

**EXPLANATORY MEMORANDUM TO THE  
CHILDREN (PRIVATE ARRANGEMENTS FOR FOSTERING)  
REGULATIONS 2005**

**2005 No. 1533**

1. This explanatory memorandum has been prepared by the Department for Education and Skills, and is laid before Parliament by command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Description**

2.1 The Children (Private Arrangements for Fostering) Regulations 2005 revoke and replace the Children (Private Arrangements for Fostering) Regulations 1991 (SI 1991/2050). They make provision concerning notification to local authorities about private fostering arrangements, and about the action to be taken by local authorities when such notifications are received. They specify the people who must notify local authorities and when, and what information has to be given in those notifications. They also set out the requirements to be met by local authorities when satisfying themselves that the welfare of children who are, or are proposed to be, privately fostered is being, or will be, satisfactorily safeguarded and promoted. They require local authorities to monitor the way in which they discharge their functions under Part 9 of the Children Act 1989 (the Act).

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 There is none.

**4. Legislative background**

4.1 Part 9 of the Act is concerned with private arrangements for fostering children. A privately fostered child is defined in section 66 as one who, being under the age of 16 (or 18 if disabled), is cared for and accommodated in their own home by someone other than a parent or close relative of the child, or other person who has parental responsibility for him. A child is not privately fostered if the person caring for him has done so for fewer than 28 days and does not intend to do so for longer than that. There are a number of other exemptions to the definition set out in Schedule 8 to the Act.

4.2 Privately fostered children are not 'looked after' children in the terms of section 22 of the Children Act 1989 and local authorities are not involved in the making of such arrangements. In essence Part 9 of the Act creates a notification scheme in respect of private fostering, under which those involved in private fostering arrangements are required to notify the appropriate local

authority of the arrangement, and the local authority then has duties in respect of the child so long as the arrangement lasts. It is an offence for a person involved in a private fostering arrangement to fail without reasonable excuse to give notice within the required timescale. A person found guilty of such an offence is liable on summary conviction to a fine not exceeding Standard 5 on the standard scale.

4.3 Section 67 of the Act requires local authorities to satisfy themselves that the welfare of children who are privately fostered in their area is being satisfactorily safeguarded and promoted. The Secretary of State may make regulations under that section requiring privately fostered children to be visited by the local authority in prescribed circumstances and on specified occasions. The regulations may also impose requirements which are to be met by local authorities in carrying out functions under the Act.

4.4 Paragraph 7 of Schedule 8 to the Act gives the Secretary of State the power to make provision in regulations as to the circumstances in which notification is required to be given in connection with children who are, have been or are proposed to be privately fostered.

4.5 Section 67 has been amended by section 44 of the Children Act 2004, which comes fully into force on 1 July 2005, to extend the duties of local authorities in cases where a child is proposed to be, but is not yet, privately fostered. Local authorities must satisfy themselves about the welfare of children who are proposed to be privately fostered, and the Secretary of State has the power to make regulations imposing requirements as to the action to be taken by local authorities for the purpose of discharging their duty under section 67(1) where they have received advance notification of a proposal that a child is to be privately fostered. Section 67(6) also gives the Secretary of State the power to make regulations requiring local authorities to monitor the way in which they discharge their functions under Part 9 of the Act.

4.6 Schedule 8 to Part 9 of the Act has been amended by section 44 of the Children Act 2004 to require local authorities to promote public awareness in their area of the requirements as to notification.

4.7 The first regulations made under section 67 and paragraph 7 of Schedule 8 were the Children (Private Arrangements for Fostering) Regulations 1991 which the 2005 regulations replace.

## **5. Extent**

5.1 These regulations apply to England only.

## **6. European Convention on Human Rights**

6.1 Not applicable.

## **7. Policy background**

7.1 Estimates of the number of children privately fostered vary. There could be as many as 10,000 to 20,000 such children. The Government introduced, with effect from April 2004, a statistical collection on the number of notifications of private fostering arrangements received by local authorities. The first data from this collection will be available in the Autumn.

7.2 Whilst we do not know how many children are privately fostered, we do know that they are a diverse and potentially vulnerable group. For some years, the notification scheme under the Children Act 1989 has been criticised for its failure effectively to protect vulnerable children living in private fostering arrangements. A number of problems have been identified with the implementation of the scheme. These include: low notification rates - because parents and private foster carers do not wish to notify or are unaware of their responsibility to notify; late notifications - where notifications are made, they often occur after an arrangement has begun, thus preventing pre-arrangement scrutiny by local authorities, linked to which there is no requirement on local authorities to check out an arrangement before it begins (in those cases where advance notification is given). This means that local authorities do not get to check out arrangements in advance, making it harder in practice to impose requirements and prohibitions. There is a perceived lack of consistent local authority commitment to meeting the needs of children who are privately fostered (some local authorities give this area of work low priority and do not fully exercise their functions). Linked to this, insufficiently powerful statutory levers are in place to encourage them actively to seek out private fostering arrangements.

7.3 The new measures in section 44 of the Children Act 2004 and the Children (Private Arrangements for Fostering) Regulations 2005 will strengthen and enhance the private fostering notification scheme under the Children Act 1989, and provide additional safeguards for privately fostered children. The new measures, along with new National Minimum Standards, are expected better to focus local authorities' attention on private fostering, by requiring them to take a more proactive approach to identifying private fostering arrangements in their area. They are expected to improve notification rates and compliance with the existing legislative framework for private fostering, and significantly to increase the number of arrangements checked out before a child begins to be privately fostered – and, therefore, to address the key problems identified with the existing scheme.

7.4 The Government firmly believes that this scheme can be made to work through the new measures in section 44 of the Children Act 2004, underpinned by the replacement private fostering regulations. However, sections 45 and 47 of the Children Act 2004 make provision which will allow the Government to introduce a private fostering registration scheme in England at any point within four years of the 2004 Act receiving Royal Assent (i.e. from November 2004). The Government has made clear that we will introduce a registration scheme for private foster carers if the enhanced and strengthened notification scheme is found not adequately to be safeguarding and promoting the welfare of privately fostered children.

7.5 The Children (Private Arrangements for Fostering) Regulations 2005 were issued for full public consultation for a 12 week period (which ended on 15 April 2005): approximately 30 written responses were received. The responses show that the regulations have been welcomed by key stakeholders, with many commenting that they are clear and comprehensive. As part of the consultation process, the Government asked Roger Morgan, the Commission for Social Care Inspection's Children's Rights Director, to seek views from privately fostered children on the new measures. The findings of this survey can be found at: <http://www.csci.org.uk/publications/childrens-rights-director-reports>.

## **8. Impact**

8.1 An initial public sector Regulatory Impact Assessment (RIA) is underway.

## **9. Contact**

9.1 Charmaine Church at the Department for Education and Skills (Email [Charmaine.Church@dfes.gsi.gov.uk](mailto:Charmaine.Church@dfes.gsi.gov.uk)) is available to respond to queries regarding this instrument.