
STATUTORY INSTRUMENTS

2011 No. 581

The Fostering Services (England) Regulations 2011

PART 5

Approval of Foster Parents

Constitution and membership of fostering panel

23.—(1) The fostering service provider must maintain a list of persons who are considered by them to be suitable to be members of a fostering panel (“the central list”), including one or more social workers who have at least three years’ relevant post-qualifying experience.

(2) A person who is included in the central list may at any time ask to be removed from the central list by giving one month’s notice in writing.

(3) Where the fostering service provider are of the opinion that a person included in the central list is unsuitable or unable to remain on the list, the fostering service provider may remove that person’s name from the list by giving them one month’s notice in writing.

(4) Subject to paragraph (5), the fostering service provider must constitute one or more fostering panels, as necessary, to perform the functions of a fostering panel under these Regulations, and must appoint panel members including—

- (i) a person to chair the panel who, in the case of any appointment made after 1st October 2011, must be independent of the fostering service provider, and
 - (ii) one or two persons who may act as chair if the person appointed to chair the panel is absent or that office is vacant (“the vice chairs”)
- from the persons on the central list.

(5) A fostering panel may be constituted jointly by any two or more fostering service providers, in which case the appointment of members must be made by agreement between the fostering service providers.

(6) A local authority may pay to any member of a fostering panel constituted by them such fee as they may determine, being a fee of a reasonable amount.

(7) The fostering service provider must ensure that the fostering panel has sufficient members, and that individual members have between them the experience and expertise necessary, to effectively discharge the functions of the panel.

(8) Any fostering panel member may resign at any time by giving one month’s notice in writing to the fostering service provider which appointed them.

(9) Where a fostering service provider are of the opinion that any member of the fostering panel appointed by them is unsuitable or unable to continue as a panel member, they may terminate that member’s appointment at any time by giving the member notice in writing.

(10) For the purposes of this regulation and regulation 24—

- (a) a person is not independent of the fostering service provider if—
 - (i) they are currently approved by the fostering service provider as a foster parent,

- (ii) in the case of a local authority fostering service, the person is an elected member of that local authority, or is employed by that local authority for the purposes of the fostering service or for the purposes of any of that local authority's functions relating to the protection or placement of children, or
- (iii) in the case of a fostering agency, the person is employed by, or is a trustee of, that fostering agency, and
- (b) 'social worker' means a person who is registered as a social worker in a register maintained by the General Social Care Council or by the Care Council for Wales under section 56 of the Care Standards Act 2000(1), or in a corresponding register maintained under the law of Scotland or Northern Ireland.

Meetings of fostering panel

24.—(1) No business may be conducted by a fostering panel unless at least the following meet as the panel—

- (i) either the person appointed to chair the panel or one of the vice chairs,
- (ii) one member who is a social worker who has at least three years' relevant post-qualifying experience, and
- (iii) three, or in the case of a fostering panel established under regulation 23(5) four, other members, and

where the chair is not present and the vice chair who is present is not independent of the fostering service provider, at least one of the other panel members must be independent of the fostering service provider.

(2) A fostering panel must make a written record of its proceedings and the reasons for its recommendations.

Functions of fostering panel

25.—(1) The functions of the fostering panel in respect of cases referred to it by the fostering service provider are—

- (a) to consider each application for approval and to recommend whether or not a person is suitable to be a foster parent,
 - (b) where it recommends approval of an application, to recommend any terms on which the approval is to be given,
 - (c) to recommend whether or not a person remains suitable to be a foster parent, and whether or not the terms of their approval (if any) remain appropriate—
 - (i) on the first review carried out in accordance with regulation 28(2), and
 - (ii) on the occasion of any other review, if requested to do so by the fostering service provider in accordance with regulation 28(5), and
 - (d) to consider any case referred to it under regulation 27(9) or 28(10).
- (2) In considering what recommendation to make under paragraph (1), the fostering panel—
- (a) must consider and take into account all of the information passed to it in accordance with regulation 26, 27 or 28 (as the case may be),
 - (b) may request the fostering service provider to obtain any other relevant information or to provide such other assistance as the fostering panel considers necessary, and

(1) Section 56 was amended by regulations 230 and 232(a) of [S.I. 2007/3101](#).

- (c) may obtain such legal advice or medical advice as it considers necessary.
- (3) The fostering service provider must obtain such information as the fostering panel considers necessary and send that information to the panel, and provide such other assistance as the fostering panel may request, so far as is reasonably practicable.
- (4) The fostering panel must also—
 - (a) advise, where appropriate, on the procedures under which reviews in accordance with regulation 28 are carried out by the fostering service provider, and periodically monitor their effectiveness,
 - (b) oversee the conduct of assessments carried out by the fostering service provider, and
 - (c) give advice, and make recommendations, on such other matters or cases as the fostering service provider may refer to it.
- (5) In this regulation “recommend” means recommend to the fostering service provider.

Assessment of prospective foster parents

26.—(1) The fostering service provider may carry out an assessment of any person who applies to become a foster parent and whom they consider may be suitable to become a foster parent (“X”), and any such assessment must be carried out in accordance with this regulation.

- (2) The fostering service provider—
 - (a) must obtain the information specified in Schedule 3 relating to X and other members of X’s household and family, and any other information they consider relevant,
 - (b) must interview at least two persons nominated by X to provide personal references for X, and prepare written reports of the interviews,
 - (c) except where the fostering service provider is a local authority and X lives in the area of that authority, must consult with, and take into account the views of, the local authority in whose area X lives,
 - (d) may, where X was approved as a foster parent by another fostering service provider and that approval has been terminated, and where X consents to the inspection, request inspection of the relevant records compiled by that other fostering service provider in relation to X under regulations 30 and 31.
- (3) Having regard to the information obtained under paragraph (2), the fostering service provider must—
 - (a) consider whether X is suitable to be a foster parent and whether X’s household is suitable for any child,
 - (b) prepare a written report on X which includes the matters set out in paragraph (4), and
 - (c) refer the report to the fostering panel and notify X accordingly.
- (4) The report referred to in paragraph (3) must include the following matters in relation to X—
 - (a) the information required by Schedule 3 and any other information the fostering service provider consider relevant,
 - (b) the fostering service provider’s assessment of X’s suitability to be a foster parent, and
 - (c) the fostering service provider’s proposals about any terms of the approval.
- (5) Subject to paragraph (8), X is not suitable to be a foster parent if X, or any member of X’s household aged 18 or over—
 - (a) has been convicted of a specified offence committed at the age of 18 or over, or
 - (b) has been cautioned by a constable in respect of any such offence.

- (6) In paragraph (5) “specified offence” means—
- (a) an offence against a child,
 - (b) an offence specified in Part 1 of Schedule 4,
 - (c) an offence contrary to section 170 of the Customs and Excise Management Act 1979⁽²⁾ in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876⁽³⁾ (prohibitions and restrictions relating to pornography) where the prohibited goods included indecent photographs of children under the age of 16,
 - (d) any other offence involving bodily injury to a child, other than an offence of common assault or battery, and
- the expression “offence against a child” has the meaning given to it by section 26(1) of the Criminal Justice and Court Services Act 2000⁽⁴⁾ except that it does not include an offence contrary to section 9 of the Sexual Offences Act 2003⁽⁵⁾ (sexual activity with a child) in a case where the offender was under the age of 20 at the time the offence was committed and the child was aged 13 or over.
- (7) Subject to paragraph (8), X is not suitable to be a foster parent if X, or any member of X’s household aged 18 or over—
- (a) has been convicted of an offence specified in paragraph 1 of Part 2 of Schedule 4 committed at the age of 18 or over, or has been cautioned by a constable in respect of any such offence, or
 - (b) falls within paragraph 2 or 3 of Part 2 of Schedule 4,
- notwithstanding that the statutory offences in Part 2 of Schedule 4 have been repealed.
- (8) The fostering service provider may regard a person who falls within paragraph (5) or (7) as suitable to be a foster parent in relation to a particular child (or children), if the fostering service provider is satisfied that the welfare of that child (or those children) requires it, and either—
- (a) the person, or a member of their household, is a relative of the child, or
 - (b) the person is already acting as a foster parent for the child.
- (9) In—
- (a) this regulation and Schedule 4, ‘constable’ has the meaning given in section 5 of the Police Act 1993⁽⁶⁾, and
 - (b) this regulation, and regulations 27 and 28 and Schedules 3 and 5, a person who is living in X’s household in parent and child arrangements, is a member of X’s household.

Approval of foster parents

- 27.—**(1) A fostering service provider must not approve a person who has been approved as a foster parent by another fostering service provider where that approval has not been terminated.
- (2) A fostering service provider must not approve X as a foster parent unless—
- (a) they have completed their assessment of X’s suitability, and
 - (b) the fostering panel has considered the application.
- (3) A fostering service provider must, in deciding whether to approve X as a foster parent and as to the terms of any approval, take into account the recommendation of the fostering panel.

(2) 1979 c. 2.

(3) 1876 c.36. Section 42 was amended by Part 9 of Schedule 1 to the Statute Law (Repeals) Act 1993 (c.50), and paragraph 1 of Schedule 2 to the Statute Law (Repeals) Act 2008 (c.12) and by other provisions which are not relevant to these Regulations.

(4) 2000 c. 43. Section 26 is repealed by Schedule 10 of the 2006 Act on a date to be appointed.

(5) 2003 c. 42.

(6) 1993 c. 11.

(4) No member of the fostering panel may take part in any decision made by a fostering service provider under paragraph (3).

(5) If a fostering service provider decide to approve X as a foster parent they must—

- (a) give X notice in writing specifying any terms on which the approval is given, and
- (b) enter into a written agreement with X covering the matters specified in Schedule 5 (the “foster care agreement”).

(6) If a fostering service provider consider that X is not suitable to be a foster parent they must, subject to paragraph (7)—

- (a) give X written notice that they propose not to approve X as suitable to be a foster parent (a “qualifying determination”), together with their reasons and a copy of the fostering panel’s recommendation, and
- (b) advise X that, within 28 days of the date of the qualifying determination, X may—
 - (i) submit any written representations that X wishes to make to the fostering service provider, or
 - (ii) apply to the Secretary of State for a review by an independent review panel of the qualifying determination(7).

(7) Paragraph (6)(b)(ii) does not apply in a case where the fostering service provider consider in accordance with regulation 26(8) that X is not suitable to be a foster parent.

(8) If, within the period referred to in paragraph (6)(b)—

- (a) the fostering service provider do not receive any representations, and
 - (b) X does not apply to the Secretary of State for a review by an independent review panel of the qualifying determination,
- the fostering service provider may proceed to make their decision.

(9) If within the period referred to in paragraph (6)(b) the fostering service provider receive any written representations, they must—

- (a) refer the case to the fostering panel for further consideration, and
- (b) make their decision, taking into account any further recommendation made by the fostering panel.

(10) If, within the period referred to in paragraph (6)(b), X applies to the Secretary of State for a review by an independent review panel of the qualifying determination, the fostering service provider must make their decision taking into account the recommendation of the fostering panel and the recommendation of the independent review panel.

(11) As soon as practicable after making the decision referred to in paragraph (8), (9)(b) or (10) (as the case may be), the fostering service provider must notify X in writing and—

- (a) if the decision is to approve X as a foster parent, comply with paragraph (5) in relation to X, or
- (b) if the decision is not to approve X, provide written reasons for their decision.

(12) In a case where an independent review panel has made a recommendation, the fostering service provider must send a copy of the notification referred to in paragraph (11) to the Secretary of State.

(7) For provisions about the review mechanism, see the Independent Review of Determinations (Adoption and Fostering) Regulations 2009 (S.I. 2009/395) as amended by S.I. 2011/581.

Reviews and terminations of approval

28.—(1) The fostering service provider must review the approval of each foster parent in accordance with this regulation.

(2) A review must take place not more than a year after approval, and thereafter whenever the fostering service provider consider it necessary, but at intervals of not more than a year.

(3) When undertaking a review, the fostering service provider must—

- (a) make such enquiries and obtain such information as they consider necessary in order to review whether the foster parent continues to be suitable to be a foster parent and the foster parent's household continues to be suitable, and
- (b) seek and take into account the views of—
 - (i) the foster parent,
 - (ii) any child placed with the foster parent (subject to the child's age and understanding), and
 - (iii) any placing authority which has, within the preceding year, placed a child with the foster parent.

(4) At the conclusion of the review, the fostering service provider must prepare a written report, setting out whether—

- (a) the foster parent continues to be suitable to be a foster parent and the foster parent's household continues to be suitable, and
- (b) the terms of the foster parent's approval continue to be appropriate.

(5) The fostering service provider must on the occasion of the first review under this regulation, and may on any subsequent review, refer their report to the fostering panel for consideration.

(6) If the fostering service provider decide, taking into account any recommendation made by the fostering panel, that the foster parent and the foster parent's household continue to be suitable and that the terms of the foster parent's approval continue to be appropriate, they must give written notice to the foster parent of their decision.

(7) If, taking into account any recommendation made by the fostering panel, the fostering service provider are no longer satisfied that the foster parent or the foster parent's household continue to be suitable, or that the terms of the approval are appropriate, they must (subject to paragraph (8))—

- (a) give written notice to the foster parent that they propose to terminate, or (as the case may be) revise the terms of, the foster parent's approval (a "qualifying determination"), together with their reasons and a copy of any recommendation made by the fostering panel, and
- (b) advise the foster parent that, within 28 days of the date of the qualifying determination, the foster parent may—
 - (i) submit any written representations that the foster parent wishes to make to the fostering service provider, or
 - (ii) apply to the Secretary of State for a review by an independent review panel of the qualifying determination.

(8) Paragraph (7)(b)(ii) does not apply in a case where, in accordance with regulation 26(8), the fostering service provider are no longer satisfied that the foster parent or the foster parent's household continue to be suitable, or that the terms of the approval are appropriate.

(9) If within the period referred to in paragraph (7)(b)—

- (a) the fostering service provider do not receive any representations, and
- (b) the foster parent does not apply to the Secretary of State for a review by an independent review panel of the qualifying determination,

the fostering service provider may proceed to make their decision.

(10) If, within the period referred to in paragraph (7)(b), the fostering service provider receive any written representations, they must—

- (a) refer the case to the fostering panel for its consideration, and
- (b) make their decision, taking into account any recommendation made by the fostering panel.

(11) If, within the period referred to in paragraph (7)(b), the foster parent applies to the Secretary of State for a review by an independent review panel of the qualifying determination, the fostering service provider must make their decision taking into account any recommendation made by the fostering panel and the recommendation of the independent review panel.

(12) As soon as practicable after making the decision referred to in paragraph (9), (10)(b) or (11), the fostering service provider must give written notice to the foster parent stating (as the case may be)—

- (a) that the foster parent and the foster parent's household continue to be suitable, and that the terms of the approval continue to be appropriate,
- (b) that the foster parent's approval is terminated from a specified date, and the reasons for the termination, or
- (c) the revised terms of the approval and the reasons for the revision.

(13) A foster parent may give notice in writing to the fostering service provider at any time that the foster parent no longer wishes to be a foster parent, in which case the foster parent's approval is terminated with effect from 28 days from the date on which the notice is received by the fostering service provider.

(14) A copy of any notice given under this regulation must be sent to the placing authority for any child placed with the foster parent (unless the placing authority is also the fostering service provider), and the area authority for any child placed with the foster parent.

(15) In a case where an independent review panel has made a recommendation, the fostering service provider must send a copy of the notification referred to in paragraph (12) to the Secretary of State.

Information to be sent to the independent review panel

29.—(1) This regulation applies where the fostering service provider receive notification from the Secretary of State that a person has applied for a review by an independent review panel of a qualifying determination under regulation 27(6)(b)(ii) or 28(7)(b)(ii).

(2) The fostering service provider must send the following documents and information to the Secretary of State within ten working days of receipt of the notification referred to in paragraph (1)—

- (a) a copy of any report prepared, and of any other documents referred to the fostering panel, for the purposes of regulations 26, 27 or 28 (as the case may be),
- (b) any relevant information in relation to X or the foster parent (as the case may be) which was obtained by the fostering service provider after the date on which the report was prepared or the documents referred to the fostering panel, and
- (c) a copy of the notice, and of any other documents, sent in accordance with regulations 27(6)(a) or 28(7)(a).

Case records relating to foster parents and others

30.—(1) A fostering service provider must maintain a case record for each foster parent approved by them which must include copies of the documents specified in paragraph (2) and the information specified in paragraph (3).

- (2) The documents referred to in paragraph (1) are—
- (a) the report prepared under regulation 26(3)(b) and any other reports submitted to the fostering panel,
 - (b) any recommendations made by the fostering panel,
 - (c) the notice of approval given under regulation 27(5)(a),
 - (d) the foster care agreement,
 - (e) any report of a review of approval prepared under regulation 28(4), and
 - (f) any notice given under regulation 28(12).
- (3) The information referred to in paragraph (1) is, as the case may be—
- (a) a record of each placement with the foster parent, including the name, age and sex of each child placed, the dates on which each placement began and terminated, and the circumstances of the termination,
 - (b) the information obtained by the fostering service provider in relation to the assessment and approval of the foster parent, and in relation to any review or termination of the approval.
- (4) A local authority must maintain a case record for each person with whom a child is placed under regulation 24 of the Care Planning Regulations (*temporary approval of relative, friend or other person connected with the child*) which must include in relation to that person—
- (a) a record in relation to the placement, including the name, age and sex of each child placed, the date on which the placement began and, if the placement has been terminated, the date and circumstances of the termination, and
 - (b) the information obtained in relation to the enquiries carried out under regulation 24(2) of the Care Planning Regulations.
- (5) The fostering service provider must compile a record for each person whom they do not approve as a foster parent, or who withdraws their application prior to approval, which must include—
- (a) the information obtained in connection with the assessment,
 - (b) any report submitted to the fostering panel and any recommendation made by the fostering panel, and
 - (c) any notification given under regulation 27.

Register of foster parents

31. The fostering service provider must maintain a register (a “register of foster parents”) and enter in it the following particulars in relation to each foster parent—

- (a) name, address, date of birth and sex of each foster parent and, in the case of a local authority fostering service, of each person with whom it has placed a child under regulation 24 of the Care Planning Regulations,
- (b) the date of approval and of each review of approval (as the case may be), and
- (c) the current terms of approval (if any).

Retention and confidentiality of records

32.—(1) The records compiled in relation to a foster parent under regulation 30(1), and any entry relating to that foster parent in the register maintained under regulation 31, must be retained for at least 10 years from the date on which their approval is terminated.

(2) The records compiled by a local authority under regulation 30(4) in relation to a person with whom a child is placed under regulation 24 of the Care Planning Regulations, and any entry relating to such a person in the register maintained under regulation 31, must be retained for at least 10 years from the date on which the placement is terminated.

(3) The records compiled under regulation 30(5) must be retained for at least 3 years from the refusal or withdrawal, as the case may be, of the application to become a foster parent.

(4) The requirements in paragraphs (1) to (3), and in regulation 22, may be complied with by retaining the original written records or copies of them, or by keeping all or part of the information contained in them in some other accessible form such as a computer record.

(5) Subject to paragraph (6), any records or register maintained in accordance with regulation 22, 30 or 31 must be kept securely and may not be disclosed to any person except in accordance with—

- (a) any provision of, or made under or by virtue of, a statute under which access to such records is authorised,
- (b) any court order authorising access to such records.

(6) A fostering service provider must make their records compiled under regulation 30 or 31 in relation to a foster parent available for inspection by another fostering service provider within one month of a request under regulation 26(2)(d).