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STATUTORY INSTRUMENTS

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**2009 No. 394**

**CHILDREN AND YOUNG PERSONS, ENGLAND  
SOCIAL CARE, ENGLAND**

**The Fostering Services (Amendment) Regulations 2009**

*Made* - - - - 27th February 2009  
*Laid before Parliament* 6th March 2009  
*Coming into force* - - 1st April 2009

The Secretary of State for Children, Schools and Families makes the following Regulations in exercise of the powers conferred by sections 23(2) and (9) and 104(4) of, and paragraph 12A(1) (b) of Schedule 2 to, the Children Act 1989(1) and sections 22(1) and 118(5) to (7) of the Care Standards Act 2000(2).

**Citation, commencement, application and interpretation**

1.—(1) These Regulations may be cited as the Fostering Services (Amendment) Regulations 2009 and come into force on 1st April 2009.

(2) These Regulations apply in relation to England only.

(3) In these Regulations, “the FSR” means the Fostering Services Regulations 2002(3).

**Amendment of regulation 24 of the FSR – establishment of fostering panel**

2.—(1) Regulation 24 of the FSR is amended as follows.

(2) In paragraph (3)(b)(i), after “that individual” insert “or an employee of the agency who is concerned in the management of the agency or, where that is not reasonably practicable, another person (who need not be an employee of the agency) who has experience in the provision of a fostering service”.

(3) For paragraph (6), substitute—

“(6) Subject to paragraphs (6A) and (6B), a fostering panel member—

(a) shall hold office for a term not exceeding three years, and

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(1) 1989 c. 41. Section 8(3) of, and paragraph 2 of Schedule 2 to, the Children and Young Persons Act 2008 (2008 c. 23) provide that Schedule 2 to the Children Act 1989 has effect as if paragraph 12A were inserted after paragraph 12.  
(2) 2000 c. 14.  
(3) S.I. 2002/57 as amended by S.I. 2002/865, S.I. 2002/2469, S.I. 2006/1738, S.I. 2007/603 and S.I. 2008/640.

(b) may not hold office as a member of the fostering panel of the same fostering service provider for more than three terms without an intervening period.”.

(4) After paragraph (6A), insert—

“(6B) Where the term of office of a panel member has been extended by a further period under paragraph (6A) and the panel member is appointed for a third term of office without an intervening period, that term of office may not exceed a period of three years less a period equal to the further period by which the second term was extended.

(6C) For the purposes of paragraphs (6) and (6B), an “intervening period” means an unbroken period of at least three years during all of which time the individual in question was not a member of the fostering panel.”.

### **Amendment of regulation 26 of the FSR – functions of fostering panel**

3. In regulation 26 of the FSR, insert after paragraph (1)—

“(1A) 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 27, 28 or 29 as the case may be;
- (b) may request the fostering service provider to obtain any other relevant information which the fostering panel considers necessary or to provide such other assistance as the fostering panel may request; and
- (c) may obtain such legal advice or medical advice it considers necessary in relation to the case.

(1B) 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.”.

### **Substitution of regulations 28 and 29 of the FSR – approval of foster parents**

4. For regulations 28 and 29 of the FSR, substitute—

#### **“Approval of foster parents**

**28.**—(1) A fostering service provider shall not approve a person who has been approved as a foster parent by another fostering service provider and whose approval has not been terminated.

(2) A fostering service provider shall not approve a person as a foster parent unless—

- (a) it has completed its assessment of the person’s suitability; and
- (b) its fostering panel has considered the application.

(3) A fostering service provider shall, in deciding whether to approve a person as a foster parent and as to the terms of any approval, take into account the recommendation of its fostering panel.

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

(5) If a fostering service provider decides to approve a person as a foster parent it shall—

- (a) give the person notice in writing specifying the terms of the approval, for example, whether it is in respect of a particular named child or children, or number and

age range of children, or of placements of any particular kind, or in any particular circumstances; and

(b) enter into a written agreement with the person covering the matters specified in Schedule 5 (in these Regulations referred to as the “foster care agreement”).

(6) If a fostering service provider considers that a person is not suitable to act as a foster parent it shall, subject to paragraph (7)—

(a) give the person written notice that it proposes not to approve the person as suitable to act as a foster parent (a “determination”), together with its reasons and a copy of the fostering panel’s recommendation; and

(b) advise the person that within 28 days of the date of the notice the person may—

(i) submit any written representations that the person 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 determination.

(7) Paragraph (6)(b)(ii) does not apply in a case where the fostering service provider considers in accordance with regulation 27(6) that the person is not suitable to act as a foster parent.

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

(a) the fostering service provider does not receive any representations, and

(b) the person does not apply to the Secretary of State for a review by an independent review panel of the determination,

the fostering service provider may proceed to make its decision.

(9) If within the period referred to in paragraph (6)(b) the fostering service provider receives any written representations, it shall—

(a) refer the case to the fostering panel for further consideration; and

(b) make its decision, taking into account any fresh recommendation made by the fostering panel.

(10) If within the period referred to in paragraph (6)(b) the person applies to the Secretary of State for a review by an independent review panel of the determination, the fostering service provider shall make its 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 shall notify the prospective foster parent in writing and—

(a) if the decision is to approve the person as a foster parent, comply with paragraph (5) in relation to the person; or

(b) if the decision is not to approve the person, provide written reasons for its decision.

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

### **Reviews and terminations of approval**

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

- (2) A review shall take place not more than a year after approval, and thereafter whenever the fostering service provider considers it necessary, but at intervals of not more than a year.
- (3) When undertaking a review, the fostering service provider shall—
- (a) make such enquiries and obtain such information as it considers necessary in order to review whether the foster parent continues to be suitable to act as 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) (subject to the child’s age and understanding) any child placed with the foster parent; and
    - (iii) any responsible 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 shall prepare a written report, setting out whether—
- (a) the foster parent continues to be suitable to act as 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 shall on the occasion of the first review under this regulation, and may on any subsequent review, refer its report to the fostering panel for consideration.
- (6) If the fostering service provider decides, 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, it shall give written notice to the foster parent of its decision.
- (7) If, taking into account any recommendation made by the fostering panel, the fostering service provider is no longer satisfied that the foster parent and the foster parent’s household continue to be suitable, or that the terms of the approval are appropriate, it shall (subject to paragraph (8))—
- (a) give written notice to the foster parent that it proposes to terminate, or (as the case may be) revise the terms of, the foster parent’s approval (a “determination”), together with its 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 notice 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 determination.
- (8) Paragraph (7)(b)(ii) does not apply in a case where, in accordance with regulation 27(6), the fostering service provider is no longer satisfied that the foster parent and 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 does 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 determination,

the fostering service provider may proceed to make its decision.

(10) If within the period referred to in paragraph (7)(b) the fostering service provider receives any written representations, it shall—

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

(11) If the foster parent applies within the period referred to in paragraph (7)(b) to the Secretary of State for a review by an independent review panel of the determination, the fostering service provider shall make its decision taking into account any recommendation made by its 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 shall 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 act as a foster parent, whereupon 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 shall be sent to the responsible authority for any child placed with the foster parent (unless the responsible authority is also the fostering service provider), and the area authority.

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

#### **Amendment of the FSR – duty to send information to the Secretary of State**

5. After regulation 29 of the FSR, insert—

##### **“Information to be sent to the independent review panel**

**29A.—**(1) This regulation applies where the fostering service provider receives notification from the Secretary of State that a person has applied for a review by an independent review panel of a determination.

(2) The fostering service provider must, within 10 working days of receipt of the notification referred to in paragraph (1), send to the Secretary of State the documents and information specified in paragraph (3).

(3) The following documents and information are specified for the purposes of paragraph (2)—

- (a) a copy of any report prepared, and of any other documents referred to the fostering panel, for the purposes of regulation 27, 28 or 29 as the case may be;
- (b) any relevant information in relation to the person 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

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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- (c) a copy of the notice and of any other documents sent in accordance with regulation 28(6)(a) or 29(7)(a).”.

27th February 2009

*Delyth Morgan*  
Parliamentary Under Secretary of State  
Department for Children, Schools and Families

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made under the Children Act 1989 and the Care Standards Act 2000, and make amendments to the Fostering Services Regulations 2002 (S.I. 2002/57) (“the FSR”). The Regulations apply in relation to England only.

Regulation 2 makes provision in connection with the constitution of fostering panels. Firstly, it provides for flexibility in the appointment of a panel member under regulation 24(3)(b)(i) of the FSR where a person who is registered under Part 2 of the Care Standards Act 2000 as the person carrying on a fostering agency is an individual. Secondly, it amends the limits of tenure of panel members, allowing each panel member to serve a maximum of nine years, or three terms of up to three years each; where there has been an interval of at least three years between terms, terms served prior to the interval are disregarded.

Regulation 3 makes provision in connection with the functions of fostering panels established under regulation 24 of the FSR and imposes a duty on the fostering service provider to supply information and assistance requested by panels, where reasonably practicable.

Regulation 4 amends and restates regulations 28 and 29 of the FSR. Regulations 28 and 29 make provision in relation to the approval of foster parents, and reviews of approval, terminations of approval and revisions to terms of approval. The amendments made by regulation 4 include provision in relation to the making of an application for the independent review of a determination made by a fostering service provider by an independent review panel constituted by the Secretary of State. The Independent Review of Determinations (Adoption and Fostering) Regulations 2009 (S.I. 2009/395) prescribe as a “determination” a determination not to approve a person as suitable to be a foster parent, or to terminate or to revise the terms of a foster parent’s approval. Those Regulations also establish the procedure for review of determinations by an independent review panel constituted by the Secretary of State.

Regulation 5 specifies the information that the fostering service provider must send to the independent review panel where a person applies for a review of a determination by a panel constituted by the Secretary of State.