

CHILDREN AND YOUNG PERSONS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 –Adoption and Fostering

Section 35: Extension of period allowed for making regulations under section 45 or 46 of the Children Act 2004

141. Section 45 of the Children Act 2004 gives the Secretary of State the power to establish, through regulations, a scheme for the registration of private foster carers. Section 46 confers equivalent powers on the Welsh Ministers. These provisions allow the regulations to specify, for example, how a local authority should determine suitability of private fostering arrangements, the grounds on which individuals may be disqualified from private fostering, how individuals may appeal against decisions regarding their registration and how the registration scheme application would work in practice.
142. [Section 47](#) provides that if no regulations have been made under either section within four years of Royal Assent, then the relevant section will cease to have effect. This operates independently in England and Wales, so if regulations are not made in England within the four year period, the power in section 45 (to make regulations in England) expires even if regulations have been made under section 46 in Wales (and vice versa).
143. [Section 35](#) amends section 47 so that the powers will not lapse for a further 3 years i.e. until November 2011.
144. Private fostering is regulated by Part 9 of and Schedule 8 to the 1989 Act and the [Children \(Private Arrangements for Fostering\) Regulations 2005/1533](#).
145. A “privately fostered” child is one who:
- a. is cared for by a person who is not a relative and who does not have parental responsibility and is provided with accommodation in that person’s home, and;
 - b. is under the age of 16, or under the age of 18 if they are disabled,
- where the care and accommodation have been provided for more than 28 days (or where the intention is to accommodate for longer than 28 days). This is defined in section 66 of the 1989 Act.