

## EXPLANATORY MEMORANDUM TO

### THE CARE PLANNING AND FOSTERING (MISCELLANEOUS AMENDMENTS) (ENGLAND) REGULATIONS 2015

2015 No. 495

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 These Regulations amend the Care Planning, Placement and Case Review (England) Regulations 2010 (“Care Planning Regulations”) which make provision about care planning for children who are looked-after by a local authority. These amendments:

- require that carers responsible for looked-after children (foster carers, residential managers, or the person responsible for the child at their accommodation) are properly consulted and involved in the decision-making for children;
- establish long term foster care as a legally defined permanence option for looked-after children, require local authorities to adhere to a set of conditions when they are proposing long term foster care as the permanence plan for a child and allow greater flexibility in relation to social work support for such long term arrangements; and
- require local authorities to assess the needs of a looked-after child and their family before they cease to look-after the child and satisfy themselves that the proposed arrangements, including any support and services that will be provided to the child and family, will safeguard and promote the welfare of the child.

2.2 These Regulations amend the Fostering Services (England) Regulations 2011, which provide a regulatory framework for fostering service providers, and the Independent Review of Determinations (Adoption and Fostering) Regulations 2009, which provide the statutory framework for determinations about the approval of prospective or current foster carers and adoptive parents. These regulations make provisions for the Independent Review Mechanism and fostering panels to ask fostering service providers to complete a full assessment of a prospective foster carer if there is insufficient evidence presented in the brief report (first stage of the assessment) to determine that the applicant is unsuitable to foster. This mirrors existing provisions at the point of an adoption brief report.

2.3 These Regulations also make minor amendments to the Care Leavers (England) Regulations 2010. The Regulations make provision about the support to be provided to certain children and young people who are no longer looked after by the local authority.

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

3.1 None.

### **4. Legislative Context**

4.1 These Regulations are made under powers in sections 22C(11), 23ZA(1)(b), (3) and (4), 23E(1B), 23E(2), 25B(2)(a), 26(1) and (2), 31A(3) and 104(4) of, and paragraphs 12E, 12F and 19B(7) of Schedule 2 to the Children Act 1989(a).

#### **Involving carers in decision-making**

4.2 When a child is ‘looked after’ by a local authority (as defined in section 22(1) of the Children Act 1989) (“the Act”), section 22C of that Act sets out how the local authority looking after the child must accommodate them. The local authority must place the child in ‘the most appropriate placement available’ (section 22C(5)).

4.3 Every looked after child must have a care plan (Regulation 4, Care Planning Regulations) which includes a placement plan (Regulation 9, Care Planning Regulations). The placement plan sets out how a placement will meet the child’s needs and safeguard and promote the child’s welfare. Schedule 2 of the Regulations require that the delegation of authority for decision making about the child’s day to day care is set out in the placement plan.

4.4 The local authority has a duty to review to review a child’s case at a specified frequency to ensure that the child’s care plan, including the placement plan, continues to meet the child’s needs.

4.5 These Regulations insert a new provision (paragraph 15) into Schedule 7 of the Care Planning Regulations (“*Consideration to which the responsible authority must have regard when reviewing C’s case*”) which requires local authorities to consider the delegation of authority for everyday decision making at every review and ensure that this continues to meet the child’s needs and reflects the nature of the relationship between the child and carer. For example, in longer term arrangements the delegation of authority for decision making to the carer may be greater than in shorter term arrangements where the child is likely to return to the care of their parents.

4.6 The provisions on ‘Reviews of the Child’s Case’ are set out in Part 6 of the Care Planning Regulations. This part includes the provisions relating to the role of the Independent Reviewing Officer (IRO) and the required activities in preparation for and at the review.

4.7 These Regulations introduce a new requirement into Regulation 36 (within Part 6) of the Care Planning Regulations for the IRO to seek the views of the child's carer and take these into account as part of the review process.

### **Long term foster placements**

4.8 Where a child is a looked-after child, the local authority must place them in one of the types of placement set out in section 22C(6) of the Act, i.e. with a local authority foster parent (giving preference to 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) of the Act).

4.9 In preparing the child's care plan the local authority must record the long term plan for the child's upbringing (known as "the plan for permanence") (Regulation 5(a), of the Care Planning Regulations). In many circumstances children will return to the care of their parents or relatives, others will move to permanence arrangements such as adoption or special guardianship. However, some children are placed in foster care and remain looked after throughout their childhood.

4.10 These Regulations insert a new definition into regulation 2 (interpretation) to define a 'long term foster placement' and set out the requirements for such an arrangement. In making such an arrangement the local authority must ensure that the long term plan for the child is foster care, that the foster carer has agreed to act as the child's carer while the child is 'looked-after' and that the arrangement has been confirmed with the foster carer, the parent and the child. The definition also makes clear that the arrangement may be the result of a change in placement status where the child is already placed with the foster carers and those carers become the long term foster carers for the child.

4.11 Part 3 of the Care Planning Regulations sets out the general provisions for placing looked-after children. These include provisions for placement plans, the avoidance of placement disruptions, placement out of (the local authority) area, notifications and terminations of placements. Part 4 sets out the provisions for different types of placement.

4.12 These Regulations insert a new Regulation 22B into the Care Planning Regulations which makes specific provision for conditions that must be complied with before a child can be placed in a long term foster placement. The general requirements for placing a child in any foster placement are set out in regulation 22. New Regulation 22B provides for additional requirements for long term foster placements. The emphasis of the new regulation is on ensuring that the placement plan is in place, that the child, child's relatives and IRO have been consulted in the making of the placement, that the foster carer is clear about the arrangement and has made the necessary

long term commitment, and that the arrangement is the most appropriate way to safeguard and promote the child's welfare.

4.13 These Regulations also insert a requirement to record in the child's placement plan, the fact that a child has been placed in a long term foster placement by inserting a new subparagraph into paragraph 3 of schedule 2 to the Care Planning Regulations ("Matters to be dealt with in the placement plan").

4.14 As part of the local authority's duty to safeguard and promote the child's welfare, an officer of the authority must visit the child in their placement at a specified minimum frequency. For the most part these visits will be carried out by the child's social worker. In general, children must be visited within a week of the start of the placement and then at a frequency of not more than six weeks. Where the placement is intended to last until the child is 18yrs, the authority must visit the child at intervals of not more than three months.

4.15 These Regulations amend regulation 28 ("Frequency of visits") which set out the circumstances where the authority must adopt a more flexible approach to statutory visits for children who are settled in long term foster placements. The authority must reduce the minimum visiting frequency for these children to not more than six months where the child has been in the long term foster placement for at least a year (the point at which the placement is recorded in the child's placement plan – see 4.14) and the child agrees (subject to their age and understanding) to be visited less frequently.

4.16 Regulation 28(7)(a) already ensures that the child and/or carer can request additional visits at any time.

### **Children ceasing to be looked after (including those returning home)**

4.17 Many children will be looked after by the local authority as the result of a voluntary arrangement, under section 20 of the Children Act 1989, with the child's birth parents or person with parental responsibility. In these circumstances, the parent (or person with parental responsibility) retains full parental responsibility and may remove the child from the accommodation provided by the local authority at any time. The care planning and case review process is about bringing together children who are looked after, their families, the child's carers and professionals, in order to plan for the care of the child and to review that plan on a regular basis. The decision to cease to look after a child should, so far as is possible, be part of the care planning process.

4.18 A local authority cannot unilaterally decide to cease to look after a child who is the subject of a care order or interim care order. Such an order must be discharged by the court.

4.19 The arrangements that a local authority must make in ceasing to look after a child, who has been voluntarily accommodated and is not likely to be

an eligible child, are set out in regulation 39 of the Care Planning Regulations. The authority must set out the advice, assistance and support that they intend to provide after the child ceases to be looked after, in the child's care plan. An eligible child is a child who meets the requirements for access to leaving care services.

4.20 These Regulations replace the current regulation 39 and 39ZA to make provision for the arrangements that the local authority must make when they are considering ceasing to look after any looked after child.

4.21 New regulation 39 extends the local authority duties when they are considering ceasing to look after a child. These duties include assessing the suitability of where the child will live, how they will be cared for and what support they might need after they cease to be looked after. Where children are returning home, this assessment includes the support their parents might need if reunification is to be successful. The regulation also introduces a requirement for a nominated officer (defined in regulations as a senior member of the local authority, nominated by the Director of Children's Services(DCS)) to approve the decision (except in the case of a voluntarily accommodated 16 or 17 year old, where there is already a requirement for the DCS to approve such decisions). Before putting the arrangements in place the responsible authority and the nominated officer/DCS must be satisfied that the proposed arrangements will safeguard and promote the child's welfare.

4.22 The existing requirement in regulation 39 of the Care Planning Regulations to set out the details of what will be provided after the child ceases to be looked after in their care plan has been retained.

### **Approval to foster and the role of the Independent Review Mechanism (IRM)**

4.23 The process for assessing and approving foster parents is prescribed in the Fostering Services (England) Regulations 2011. The Care Planning, Placement and Case Review and Fostering Services (Miscellaneous Amendments) Regulations 2013 amended the approval process to streamline it, and to reflect changes made to the process for the assessment and approval of prospective adopters contained in the Adoption Agencies Regulations 2005.

4.24 In particular those amendments required 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 allowed 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 could then be terminated. They also allowed 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).

4.25 These Regulations amend the Fostering Services (England) Regulations 2011 by inserting a new paragraph in regulation 25 which requires that where a brief report (Part 1) has been prepared, that the fostering panel must either recommend that the person is not suitable to foster; or request that the fostering service provider prepare a full written report.

4.26 Similarly, the Independent Review of Determinations (Adoption and Fostering) Regulations 2009 are also amended. Paragraph 2 of regulation 13 is substituted to reflect that the IRM panel may recommend to the fostering service provider that it should prepare a written report (that would contain all the information required by the full report) if there is insufficient evidence presented in the brief report to enable them to determine that the applicant is unsuitable to foster.

### **The Care Leavers (England) Regulations 2010**

4.27 The Care Leavers (England) Regulations 2010 make provision about the support to be provided to certain children and young people who are no longer looked after by the local authority. They were amended in 2014 to take into account the status of unaccompanied asylum seeking children and victims of child trafficking. Regulations 14 and 15 of these Regulations make minor amendments to correct a couple of typographical errors.

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

5.1 This instrument applies 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**

### **Involving foster and residential carers in decision-making**

7.1 Regulation 6 of these regulations requires Independent Reviewing Officers to seek the views of the appropriate person, that is the child's carer, as part of the child's review. Until now, it has not been explicit in regulations that carers should be specifically consulted. Although this is clear in Statutory Guidance, making it a must do in Regulations will ensure that the day to day carer for the child will have a voice in the review process.

7.2 Schedule 7 of the Care Planning Regulations sets out the considerations to which the responsible authority must have regard when reviewing a looked-after child's case. Regulation 10 of these regulations requires them to consider whether the levels of day-to-day decision making delegated to the foster parent remain appropriate and in the child's best interests. The purpose is to ensure that the changing relationship between child

and carer is reflected in day-to-day decision making responsibilities, strengthening relationships.

### **Long term foster placements**

7.3 Long term foster care is the only permanence option not clearly defined in law. At 31 March 2012, 6,290 children – 17% of all fostered children - between 5 and 18yrs had been in the same foster placement for more than five years. Research shows that these long term foster care arrangements are as much a result of placement 'drift' as the result of a proactive, robust assessment of the child's existing and long term needs. Consideration of the foster carers ability to meet the child's needs now and in the future and planning for the support and services the child and foster carer may need to make the long term arrangement a success are therefore not always part of the process.

7.4 Ensuring that long term foster care arrangements is a legally defined placement will provide stability, security and status for these arrangements. Setting out the requirements that the local authorities must adhere to will prevent placement drift and ensure that long term arrangements are made in the best interests of the child.

7.5 Local authorities have clear duties to safeguard and promote the welfare of looked after children. This includes visiting children in their placements. However, these visits can sometimes be intrusive and unnecessary where a child is settled in a long term placement and wants to experience family life without unnecessary interruptions. Ensuring that long term foster care arrangements, and the associated conditions for making such a placement, are clearly defined in regulations enables a more flexible approach to statutory visits for children settled in long term foster placements, where this is appropriate.

### **Children ceasing to be looked after**

7.6 For many children permanence is achieved through a return home to parents or other relatives. However, research shows that almost half (47%) of children who returned home re-entered care. In total two-thirds (64%) of children who returned home experienced at least one failed return and a third had oscillated in and out of care twice or more. Many returns home were characterised by a lack of support.

7.7 A sharper focus on safe and successful reunification is required within the statutory framework, in terms of the way in which local authorities plan for and support children ceasing to be looked after. Therefore these amendments focus on assessment before a decision is made about ceasing to look after a child and scrutiny of this decision by a senior officer within the authority to ensure that this decision and the change in accommodation and status for the child (i.e. ceasing to be looked after) will safeguard and promote the child's welfare.

7.8 There is a degree of overlap between the new requirements for children ceasing to be looked after and the existing regulations for eligible children. The new requirements apply to every looked-after child that the authority is considering ceasing to look after. The existing Regulations require that an assessment is undertaken for eligible children; but that assessment does not go as far as what will now be required for all children ceasing to be looked after, where the assessment includes a focus on support that parents, as well as the child, may require. Around 40% (1,480 of 3,430 in 2013-14) of eligible children return home when they cease to be looked after.

7.9 These new provisions only apply when the local authority is themselves considering ceasing to look after a child. It should be noted that where a parent decides to remove a child who is voluntarily accommodated under section 20 of the Children Act 1989, these new provisions won't apply.

### **Approval to foster and the role of the Independent Review Mechanism (IRM)**

7.10 The Fostering Services (England) Regulations 2011 were amended in 2013 to introduce a brief report stage into the process of assessing a prospective foster carer's suitability to foster. Provision was not made for either a fostering services panel or the Independent Review Mechanism (IRM) to be able to request fostering services to complete a full assessment of a prospective foster carer if they are not persuaded that there is sufficient evidence presented in the brief report to enable them to determine that the applicant is unsuitable to foster. The Independent Review Mechanism (IRM) has the power to conduct an independent review of fostering suitability applications from potential and current foster carers whose fostering service provider has decided not to approve them as a foster carer. Regulation 11 provides that the IRM panel may recommend to the fostering service provider that it should prepare a written report that contains all the information required by a full report. Regulations 12 and 13 provide that where a brief report has been prepared, the fostering service panel must either recommend that the person is not suitable to be a foster parent or request that the fostering service provider prepare a full written report. This will bring arrangements for foster carers in line with those in place for prospective adopters.

7.11 As these regulations only make minor amendments to the Care Leavers (England) Regulations 2010, the Independent Review of Determination (Adoption and Fostering) Regulations 2009 and the Fostering Services (England) Regulations 2010, consolidation is not considered necessary at this time.

## **8. Consultation outcome**

8.1 Department for Education officials have worked closely with an Expert Group since 2011 to develop and refine policy proposals to improve permanence for looked-after children. The Expert Group includes representatives from local authorities, independent fostering services, fostering and children's charities, academics and foster carers. In addition, we met with



representatives from the Association of Directors of Children's Services (ADCS) to discuss the proposals in detail.

8.2 The 'Improving Permanence for Looked-After Children' consultation, launched on the 30 September 2013 and closed on 29 November 2013, set out proposals to strengthen the team around the looked-after child, improve the status, security and stability of long term foster care and improve practice when looked after children return home to their families. There was significant support for the majority of the consultation proposals but concerns were raised that the original focus on voluntarily accommodated children returning home from care would miss out those returning home following the discharge of a full or interim care order and eligible children. We agreed that it was right to include all children who cease to be looked-after in a planned way and these Regulations ensure that whenever the local authority is considering ceasing to look after a child that they follow the process set out.

8.3 The government response to the consultation can be found here: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/365091/Looked-after\\_children\\_improving\\_permanence\\_consultation\\_response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/365091/Looked-after_children_improving_permanence_consultation_response.pdf)

8.4 The government intends to take forward many of the proposals from the original consultation, in particular those concerned with strengthening the team around the child and long-term foster care. We do not propose to take forward those that prescribe timescales or could be seen to be setting up a parallel system to existing safeguarding arrangements. Instead we intend to meet our continued commitment to improving care for looked-after children by making even clearer the requirements and expectations within the current framework, and to pursue a range of approaches to improve practice.

## **9. Guidance**

9.1 Statutory guidance, developed in consultation with the Improving Permanence for Looked-after Children Expert Group will be published in advance of the Regulations coming into force.

## **10. Impact**

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector includes a number of requirements to engage relevant parties in discussions about a child's care, carry out robust assessments of a child's needs and any support or services that they need and to set out decisions in the child's care plan. These requirements are not considered new burdens for local authorities as they should already be undertaking these activities in discharging their care planning duties.

10.3 An Impact Assessment was undertaken for the changes to the assessment and approval process for foster carers in 2013 (EM 2013 No. 984).

The impact on businesses, charities or voluntary bodies of the changes is positive – the changes make the process more efficient and flexible.

10.4 An Impact Assessment for the other provisions outlined here has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business except in the case of the changes in relation to fostering approval and the role of the Independent Review Mechanism outlined in EM 2013 No.984.

## **12. Monitoring & review**

12.1 Local Authority children's social care services are inspected every three years by HM Chief Inspector for Standards in Education, Children's Services and Skills ("HMCI"). HMCI is independent of the Department for Education. These inspections include local authority practice in complying with the Care Planning, Placement and Case Review (England) Regulations 2010, the Fostering Services (England) Regulations 2011. HMCI publishes inspection reports of individual local authorities on its website. The Department for Education will monitor these inspection reports and conduct an internal review after 12 months, seeking feedback directly from members of the Improving Permanence for Looked-after Children Expert Group to assess the impact of these regulations and amend them accordingly.

## **13. Contact**

Jamie Roome at the Department for Education Tel: 0207 783 8423 or email: [jamie.roome@education.gsi.gov.uk](mailto:jamie.roome@education.gsi.gov.uk) can answer any queries regarding the instrument.