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STATUTORY INSTRUMENTS

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**2011 No. 581**

**The Fostering Services (England) Regulations 2011**

**PART 5**

**Approval of Foster Parents**

**Assessment of prospective foster parents**

**26.**—<sup>F1</sup>(1) Where a person (“X”) applies to become a foster parent and the fostering service provider decide to assess X’s suitability to become a foster parent, any such assessment must be carried out in accordance with this regulation.

(1A) Subject to paragraph (1B), the fostering service provider—

- (a) must, as soon as reasonably practicable, obtain the information specified in Part 1 of Schedule 3 relating to X and other members of X’s household and family,
- (b) where X has been a foster parent within the preceding 12 months and was approved as such by another fostering service provider, must request a written reference from that other fostering service provider,
- (c) except in a case where (b) applies and the other fostering service provider provides the reference requested, must interview at least two persons nominated by X to provide personal references for X, and prepare written reports of the interviews,
- (d) except where the fostering service provider is a local authority and X lives in the area of that authority, must consult, and take into account the views of, the local authority in whose area X lives,
- (e) may, where X was approved as a foster parent by another fostering service provider and consents, request access to the relevant records compiled by that other fostering service provider in relation to X, and
- (f) may, where X has been approved as a prospective adopter by an adoption agency and consents, request access to the relevant records compiled by that adoption agency in relation to X.

(1B) Where—

- (a) having regard to any information obtained under paragraph (1A), the fostering service provider decide that X is not suitable to become a foster parent, or
- (b) X is not suitable to become a foster parent by virtue of paragraphs (5) to (7), and paragraph (8) does not apply,

the fostering service provider must notify X in writing that X is not suitable to be a foster parent giving their reasons for that decision.

(1C) The notification in paragraph (1B)—

- (a) may be given notwithstanding that the fostering service provider has not obtained all the information set out in paragraph (1A), and

- (b) may not be given more than 10 working days after the fostering service provider has obtained all the information set out in paragraph (1A).

(2) [<sup>F2</sup>Where the fostering service provider have obtained all the information set out in paragraph (1A) and have not given the notification in paragraph (1B) within 10 working days of doing so, the fostering service provider must, subject to paragraph (3)—]

[<sup>F2</sup>Subject to paragraphs (2A) and (3), where the fostering service provider have obtained all the information set out in paragraph (1A) and have not given the notification in paragraph (1B), the fostering service provider must—]

- (a) obtain the information specified in Part 2 of Schedule 3 relating to X and other members of X's household and any other information they consider relevant,
- (b) consider whether X is suitable to be a foster parent and whether X's household is suitable for any child,
- (c) prepare a written report on X which includes the following matters—
  - (i) the information required by Schedule 3 and any other information the fostering service provider consider relevant,
  - (ii) the fostering service provider's assessment of X's suitability to be a foster parent, and
  - (iii) the fostering service provider's proposals about any terms of approval, and
- (d) notify X that the case is to be referred to the fostering panel, and give X a copy of the report prepared under subparagraph (c) inviting X to send any observations in writing to the fostering service provider within 10 working days beginning with the date on which the notification is sent.

[<sup>F3</sup>(2A) The fostering service provider may comply with paragraph (2)(a) even if the information required by paragraph 2 of Schedule 3 has yet to be obtained.

(2B) A fostering service provider must keep a record of any decision made in accordance with paragraph (2A).]

(3) Where, having regard to any information obtained under paragraph 2(a), the fostering service provider decide that X is unlikely to be considered suitable to become a foster parent, it may prepare a written report under paragraph (2)(c) notwithstanding that the fostering service provider may not have obtained all the information about X which is required by paragraph (2)(c).

(4) At the end of the 10 working days referred to in paragraph (2)(d) (or when X's observations are received, whichever is sooner), the fostering service provider must send—

- (a) the report prepared under paragraph (2)(c),
- (b) X's observations on that report, if any, and
- (c) any other relevant information obtained by the fostering services provider,

to the fostering panel.]

(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 <sup>M1</sup> in relation to goods prohibited to be imported under section 42 of the Customs Consolidation

Act 1876 <sup>M2</sup> (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 <sup>M3</sup> except that it does not include an offence contrary to section 9 of the Sexual Offences Act 2003 <sup>M4</sup> (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 <sup>M5</sup>, 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.

#### Textual Amendments

- F1** Reg. 26(1)-(4) substituted (1.7.2013) by [The Care Planning, Placement and Case Review and Fostering Services \(Miscellaneous Amendments\) Regulations 2013 \(S.I. 2013/984\)](#), regs. 1, 7
- F2** Words in reg. 26(2) substituted (temp.) (25.9.2020 to 31.3.2021) by virtue of [The Adoption and Children \(Coronavirus\) \(Amendment\) \(No.2\) Regulations 2020 \(S.I. 2020/909\)](#), regs. 1(3), **5(2)(a)** (with reg. 8)
- F3** Reg. 26(2A)(2B) inserted (temp.) (25.9.2020 to 31.3.2021) by virtue of [The Adoption and Children \(Coronavirus\) \(Amendment\) \(No.2\) Regulations 2020 \(S.I. 2020/909\)](#), regs. 1(3), **5(2)(b)** (with reg. 8)

#### Marginal Citations

- M1** 1979 c. 2.
- M2** 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.
- M3** 2000 c. 43. Section 26 is repealed by Schedule 10 of the 2006 Act on a date to be appointed.
- M4** 2003 c. 42.
- M5** 1993 c. 11.

**Changes to legislation:**

There are currently no known outstanding effects for the The Fostering Services (England) Regulations 2011, Section 26.