

## STATUTORY INSTRUMENTS

# 1995 No. 755

## The Children (Northern Ireland) Order 1995

### PART X

#### PRIVATE ARRANGEMENTS FOR FOSTERING CHILDREN

##### Interpretation

**106.**—(1) In this Order—

“foster a child privately” means look after the child in circumstances in which he is a privately fostered child;

“privately fostered child” means a child who is cared for, and provided with accommodation<sup>[F1]</sup> in their own home] by, someone other than—

- (a) a parent of his;
- (b) a person who is not a parent of his but who has parental responsibility for him; or
- (c) a relative of his.

(2) Paragraph (1) is subject to—

- (a) the provisions of Articles 90<sup>[F1]</sup> and 91] (children's homes); and
- (b) the exceptions made by Article 107 (privately fostered children further defined).

(3) In this Part “child” means a person who is under the age of 16 or, if he is disabled, under the age of 18.

<sup>[F1]</sup>(3A) The Department may by regulations make provision as to the circumstances in which a person who provides accommodation to a child is, or is not, to be treated as providing him with accommodation in the person's own home.]

**F1** [2003 NI 9](#)

##### Privately fostered children further defined

**107.**—(1) A child is not a privately fostered child if the person caring for and accommodating him—

- (a) has done so for a period of less than 28 days; and
- (b) does not intend to do so for any longer period.

(2) A child is not a privately fostered child while he is being looked after by an authority.

(3) A child is not a privately fostered child while he is in the care of any person—

- (a) in premises in which any—
  - (i) parent of his;
  - (ii) person who is not a parent of his but who has parental responsibility for him; or

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(iii) person who is a relative of his and who has assumed responsibility for his care, is for the time being living;

*Sub#para.(b) rep. by 2003 NI 9*

- (c) in accommodation provided by or on behalf of any voluntary organisation;
- (d) in any school in which he is receiving full-time education;
- (e) in any residential care home;
- (f) in any hospital (including a private hospital) or nursing home; or
- (g) in any home or institution not specified in<sup>[F2]</sup> sub-paragraphs (c)] to (f) but provided by the Secretary of State, a government department or a prescribed public body,

but<sup>[F2]</sup> sub-paragraphs (c)] to (g) do not apply where the person caring for the child is doing so in his personal capacity and not in the course of carrying out his duties in relation to the establishment mentioned in the sub-paragraph in question.

(4) A child is not a privately fostered child while he is living with any person in compliance with a probation order which includes a residence requirement.

(5) A child is not a privately fostered child while<sup>[F3]</sup> he is living with any person in compliance with a juvenile justice centre order.]

(6) A child is not a privately fostered child while he is liable to be detained, or subject to guardianship, under the Mental Health (Northern Ireland) Order 1986<sup>F4</sup>.

(7) A child is not a privately fostered child while—

- (a) he is placed in the care of a person who proposes to adopt him under arrangements made by an adoption agency within the meaning of—
  - (i) Article 3 of the Adoption Order; or
  - (ii) section 1 of the Adoption Act 1976<sup>F5</sup>; or
  - (iii) section 1 of the Adoption (Scotland) Act 1978<sup>F6</sup>;
- (b) he is a protected child.

**F2** 2003 NI 9  
**F3** 1998 NI 9  
**F4** 1986 NI 4  
**F5** 1976 c. 36  
**F6** 1978 c. 28

**Modifications etc. (not altering text)**

**C1** Art. 107(7)(a) modified (6.4.2010) by [Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), reg. 5, [Sch. 4](#)

**Welfare of privately fostered children**

**108.**—(1) Every authority shall—

- (a) satisfy itself that the welfare of children who are privately fostered within the authority's area is being satisfactorily safeguarded and promoted; and
- (b) secure that such advice is given to those caring for them as appears to the authority to be needed.

(2) The Department may make regulations—

- (a) requiring every child who is privately fostered within an authority's area to be visited by an officer of the authority—
    - (i) in prescribed circumstances; and
    - (ii) on specified occasions or within specified periods; and
  - (b) imposing requirements which are to be met by any authority, or officer of an authority, in carrying out functions under this Article.
- (3) Where any person who is authorised by an authority to visit privately fostered children has reasonable cause to believe that—
- (a) any privately fostered child is being accommodated in premises within the authority's area; or
  - (b) it is proposed to accommodate any such child in any such premises,
- he may at any reasonable time inspect those premises and any children there.
- (4) Any person exercising the power under paragraph (3) shall, if so required, produce some duly authenticated document showing his authority to do so.
- (5) If an authority is not satisfied that the welfare of any child who is privately fostered within the authority's area is being satisfactorily safeguarded or promoted the authority shall—
- (a) unless it considers that it would not be in the best interests of the child, take such steps as are reasonably practicable to secure that the care and accommodation of the child is undertaken by—
    - (i) a parent of his;
    - (ii) any person who is not a parent of his but who has parental responsibility for him; or
    - (iii) a relative of his; and
  - (b) consider the extent to which (if at all) it should exercise any of its functions under this Order with respect to the child.

### **Persons disqualified from being private foster parents**

**109.**—(1) Unless he has disclosed the fact to the appropriate authority and obtained its written consent, a person shall not foster a child privately if he is disqualified from doing so by regulations made by the Department for the purposes of this Article.

- (2) The regulations may, in particular, provide for a person to be so disqualified where—
- (a) an order of a kind specified in the regulations has been made at any time with respect to him;
  - (b) an order of a kind so specified has been made at any time with respect to any child who has been in his care;
  - (c) a requirement of a kind so specified has been imposed at any time with respect to any such child under any statutory provision;
  - (d) he has been convicted of any offence of a kind so specified, or has been placed on probation or discharged absolutely or conditionally for any such offence;
  - (e) he has at any time been disqualified from child minding or providing day care for children under the age of twelve;
  - (f) a prohibition has been imposed on him at any time under Article 110 or under any other specified statutory provision.
- (3) Unless he has disclosed the fact to the appropriate authority and obtained its written consent, a person shall not foster a child privately if—

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- (a) he lives in the same household as a person who is himself prevented from fostering a child by paragraph (1); or
  - (b) he lives in a household at which any such person is employed.
- (4) Where an authority refuses to give its consent under this Article, it shall inform the applicant by a written notice which states—
- (a) the reason for the refusal;
  - (b) the applicant's right under Article 113 to appeal against the refusal; and
  - (c) the time within which he may do so.
- (5) In this Article—
- “the appropriate authority” means the authority within whose area it is proposed to foster the child in question;
- “statutory provision” includes any statutory provision having effect, at any time, in any part of the United Kingdom.

### **Power to prohibit private fostering**

- 110.**—(1) This Article applies where a person—
- (a) proposes to foster a child privately; or
  - (b) is fostering a child privately.
- (2) Where the authority for the area within which the child is proposed to be, or is being, fostered is of the opinion that—
- (a) he is not a suitable person to foster a child;
  - (b) the premises in which the child will be, or is being, accommodated are not suitable; or
  - (c) 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,
- the authority may impose a prohibition on that person.
- (3) A prohibition imposed on any person under paragraph (2) may prohibit him from fostering privately—
- (a) any child in any premises within the authority's area;
  - (b) any child in premises specified in the prohibition; or
  - (c) a child identified in the prohibition, in premises specified in the prohibition.
- (4) An authority which has imposed a prohibition on any person under paragraph (2) may, if it thinks fit, cancel the prohibition—
- (a) of its own motion; or
  - (b) on an application made by that person,
- if it is satisfied that the prohibition is no longer justified.
- (5) Where an authority imposes a requirement on any person under Article 111, it may also impose a prohibition on him under paragraph (2).
- (6) Any prohibition imposed by virtue of paragraph (5) shall not have effect unless—
- (a) the time specified for compliance with the requirement has expired; and
  - (b) the requirement has not been complied with.
- (7) A prohibition imposed under this Article shall be imposed by notice in writing addressed to the person on whom it is imposed and informing him of—

- (a) the reason for imposing the prohibition;
- (b) his right under Article 113 to appeal against the prohibition; and
- (c) the time within which he may do so.

### **Power to impose requirements**

**111.**—(1) Where a person is fostering any child privately, or proposes to foster any child privately, the appropriate authority may impose on him requirements as to—

- (a) the number, age and sex of the children who may be privately fostered by him;
- (b) the standard of the accommodation and equipment to be provided for them;
- (c) the arrangements to be made with respect to their health and safety; and
- (d) particular arrangements which must be made with respect to the provision of care for them,

and he shall comply with any such requirement before the end of such period as the authority may specify unless, in the case of a proposal, the proposal is not carried out.

(2) A requirement may be limited to a particular child.

(3) A requirement (other than one imposed under paragraph (1)(a)) may be limited by the authority so as to apply only when the number of children fostered by the person exceeds a specified number.

(4) A requirement shall be imposed by notice in writing addressed to the person on whom it is imposed and informing him of—

- (a) the reason for imposing the requirement;
- (b) his right under Article 113 to appeal against it; and
- (c) the time within which he may do so.

(5) An authority may vary any requirement, impose any additional requirement or remove any requirement.

(6) In this Article—

“the appropriate authority” means—

- (a) the authority within whose area the child is being fostered; or
- (b) in the case of a proposal to foster a child, the authority within whose area it is proposed that he will be fostered; and

“requirement”, in relation to any person, means a requirement imposed on him under this Article.

### **Regulations requiring notification of fostering, etc.**

**112.**—(1) The Department may by regulations make provision as to—

- (a) the circumstances in which notification is required to be given in connection with children who are, have been or are proposed to be, fostered privately; and
- (b) the manner and form in which such notification is to be given.

(2) The regulations may, in particular—

- (a) require any person who is, or proposes to be, involved (whether or not directly) in arranging for a child to be fostered privately to notify the appropriate authority;
- (b) require any person who is—
  - (i) a parent of a child; or

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- (ii) a person who is not a parent of his but who has parental responsibility for a child, and who knows that it is proposed that the child should be fostered privately, to notify the appropriate authority;
  - (c) require any parent of a privately fostered child, or person who is not a parent of such a child but who has parental responsibility for him, to notify the appropriate authority of any change in that parent's, or that person's, address;
  - (d) require any person who proposes to foster a child privately, to notify the appropriate authority of his proposal;
  - (e) require any person who is fostering a child privately, or proposes to do so, to notify the appropriate authority of—
    - (i) any offence of which he has been convicted;
    - (ii) any disqualification imposed on him under Article 109; or
    - (iii) any prohibition imposed on him under Article 110;
  - (f) require any person who is fostering a child privately, to notify the appropriate authority of any change in that person's address;
  - (g) require any person who is fostering a child privately to notify the appropriate authority in writing of any person who begins, or ceases, to be part of his household;
  - (h) require any person who has been fostering a child privately, but has ceased to do so, to notify the appropriate authority (indicating, where the child has died, that that is the reason).
- (3) In paragraph (2) “the appropriate authority” has the same meaning as in Article 111.

## Appeals

**113.**—(1) A person aggrieved by—

- (a) a requirement imposed under Article 111;
- (b) a refusal to consent under Article 109;
- (c) a prohibition imposed under Article 110;
- (d) a refusal to cancel such a prohibition;
- (e) a refusal to make an exemption under paragraph 4 of Schedule 5;
- (f) a condition imposed in such an exemption; or
- (g) a variation or cancellation of such an exemption or condition,

may appeal to the court.

(2) The appeal must be made within 14 days from the date on which the person appealing is notified of the requirement, refusal, prohibition, condition, variation or cancellation.

(3) Where the appeal is against—

- (a) a requirement imposed under Article 111;
- (b) a condition of an exemption imposed under paragraph 4 of Schedule 5; or
- (c) a variation or cancellation of such an exemption or condition,

the requirement, condition, variation or cancellation shall not have effect while the appeal is pending.

(4) Where it allows an appeal against a requirement or prohibition, the court may, instead of cancelling the requirement or prohibition—

- (a) vary the requirement, or allow more time for compliance with it; or

- (b) if an absolute prohibition has been imposed, substitute for it a prohibition on using the premises after such time as the court may specify unless such specified requirements as the authority had power to impose under Article 111 are complied with.
- (5) Any requirement or prohibition specified or substituted by a court under this Article shall be deemed for the purposes of this Part (other than this Article) to have been imposed by the authority under Article 111 or (as the case may be) Article 110.
- (6) Where it allows an appeal against a refusal to make an exemption, a condition imposed in such an exemption or a variation or cancellation of such an exemption or condition, the court may—
  - (a) make an exemption;
  - (b) impose a condition; or
  - (c) vary the exemption or condition.
- (7) Any exemption made or varied under paragraph (6), or any condition imposed or varied under that paragraph, shall be deemed for the purposes of Schedule 5 (but not for the purposes of this Article) to have been made, varied or imposed under that Schedule.
- (8) Nothing in paragraph (1)(e) to (g) confers any right of appeal on—
  - (a) a person who is, or would be if exempted under Schedule 5, an authority foster parent; or
  - (b) a person who is, or would be if so exempted, a person with whom a child is placed by a voluntary organisation.

#### **Application of this Part to certain school children during holidays**

- 114.**—(1) Where a child who is a pupil at a school lives at the school during school holidays for a period of more than two weeks, this Part shall apply in relation to the child as if—
- (a) while living at the school, he were a privately fostered child; and
  - (b) Articles 107(3)(d) and 111 were omitted.
- (2) Paragraph (3) applies to any person who proposes to care for and accommodate one or more children at a school in circumstances in which some or all of them will be treated as privately fostered children by virtue of this Article.
- (3) That person shall, not less than two weeks before the first of those children is treated as a privately fostered child by virtue of this Article during the holiday in question, give written notice of his proposal to the authority within whose area the child is ordinarily resident ( “the appropriate authority”), stating the estimated number of the children.
- (4) An authority may exempt any person from the duty of giving notice under paragraph (3).
- (5) Any such exemption may be granted for a special period or indefinitely and may be revoked at any time by notice in writing given to the person exempted.
- (6) Where a child who is treated as a privately fostered child by virtue of this Article dies, the person caring for him at the school shall, not later than 48 hours after the death, give written notice of it—
- (a) to the appropriate authority; and
  - (b) where reasonably practicable, to each parent of the child and to every person who is not a parent of his but who has parental responsibility for him.
- (7) Where a child who is treated as a privately fostered child by virtue of this Article ceases for any other reason to be such a child, the person caring for him at the school shall give written notice of the fact to the appropriate authority.

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### Advertisements relating to fostering

**115.** No advertisement indicating that a person will undertake, or will arrange for, a child to be privately fostered shall be published, unless it states that person's name and address.

### Avoidance of insurances on lives of privately fostered children

**116.** A person who fosters a child privately and for reward shall be deemed for the purposes of the Life Assurance Act 1774<sup>F7</sup> as extended by the Life Insurance (Ireland) Act 1866<sup>F8</sup> to have no interest in the life of the child.

**F7** [1774 c. 48](#)

**F8** [1866 c. 42](#)

### Offences

**117.—**(1) A person shall be guilty of an offence if—

- (a) being required, under any provision made by or under this Part, to give any notice or information—
  - (i) he fails without reasonable excuse to give the notice within the time specified in that provision; or
  - (ii) he fails without reasonable excuse to give the information within a reasonable time; or
  - (iii) he makes, or causes or procures another person to make, any statement in the notice or information which he knows to be false or misleading in a material particular;
- (b) he refuses to allow a privately fostered child to be visited by a duly authorised officer of an authority;
- (c) he intentionally obstructs another in the exercise of the power conferred by Article 108(3);
- (d) he contravenes Article 109;
- (e) he fails without reasonable excuse to comply with any requirement imposed by an authority under this Part;
- (f) he accommodates a privately fostered child in any premises in contravention of a prohibition imposed by an authority under this Part;
- (g) he knowingly causes to be published, or publishes, an advertisement which he knows contravenes Article 115.

(2) Where a person contravenes Article 109(3), he shall not be guilty of an offence under this Article if he proves that he did not know, and had no reasonable ground for believing, that any person to whom Article 109(1) applied was living or employed in the premises in question.

(3) A person guilty of an offence under paragraph (1)(a) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A person guilty of an offence under paragraph (1)(b), (c) or (g) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) A person guilty of an offence under paragraph (1)(d) or (f) shall be liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both.

(6) A person guilty of an offence under paragraph (1)(e) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.



(7) If any person who is required, under any provision of this Part, to give a notice fails to give the notice within the time specified in that provision, proceedings for the offence may be brought at any time within six months from the date when evidence of the offence came to the knowledge of the authority.

(8) Paragraph (7) is not affected by anything in Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981<sup>F9</sup>.

**F9** 1981 NI 26

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