

EXPLANATORY MEMORANDUM TO
THE CARE PLANNING, PLACEMENT AND CASE REVIEW AND FOSTERING
SERVICES (MISCELLANEOUS AMENDMENTS) REGULATIONS 2013

2013 No. 984

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 These Regulations amend the Care Planning, Placement and Case Review (England) Regulations 2010 (“the Care Planning Regulations”) which make provision about care planning for children who are looked after by a local authority:
 - they provide that people who are approved as prospective adopters under the Adoption Agencies Regulations 2005 may be temporarily approved as foster parents for a named child, and
 - they make changes to the requirements relating to a looked after child’s placement plan (that is, the plan prepared by the responsible local authority setting out how the child’s placement, for example with a local authority foster parent or in a children’s home, will contribute to meeting the child’s needs). They require that the placement plan must set out the respective responsibilities of the child’s parents, anyone else who has parental responsibility for the child and the responsible local authority, and require that the plan must identify any delegation of responsibility to make decisions about the child’s care and upbringing to the local authority, the foster parent, or the manager of the children’s home (as appropriate).
 - 2.2 The Regulations also amend the Fostering Services (England) Regulations 2011 (“the Fostering Services Regulations”) which provide a regulatory framework for fostering service providers and make provision about matters including the approval of foster parents by fostering service providers:
 - they amend the process for assessing and reviewing a person’s suitability to be a foster parent, and
 - they enable the fostering service provider and an approved foster parent to agree a change in the foster parent’s terms of approval without delay.

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

3.1 None

4. Legislative Context

Temporary approval

4.1 When a child is “looked after” by a local authority (as defined in section 22(1) of the Children Act 1989), section 22C of that Act sets out how the local authority looking after the child may accommodate him. Section 22C(2)–(4) requires the local authority to make arrangements for the child to live with his parents, unless this is not consistent with the child’s welfare and reasonably practicable.

4.2 Where such arrangements are not consistent with the child’s welfare and reasonably practicable – whether in the immediate future, or in the longer term - the local authority must then place the child in one of the types of placement set out in section 22C(6), i.e. with a local authority foster parent (and preferably one who is a relative, friend or is otherwise connected with the child), in a children’s home, or in other arrangements (such as supported lodgings). The local authority must place the child in ‘the most appropriate placement available’ (section 22C(5)).

4.3 In cases where the local authority are considering adoption as one of the options (or as the only remaining option) for the child’s long term care, they must have authority before they can place the child for adoption. (Authority to place the child for adoption takes the form of parental consent or a placement order). Without that authority, a looked after child cannot be placed with prospective adopters in an adoptive placement under the Adoption and Children Act 2002 – only in a Children Act placement, as set out in paragraph 4.2.

4.4 In some cases, a carer will be identified for a looked after child, such as a close relative, who is not a local authority foster parent. In those circumstances, regulation 24 of the Care Planning Regulations allows the local authority to temporarily approve that person as a foster parent for the child, subject to making a preliminary assessment of the person’s suitability to care for the child, and making immediate arrangements for them to be formally assessed as a foster parent under the regime set out in the Fostering Services Regulations.

4.5 These Regulations insert a new regulation 25A into the Care Planning Regulations which makes a similar provision to that in regulation 24 in that it allows for temporary approval of a carer who is not a fully approved foster parent. Regulation 25A allows someone who is already approved as a prospective adopter under the Adoption Agencies Regulations 2005, to be temporarily approved as a local authority foster parent for a named child. In order to make use of this provision, the local authority must be satisfied that placement with that person is the most appropriate placement for the particular child and is in the child’s best interests. And before temporarily approving the person as a local

authority foster parent for that named child, the local authority must first assess their suitability to care for the child as a foster parent, and be satisfied that the placement will safeguard and promote the child's welfare and meet his needs as set out in his care plan. The carer is not required to go on to a full foster parent assessment under the Fostering Services Regulations, to reflect the fact that they have already been through the prospective adopter assessment and approval process set out in the Adoption Agencies Regulations. The focus of the local authority's assessment under regulation 25A is, therefore, whether the person is able to care for the child qua foster parent. The approval is temporary, in that it expires on the occurrence of certain events. But it is not time limited, to reflect the fact that the carer is already an approved prospective adopter and is not required to undergo full assessment as a foster parent.

Delegation of Authority

4.6 Every looked after child must have a care plan which sets out how the local authority will look after him. The detail of the care plan is prescribed in the Care Planning Regulations. The care plan contains a number of elements, such as a health plan, a personal education plan, a long term plan for the child's upbringing, and a placement plan. A placement plan must be prepared for each placement the child is put in, and records the detail of how the placement will meet the child's needs. It deals with matters such as arrangements for contact between the child and his family, and the day to day care of the child by the person responsible for the placement (such as the foster parent or the registered manager of the children's home).

4.7 These Regulations amend the Care Planning Regulations to require that every placement plan must record the respective responsibilities of the local authority, the child's parents and any person who has parental responsibility for the child. In relation to certain matters, such as medical or dental treatment, or education, the placement plan must record any delegation of authority to make decisions about the child's care and upbringing, by those persons, to the local authority, the foster parent or the registered manager of the children's home (as appropriate). It must also identify any matters where it is agreed that the child can make a decision.

Foster parent assessment and approval

4.8 The process for assessing and approving foster parents is prescribed in the Fostering Services Regulations. These Regulations make amendments to that process to streamline it, and to reflect changes being made to the process for the assessment and approval of prospective adopters being implemented by the Adoption Agencies (Miscellaneous Amendments) Regulations 2013 which come into force on the same date as these Regulations.

4.9 In particular the amendments require the provider to obtain information and make enquiries as to the applicant's suitability, as set out in Parts 1 and 2 of a revised Schedule. They allow a fostering service provider to determine that a person is not suitable to become a foster parent on the basis of preliminary information obtained under Part 1, and

in those circumstances the assessment is terminated. They will also allow the provider to refer a case to its panel for consideration, without completing a full report of the applicant's suitability, where it becomes apparent as a result of further information obtained as required by Part 2, that the applicant is unlikely to be suitable to foster. In the latter instance, the applicant may seek a review of this decision by the independent review panel (set out under the Independent Review of Determinations Regulations).

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

Temporary approval

7.1 The Action Plan for Adoption set out the Government's plan to consult on changes to legislation to enable a more stream-lined process for prospective adopters to be approved as temporary foster carers in appropriate cases. The aim of this policy is to bring forward the point at which looked after children, where appropriate, can go to live with the people who may become their permanent carers (adoptive parents). The aim of such a placement is to enable the child to go to live with the people who go on to become his permanent family at an earlier stage. As highlighted in the Department's Action Plan, delays in moving children into stable long-term placements is harmful to them, and is known to be a cause of behavioural and attachment problems. Equally, moving children in and out of a series of temporary placements causes distress and emotional upheaval. It follows that the sooner a child can be placed in a home which is, or becomes, their permanent home, the better.

7.2 A placement order gives the local authority permission formally to place the child/children for adoption. Until a placement order has been made the child cannot be placed for adoption. But if the carers have been approved as foster carers they can foster the child whilst the local authority seeks a placement order from the courts. If a placement order is made, the placement can become an adoptive placement. If the court does not make a placement order the local authority will need to reconsider the child's care plan and the child may not stay with those carers.

7.3 It is already possible under the Children Act 1989 for local authorities to approve adopters as foster carers, but the process is quite lengthy. These regulations could

significantly reduce the time and process, taking assurances from the carer's approved adopter status about their capacity to care for the child.

Delegation of Authority

7.4 The Regulations introduce an explicit requirement for a looked after child's placement plan (the part of the child's care plan concerning their day to day care) to state how authority to take decisions has been allocated in specified decision-making areas. These include: medical and dental treatment; education; leisure and home life; faith and religious observance; use of social media; and any other matters considered relevant in relation to the particular child.

7.5 Looked after children highlight delegation of authority for decisions about their day to day care as a particular concern for them - local requirements that decisions about such matters as sleepovers, school trips and haircuts must be taken by a social worker or manager, rather than the child's carer, can lead to delays and missed opportunities and make children feel different from their peers. Failure to consider upfront, and record, who has the authority to take particular decisions can lead to confusion that results in delay and undermines the foster carer's ability to carry out their parenting role. Problems associated with delegation of authority have been a key lobbying issue for the sector and have been raised in the media.

7.6 The instrument aims to address these problems by requiring a record in the placement plan of who can decide what about key areas of a child's day to day care, so helping ensure both that there is local discussion about who is the most appropriate person to take particular decisions, and that all key parties are clear about who has the authority to take particular decisions.

Foster parent assessment and approval of foster carers

7.7 In the context of local shortages of foster carers able to meet looked after children's needs (which the Government is committed to helping local areas address), the aim of the instrument is to make the assessment and approval of foster carers more efficient and to enable foster carers to be deployed more flexibly to meet children's needs. The instrument amends the foster carer assessment and approval process by:

- introducing a two part assessment process;
- removing the right for an applicant to seek a review of a decision that they are unsuitable to foster made at stage 1 of the process (though an applicant who is unhappy about the way their case is handled may complain via the fostering service's complaints process);

- introducing the option of terminating an assessment via a brief report if evidence indicates at stage 2 of the process that the applicant is not suitable to foster (the applicant may seek a review of this decision);
- removing unnecessary restrictions on an applicant's previous fostering and adoption records being used to inform a new fostering assessment;
- removing the requirement for a fostering service to interview personal referees if a service the applicant fostered for in the last 12 months provides a written reference (the power to interview personal referees remains); and
- removing the requirement to wait 28 days before a change to the terms of a foster carer's approval to foster (that the carer has agreed to) can be implemented.

7.8 A number of fostering services have raised concerns with the Department that current arrangements for assessing and approving foster carers are overly bureaucratic and resource intensive and that requirements around the amendment of carers' terms of approval are a barrier to timely placement of children with suitable carers. By removing the current requirement to complete any assessment that has been started; by only offering a review of a decision not to approve a person as suitable to foster to stage 2 applicants; and by avoiding unnecessary information collection and duplication; the changes enable fostering services to focus resources more efficiently on the most viable applicants. Allowing amended terms of approval, that the foster carer agrees to, to be implemented without delay, removes a barrier to children being placed quickly in a foster home that meets their needs.

- Consolidation

7.9 Consolidation of the Care Planning Regulations, and of the Fostering Services Regulations, is not considered necessary.

8. Consultation outcome

8.1 The policy measures were developed following 'deep dive' visits to five local authorities; in partnership with working groups (including representatives from sector organisations, local authorities, fostering services and foster carers); and following evidence gathered over a 12 week public consultation. 197 responses to the public consultation were received from local authority and independent fostering and adoption services, prospective and approved foster carers and adopters, sector organisations, members of fostering and adoption panels, the judiciary/lawyers and a birth parent. In addition, the Children's Rights Director consulted 363 looked after children about the delegated authority aspect of the consultation. The [Government's response](#) to the consultation has been published on the Department for Education's website on www.education.gov.uk.

8.2 On the temporary approval of prospective adopters as foster carers, the majority of respondents agreed that the proposal would help facilitate children being placed with their likely adoptive families more easily and had potential to secure better adoption outcomes for more children than at present. Respondents stated that these types of placements should only be approved for carers with the right qualities. Dependence on the court's approval of the placement order before a child could be adopted, it was felt, would limit its appeal to prospective adopters. Respondents believed that matching would need to be robust to ensure that only those people who were resilient and could manage such uncertainty were chosen.

8.3 The majority of respondents agreed with the proposals concerning both the assessment and approval of foster carers and the delegation of decision making about looked after children. However, some respondents expressed concern that a sequential two stage assessment process would cause delay. The Department has responded by allowing the two stages to be carried out in parallel, provided stage 1 information is collected as soon as possible and stage 1 ends, at the latest, 10 days after the fostering service has collected the information. Some concerns were also expressed that 10 days to provide access to an applicant's fostering or adoption records is insufficient. The Department has therefore extended the timeframe to 15 days.

8.4 A number of respondents felt that faith and religious observance should not be part of the list of decision-making areas that must be included in a child's placement plan in terms of who has the authority to take such decisions – the view was given that decisions about faith and religious observance should be for a person with parental responsibility to make, or the child if they are of sufficient age and understanding, but not the foster carer. This was also the view of the majority of 363 looked after children which the Children's Rights Director consulted about the allocation of decision making provisions. The Department has responded by making clear that the intention is not to require decisions about faith and religious observance to be delegated to a child's foster carer but to require the placement plan to say who does have the authority to take such decisions.

9. Guidance

9.1 Statutory guidance will accompany the legislative provisions on the temporary approval of prospective adopters as foster carers, the assessment and approval of foster carers (including guidance on information sharing) and the allocation of authority for day-to-day decision making about looked after children.

10. Impact

10.1 There is no impact on business, charities and voluntary bodies of the introduction of a new regulation on temporary approval. The impact on business, charities or voluntary bodies of the changes to the assessment and approval process for foster carers is positive - the changes make the process more efficient and flexible. The impact on business, charities or voluntary bodies of the provisions on allocation of authority to make

decisions about looked after children is neutral – fostering services should already be recording in a looked after child’s placement plan who has authority to take the range of day to day decisions about the child, the regulations simply make more transparent what type of decisions should be covered.

10.2 The impact of the new regulation on temporary approval on the public sector is minimal as we anticipate it will apply to a small number of cases. The aim of the policy is to reduce the amount of work currently required on training and assessment of prospective adopters who wish to be approved as temporary foster carers for a child. The impact on the public sector in respect of the other measures is the same as that for businesses, charities and voluntary bodies.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to have provisions that remove bureaucracy and enhance flexibility and clarity.

11.3 The basis for the final decision on what action to take to assist small business was based on consultation with fostering services, including those that are small businesses.

12. Monitoring & review

12.1 The Department for Education will follow up with sector representatives 12 months after the instrument comes into force.

13. Contact

Louise Lawrence at the Department for Education, tel: 020 7783 8088 or email: louise.lawrence@education.gsi.gov.uk can answer any queries regarding the instrument in respect of the amendments to the Fostering Services Regulations.

Veronica Berti at the Department for Education, tel: 020 7340 7180 or email: veronica.beriti@education.gsi.gov.uk can answer any queries regarding the instrument in respect of the amendments to the Care Planning Regulations.