to, foster the child privately should be made aware that such views will be sought.
- 4.4** If the child is a child in need under section 17 of the Children Act 1989, the guidance set out in the *Framework for the Assessment of Children in Need and their Families (2000)* should be followed. The overall decision about the suitability of an arrangement should be signed-off at managerial level.

#### **PREPARATION**

- 4.5** Discussions with the parent and person who is fostering, or proposing to foster, a child privately should be open. It should always be made clear by the social worker that the welfare of the child is paramount and their role includes supporting the private foster carer to provide the best possible care for the child.
- 4.6** The local authority enquiry process should provide opportunities to enable a parent or prospective private foster carer to decide that a private fostering arrangement may not be the best way to meet their own or the child's needs. The person who is fostering or proposing to foster a child privately should be given a clear understanding as to the purpose of the local authority's enquiries so that he fully understands the duty of the social worker to determine:
- his capacity to look after the child and the suitability of his household;
  - the suitability of the premises in which the child will be, or is being, privately fostered;
  - whether it would be prejudicial to the welfare of the child to be, or continue to be, accommodated by him in those premises; and
  - that the arrangements or proposed arrangements are likely to provide a safe and stable environment for the child.

## INTENDED DURATION OF THE ARRANGEMENT

**4.7** The intended duration of the arrangement needs to be understood and agreed (ideally in writing) between the parents of the child (or any other person with parental responsibility for him) and the proposed private foster carer. The duration of the arrangement should be reviewed with the private foster carer on every visit so that any change can be anticipated to enable parent, child and other carers to be involved and consulted, thus helping to avoid unplanned moves or drift. If plans change, the reasons given for the change and the nature of the revised arrangements should be clearly understood by all parties, including the child, along with appropriate timescales for implementing the changes. All significant changes should be notified to the local authority.

## CAPACITY OF PRIVATE FOSTER CARERS TO RESPOND TO THE CHILD'S DEVELOPMENTAL NEEDS

**4.8** When assessing and deciding whether a private foster carer has the capacity to look after the child, it will be important to understand the child's wishes and feelings about the arrangements, the child's developmental needs and ascertain whether the private foster carer understands the child's needs and what it will mean for the child to live in the private foster carer's family.

## WISHES AND FEELINGS OF THE CHILD

**4.9** The child's wishes and feelings about a private fostering arrangement (proposed or actual) should always be sought, subject to the child's age and understanding. The social worker should ensure that the child understands that information which he shares which raises issues about the child's safety or the commission of a serious crime cannot be kept confidential. If the child expresses a wish not to be privately fostered, the social worker needs to try to understand whether this is related to the child's anxiety about leaving the birth parent or whether there is a specific reason why he does not wish to be privately fostered by a particular person. The social worker should be particularly aware that there may be good reasons why the child's views are different from those of his parents, or any other person with parental responsibility for him and, in the case of a child who is privately fostered, the views of the private foster carer. The more mature the child, the more fully he will be able to enter into discussion about plans and proposals, and participate in the decision-making process.

**4.10** All children need to be given information and explanations so that they are in a position to develop their own views and make choices. Providing children with reassurance and helping them over their anxieties is essential if their welfare is to be safeguarded and promoted.

**4.11** Where the child has a communication impairment, social workers should ensure that the child's preferred method of communication is used to enable the child to express his wishes and feelings so that they can be fully considered. Such means could include working with someone who has the appropriate communication skills, such as sign language, and making use of Makaton or Bliss symbols – a language of signs used by people with severe learning disabilities. With young children their wishes and feelings can often be established indirectly by observation and through play. In the case of a child whose preferred language is not English, an interpreter who is independent of the child's parents and of the private foster carer will be required.

#### **PHYSICAL, INTELLECTUAL, EMOTIONAL, SOCIAL AND BEHAVIOURAL DEVELOPMENT**

**4.12** The quality and consistency of the care a child receives in his formative years is crucial to his physical, intellectual, emotional, social and behavioural development. Attention to the child's physical, intellectual, emotional, social and behavioural development is expected to include appropriate and sufficient diet, exercise, play, intellectual stimulation, development and pursuit of hobbies and personal interests, and help (where necessary) with language development, relationships, social skills and behaviour, ensuring that his needs are appropriately identified and met, including through appropriate health promotion advice and information, and his wishes and feelings taken into account.

**4.13** Understanding the child's needs will include assessing:

- his developmental needs and progress;
- the quality and permanence of previous care and relationships;
- how separation and loss are being handled. (Both parents and private foster carers may need advice on the potential impact of separation and loss on the child);
- his sense of self worth which comes from being loved, respected and accepted as an individual in his own right, and a sense of belonging in his new family and not being treated less favourably than other children in the household;
- his self image and sense of identity, including ethnicity, knowing who his parents are and what his given name is. It is important that parents inform the private foster carer how the child is usually addressed (only a person with parental responsibility has legal authority to change a child's forenames or surname);
- his wishes and feelings about the private fostering arrangement.

**4.14** Disturbed behaviour may be a reflection of emotional difficulties which in turn may be related to past or present experiences. It is an indication that all is not well and an assessment of the problems is required so that appropriate advice can be given and,

if necessary, action taken. The happiness of the child, quality and comfort of relationships, and whether he is insecure or confused, are also indicators of his emotional state.

- 4.15** Advice can be given on appropriate play, nursery school or playgroup experience, leisure activities, and experiences that will enhance the child's feeling of self worth and provide appropriate stimulation and learning opportunities.

#### **HEALTH CARE**

- 4.16** Children of particular racial origins may have specific health care needs and full consideration should be given to this aspect of the child's care. If a child is well, no special screening may need to be undertaken, over and above routine screening and surveillance offered to all children in the United Kingdom. If, however, the child is unwell, special factors should be taken into account as they may be the key to the child's ill health. For example, children of particular racial origins may be at risk of developing or suffering a range of difficulties such as malnutrition, sickle cell anaemia, thalassaemia, tuberculosis, hepatitis B and C, certain forms of diabetes, schistosomiasis, HIV/AIDS or tropical diseases such as malaria.
- 4.17** Children attending school will be able to benefit from health care provided by the School Health Service. Children aged under five who are privately fostered should not miss out on the Child Health Promotion Programme. A general physical examination will normally be offered at 6-8 weeks and an assessment of the child's physical, emotional and developmental needs should be carried out by the time they are age one. Their developmental progress should then be reviewed between ages 2 and 5. A further health review will be offered at school entry. Private foster carers should make sure that they are informed by the child's parents about the child's health reviews, needs assessment, immunisations etc.

#### **PERSONAL CHILD HEALTH RECORD**

- 4.18** The Personal Child Health Record (PCHR) should normally be held by the person who has care of the child. The parents of the privately fostered child may, therefore, wish to give the private foster carer the child's Personal Child Health Record for the duration of the arrangement. For some disabled children, parents will also need to share any necessary information about specific techniques for feeding and personal care. Children with disabilities may have been receiving medical services from specialist units and special arrangements may be necessary to ensure continuity of care and treatment.

#### **CHILD'S MEDICAL HISTORY**

- 4.19** The parents of the child to be privately fostered should make known the child's medical history to the proposed private foster carer and ensure that the social worker

is aware of any particular health conditions. In addition to basic details of the child – height, weight, etc, details in a child’s medical history should include:

- immunisations given with dates and, where practicable, the results of any neonatal screening tests;
- history relating to infectious diseases, with dates;
- any episodes of in-patient or out-patient hospital treatment for any condition with dates, and details where possible;
- whether the child has, or is known to have, any congenital condition which has, or may have, medical implications and/or which necessitates ongoing health care;
- whether the child is known to have any allergies, including allergies to any medication;
- current short term or long term medication and any other treatments, including the names of the consultants involved in those treatments;
- information on any special dietary requirements or dietary restrictions.

#### CONSENT TO MEDICAL EXAMINATION OR TREATMENT

**4.20** Consent to medical examination or treatment, which the child himself is not capable of giving, may be given by a parent or other person with parental responsibility. Although a person may not transfer or abdicate parental responsibility, they may arrange for some or all of it to be met by one or more persons acting on their behalf (section 2(9) of the Children Act 1989). There is no requirement for such arrangements to be evidenced in writing. However, it is recommended that, at the commencement of the arrangement, the parent or other person with parental responsibility records in writing their agreement for the private foster carer to give consent on behalf of the child to everyday treatment which may become necessary. It may be appropriate for the local authority and the Primary Care Trust or the child’s General Practitioner to have copies of this document.

**4.21** Children of sixteen and over are entitled to give their own consent to medical treatment (see *Seeking Consent: Working with Children*, Department of Health, 2001). In most cases, those over sixteen will give their own consent, but there may be occasions (if the young person is unconscious or the effects of pain or medication mean that they cannot make an informed decision) when a person with parental responsibility can consent for them. This no longer applies when a young person becomes eighteen.

**4.22** Children under sixteen may also be able to give or refuse consent depending on their capacity to understand the nature of the medical examination or treatment. It is for the doctor or other health professional concerned to determine whether the child is

competent to give consent, and to keep a record of how this decision was reached in case of challenge at some future point. Children who are judged able to give consent (“competent”) cannot be medically examined or treated without their consent. The child’s attention should be drawn to his rights to give or refuse consent to examination or treatment if he is 16 or over or if he is under 16 and the health professional considers him to be competent to give or withhold consent to the examination or treatment in question. Young people should be encouraged to understand the importance of health care and to take responsibility for their own health. If a child aged under 18 refuses consent, this may be overridden by a person with parental responsibility or by the court if the welfare of the child so requires. This is likely to be only in exceptional circumstances, and those involved should consider seeking legal advice about applying to the court for a decision as to whether the child’s welfare requires his refusal to be overridden. For more information on consent issues local authorities may wish to refer to the Department of Health web-site: <http://www.dh.gov.uk/PolicyAndGuidance/HealthAndSocialCareTopics/Consent/fs/en>.

#### REGISTRATION WITH GENERAL PRACTITIONER

**4.23** Local authorities must establish that arrangements for the care of the child’s health are in place and, in particular, that the child is included on the list of a General Practitioner. Local authorities should check this with the relevant practice. The child should remain with the current General Practitioner, if possible. The child’s parent, or other person with parental responsibility for him, should be given the name and address of the General Practitioner with whom the child is registered, if changed. Regular visits to the dentist for checks and treatment should form an integral part of the general health care of the child. Privately fostered children are, of course, entitled to the same universal health services (e.g. immunisation programme, sight tests etc) as other children.

#### EDUCATION

**4.24** Local authorities must establish the arrangements for the child’s education through an approved programme, whether at school or otherwise. Where possible and appropriate, children should remain at the same school. However, if a school change is required, care must be taken to ensure that the school is appropriate in terms of the child’s educational needs, race, culture, gender and disability.

**4.25** Local authorities should explore the private foster carer’s or prospective private foster carer’s attitudes and expectations in relation to a child’s education. The objective should be to establish a view as to this person’s:

- understanding and recognition of the need to provide educational support to a privately fostered child; and

- (where appropriate) ability to cope with the additional parenting tasks of providing support to a child with special educational needs.

## RELIGIOUS PERSUASION, RACIAL ORIGIN, AND CULTURAL AND LINGUISTIC BACKGROUND

- 4.26** The practice among some minority ethnic families to place their children in private foster homes of a different race and culture may, in some instances, require local authorities to pay particular attention to ensuring that the privately fostered child is able to maintain contact with people from his race, culture and religion.
- 4.27** Local authorities should establish that the person who is proposing to privately foster a child is aware of the significance of religion and/or culture in relation to the child's racial origin, and has an understanding of the particular culture and knowledge of the child's preferred language. Social workers should explore the extent to which the proposed private foster carer is prepared to develop such understanding and give advice as appropriate. The importance to a child of maintaining his preferred language needs to be stressed since eventual return to his family or community is made even more difficult if he is unable regularly to use his family's preferred language.
- 4.28** Attention may need to be given to the expectations of the privately fostered child participating in the religious life of the private foster carer and his household, and whether this would be compatible with the expectations of the child and his parents. Account should also be taken of the private foster carer's willingness to provide a child from an minority ethnic group with a diet which is familiar to him, including food which may be part of a religious observance.
- 4.29** Local authorities should ensure that the private foster carer is advised about the provision of resources and facilities which could assist him meet the racial, cultural, religious and linguistic needs of the child. This can be done, for example, by involving local religious groups, minority ethnic communities and relevant voluntary organisations.
- 4.30** Local authorities will need to be aware of the practical difficulties which such arrangements can present. It is important to remember that the local authority has an important role in providing advice on how potential or actual difficulties can be overcome, as part of their overarching duty to satisfy themselves that the child's welfare is satisfactorily safeguarded and promoted.

## CONTACT

- 4.31** Where the place where the child is, or will be, cared for and accommodated is not within easy reach of the child's family, the local authority should explore whether clear arrangements have been made to facilitate contact. Contact with members of the child's extended family who are living in the UK should also be encouraged.

- 4.32** All those involved with a private fostering arrangement need to view contact in a positive light, simultaneously ensuring that contact is in the best interests of the child. The proposed or actual private foster carer's attitude and expectations should be explored concerning his promotion of contact between the child's parent, or other person with parental responsibility, and any other significant person in the child's earlier life, and his willingness to facilitate visits by parents and other relatives to the private foster home for the duration of the placement so that the child can retain emotional links to his birth family. It is essential that the person privately fostering, or proposing to privately foster, a child is aware of the implications of caring for other people's children and of the need to work in partnership with the child's parents. Parents and private foster carers may need advice on the importance of continuing links for the child's emotional wellbeing. The social worker should ensure that adequate arrangements are made for relationships between the privately fostered child and his siblings to develop.
- 4.33** Arrangements for contact between the child and his parent, other person with parental responsibility for him, and other persons who are significant to him need to be understood and agreed, and ideally set down in writing. Arrangements for the private foster carer to contact the parent should also be agreed and ideally set down in writing. If the parent and private foster carer are working together then the child is more likely to feel secure. Of course, in order to satisfy itself that the welfare of the child is being, or will be, satisfactorily safeguarded and promoted, the local authority will need to ensure that all contact between the child and others is, or will be, satisfactory for the child (taking into account his ascertainable wishes and feelings). The child, if of sufficient age and understanding, should always be consulted about contact arrangements, and their wishes and feelings taken into account.
- 4.34** The local authority may need to support the contact arrangements and even, if necessary, provide a venue for families to meet if to do so would help safeguard and promote the child's welfare. If arrangements for contact are not satisfactory for the child the local authority should discuss with the private foster carer, and birth parent where possible, how this could be addressed and what the local authority might do to help. In normal circumstances the costs of contact is a matter between the parent and private foster carer, but reasonable financial assistance could be considered under section 17 of the Children Act 1989 if this supports a child in "need" as defined by the Act.

#### **CONTINUITY AND CHANGE**

- 4.35** The private foster carer and the child's parents need to be aware of the importance of continuity of health care, education, religious practice and, indeed, all aspects of the child's life, and share all relevant information. As much information as possible about

the child and his needs should be shared by the parents with the prospective private foster carer so that he fully understands the needs of the child and can consider his own capacity to meet them. Private foster carers will need information about the child, the child's needs and history, medical background, educational attainment, ethnicity, culture, religion and the child's understanding of the reasons for and duration of the arrangement. Information about, for example, routines, capabilities, interests, habits, fears, likes and dislikes and, where appropriate, the implications of a child's physical disability or learning disability, are essential if the private foster carer is to offer good quality continuity of care and help the child settle into his new home. At the same time, the child should be told as much about the proposed private foster carer, his household and premises, as the child is able to understand for example, the interests of the children already living in the household and the location of the private foster home.

- 4.36** The way the introduction to his new home is organised is important for the child's sense of security and acceptance of the change. A process of introduction helps to minimise the pain of separation. Private foster carers need to be prepared for the possibility of disturbed behaviour following such a significant change for a child. Photographs of family members can provide familiarity in a new setting.
- 4.37** Advice to private foster carers and parents should include the importance of planned endings to arrangements and preparation of the child for further change. This is particularly important where the child is to move to a new private foster carer.
- 4.38** A child's return to his family may also need careful preparation by both his parent and the private foster carer depending on the length of time the child has been away and the extent of changes within the family. The need for continuity is as critical at the end of the placement as at the beginning. Children sometimes return to different addresses, an unfamiliar culture and new family members. The private foster carer should be advised to pass on information to the parent about, for example, the habits, food preferences, interests, routines and connections developed by the child. Where a child has been in a private fostering arrangement for some time parents should be prepared for the possibility of the child's distress while the child re-establishes himself in his family. Proactive planning will need to be in place as a privately fostered child reaches 16 (18, if disabled) to ensure that suitable arrangements are being made for his care and accommodation.

#### **SPECIFIC AREAS OF THE PRIVATE FOSTER CARER'S CAPACITY TO RESPOND TO THE CHILD'S NEEDS**

- 4.39** The following specific areas of the foster parents capacity to respond to the child's needs and provide a suitable household will be assessed in order to inform the overall decision about the suitability of all aspects of the private fostering arrangement.

## DISCIPLINE

**4.40** The local authority should ascertain the proposed private foster carer's views on discipline and ensure he has an understanding of positive approaches to discipline. The local authority should also check and reinforce the proposed private foster carer's understanding that the general law on assault applies equally to the physical punishment of children: there is no exception for private foster carers. The "reasonable chastisement" defence can be relied upon by anyone exercising parental authority for a child. A private foster carer should not physically punish a privately fostered child. The social worker should, where appropriate, provide advice on positive parenting techniques, which reward the child for good behaviour rather than focusing on the negative. Whilst there may sometimes need to be a consequence for bad behaviour, it should not involve withdrawal of meals or restrictions on contact with family and should not be unreasonable or excessive.

## LIFE STYLE

**4.41** The local authority will need to determine the standard of living and "life style" of the private foster carer or prospective private foster carer and, for example, should explore the type of leisure activities and other interests pursued, and how his type of employment affects family life. Where he is employed outside the home, he will need to make arrangements to ensure proper care, for example, after school, and during sickness and holidays.

## HOUSEHOLD RELATIONSHIPS

**4.42** The extent to which members of the household may participate in the daily care of a privately fostered child is an important consideration, as are demands made by other members of the household on the private foster carer or prospective private foster carer. The impact of privately fostering a child on family life should be discussed fully with that person and all members of his household. The extent of contact with persons staying with the family or working in the household should also be explored. Where such a person is over 16 and the degree of contact and involvement is significant, an Enhanced Criminal Records Bureau check may be relevant.

## ENHANCED CRIMINAL RECORDS BUREAU AND OTHER CHECKS

**4.43** Local authorities should arrange for Enhanced Criminal Records Bureau checks to be carried out for someone who is privately fostering or proposing to privately foster a child, and all members of his household aged over 16 years. The actual or proposed private foster carer and each member of his household aged over 16 should be asked to provide written consent for such a check to be carried out (see Annex B). The local authority will need to advise the person concerned that spent convictions may be disclosed.

- 4.44** Unless the proposed or actual private foster carer and members of his household agree to Enhanced Criminal Records Bureau checks being made local authorities will not be able to satisfy themselves that the welfare of the child will be satisfactorily safeguarded and promoted. A record of convictions will not necessarily preclude the person from fostering a child privately, but will require careful consideration in consultation with senior staff. The disqualification provisions contained in section 68 of the Children Act 1989 and the Disqualification from Caring for Children (England) Regulations 2004 are relevant in this respect.
- 4.45** Local authorities should check their own records to see whether the proposed or actual private foster carer or any member of his household is known to social services (and liaise with other local authorities if the proposed private foster carer has only been in the present local authority area for a short-time).

#### **SUITABILITY OF ACCOMMODATION**

- 4.46** Local authorities may inspect premises where a privately fostered child is being, or is proposed to be, accommodated, and may also enquire about and interview the children in them (section 67(3) of the Children Act 1989). The type of premises in which a child is privately fostered will vary considerably and local authorities should decide whether the standard of accommodation is suitable, having regard to the child's age and developmental needs.
- 4.47** The local authority should ensure that the home and immediate environment are free from avoidable hazards (that might expose a child to risk of injury or other harm), and contain safety barriers and equipment appropriate to the child's age, development and level of ability.
- 4.48** When inspecting premises the local authority should take into account conditions which may have a direct effect on the health of a child. Dampness and extremes of temperature, for example, may in particular have a serious effect on the health of a child, such as those suffering from certain conditions e.g. sickle cell anaemia or thalassaemia. Private foster carers (proposed or actual) should be made aware of the factors being considered by the local authority when an assessment of the accommodation is made.
- 4.49** The assessment should also include the nature of living and sleeping facilities and the effect of possible overcrowding. Each privately fostered child must have his own bed, and the accommodation arrangements should reflect the child's need for privacy and space, and any specific need resulting from disability. Where a child is to share a bedroom with another member of the household, particular attention should be given to ensuring that the arrangements will not be prejudicial to his welfare or the welfare of other children in the household. Under normal circumstances a

privately fostered child over the age of two, should not share a bedroom with a teenager, the private foster carer or other adult member of the household.

- 4.50** Requirements can be imposed, and advice given, regarding the standard of accommodation and equipment.

#### **FINANCIAL ARRANGEMENTS**

- 4.51** The proposed private foster carer will need to agree with the child's parents the financial arrangements for his care and maintenance. Ideally, these arrangements should be set down in writing. Local authorities should ensure that proposed private foster carers have realistic expectations about the costs of maintaining adequately a child. Proposed private foster carers should also be clear about how far they are prepared themselves to contribute to the child's maintenance (if at all). In any event they should have sufficient resources to tide over any gaps in maintenance payments, at least temporarily. If financial arrangements are not satisfactory the local authority should discuss with the private foster carer how this could be addressed and what the local authority might do to help. Exceptionally, action by the local authority could be considered to assist the private foster carer through a short period of financial hardship which coincided with a fall in maintenance payments. Such payments can be recovered. Any state entitlements should also be taken into account.

- 4.52** Private foster carers can receive child benefit, but any maintenance payments received from the child's parents will be taken into account in any assessment for means-tested benefits. Local authorities should provide basic advice to private foster carers on access to child benefit and other benefits.

#### **STANDARD OF CARE**

- 4.53** Having considered all aspects of the child's needs and the capacity of the private foster carer, the social worker will be able to make an assessment about the overall standard of care provided to the child.



## CHAPTER 5

# Advice and Support

### FOR PARENTS

- 5.1** Local authorities may need to give advice and support to parents to enable them to make alternative arrangements for the care of their child where in all the circumstances of the case the local authority considers that it is not appropriate for the child to be privately fostered, and where a private fostering arrangement is prohibited and no other is contemplated. Parents may need to be advised on the desirability to keep siblings together if possible – unless a child has particular needs which preclude being with siblings. They may need advice on attachment issues, and the implications of a child living away from home with someone else to whom they may become attached if parental involvement is not maintained. They may also need advice on what to do if they are concerned about their child's care.
- 5.2** In each case the local authority needs to consider whether support or referral to another agency would remove the necessity for the child to be privately fostered and, where feasible and in the child's best interests and with the parents' consent, provide that support or make that referral.

### FOR PRIVATE FOSTER CARERS

- 5.3** Local authorities should provide information to private foster carers (prospective and actual) on the advice and support that is available from other agencies, including

health services, education, housing services, youth support services, voluntary organisations and community groups. They might in some circumstances need to refer private foster carers on to other agencies. Where there is an identified need for support, which is not available from other agencies, the local authority will need to consider whether this support should be provided under section 17 of the Children Act 1989.

- 5.4** Advice to private foster carers may cover a range of topics from the advisability of taking out public liability insurance to the potential for bullying and racial harassment, and the importance of private foster carers regularly consulting and taking into account the wishes and feelings of the child about key issues. Where appropriate, local authorities will need to give advice to private foster carers about needs arising from religious persuasion, racial origin and cultural and linguistic background. They will also, where appropriate, need to give advice which would enhance a private foster carer's ability to care effectively for a child in other ways (including in relation to age, sex and disability), and the opportunity to utilise any training or support services that may be available.
- 5.5** Advice to private foster carers can be given in a number of ways:
- individually by the social worker (at, or between, visits), health visitor or other professional;
  - in a "self-help" group, learning from other private foster carers. This can be particularly useful if it includes some experienced private foster carers with good standards of care who can act as role models to others;
  - via "drop-in" centres;
  - by being linked to local resources e.g. a toy library, equipment loan scheme, play group or other relevant agencies;
  - through training set up specifically for private foster carers or generally for all foster carers, childminders or others.
- 5.6** Both parents and private foster carers should be given information about how to access support groups and independent advice and advocacy services, including relevant advice lines provided by organisations such as Parentline Plus, Family Rights Group and Fostering Network. In addition, they should be given the contact details of the social worker whom they can contact at any time if they have any significant worries about the care of the child or would like to request a visit to the child.

## RECORDING THE CHILD'S DEVELOPMENT AND PROGRESS

**5.7** It is good practice for the local authority social worker to offer private foster carers advice about the information they should keep and the manner in which they should keep it, to be shared with the parents, and where appropriate, the local authority social services, health and education services. Such advice should cover:

- maintaining and updating the child's medical history (with appropriate input from health personnel), to include notes/dates of visits to the general practitioner, health clinic etc;
- keeping a file of school reports, examination results and special pieces of work;
- noting the dates and means of contact with the parents and other significant people in the child's life (visits, letter, phone calls);
- recording the child's out of school activities, such as sport art, music, drama, Brownies/Cubs etc;
- maintaining a financial record of monies received in relation to the child's upkeep;
- noting the dates and nature of social services contact;
- keeping a photograph album of significant events/people in the child's life during their stay in private fostering.

## FOR CHILDREN

**5.8** The local authority will need to provide privately fostered children with information, in formats appropriate to their age and level of understanding, including about their private foster carer and his responsibilities, the meaning of their privately fostered status, and their right to be safeguarded.

**5.9** In addition, they should be given the contact details of the social worker who will be visiting them while they are privately fostered. The child should be made aware, if of sufficient age and understanding, that they can contact their social worker if they have any significant worries about their care, they would like the social worker to visit them to check on anything that is concerning them about their care or there are other matters about which they want to talk. The local authority should ensure that the privately fostered child is given information about advocacy services, if he is a child in need.



## CHAPTER 6

# The Role and Functions of Local Authorities

### LOCAL AUTHORITIES' APPROACH TO PRIVATE FOSTERING

- 6.1** Local authority priorities need to reflect their private fostering duties and powers flowing from the Children Act 1989 (as amended by section 44 of the Children Act 2004) and the Children (Private Arrangements for Fostering) Regulations 2005. In the course of putting these duties into operation, local authorities also need to take particular note of Paragraph 1(1) of Schedule 2 to the Children Act 1989 and its requirement to take reasonable steps to identify the extent to which there are children in need in their area.
- 6.2** Local authorities and other relevant agencies are responsible for decisions about their own arrangements for managing the legal and administrative issues assigned to them under the Children Act 1989. Local authorities should work with other key agencies in meeting the needs of privately fostered children, parents and private foster carers.
- 6.3** Local authorities should appraise their organisational arrangements and interactive links with other agencies in order to carry out their duty to satisfy themselves that the welfare of privately fostered children is satisfactorily safeguarded and promoted. These links are likely to reflect the wider co-operation arrangements required under

section 10 of the Children Act 2004, and by corresponding statutory guidance on inter-agency co-operation and Children's Trusts.

- 6.4 Local Safeguarding Children Boards will be set up under the Children Act 2004 to co-ordinate and ensure the effectiveness of what is done by key organisations in each local area to safeguard and promote the welfare of children. Their remit will include private fostering.

#### VISITS

- 6.5 The frequency of visits should be determined by the circumstances of the case but should not be below the minimum requirements specified in the regulations. If the local authority considers it appropriate, some visits should be unannounced. Occasionally, visits should take place when all members of the household are likely to be at home. In addition, the local authority should arrange a visit if reasonably requested by the child, private foster carer or parent. The continuing capacity of a private foster carer to look after the child should be monitored at these visits. The quality of the relationship between the child and his private foster family is a useful barometer as to suitability of the arrangement as well as all the matters detailed in Chapter 4. At each visit any notifiable change in circumstances should be ascertained. A visit may be needed upon notification of a change in the household, new conviction or other circumstance. At each visit the social worker will need to check whether any requirements are being met and to form a view as to whether they need to be varied or cancelled.
- 6.6 The social worker should seek to develop a positive relationship with the child and private foster carer, in order to assess difficulties which may arise over time. Visits must not be neglected because a placement is apparently going well.
- 6.7 Care needs to be taken to ensure that visits do not unsettle the child or private foster carer. This is easier where a way of partnership working has been established at the beginning of an arrangement. The social worker should make clear to the private foster carer the purpose of each visit, the areas about which the local authority needs to be satisfied, and any concerns which have arisen during a visit. The child and private foster carer should be able to contact the allocated social worker at any time between visits.

#### REFUSAL TO ALLOW VISITS

- 6.8 It is an offence for a private foster carer to refuse to allow a child to be visited or to obstruct an authorised officer, who has reasonable cause to believe that a privately fostered child is being accommodated or is proposed to be accommodated within the authority's area, from any exercise of any duty towards the child. An officer encountering any difficulties should discuss the problem with a senior manager and

legal advisors. In such cases, an application for a warrant under section 102 of the Children Act 1989 may be necessary to support the power of entry.

### SEEING THE CHILD ALONE

- 6.9** The child should be seen alone at each visit, unless the social worker considers it inappropriate, and with an interpreter, who is independent of the child's parents and of the private foster carer, present in every case where the child's preferred language is not English. If requested by the child or if it seems likely to the social worker that the child would prefer to discuss his welfare elsewhere, the child should be seen away from the private foster home for example, at the child's school or at the local authority premises. Children may find it difficult to speak freely in the private foster home. Circumstances in which it may be inappropriate to see a child alone include where the child is very young or does not wish to see the social worker alone.
- 6.10** Having completed his functions under Regulations 4(1) and 7(1), and after each visit carried out in accordance with Regulations 8(1) and 8(2), the social worker is required to make a written report. It will need to be borne in mind that this report will be part of the electronic social care record (website: [www.everychildmatters.gov.uk/socialcare/ics/](http://www.everychildmatters.gov.uk/socialcare/ics/)). The report should include the conclusions drawn, whether the child was seen alone and, where appropriate, the reasons why the officer considered it inappropriate to see the child alone. It should report on the child's wishes and feelings about the arrangement, and on the child's welfare and whether the arrangement is satisfactory, and include any information given by the child or the carer. Any matter for concern or difficulty should be highlighted so that the need for any intervention or services can be considered in conjunction with the social worker's manager.

### WRITTEN REPORT

- 6.11** The framework of the report should be designed with a view to the local authority taking one, or a combination of, the following courses of action:
- considering the extent to which the child's identified needs are being, or will be, met and the need for support and/or services;
  - imposing one or more requirements under paragraph 6 of Schedule 8 to the Children Act 1989;
  - imposing a prohibition under section 69 of the Children Act 1989;
  - imposing a prohibition *with* conditions upon non-compliance with requirements under section 69(5) of the Children Act 1989;
  - considering to what extent (if at all) they should exercise their duty under section 67(5) of the Children Act 1989.

**6.12** Local authorities have the power under Paragraph 6 of Schedule 8 to the Children Act 1989 to impose requirements on private foster carers as to:

- the number, age and sex of the children who may be privately fostered;
- the standard of accommodation and equipment to be provided for them;
- the arrangements to be made with respect to their health and safety; and
- particular arrangements which must be made with respect to the provision of care for them.

#### **LOCAL AUTHORITY POWERS: REQUIREMENTS**

**6.13** Requirements can relate to an individual child or a category of children, e.g. those over a certain age. In any event the imposition of a requirement must be notified in writing with the reasons for the requirement and the notification must inform the person of his right to appeal and the time limit for doing so. It is advisable to inform the proposed or actual private foster carer that a requirement is to be made in order to give time for any informal negotiations to take place if it is consistent with the welfare of the child, thus preventing unnecessary appeals to court.

**6.14** A requirement does not have effect while an appeal is pending. A court may dismiss the appeal or if not, can cancel or vary requirements, or allow more time for compliance.

**6.15** Decisions to impose requirements should be taken by the authority in accordance with established procedures. The local authority has the power to remove, vary, or add requirements and will need to have a policy on how these decisions are to be made.

**6.16** If a private foster carer does not comply with a requirement, the local authority should consider whether it would be appropriate to impose a prohibition on him.

**6.17** The provisions of Schedule 7 to the Children Act 1989 prescribe the usual fostering limit of not more than three children. This provision applies to private fostering arrangements.

#### **LIMIT ON THE NUMBER OF FOSTER CHILDREN**

**6.18** In cases where a person is privately fostering, or proposes to foster privately, more than three children who are not siblings at any one time, then that person needs an exemption from the local authority. If a private foster carer exceeds the usual fostering limit or, where exempted, privately fosters a child not named in the exemption and in so doing exceeds the usual fostering limit he shall be treated as carrying on a children's home. Any person who carries on a children's home without being registered in respect of the home under the Care Standards Act 2000 is guilty of an offence (see section 11 of that Act).

**6.19** The power of the local authority to impose a prohibition on a person applies to persons who propose to foster privately, as well as to persons who are actually fostering a child privately (section 69(1) of the Children Act 1989). Under this power local authorities may prohibit a person from privately fostering a child if they are of the opinion that that person is not suitable to privately foster a child; his premises are not suitable for private fostering; or it would be prejudicial to the welfare of the child for him to be, or continue to be, accommodated by that person in those premises. A local authority may prohibit a person from fostering privately any child in any premises; or a child in specified premises; or a particular child in specified premises (section 69(3) of the Children Act 1989).

#### **LOCAL AUTHORITY POWERS: PROHIBITIONS**

**6.20** Local authorities are encouraged to use the power to prohibit where it is necessary to enforce requirements. They should develop, in consultation with their legal departments, an agreed policy on the use of this power so that prohibitions provide an effective framework for promoting and safeguarding the welfare of privately fostered children, and to prevent unsuitable persons privately fostering a child in premises that would not safeguard and promote the child's welfare.

**6.21** Where a local authority impose a requirement on any person under Paragraph 6 of Schedule 8 to the Children Act 1989, they may also impose a prohibition on that person.

**6.22** A prohibition must be sent in writing to the person on whom it is being imposed, specify reasons, and contain information about the right of the person to appeal and the time in which he may do so (section 69(7)).

**6.23** In circumstances where a prohibition is imposed on a private foster carer who already has a child living with him, the local authority should exercise its duty under section 67(5) of the Children Act 1989.

**6.24** Local authorities may cancel a prohibition if they are satisfied that the prohibition is no longer justified. This power enables local authorities to respond appropriately to matters raised during the process of conducting enquiries into the capacity of the proposed or actual private foster carer to look after the child, the suitability of his household and premises; or to changes notified by that person (section 69(4)).

#### **CANCELLATION OF PROHIBITIONS**

**6.25** Persons on whom a prohibition has been imposed under Section 69 are disqualified from private fostering and from carrying on or being employed in a children's home, voluntary home, day care or childminding.

**6.26** Section 68 of the Children Act 1989 deals with disqualification from being a private foster carer. The Regulations made under Section 68 are the Disqualification from

Caring for Children (England) Regulations 2004. Local authorities will need to conduct appropriate enquiries to determine whether a proposed, or actual, private foster carer is disqualified from private fostering, or whether any member of that person's household is disqualified from fostering a child privately.

## DISQUALIFICATION

- 6.27** As an effective and efficient means of inquiring into whether or not a person is disqualified from fostering privately, local authorities may consider using a declaration form as shown in Annex B, enabling the person to give their written consent for enquiries to be made with other agencies (see also Paragraph 4.43).
- 6.28** Local authorities can, in certain circumstances, give their consent to a person acting as a private foster carer who would otherwise be disqualified, but only if they are satisfied that the welfare of the child concerned would not be prejudiced by the proposed, or actual, private foster carer or by a member of their household. In such circumstances, a senior manager must give *written consent* for the person to privately foster that child. Where the local authority decides to refuse consent to allow a disqualified person to privately foster a child they must notify the person concerned in writing and the notification must inform him of his right to appeal and the timescale for doing so. Local authorities should involve their legal departments in establishing procedures for handling disqualifications.
- 6.29** Where the local authority makes a decision to impose a requirement or prohibition, refuse to cancel a prohibition, refuse to exempt a person from the fostering limit of 3 under Schedule 7 (or impose a condition on an exemption or a variation or cancellation of such an exemption) or refuse to consent to allow a person who is disqualified to privately foster a child, an appeal may be made to the family proceedings court within 14 days of notification of that decision. Schedule 8 to the Children Act 1989 deals with appeals. Local authorities should involve their legal departments in establishing procedures for handling appeals.

## APPEALS

- 6.30** If local authorities are not satisfied that the arrangements made for the care and accommodation of a child will be suitable or about the welfare of a child who is already privately fostered, they should impose requirements on the private foster carer or, if appropriate, prohibit the arrangement – and inform the parents or those with parental responsibility for the child. Unless it would not be in the best interests of the child concerned, they must take reasonable steps to secure that the child is looked after by a parent, any other person with parental responsibility, or a relative. They must also consider whether they should exercise any of their functions under the Children Act 1989, including whether or not to consider accommodating the child under section 20 of the Act or offering support under section 17 of the Act if the child is considered to be

a child in need of services. Decisions under section 67(5) of the Children Act 1989 should not be taken by the social worker working alone. Concerns should be discussed with senior managers together with the local authority's legal advisers.

#### UNSATISFACTORY CARE

- 6.31** Local authorities need to be clear about the level at which care becomes unsatisfactory. The social worker's knowledge of the individual child and the quality of their relationship over time will enable him or her to identify when an arrangement is failing to meet the child's needs. Where the child is of sufficient age and understanding, the child's wishes and feelings should be ascertained and taken into account in deciding whether care is unsatisfactory and whether alternative arrangements for his care need to be made. In any event, the local authority should take action to inform the parent when the level of care becomes unsatisfactory. Advice and support might be necessary to enable parents to make alternative arrangements for the care of their child where in all the circumstances of the case the local authority considers that it is not appropriate for the child to be privately fostered, or where a private fostering arrangement is prohibited and no other is contemplated.
- 6.32** Decisions need to be made promptly, bearing in mind that the delay is usually contrary to the best interests of the child. If the child is "in need" as defined by Part 3, section 17 of the Children Act 1989, the local authority may consider whether temporary help, including financial help, should be made available in the short term to allow time for the child to be prepared for any move or for the arrangement to be brought up to standard, should a move be contrary to the best interests of the child. This also gives time for the parent to be informed of the situation by the local authority.
- 6.33** A child will need help to cope with a disrupted arrangement and will need reassurance that he is not to blame. The capacity of the parent to support the child at this stage is crucial. If the parent is unable to undertake this role it will be important that the social worker supports the child. The parent should be involved in, or at least be informed of, any significant action taken by the local authority. The parent can, of course, at any time during the arrangement remove the child from the private foster home.
- 6.34** There may be particular difficulties if the child's parent is overseas. If it is considered to be in the child's best interests, the one-off expense of funding the reunification of the child with his family may be more appropriate and more cost effective than long term local authority care.
- 6.35** If there is reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm the procedures set out in *Working Together to Safeguard Children* (1999) or its successor document should be followed.

**6.36** Section 70 of the Children Act 1989 covers offences, and penalties, in relation to private fostering.

- It is an offence to care for a child whilst disqualified from private fostering without the consent of the local authority, whilst living in the same household as someone who is himself disqualified from private fostering or at which any such person is employed or whilst prohibited. A person found guilty on summary conviction of such offences would be liable to a term of imprisonment of not more than 51 weeks (or not more than 6 months in the case of an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003) or to a fine or both.
- It is an offence to fail to give the notice required under Regulations 3 and 5 of the Children (Private Arrangements for Fostering) Regulations 2005 without reasonable excuse, within the time specified; or to provide any information required, without reasonable excuse, within a reasonable time. A person found guilty on summary conviction of such an offence would be liable to a fine.
- It is an offence to make, or cause or procure another person to make, any statement in the notice or information, which is known to be false or misleading in a material particular. A person found guilty on summary conviction of such an offence would be liable to a fine.
- It is an offence to fail, without reasonable excuse, to comply with any requirement imposed by a local authority. A person found guilty on summary conviction of such an offence would be liable to a fine.
- It is an offence to refuse to allow a privately fostered child to be visited by an authorised officer of a local authority; or to obstruct such an officer in inspecting premises in which a child is privately fostered or in which it is proposed to privately foster a child, and from seeing the child there. A person found guilty on summary conviction of such an offence would be liable to a fine.
- It is an offence to publish an advertisement offering to undertake or arrange for a child to be privately fostered unless it states the person's name and address. A person found guilty on summary conviction of such an offence would be liable to a fine.

## OFFENCES

**6.37** Local authorities should pay particular attention to ensuring that they have in place procedures, agreed with their legal departments, for dealing with situations where a private fostering arrangement has come to their attention, but has not been notified in accordance with the Children (Private Arrangements for Fostering) Regulations 2005.



## CHAPTER 7

# Records to be Kept by Local Authorities

### INTRODUCTION

**7.1** Local authorities need to have in place and implement effectively a system for monitoring the way in which they discharge their functions in relation to private fostering. In order effectively to be able to monitor compliance, local authorities need to:

- record information on the numbers of privately fostered children and private foster carers living in their area, including on the number of new notifications;
- record the number and nature of enquiries received in relation to private fostering, the responses given and any action taken;
- ensure that accurate, comprehensive, well-organised and confidential records are kept for each privately fostered child and private foster carer.

### CONTENTS

**7.2** Social workers and carers change and records are therefore the basis for a clear and common understanding of the plan for the child, agreements reached, decisions taken and the reasons for them and arrangements made.

**7.3** They should cover all the matters to which the local authority has to satisfy itself; disqualifications, prohibitions or requirements imposed on private foster carers;

decisions about offences; any advice given to parents and/or private foster carers; and include written reports.

#### **CASE RECORDS**

- 7.4** There should be an individual child record, not a family file. The record should enable the process of decision-making to be easily ascertained so that the views of the child and his parents can be found and related to the sequence of agreements reached, decisions taken and the reasons for them, and arrangements made. There should also be an individual record for each private foster carer, clearly detailing any convictions, disqualifications or prohibitions of the private foster carer himself or any person living, or employed, in their household, any requirements imposed on the private foster carer, and any advice given.

#### **SAFEKEEPING OF RECORDS**

- 7.5** Good practice requires local authorities to take steps to ensure the safekeeping of records. This requires not only arrangements for the physical security of the records, but effective procedures to restrict access to the records only to those who are properly authorised and in need of information because of their duties in relation to a case.

## CHAPTER 8

# International Aspects

### IMMIGRATION AND NATIONALITY

- 8.1** There is no specific provision in the Immigration Rules for children to be admitted to the United Kingdom for private fostering. However, foreign nationals and Commonwealth citizens who are admitted to the United Kingdom for a limited period, for example as visitors, students or work permit holders, may be joined or accompanied by their children provided that certain conditions are met (for example, the parents must be able to maintain and accommodate their children adequately without recourse to public funds). There is no bar to parents placing their children in private foster care during their stay in the United Kingdom provided that they take the child with them when they leave the country and meet all the usual requirements about notice and suitability of the proposed arrangement. Children will normally be given leave to remain for the same period as their parents. The date when the child's leave to remain expires will be stamped in the child's passport on arrival in the United Kingdom. If the social worker who is responsible for inquiring into a prospective private foster care arrangement or one that has already begun is not satisfied that there are clear plans for the child to return with the parents e.g. purchased return tickets and clear traceable return address in the country of origin, they should discuss these issues with the adults concerned and, if concerns remain, should seek advice from the Home Office Immigration and Nationality Directorate.

- 8.2** Any person who has limited leave to remain in the United Kingdom must leave the country before his or her leave expires or apply to extend that leave. If he does not do so, he will automatically become an overstayer, which is a criminal offence (except for children under age 10), and will be liable to removal from the United Kingdom. Parents may make an application to the Home Office Immigration and Nationality Directorate for an extension of leave to remain, whether in relation to themselves or their children. It should be noted that any application for an extension of leave to remain *must* be made before the child's current leave expires; and that there is no provision in the Immigration Rules for a person who was admitted for 6 months as a visitor to be granted further leave to remain as a visitor or a student.
- 8.3** A person born in the United Kingdom prior to 1 January 1983 is a British citizen and is not therefore subject to immigration control. A child born in the United Kingdom after that date will be a British citizen if at the time of his birth his father or mother is a British citizen or lawfully settled in the United Kingdom. A new born child who is found abandoned in the United Kingdom is assumed to meet the above requirements unless the contrary is shown i.e. the child will be assumed to be a British Citizen.
- 8.4** The social worker should check a privately fostered child's passport to in order to satisfy himself about the child's immigration status, in particular that the child is lawfully present in the UK. This should be done on the first occasion that the child is seen following notification that a private fostering arrangement is in place. This simple, practical step is also an important means of confirming the child's identity. For children who are UK citizens, it is recognized that they may not hold a passport. A local authority or private foster carer who is in any doubt about a child's immigration or nationality status is strongly advised to consult the Home Office Immigration and Nationality Directorate at the earliest opportunity. The local authority can also seek assistance from the authorities in the country of origin or the International Social Service (ISS) with a view to tracing the child's parents and arranging for the child to be returned to them. In most cases, the ISS is able to provide for the exchange of medical and educational histories of a child, as well as to ascertain whether there would be any reasonable grounds not to return the child to his parents and whether parental responsibility has been terminated or circumscribed by any overseas authority, or to make arrangements for the reunification of the child with his parents overseas.

## **LIVING ABROAD**

- 8.5** A parent of a child who is being privately fostered, or other person with parental responsibility for him, can arrange for his return to his own country from the United Kingdom, even in those instances where this is in opposition to the wishes of the child himself or in opposition to the wishes of the private foster carer. It would be advisable for local authorities to ensure at the outset of an arrangement, in so far as it

is practicable to do so, that there are any plans for the child to be reunited with a parent who is not present in the UK. This will avoid frustration that may arise from mistaken, confused or disappointed expectations about any proposed or actual plans for the child to return to the country of origin.

- 8.6** Where arrangements for leaving the UK need to be made for children whose families live abroad, this is primarily a matter for the private foster carer and the parent. However, if the arrangement has broken down and the child is accommodated by the local authority, the authority may wish to assist the parents by making travel arrangements, and then check that the child has arrived at his destination and been met.

#### **LONE CHILDREN WITHOUT A RIGHT OF ABODE**

- 8.7** Children of statutory school age without a right of abode who apply for leave to enter the UK on their own will only be granted leave to enter in very limited circumstances and will not be permitted to take up a place at a maintained school. Leave to enter the UK in order to receive an education will only be granted if the child satisfies the requirements specified in paragraph 57 of the Immigration Rules. For example, if the child is under 16 years old, he must produce proof of acceptance for a course of study at an independent and fee-paying or private educational institution. The Immigration Rules can be viewed on [www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk).

#### **EEA NATIONALS**

- 8.8** EEA national children who come to the UK as students, and who are not accompanied by their parents, enjoy the same rights to education as British citizens. Non-EEA children of EEA parents who are not accompanied by their parents do not have this right.

#### **NON-EEA NATIONALS**

- 8.9** Holders of passports describing them as British Dependent Territories Citizens or British Overseas Citizens have no automatic right of abode in the UK, nor do other non-EEA nationals.

#### **ENTITLEMENT TO HEALTH SERVICES FOR CHILDREN FROM OVERSEAS**

- 8.10** A child from overseas, who is resident in the UK lawfully and for a settled purpose, may apply to register with a General Practitioner, or their parent or private foster carer may do so on their behalf.
- 8.11** A child who is being privately fostered may or may not be chargeable for NHS hospital treatment, depending on the exact circumstances of their stay in the UK. A child who, for example, enters the UK on a visitor's visa, but then remains beyond the validity of that visa, being privately fostered while his parents return to their home country, would not be here legally and could, therefore, be charged for NHS hospital treatment.

# Annex A

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STATUTORY INSTRUMENTS

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**2005 No. 1533**

**CHILDREN AND YOUNG PERSONS, ENGLAND**

**SOCIAL CARE, ENGLAND**

**The Children (Private Arrangements for Fostering) Regulations 2005**

<i>Made</i> - - - -	<i>9<sup>th</sup> June 2005</i>
<i>Laid before Parliament</i>	<i>10<sup>th</sup> June 2005</i>
<i>Coming into force</i> - -	<i>1st July 2005</i>

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.

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(1) 1989 c.41; section 67 was amended by the Children Act 2004 (c. 31), section 44.  
(2) 1971 c.80.

(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

9<sup>th</sup> June 2005

Maria Eagle  
Parliamentary Under Secretary of State  
Department for Education and Skills

## 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 sub-paragraph (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.

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

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).

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(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.

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.

# Annex B

**BLANKSHIRE COUNCIL  
CHILDREN'S SERVICES  
CHILDREN ACT 1989 (PART 9)  
DECLARATION REGARDING SUITABILITY TO FOSTER CHILDREN  
PRIVATELY**

To be completed by all members of the household over 16 years

Full Name

.....

Date of Birth

.....

Address

.....

.....

Post Code

.....

**HAVE YOU EVER**

**YES**

**NO please tick**

- |   |   |                          |                          |
|---|---|--------------------------|--------------------------|
| 1 | Been convicted of any offences involving a child  | <input type="checkbox"/> | <input type="checkbox"/> |
| 2 | Had a child removed from your care by the order of any court                                | <input type="checkbox"/> | <input type="checkbox"/> |
| 3 | Had registration under Part X of the Children Act 1989 refused or cancelled, (childminding) | <input type="checkbox"/> | <input type="checkbox"/> |
| 4 | Had a prohibition from private fostering imposed on you at any time                         | <input type="checkbox"/> | <input type="checkbox"/> |
| 5 | Been disqualified from acting as a private foster carer                                     | <input type="checkbox"/> | <input type="checkbox"/> |

If you have answered "yes" to any of the above questions, please supply the dates and circumstances.

Section 70(1)(a) of the Children Act 1989, provides that a person who makes any statement in this notice or information which he knows to be false or misleading, shall be guilty of an offence and liable on summary conviction to fine not exceeding level 5.

I agree to the local authority arranging for an enhanced Criminal Records Bureau check for previous convictions.

Signed..... Date .....

Reference: DFES-10016-2005

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