



Department  
for Education

# **Early permanence placements and approval of prospective adopters as foster carers**

**Statutory guidance for local authorities  
and adoption agencies**

**July 2014**

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# Summary

## About this guidance

This is statutory guidance from the Department for Education and is an update to *The Children Act 1989 Guidance and Regulations Volume 2: Care Planning, Placement and Case Review*. The guidance incorporates the May 2013 *Temporary approval of prospective adopters as foster carers* guidance and supports the introduction of:

- a new duty under section 22C(9A) of the Children Act 1989 (the Act) on local authorities to consider placing a looked after child, for whom the local authority is considering adoption, with foster carers who are also approved prospective adopters following consideration in accordance with section 22C(9B)(c). The carers may be dually approved at the outset, or they might be approved prospective adopters who have been temporarily approved as foster carers for a named child under regulation 25A of the Care Planning, Placement and Case Review (England) Regulations 2010 (the 2010 Regulations),
- new regulation 22A of the 2010 Regulations providing for a decision to place a child in accordance with section 22C(9B)(c) to be approved by a nominated officer of the responsible authority, and the duties he or she must comply with before approving the placement decision, and
- a widening of regulation 14 of the Adoption Agencies Regulations 2005 (*requirement to provide counselling and information for, and ascertain wishes and feelings of, the parent or guardian of the child and others*) requiring the adoption agency to explain to the birth parents (which includes fathers without parental responsibility for the child) or guardian the legal implications of their child being placed following consideration in accordance with section 22C(9B)(c) of the Act.

It is possible that a section 22C(9B)(c) placement may not lead to adoption, for example because the child's plan changes where rehabilitation with the birth family is successful, because suitable family or friends come forward or because the court does not make a placement order. This may mean that the child returns home or is moved to another permanence arrangement. But, for the vast majority of children who are in a section 22C(9B)(c) placement, progression towards adoption will be the anticipated outcome. The placement will only become an adoptive placement where the Agency Decision Maker (ADM) has decided that the child should be placed for adoption and either a placement order has been made, or parental consent to the child's adoption is given.

This statutory guidance applies in England only and is issued under section 7 of the Local Authority Social Services Act 1970. This requires local authorities, in exercising their social services functions, to act under the general guidance of the Secretary of State. Local authorities must comply with this guidance unless there are exceptional reasons that justify a departure.

## Practice guidance

Coram and BAAF, funded by the Department for Education, have produced *Fostering for Adoption Practice Guidance*. This provides advice on all aspects of placements in accordance with section 22C(9B)(c) of the Act, and particularly on matching. This requires careful consideration because it must address the carers' capacity to meet the child's needs both in the short-term and potentially for their lifetime.

## Expiry or review date

This guidance comes into force on 25 July 2014 and will next be reviewed in September 2016.

The May 2013 *Temporary approval of prospective adopters as foster carers* guidance is cancelled.

## What legislation does this guidance refer to?

- The Children Act 1989 (as amended by the Children and Families Act 2014).
- The Care Planning, Placement and Case Review (England) Regulations 2010 (as amended by the Adoption and Care Planning (Miscellaneous Amendments) Regulations 2014).
- The Adoption Agencies Regulations 2005 (as amended by the Adoption and Care Planning (Miscellaneous Amendments) Regulations 2014).

## Who is this guidance for?

This guidance is for:

- Local authorities
- Adoption agencies
- Directors of Children's Services
- Nominated officers
- Social workers
- Officers who are responsible for carrying out the assessment and approval of foster carers who are already approved prospective adopters.

## Main points

- The duty to seek to place a child with a relative, friend or other person connected with the child and who is also a local authority foster parent (family and friends) before considering adoption,
- examples of when a local authority may be “considering adoption”,
- appointing a nominated officer to approve the decision to place a child in accordance with section 22C(9B)(c) of the Act, and
- additional duties and considerations where a child is accommodated under section 20 of the Act.

# Placement of children with foster carers who are also approved prospective adopters

## Introduction

1. There may be cases where a local authority identifies that, based on the evidence available and on its assessment of the case, the long term permanence plan for a named child is likely to be adoption. The local authority is likely still to be considering other outcomes for the child, and may still be attempting rehabilitation with family, although this will be thought highly unlikely to succeed, and adoption is the most likely outcome. The local authority will already have considered wider family and friends as potential carers for the child and concluded that they are unlikely to be able to care for the child. It is possible that suitable family members may be identified or come forward after the child has been placed, and the authority will need to consider them should that occur. This is because the local authority has a continuing duty to place the child in the most appropriate placement for that child (see section 22C of the Act).

2. In some cases the ADM may have decided that the child's plan should be adoption, but the agency has not yet obtained a placement order or have parental consent to place the child for adoption.

3. A placement made following consideration under section 22C(9B)(c) of the Act (a section 22C(9B)(c) placement) with carers who are both approved prospective adopters and approved foster carers is a fostering placement under the Act and one which may lead to adoption by those foster carers. The advantage of this type of placement is that the child will be placed with foster carers who, subject to a placement order being made, or parental consent, are expected to go on to become the child's adoptive family. Delay in finding a permanent family for young children who have already experienced neglect early on in their lives may have a profoundly damaging effect on their development. This type of placement has potential to reduce this delay and the damage caused significantly.

4. The carers might be dually approved at the outset or they might be approved prospective adopters who have been temporarily approved as foster carers for a named child under regulation 25A of the 2010 Regulations.

5. It is possible that a section 22C(9B)(c) placement may not lead to adoption, for example because the child's plan changes where rehabilitation with the birth family is successful, because suitable family or friends come forward or because the court does not agree to make a placement order. This may mean that the child returns home or is moved to another permanence arrangement. But, for the vast majority of children who are in a section 22C(9B)(c) placement, progression towards adoption will be the anticipated outcome.

6. The child therefore benefits from an early placement with their eventual permanent carers. Local authorities will need to ensure that people who are willing to care for a child in this way are fully aware that the placement may not lead to adoption, and that they have been given appropriate information and training so that they understand their role and legal responsibilities as foster carers and ongoing support once the placement has been made.

## Family and friends

7. Before a local authority can consider adoption for a child, they must have considered the likelihood of the child being able to return to his or her birth parents, and where that is thought unlikely, have considered, and given preference to family and friends (provided they can safeguard the child and meet his or her welfare needs). Only then will the local authority consider alternative placements for the child, and the care plan must reflect all realistic permanence options for that child.

8. It is important that wider family members are identified and involved as early as possible in the planning for the child, as they can play a key role in supporting the child and helping the parents to address identified problems. The use of Family Group Conferences is helpful to identify wider family members at an early stage in the care planning for the child. See the statutory guidance *Court orders and pre-proceedings* and *Family and Friends Care* for further details.

9. The duties set out in section 22C(7) to (9) of the Act do not apply where the local authority is considering a section 22C(9B)(c) placement. These duties are to give preference to a placement with family and friends carers and ensure, so far as reasonably possible, that the placement allows the child to live near their home, does not disrupt their education or training, allows them to live with their sibling (if that is in the best interests of each sibling) if the sibling is accommodated by the same local authority, and, the placement must be in the local authority's area. If the duty to give preference to family and friends was not dis-applied, it would mean that a local authority would still be required to give preference to them when considering a section 22C(9B)(c) placement, even though those family and friends had been considered and discounted. Given that family and friends will already have been ruled out by the local authority it is very unlikely that any of them would become the child's permanent carers. It is also likely that most appropriate dually approved carers would not live locally to the child's home.

10. If a family or friend carer is identified after the child has been placed, the local authority still has a duty to assess their suitability to care for the child, and remains under the continuing duty (section 22C(5) of the Act) to place the child in the most appropriate placement available. So if that relative or friend can offer the most appropriate placement, the local authority must move the child.

## Duty of a local authority under section 22C(9B) of the Act

11. It is already possible under the Act to place a looked after child with foster carers who are also approved prospective adopters. This is often done under a practice known as “concurrent planning”. Section 22C(9B) imposes a duty on a local authority to consider placing a looked after child, (which may include children who are accommodated under section 20 of the Act, but see paras 14-18 below) and for whom the local authority is considering adoption, with foster carers who are also approved prospective adopters. The new duty applies to cases either:

- where a local authority is considering adoption as an option for a looked after child or
- where the ADM has decided that the child should be placed for adoption, but where a placement order or parental consent is awaited.

## Considering adoption

12. Although “considering adoption” is not defined it is used in the Adoption Agencies Regulations 2005 and triggers the requirements set out in those Regulations. At that point, the local authority must also consider whether a section 22C(9B)(c) placement is appropriate for the child. Examples of when a local authority may be considering adoption include:

- where the local authority is trying to rehabilitate the child with the birth parents, there are no suitable family or friends carers and adoption is the best option for the child if rehabilitation does not succeed. This scenario is often known as concurrent planning,
- where the local authority has decided at the permanence planning stage that adoption should be the plan for the child. The permanence planning stage is normally by the second statutory review, which is held no later than four months after the child enters care, but can be much earlier. The local authority must be able to demonstrate to the ADM and the court why the child cannot return home, why the child has not been placed with family or friends, why no other permanence plan is appropriate for the child and why adoption is the right plan for the child,
- in cases where the birth parents have indicated that they are likely to consent to the child being placed for adoption, but have not yet consented,
- a section 22C(9B)(c) placement can also be made after the ADM has made the decision that the child should be placed for adoption, but does not yet have a placement order to place the child for adoption.

Examples of where a local authority will **not** be considering adoption include:

- the child is likely to return home,



- they are aware that there are family or friends who can care for the child;
- a permanence placement other than adoption is more appropriate for the child.

## **Appointing a nominated officer: decision making**

13. The Director of Children’s Services must appoint a nominated officer for the purposes of regulation 22A of the 2010 Regulations. It is for the DCS to decide who is an appropriate person to be the nominated officer, but it is expected that that person will be a social worker with a good understanding of care planning, including adoption and fostering. This person could be the adoption ADM.

## **Considerations and safeguards**

14. Placing children with foster carers who could become their adoptive parents offers many benefits to the child; it is the adults taking the risk that the placement will not be permanent. But it will not be appropriate for all children for whom the local authority is considering adoption. Nor will it be appropriate for all adopters, many of whom will not be able to manage the potential return of the child to birth parents or other family or friend carers. Local authorities must consider the potential implications for each child, and have considered all the permanence options which are realistically possible. Children who are voluntarily accommodated under section 20 of the Act may be placed in a section 22C(9B)(c) placement but such placements are likely to be unusual.

## **Children who are voluntarily accommodated**

15. The local authority must obtain the agreement of birth parents to the care plan (regulation 4 of 2010 Regulations) wherever this is reasonably practicable. If the birth parents do not agree to a section 22C(9B)(c) placement, the local authority should review the care plan. It should consider commencing care proceedings where the case meets the threshold for obtaining a care order and adoption remains the plan. Throughout the process, the local authority should continue to work with the wider family and friends to see if they are able and willing to care for the child.

16. The local authority should not consider a section 22C(9B)(c) placement where there is a reasonable likelihood that the child will be able to return to his or her birth parents or to family or friends.

## **Adoption counselling for birth parents**

17. Once the local authority is considering a section 22C(9B)(c) placement, it must also provide support to the birth parents. Regulation 14(b)(iv) of the Adoption Agencies Regulations 2005 require the child’s adoption agency (which will be the child’s local authority) to explain to the birth parent (which includes fathers without parental

responsibility for the child), guardians and others, the legal implications of a section 22C(9B)(c) placement.

## **Approving the decision**

18. The nominated officer must approve the decision to place the child in a section 22C(9B)(c) placement before the placement may take effect. Before approving the decision, the nominated officer must be sure that the placement is the most appropriate one for the child; ensure that the child's wishes and feelings have been considered in the decision making process and that the Independent Reviewing Officer has been informed (see regulation 9(1)(b) of the 2010 Regulations). The nominated officer must also ensure that the child's parents (including fathers without parental responsibility) or guardian (if their whereabouts is known) are notified about the proposed placement. This notification should be in writing and as soon as the nominated officer is asked to approve the placement decision. Where the child is voluntarily accommodated under section 20 of the Act, the notification should remind the birth parents of their right to remove the child from the local authority's care and should provide advice on access to legal advice and appropriate advisory bodies. The local authority may also consider commencing care proceedings (see paragraph 15). The local authority may also wish to notify family and friends who may then decide to come forward as a potential carer for the child. In such circumstances, the local authority must assess their suitability.

## **Finding a carer and duties of the adoption agency**

19. When the local authority is considering making a section 22C(9B)(c) placement, the adoption agency should identify a prospective adopter who can meet the needs of the child. The agency will need to ensure the approved prospective adopter is approved as a foster carer either under the full process or under regulation 25A of the 2010 Regulations for the named child, before the child is placed with them. The agency must write to the prospective adopter notifying him or her of the decision to place the child with him or her. The agency must explain the decision to the child, subject to his or her age and understanding.

## **Fostering allowances and adoption pay and leave**

20. Section 22C(9B)(c) placements are foster placements: the carers must be approved foster carers as well as approved prospective adopters before the child can be placed with them. The carers are entitled to the fostering allowances that the fostering provider would normally pay. When the local authority receive a placement order or parental consent and the ADM has approved the adoptive placement, the section 22C(9B)(c) placement will become an adoptive placement. At that point, the carers will become eligible for adoption pay and leave, and the fostering allowances cease.

21. The Government is currently reforming the system of family related leave more widely to reflect better the needs of our modern society, and changes to the rules around adoption are an important part of that.

22. From April 2015, a wider group of people will be able to access statutory adoption leave and pay:

- adoption leave is to become a day 1 right – available to primary employed adopters (or one of the adopters in a joint adoption) regardless of length of employment with the employer,
- adoption pay will be enhanced to 90% of salary for the first six weeks, bringing it into line with statutory maternity pay,
- adopters to be entitled to time off to attend adoption appointments after being matched with a child. For a primary adopter, this can be up to five half days paid at normal salary. For the other adopter in a joint adoption this can be up to two unpaid half days, and
- prospective adopters caring for children in a section 22C(9B)(c) placement will be eligible for adoption leave and pay from the beginning of the placement. The letter notifying the prospective adopter of the placement will be treated as the equivalent of a 'matching certificate' for statutory adoption pay and leave benefits.

## **The UNCRC and the ECHR**

23. It is the fundamental right of every child to belong to a family; this principle underpins the 1989 United Nations Convention on the Rights of the Child which the United Kingdom ratified in 1991. Where children cannot live with their birth parents for whatever reason, society has a duty to provide them with a stable, safe and loving alternative family. Removing a child from their family will normally constitute an interference with the right to respect for family life. However, such interference can be justified where, for example the threshold for taking the child into care is met.

24. Article 8 of the European Convention on Human Rights (ECHR) provides a right to respect for one's "private and family life, his home and his correspondence", and Article 6 of the ECHR provides a right to a fair hearing.

25. Consistent with these Articles is the key principle of the Act that children are best looked after within their families, with their parents playing full part in family life, unless compulsory intervention in family life is necessary. This principle is reflected in the local authority's duty to provide services which support children and their families and the duty to return a looked after child to his or her family unless this is not consistent with safeguarding and promoting the child's welfare.

26. Section 22C(2) requires local authorities looking after a child to make arrangements for the child to live with their parents (or someone with parental responsibility). In deciding whether the child can live with parents, the local authority is under a duty to safeguard and promote the child's welfare. It is only where it is not consistent with the child's welfare and reasonably practicable for the child to live with his or her parents that the local authority must then place the child in one of the types of placements set out in section 22C(6).

27. Section 22(4) of the Act provides that, before making any decision with respect to a child whom the local authority is looking after or propose to look after, the authority must, as far as reasonably practicable, ascertain the wishes and feelings of the parent or anyone with parental responsibility for the child and to take these into account.

28. Section 22C(9A)-(9C) of the Act does not bring forward the point at which the child is removed from his or her birth parents, or affect the process by which that decision is made. Nor does it affect the process by which the decision to place him or her for adoption is made by the court or affect the rights of the birth family in that regard. If there is no parental consent, the decision whether to authorise the local authority to place the child for adoption remains one for the court at the placement order stage, and the birth parents retain their right to be involved in the process and to have full account taken of their views and wishes, as required.

## **Temporary approval of prospective adopters as foster carers**

29. It is already possible under section 22C of the Act, to place a child with foster carers who are also approved prospective adopters. Foster carers can be approved under the full process or for a named child in a section 22C(9B)(c) placement under regulation 25A of the 2010 Regulations.

30. Regulation 25A provides for a person who has been approved as a prospective adopter (by a local authority or a voluntary adoption agency) to be temporarily approved by a looked after child's responsible local authority as the foster carer for that child. They need not go through the full foster parent assessment and approval process set out in the Fostering Services (England) Regulations 2011 (the 2011 Regulations). The effect of the regulation is that the child may be placed with that person, notwithstanding that the person has not been approved as a foster carer under the 2011 Regulations, by a local authority or fostering agency.

31. The responsible local authority should ensure that they provide appropriate training and development opportunities for these carers so they can carry out their role effectively. Although expected to commence the Training, Support and Development Standards training, it is recognised that the carers might not complete them before the child is placed for adoption with them. The authority should ensure also that the carer receives the support and supervision they need in order to care properly for the child placed with them.

32. Regulation 25A will not be applicable or appropriate where the prospective adopter does not wish to be approved as a foster carer in order to care for a child in a section 22C(9B)(c) placement prior to the placement order being made.

33. Regulation 25A(1) and (2) provides that the child's responsible local authority can only temporarily approve a prospective adopter as a temporary foster parent for that child if:

- they are satisfied that placing the child with that particular carer is the most appropriate placement for the child, and it is in the child's best interests to be placed with them,
- they have assessed the carer's suitability to care for the child as a foster parent, and
- they have considered whether placing the child with that carer will safeguard and promote the child's welfare and meet the child's needs as set out in their care plan.

34. Regulation 25A(3) sets out the circumstances in which the temporary approval will be terminated. These are:

- if the local authority terminates the placement of the child with the prospective adopter,
- on the prospective adopter's approval to adopt being terminated,
- on the prospective adopter being fully approved as a foster parent under the 2011 Regulations,
- if the prospective adopter gives notice to the local authority that they no longer wish to be temporarily approved as foster parent for the child,
- on the child being placed for adoption with the approved prospective adopter in accordance with the Adoption and Children Act 2002.

## Further information

### Useful resources and external organisations

- [\*An Action Plan for Adoption: Tackling Delay\*](#)
- [\*Further Action on Adoption: Finding More Loving Homes.\*](#)
- [Fostering for Adoption practice guidance](#) – Coram and BAAF
- [The Adoption and Children Act Register](#)
- [Family Rights Group](#)
- [BAAF](#)
- [Coram](#)
- [Legal aid](#)
- [GOV.UK](#)

### Other relevant departmental advice and statutory guidance

- [Statutory guidance - \*Court orders and pre-proceedings\*](#)
- [Statutory guidance - \*Children Act 1989 Guidance and Regulations: Volume 2: Care Planning, Placement and Case Review\*](#)
- Statutory guidance - *Family and Friends Care*
- [Statutory guidance - \*Adoption\*](#)



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Reference: DFE-00513-2014



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