

**EXPLANATORY MEMORANDUM TO**  
**THE FOSTERING SERVICES (ENGLAND) REGULATIONS 2011**

**2011 No. 581**

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 revoke and replace the Fostering Services Regulations 2002 (SI 2002/57) (“the 2002 Regulations”). They make provision about the way in which fostering agencies (independent fostering agencies and voluntary organisations) and local authority fostering services are conducted, and in particular about the process for approving foster parents and safeguarding children placed with foster parents.

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

3.1 None

**4. Legislative Context**

4.1 These Regulations revoke and replace the 2002 Regulations which, in addition to making provision about the conduct of fostering agencies and local authority fostering services and the approval of foster parents, also made provision about the placement of children with foster parents

4.2 The Care Planning, Placement and Case Review (England) Regulations 2010 (S.I. 2010/959), which come into force on 1<sup>st</sup> April 2011, bring together all the provisions in previous Regulations relating to the placement of looked after children by local authorities, and include provisions about the placement of looked after children with foster parents. (A looked after child is a child who is in the care of a local authority by virtue of a care order, or a child who is provided with accommodation by a local authority in the exercise of their social services functions, with some exceptions).

4.3 The Arrangements for Placement of Children by Voluntary Organisations and Others (England) Regulations 2011 (S.I. 2011/xxx) which come into force on 1<sup>st</sup> April 2011 make similar provision in relation to the placement of non looked after children with foster parents.

4.4 These Regulations make changes to the establishment and membership of panels set up by fostering services to assess potential foster parents (fostering panels). The Adoption Agencies and Independent Review of Determinations (Amendment) Regulations 2011 (S.I. 2011/xxx) which come into force on 1<sup>st</sup> April make corresponding changes in relation to panels set up to assess potential adopters.

4.5 To this extent these Regulations are related to the Care Planning, Placement and Case Review (England) Regulations 2010, the Arrangements for Placement of Children by Voluntary Organisations and Others (England) Regulations 2011 and the Adoption Agencies and Independent Review of Determinations (Amendment) Regulations 2011.

## **5. Territorial Extent and Application**

5.1 This instrument applies in relation to England only.

## **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*

7.1 Around three quarters of looked after children are placed with foster parents and it is therefore key that fosters parents are properly assessed and supported to provide quality care to looked after children wherever they may live and whether they are approved by a local authority fostering service or a fostering agency. It is also important that local authorities and fostering agencies understand their duties in relation to looked after children and that the people who carry on and manage fostering services are suitably fit and qualified to do so.

7.2 These Regulations provide the regulatory framework for fostering agencies (that is, independent fostering agencies and voluntary organisations) and local authority fostering services, by placing duties on the ‘fostering service provider’. The fostering services provider in the case of a fostering agency is the person who is registered in respect of the agency under Part 2 of the Care Standards Act 2000 as carrying on, or as the manager of, the fostering agency. The fostering services provider in relation to the local authority fostering service is the local authority.

7.3 As part of the Coalition Government’s drive to reduce burdens we have revised the regulatory framework in order to ensure that it contains no more prescription than is necessary to safeguard children and to provide a more streamlined framework for local authorities and fostering services to operate within. For example by:

- Allowing for greater flexibility within the Regulations for the operation of fostering panels. For example, removing the requirements which were provided for in the 2002 Regulations for fixed membership and tenure thus allowing panels to draw more flexibly on a pool of expertise and not have to remove experienced panel members who can continue to make valuable contributions because ‘their time is up’. The new Regulations relating to panels maintain high level safeguards, which were strongly supported by local authorities, fostering services, and third sector organisations, such as the requirement for an independent chair and the need for 5 people for a panel to be quorum with a pragmatic reality of operation on the ground e.g. reducing the level of prescription about who must make up quorum.
- Not re-enacting what is regulation 48 of the 2002 Regulations within the new Regulations. Regulation 48 provided that a failure to comply with a number of the regulations was an offence and enabled Her Majesty’s Chief Inspector for Education, Children’s Services and Skills (“HMCI”) to bring proceedings against a registered person who failed to comply with the regulations. Section 22A of the Care Standards Act 2000 (inserted by the Children and Young Persons Act 2008) provides that HMCI may serve a compliance notice on the registered person if they are failing to comply with

a requirement imposed on them. Failure to comply with the compliance notice is an offence and therefore it is considered that there is no need to retain regulation 48 of the 2002 Regulations which makes similar provision.

- Regulation 42 has been added to modify the application of the Regulations in relation to children who are not in the care of a local and who are placed in a series of “short breaks” with the same foster parent, as in these circumstances the child’s parents remain responsible for their overall care, health and education.

7.4 We have also updated a number of requirements and references so that there is a coherent regulatory framework for local authorities and fostering services. For example, so that regulations are appropriately aligned with the Care Planning, Placement and Case Review (England) Regulations 2010 and references to missing from care are in line with Statutory Guidance for Local Authorities on Children Missing from Home or Care<sup>1</sup>.

7.5 In addition, these Regulations and the accompanying guidance respond to concerns raised by fostering services and local authorities. For example by:

- Removing the provision, (formerly in regulation 20(6) of the 2002 Regulations), which meant that a fostering service provider could not employ to work for the purposes of the service a foster carer they had approved or member of their household for certain activity or for more than a certain amount of time. This is intended to increase providers’ ability to utilise foster carers and their household members’ skills more flexibly for example helping in training or mentoring.
- These Regulations also make some provision in relation to parent and child arrangements whereby a local authority arrange for a child and parent to live with a foster parent whether or not the child/parent is placed (regulation 2). The Statement of Purpose must cover any parent and child arrangements (regulation 3) and that the child protection policy must include a statement of measures to be taken to safeguard any child before making a parent and child arrangement with that foster parent (regulation 12). In addition, the guidance clarifies the legal position of such arrangements within the framework of these Regulations.
- Other areas of clarification of the regulatory framework within the guidance are around the delegation of authority to foster parents to improve their role in day to day decisions about the child so as to avoid needless bureaucracy and delays which negatively impact on the child and to explain that there is no requirement to approve certain individuals, who may care for the child, as foster parents for example relatives of the foster parent who the foster child may stay with on a holiday

- ***Consolidation***

7.6 Not necessary. These Regulations consolidate previous amendments made to the 2002 Regulations which these Regulations revoke and replace.

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<sup>1</sup>Issued in July 2009, which can be accessed at the following weblink.

<http://www.education.gov.uk/childrenandyoungpeople/safeguarding/a0066653/young-runaways>

## **8. Consultation outcome**

8.1 Prior to the consultation views were sought from groups representing both local authority and independent providers of fostering services and third sector organisations for looked after children and foster parents about changes to improve fostering services. A formal consultation ran between 27 August and 19 November 2010 on both these Regulations and the Children's Homes Regulations 2011 and accompanying statutory guidance. A total of 136 responses were received which included a good range of local authority and independent fostering providers along with key third sector children's and foster parent organisations who fed back views from their members. Fostering organisations held events to inform their feedback to the Department for Education and officials provided materials and attended events on request.

8.2 The overwhelming majority of respondents supported the principles set out in the Regulations and guidance commenting that the Government's objective to streamline the Regulations and remove any unnecessary bureaucracy has been achieved and that there is greater clarity and less unhelpful prescription. The Government's response to the consultation including a summary of responses can be found on the Department for Education website.<sup>2</sup>

## **9. Guidance**

9.1 These Regulations are being accompanied by revised statutory guidance. The guidance is being issued under section 7 of the Local Authority Social Services Act 1970 and is addressed to local authorities. The guidance is also relevant to providers of independent fostering agencies and voluntary organisations. The guidance sets out the functions and responsibilities of local authorities and their partner agencies in relation to fostering services including setting out the responsibilities of local authorities and foster parents, how to help ensure the best for children in foster care, management of the fostering service and approving and supporting foster parents. The guidance has been updated in line with the changes to these Regulations and in order to remove inaccurate information, out of date sections, unnecessary prescription and detail and make it easier for people to use. This guidance will be Volume 4 of the Children Act 1989 suite and it supersedes Volume 3 Family Placements issued in 1991.

9.2 These Regulations are also accompanied by the National Minimum Standards (NMS) for fostering services 2011 issued under sections 23 and 49 of the Care Standards Act 2000. These apply to both local authority fostering services and fostering agencies. The NMS should be complied with by fostering services providers and are taken into account by HMCI in the inspection and regulation of fostering services. They are also important in other ways. The standards may be used by providers and staff in self-assessment of their services; they provide a basis for the induction and training of staff and carers; they can be used by parents, children and young people as a guide to what they should expect as a minimum fostering service to provide and to do; and they can provide guidance on what is required when setting up a fostering service. Like the guidance, the NMS have also been amended following formal public consultation resulting in the NMS being streamlined.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is a reduction in burdens (see paragraph 7.2 – 7.5). These Regulations have been consolidated and that along

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<sup>2</sup><http://www.education.gov.uk/consultations/index.cfm?action=conResults&consultationId=1729&external=no&menu=3>

with the revised guidance and national minimum standards has resulted in a clearer, more coherent and proportionate regulatory framework.

10.2 The impact on the public sector is as above for business, charities and voluntary bodies. There are some differences in the Regulations resulting from the fact that local authority fostering services are not required to be registered with HMCI and enforcement action resulting from failure to meet the Regulations is for the Secretary of State.

10.3 An Impact Assessment has not been prepared for these Regulations because the revised framework is a streamlining of the existing framework. As such, there will be an overall reduction in burdens and in some areas, reduced costs. The Regulations will come into force on 1<sup>st</sup> April. In March the Department will be providing training materials online which will explain the changes made to the regulatory framework. These materials will also be publicised at regional training also being held in March.

## **11. Regulating small business**

11.1 The legislation does apply to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken has been to minimise regulatory burdens (as set out above).

11.3 The basis for the final decision on what action to take to assist small business, and indeed all fostering agencies, results from public consultation and subsequent amendments implemented, following advice from groups representing the interests of fostering agencies.

## **12. Monitoring & review**

12.1 Both local authority fostering services and fostering agencies are inspected by HMCI and agencies are regulated. HMCI is independent of the Department. The purpose of inspection is to assess the quality of fostering providers and of the foster care provided to children and young people. The inspection process is designed to test that fostering providers are complying with the relevant Regulations and with the National Minimum Standards that underpin these. Inspection information is used to assess each provider's performance.

12.2 HMCI publishes inspection reports of individual providers on its website. HMCI also publishes thematic reports which draw on findings aggregated from individual inspection reports. These reports offer an objective assessment of the performance of providers as a service designed to promote high quality foster care for children, so that they are effective in working with local authorities, so that looked after children are provided with the support required to achieve positive outcomes and reach their potential. Inspection data and feedback from HMCI to the Department helps inform the Department's monitoring and review of these Regulations and understand where there may be concerns or issues with the regulatory framework which mean it may need revision.

12.3 Local authorities have been asked to develop Children in Care Councils, so that looked after children and care leavers can be consulted on the development of services affecting their care. These Councils offer a mechanism so that young people can have regular contact with senior officers and lead council members of the authority responsible for their care, so that they are able to provide them with first-hand views about the quality of the services and the support that they receive. Feedback through Children

in Care Councils and other forums such as the Minister's regular meetings with looked after children and care leavers provides the Department with views direct from foster children about the operation of the regulatory framework.

### **13. Contact**

13.1 Rachel Taylor at the Department for Education (telephone: 0207 783 8255 or email: [Rachel.Taylor@education.gsi.gov.uk](mailto:Rachel.Taylor@education.gsi.gov.uk)) can answer any queries regarding the instrument.