

Cross-border placement of a child including foster family - England and Wales

TABLE OF CONTENTS

- 1 Is there an obligation under your national law for prior consultation and the obtaining of consent before the cross-border placement of a child? Please mention possible exceptions.
- 2 If prior consultation and consent are required, which authority is to be consulted and to give the consent?
- 3 Please describe shortly the procedure for consultation and the obtaining of consent (including required documents, deadlines, modalities of the procedure, and other relevant details).
- 4 What is a “foster family” according to the national law of your Member State?
- 5 Does the notion of “foster family” encompasses relatives or not? If yes, which ones?

1 Is there an obligation under your national law for prior consultation and the obtaining of consent before the cross-border placement of a child? Please mention possible exceptions.

In order for the State via the local authority to place a child it would need to be acting in accordance with the [UK Children Act 1989](#). This would either be under section 20 which requires the local authority to accommodate a child in certain circumstances or under a care order made by a court under section 31. The needs of the child take primary consideration in any placement decisions made by local authorities under the law in England. [UK The Care Planning, Placement and Case Review \(England\) Regulations 2010](#) (“the 2010 Regulations”) stipulate that for children who are accommodated by or who are in the care of the local authority the care plan should, so far as is reasonably practicable, be agreed by the responsible authority with any parent of the child and/or any person who is not the child’s parent but who has parental responsibility for them, or if there is no such person, the person who was caring for the child immediately before the responsible authority arranged a placement for child. For any child aged 16 or over who agrees to be accommodated by the local authority the 2010 Regulations require that the care plan is agreed with the child themselves.

With regards to arrangements that meet the definition of private fostering, the local authority must determine whether the welfare of the child will be satisfactorily safeguarded and promoted and should determine the suitability of all aspects of the private fostering arrangements in accordance with their duties under section 67 of the Children Act 1989. In order to achieve this [UK The Children \(Private Arrangements for Fostering\) Regulations 2005](#) (“the 2005 Regulations”) provide that the local authority is notified of the arrangement by the private foster carer at least 6 weeks in advance of the arrangement beginning but if it is to begin within 6 weeks then the local authority should be notified immediately. Any person involved in the private fostering of the child should notify the local authority as soon as possible after the arrangement is made. The local authority must visit the accommodation and speak to the proposed private foster carers, members of the household and the child and if possible visit and speak to the parents of the child and anyone else with parental responsibility for the child. Various details as set out in the Schedules to the 2005 Regulations must be ascertained by the local authority as far as possible.

2 If prior consultation and consent are required, which authority is to be consulted and to give the consent?

In the case of placement of a child by a local authority, consultation and consent must be carried out in accordance with section 20 of the Children Act 1989, i.e. placement must be agreed by parents or others with parental responsibility for the child and if the criteria for accommodating the child are met. Alternatively, the child may be placed by a local authority in accordance with a care order made by the court. In both cases, the local authority must comply with the Children Act 1989 and with the 2010 Regulations in particular. The local authority must, as far as it is reasonably practicable to do so, seek to get agreement on the care plan, which sets out how the local authority will meet the child’s needs with the child’s parents or any other person with parental responsibility for the child, and where appropriate given their age, with the child.

In the case of a private fostering arrangement, the private foster carer becomes responsible for providing the day to day care of the child in a way which will promote and safeguard their 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. The 2005 Regulations place a duty on parents, or the person with parental responsibility, as well as the private foster carers and anyone else involved (whether directly or indirectly) in arranging for the child to be privately fostered to notify the local authority of a proposed or actual private fostering arrangement. Furthermore, education, health and other professionals should also notify the local authority of a private fostering arrangement that comes to their attention, where they are not satisfied that the local authority has been, or will be, notified of this arrangement.

3 Please describe shortly the procedure for consultation and the obtaining of consent (including required documents, deadlines, modalities of the procedure, and other relevant details).

In the case of placement by a local authority, the 2010 Regulations stipulate timings around the care planning process but not the notification of the decision around the placement. The care plan must be prepared before the child is first placed by the responsible authority or, if it is not practicable to do so, within ten working days of the start of the first placement. It must be kept under review, overseen by the Independent Reviewing Officer. The responsible authority must first review the child's case within 20 working days of the date on which the child becomes looked after. The second review must be carried out not more than three months after the first, and subsequent reviews must be carried out at intervals of not more than six months. Reviews are conducted by the child's social worker (appointed by the responsible authority) and should demonstrate consultation with the child and other parties including the foster carers, the child's school or nursery, medical practitioner or any other relevant person, as appropriate.

The 2005 Regulations stipulate the timing for notification, assessment and the continued requirement for a local authority to satisfy themselves that the welfare of the children who are privately fostered in their area is safeguarded and promoted. In relation to notification, 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. Furthermore, any person, including a parent or other person with parental responsibility for a child, who is or isn't involved (whether or not directly) in arranging for the child to be privately fostered must notify the appropriate local authority of the arrangement as soon as possible after the arrangement has been made. The local authority must visit the private fostering arrangements within 7 days of being notified of the arrangement. The local authority will assess the arrangement or proposed arrangement. Local authorities will then carry out follow-up visits. The number of visits required is at intervals of not more than six weeks in respect of the first year and twelve in the second and subsequent years of the arrangement.

4 What is a "foster family" according to the national law of your Member State?

Under legislation in England a foster family is where a local authority places a child with a foster parent that is a person approved by a registered fostering services agency, following an assessment of their suitability and the suitability of their household, to foster a child or young person who has been taken into the care of the state. An agency can assess and approve any person that they consider to be suitable. As part of the assessment process, the agency will consider the potential impact of or contribution made to fostering by all members of the household. Any members of the household not approved to foster are expected to undergo police checks, the results of which may impact on assessment of the suitability of the household.

Furthermore, private fostering occurs in accordance with section 66 of the Children Act 1989 when a child under the age of 16 (under 18 if disabled) is provided with care and accommodation by a person who is not a parent, person with parental responsibility for them or a relative (as defined under section 105 of the Children Act 1989 - i.e. a grandparent, brother, sister, uncle or aunt (whether of the full or half blood or by marriage) or a step-parent will not be a private foster carer) in their own home. A child is not privately fostered if the person caring for them has done so for less than 28 days and does not intend to do so for longer. Exemptions to this definition are set out in Schedule 8 to the Children Act 1989. Unless the young person is disabled within the meaning of the Children Act 1989, the young person will cease to be privately fostered at the age of 16, but if the living arrangements continue then statutory guidance – [Replacement Children Act 1989 Guidance on Private Fostering](#) - will continue to apply as the arrangement will revert to that of informal family and friends care.

The private foster carer becomes responsible for providing the day to day care of the child. The parent will continue to hold parental responsibility for the child. The local authority does not formally approve or register a private foster carer. However, it is the duty of the local authority where the child resides, to satisfy themselves that the welfare of children who are, or will be, privately fostered within their area is being, or will be, safeguarded and promoted. During that assessment the local authority must determine the suitability of all aspects of the private fostering arrangements, in accordance with the 2005 Regulations. Where the local authority is not satisfied that the welfare of a privately fostered child is being, or will be, satisfactorily safeguarded or promoted, it must take reasonable steps to ensure that the child is accommodated by their parent (or other person with parental responsibility) or relative and consider whether they need to exercise any of their functions under the Act in relation to the child.

5 Does the notion of "foster family" encompass relatives or not? If yes, which ones?

In relation to placement by the State through the local authority only in circumstances where relatives have been through the fostering assessment process and have been approved by a fostering panel, convened by a foster service provider, as suitable to foster. Known as 'family and friends' foster carers, they account for approximately 18% of all foster carers in England. They are assessed under a lighter touch approach and whilst they receive financial support to help with the cost of looking after the child or children they are not expected to foster non-related children. This could be anyone that is either related to or has a connection with the child.

In the case of private fostering, a private foster carer may be from the extended family, such as a cousin or a great aunt. However, a person who is a relative in accordance with the definition of a relative under the Children Act 1989 i.e. a grandparent, brother, sister, uncle or aunt (whether full or half blood or by marriage) or step-parent will not be considered to be a private foster carer. A private foster carer may be a friend of the family, the parent of a friend of the children, or someone previously unknown to the child's family who is willing to privately foster a child. It must be stressed though that for it to be considered a private fostering arrangement the child must be under the age of 16 (under 18 if disabled) and being provided with care and accommodation for a period of 28 days or over.

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