

Health and Social Services Committee

HSS(2)-02-06(p.7)

Date: Wednesday 1 February 2006

Venue: Committee Rooms 3&4, National Assembly for Wales

Title: Children (Private Arrangements for Fostering) (Wales) Regulations 2006

Purpose

1. At its meeting on 13 April 2005, the Committee identified these Regulations for scrutiny (from paper ref no HSS (2)-05-05 Paper 1, item HSS18(05)).

Summary

2. This paper outlines the background to the provisions in the Children (Private Arrangements for Fostering) (Wales) Regulations 2006.

Background

3. The Children Act 1989 was brought into force on 14 October 1991. From that date, under Part IX of the Act and the Children (Private Arrangements for Fostering) Regulations 1991, a framework was put in place for notification to local authorities of private fostering arrangements made within their areas. Local authorities have duties to satisfy themselves that the welfare of children being privately fostered within their areas is being safeguarded and promoted. The 1991 Regulations and related guidance were published in Volume 8 of the Children Act 1989 series of guidance and regulations (HMSO 1991).

4. A private fostering arrangement is one made privately for the care and accommodation of a child under 16 (under 18, if disabled) by someone other than a parent, other person with parental responsibility or a close relative for 28 consecutive days or more. A close relative means a grandparent, brother, sister, uncle or aunt (whether of full blood or half blood or by affinity).

5. Children looked after by local authorities are exempt from the definition of privately fostered children. So, too, are those cared for and accommodated by a voluntary organisation, a school where the child is receiving full-time education, in a health service hospital or by a person who proposes to adopt the child under arrangements made by an adoption agency. The full range of exemptions is set out in paragraphs 1 – 5 of Schedule 8 to the 1989 Act.

6. A person who proposes to foster a child by private arrangement and is not yet providing accommodation for that child is required to notify the local authority not less than 6 weeks and not more than 13 weeks before the person receives the child. Any person receiving a child in an emergency or already caring for and providing accommodation for a child, when the child became privately fostered, must notify the local authority not more than 48 hours after the fostering arrangement began. Similar requirements apply to anyone (including parents) who is involved in arranging for a child to be privately fostered. An offence may be committed if there is a failure to notify.

7. The 1991 Regulations require a local authority to arrange for an officer to visit a child in private fostering placement, during the first year, within a week from its start and thereafter at intervals of not more than 6 weeks. In any subsequent year, visits should be at intervals of not more than 3 months. Reports should be written of each visit. If an authority is not satisfied about the welfare of the child, they should inform the parents and, if necessary, consider whether to exercise their child protection functions under the 1989 Act.

8. An authority may inspect the premises where the private fostering is taking place. Authorities have powers to impose specific requirements on the private foster carer or, if necessary, to prohibit a person from being a private foster carer (subject to a right of appeal to the magistrates' court).

9. The Children Act 2004 amends the 1989 Act so as to strengthen and enhance the existing private fostering notification scheme and to focus local authorities' attention on private fostering and require them to take a more proactive approach to identifying private fostering arrangements.

10. The amendments make it clear that the notification requirements apply to children who are proposed to be privately fostered and extend the duty on local authorities to provide advice to those caring for a privately fostered child to all those concerned with the child (not just the carer). The regulation making power is broadened to allow a requirement to be imposed on authorities to monitor the way they discharge their private fostering functions and to appoint [nominate] an officer for the purpose.

11. The Children (Private Arrangements for Fostering) (Wales) Regulations 2006 incorporate these changes while retaining many of the detailed notification requirements from the 1991 Regulations, which are to be revoked in relation to Wales.

Consultation

12. The Assembly Government issued a consultation document on 31 March 2005 to local authorities and other key stakeholders in the health, education and voluntary sectors. Comments were sought within 12 weeks. The document contained draft regulations, proposed national minimum standards and draft guidance on the revised private fostering notification provisions.

13. 21 replies were received. Annex B contains a summary of the main points made in respect of the Regulations. Following analysis of all responses received from the consultation, the key points of

concern raised were dealt with by amending the regulations (eg that, unless it would not be appropriate, a privately fostered child should be spoken to alone by the visiting social worker). Comments about resources, made mainly by local authorities, have been dealt with in the Regulatory Appraisal (paragraphs 17 – 19).

Consideration

14. Local authorities in Wales have made annual statistical returns to the Welsh Assembly Government on the numbers of private foster homes and numbers of children in private fostering arrangements known to the authorities. The table at Annex A summarises the figures for Wales over the last four years.

15. The precise reasons why the children concerned have been privately fostered are not known. However, it is assumed that some children will be fostered in this way because their parents (or others with parental responsibility) choose to make such arrangements while the parents are studying or working. In other cases, the child may be living with a friend's family while completing studies before rejoining parents who have moved.

Conclusion

These regulations are due to be considered by Business Committee on 7 March and by Legislation Committee on 21 March, before going to Plenary on 28 March 2006.

Action

The Committee is invited to note this paper and to consider the draft Regulations.

Brian Gibbons
Minister for Health and Social Services

Contact Point

The contact on this subject in Children's Health and Social Care Directorate is Mr Vivian Martin x3676.

Annex a

Private Fostering Statistical Data

YEAR to 31 st March	Number of private foster homes known to local authorities in Wales	Number of children under private fostering arrangements in Wales
01-02	45	55
02-03	49	56
03-04	31	36
04-05	48	56

Figures for individual local authorities are accessible at <http://www.lgdu-wales.gov.uk/eng/Data.asp?cat=246> as are details of the ages and countries of origin of the children concerned. 75% of children in private fostering arrangements at 31 March 2005 were from the UK.

Annex b

Private fostering consultation replies: main points

Generally welcome the strengthening of existing legislation and the introduction of revised regulations.

Resource implications arise from new requirement for local authorities to monitor the discharge of their private fostering functions.

Concern about (i) workload impact of any significant increase in number of private fostering notifications (or past under-reporting of private fostering arrangements) and consequent effects on services to children in need, including those looked after and (ii) need for staff training.

Support for clarification that notification of proposed private fostering arrangements is to be required and for extension of local authority advice role to all concerned with a privately fostered child (eg parents, not just carers).

Need for Regulations to include more precise timescale for action to be taken by local authorities following receipt of notification of a private fostering arrangement.

Strong support to require the visiting officer of the authority to speak to the privately fostered child alone during visits, unless (exceptionally) that would not be appropriate.

Regulatory Appraisal

Children Act 1989 (As Amended By The Children Act 2004)

The Children (Private Arrangements For Fostering) (Wales) Regulations 2006

Background

The Children Act 1989 was brought into force on 14 October 1991. From that date, under Part IX of the Act and the Children (Private Arrangements for Fostering) Regulations 1991, a framework was put in place for notification to local authorities of private fostering arrangements made within their areas. Local authorities have duties to satisfy themselves that the welfare of children being privately fostered within their areas is being safeguarded and promoted.

A private fostering arrangement is one made privately for the care and accommodation of a child under 16 (under 18, if disabled) by someone other than a parent, other person with parental responsibility or a close relative for 28 consecutive days or more. A close relative means a grandparent, brother, sister, uncle or aunt (whether of full blood or half blood or by affinity).

Children looked after by local authorities are exempt from the definition of privately fostered children. So, too, are those cared for and accommodated by a voluntary organisation, a school where the child is receiving full-time education, in a health service hospital or by a person who proposes to adopt the child under arrangements made by an adoption agency. The full range of exemptions is set out in paragraphs 1 – 5 of Schedule 8 to the 1989 Act.

A person who proposes to foster a child by private arrangement and is not yet providing accommodation for that child is required to notify the local authority not less than 6 weeks and not more than 13 weeks before the person receives the child. Any person receiving a child in an emergency or already caring for and providing accommodation for a child, when the child became privately fostered, must notify the local authority not more than 48 hours after the fostering arrangement began. Similar requirements apply to anyone (including parents) who is involved in arranging for a child to be privately fostered. An offence may be committed if there is a failure to notify.

The 1991 Regulations require a local authority to arrange for an officer to visit a child in private fostering placement, during the first year, within a week from its start and thereafter at intervals of not more than 6 weeks. In any subsequent year, visits should be at intervals of not more than 3 months. Reports should be written of each visit. If an authority is not satisfied about the welfare of the child, they should inform the parents and, if necessary, consider whether to exercise their child protection functions under the 1989 Act.

An authority may inspect the premises where the private fostering is taking place. Authorities have powers to impose specific requirements on the private foster carer or, if necessary, to prohibit a person from being a private foster carer (subject to a right of appeal to the magistrates' court).

The Children Act 2004 amends the 1989 Act so as to strengthen and enhance the existing private fostering notification scheme and to focus local authorities' attention on private fostering and require them to take a more proactive approach to identifying private fostering arrangements.

The amendments make it clear that the notification requirements apply to children who are proposed to be privately fostered and extend the duty to provide advice to those caring for a privately fostered child to all those concerned with the child (not just the carer). The regulation making power is broadened to allow a requirement to be imposed on authorities to monitor the way they discharge their private fostering functions and to appoint [nominate] an officer for the purpose.

A new duty is placed on authorities to promote public awareness in their areas of the notification requirements.

Purpose and Intended Effect

The Regulations will replace the Children (Private Arrangements for Fostering) Regulations 1991 in relation to Wales save that any notification given under those Regulations shall be treated as if they had been given under the new Regulations. The effect of the new Regulations is to provide a strengthened notification scheme for private fostering arrangements and the additional requirements for monitoring introduced in the Children Act 2004 (paragraph 8 above).

Objective

To improve the arrangements for safeguarding children in private fostering placements.

Risk assessment

Options

Option 1

Do nothing. Since 1991, local authorities have given relatively low priority to the subject of children who may be privately fostered. Without the strengthened measures proposed in the Regulations, there could be an unacceptable continuation of the minimal activity directed at safeguarding children placed in private fostering arrangements.

Option 2

Bring forward the Regulations to strengthen the notification scheme. These Regulations, in combination with the new duty on local authorities to publicise the notification requirements, should ensure that an appropriate level of attention is given by authorities to the safeguarding of children who are being

privately fostered.

Costs and Benefits

Business sectors affected

The Regulations have no effect on any business sectors. They affect only private individuals who propose to become, or are, foster parents of children placed privately and the parents of (or those with parental responsibility for) such children.

The costs to individuals involved are minimal. The cost is that of providing written notification to the relevant local authority. Exceptionally, if an authority imposed requirements on a private foster parent or prohibited a person from being a private foster parent, the person concerned could incur some costs if they chose to appeal to the magistrates' court against the authority's decision.

Benefits

These Regulations are the only effective way of delivering the provisions in the 1989 Act, as now amended.

Costs

There are no financial implications for the National Health Service or other statutory bodies, though there may be limited additional expenditure implications for local authorities.

To the extent that additional costs arise, these can be met from the Services for Children budget which was increased from £31.056m in 2004/2005 to £42.171m in 2005/2006, of which about one third has been transferred into the local government settlement. For 2006-07, £44.8m will be made available to local authorities in revenue support and grant.

Paragraph 2.4 of Welsh Assembly Government Circular 5/2005 on the Children First programme for 2005-06 indicated that the overall increase in resources of over £10 million for the programme in 2005-06 is intended to meet new burdens arising from, among other things, "the Children Act 2004, insofar as it impacts on the delivery of programme objectives". The objectives include ensuring that children are protected from emotional, physical, sexual abuse and neglect (significant harm).

Competition assessment

Only local authorities are affected. They have a duty to ensure that the welfare of children in private foster care is satisfactorily safeguarded and promoted.

Consultation

With Stakeholders

The Assembly Government issued a consultation document on 31 March 2005 to local authorities and other key stakeholders in the health, education and voluntary sectors. Comments were sought within 12 weeks. The document contained draft regulations, proposed national minimum standards and draft guidance on the revised private fostering notification provisions. [It is intended that the national minimum standards and the guidance will be issued to local authorities as statutory guidance under section 7 of the Local Authority Social Services Act 1970. This requires authorities in the exercise of their social services functions to act under the general guidance of the Welsh Assembly Government.]

The proposed regulations are similar to those prepared in relation to England by the Department for Education and Skills.

In total 21 replies were received (list of respondents and summary of main points made about draft Regulations attached).

Following analysis of all responses received from the consultation, the key points of concern raised (eg that, unless it would not be appropriate, a privately fostered child should be spoken to alone by the visiting social worker) were dealt with by amending the regulations. Comments about resources, made mainly by local authorities, are dealt with in the 'costs ' paragraphs 17 - 19 above.

With Subject Committee

The Health and Social Services Committee considered these Regulations at their meeting on 1 February 2006.

Monitoring

It is intended that the Welsh Assembly Government will review the effectiveness of these Regulations in 2008. At that point, the new statistical returns introduced from 2005-06 onwards will reflect any changes in numbers of notified private fostering arrangements and of children being privately fostered, as well as the compliance by authorities with the requirement for visits to be made to children who are privately fostered.

The review will assist in deciding whether the strengthened notification scheme is adequate or if consideration should be given to invoking the power in section 46 of the Children Act 2004 to establish a scheme for registration of private foster parents.

Summary and recommendation

These Regulations, amended in the light of consultation, should strengthen the existing private fostering notification scheme and improve the ability of local authorities to satisfy themselves that the welfare of privately fostered children is being safeguarded and promoted. It is recommended that the Regulations be made.

Private Fostering Consultation - Respondents

Barnardos

Cardiff County Council

Ceredigion County Council

Caerphilly County Borough Council

Conwy County Borough Council

CSIW

Fostering Network

Gwynedd Council

National Association of Head Teachers Cymru

National Public Health Service for Wales

NCH Cymru

Newport City Council

North Glamorgan NHS Trust

Powys Local Health Board

Professional Network for Unaccompanied Asylum Seekers

Rhondda Cynon Taf County Borough Council

Torfaen County Borough Council

Vale of Glamorgan Local Health Board

Welsh Language Board

Wrexham County Borough Council x 2 (Social Services Department & Education Welfare Officer)

Private Fostering Consultation Replies: Main Points On Regulations

Generally welcome the strengthening of existing legislation and the introduction of revised regulations.

Resource implications arise from new requirement for local authorities to monitor the discharge of their private fostering functions.

Concern about (i) workload impact of any significant increase in number of private fostering notifications (or past under-reporting of private fostering arrangements) and consequent effects on services to children in need, including those looked after and (ii) need for staff training.

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