

FOSTER TO ADOPT PRACTICE GUIDANCE

INTRODUCTION

This practice guidance has been developed by AFA Cymru following a commissioned brief from the National Adoption Service for Wales.

The aim of the practice guidance is to provide a context for the new Welsh provision of 'foster to adopt' contained in the Social Services and Well-being (Wales) Act 2014.

In order to approach the foster to adopt provision, there needs to be an understanding of the concept, principles and practice of 'early permanence' planning for children, including 'concurrency' and, for the avoidance of confusion, English 'fostering for adoption' which is different from the Welsh provision.

This practice guidance will:

- 1) Explain the different forms of permanence planning in England and Wales;
- 2) Provide the policy, legal and practice framework for foster to adopt;
- 3) Consider the possibilities and challenges for early permanence for children that the foster to adopt provision for Wales creates.

EARLY PERMANENCE PLANNING - WHAT IS IT?

Practitioners working in the field of care proceedings and care planning will be well used to the legal framework for planning for adoption. A child must be the subject of an 'should be placed for adoption'¹ decision by the adoption agency's agency decision maker (ADM) under the Adoption Agencies (Wales) Regulations 2005, as amended, and either a placement order, under s21 Adoption and Children Act 2002 (ACA), or placed with parental consent under s19 ACA. Before the making of the placement order, the child will have been placed with short term foster carers, with family and friends carers, or will have remained at home. After the placement order is made, the family finding process, which will have started before the placement order stage, will identify a match; there will be a panel recommendation from the relevant adoption panel and child's local authority ADM approval. Only then will the child or children find out about, formally meet and be placed with their prospective adoptive parents.

Since the late 1990's there has emerged the concept and practice of concurrent planning.

¹ The term 'should be placed for adoption' is used throughout the guidance as most practitioners in Wales use this wording. However, the AA(W)R 2005 uses the term 'ought to be placed for adoption'.

CONCURRENCY

The concurrency model for permanency planning demands that carers have dual approval – that is they are approved prospective adoptive parents, under the Adoption Agencies (Wales) Regulations 2005 and approved foster carers under the Fostering Services (Wales) Regulations 2003.

Concurrent carers (up until now) have tended to be specifically recruited and trained by concurrency projects. There are no such projects currently in existence in Wales, although concurrency arrangements have been made for specific children with specific carers on rare occasions, for example when placing a younger sibling with children already adopted or placed.

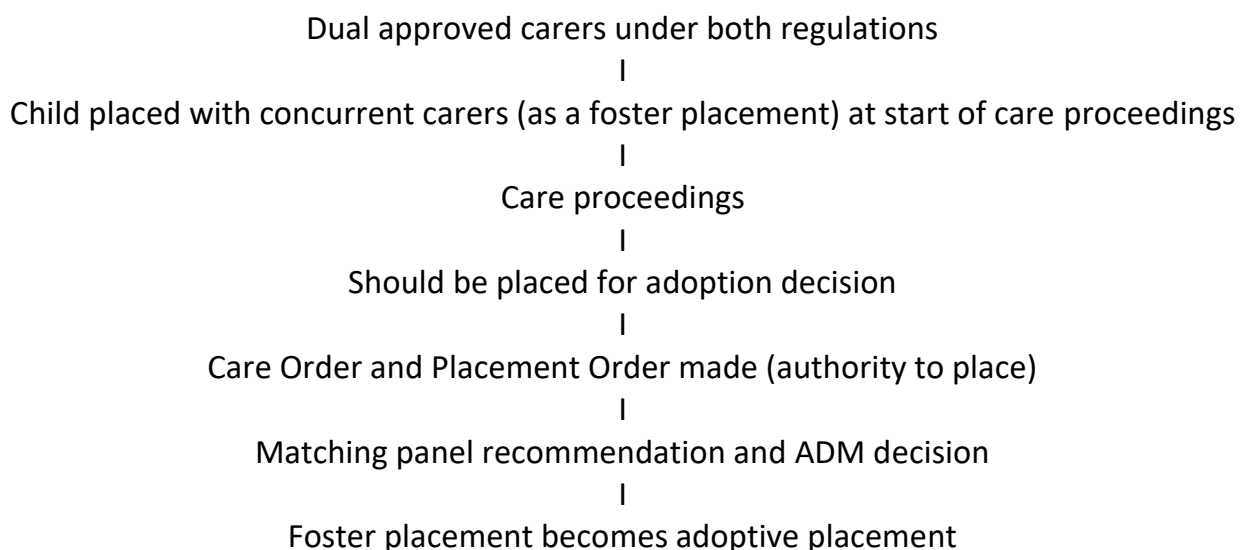
The carers are trained and prepared to become foster carers, usually to babies or toddlers, and actively work to a detailed reunification programme from the start of care proceedings, often facilitating regular contact with birth parents and / or other family members.

The carers understand that the child may return home to birth parents or be placed with family and friends at the conclusion of the care proceedings. It is only if these options are ruled out by the court, following a welfare analysis and the making of a placement order that the formal matching takes place and the foster placement transforms into an adoptive placement.

The concurrent carers bear the risk of this placement not becoming an adoptive placement. If the child returns home or goes to family or friends, then the child will not have experienced any more moves than if they had been in a short term foster placement and then returned to family. If the child remains with concurrent carers, then they will benefit from remaining with the one carer through to the adoptive placement.

The statutory and regulatory framework for concurrency in Wales is as follows. It requires no additional legal framework and relies on the two sets of regulations mentioned above.

CONCURRENT PLANNING in WALES AA(W) Regulations 2005 / FS(W) Regulations 2003

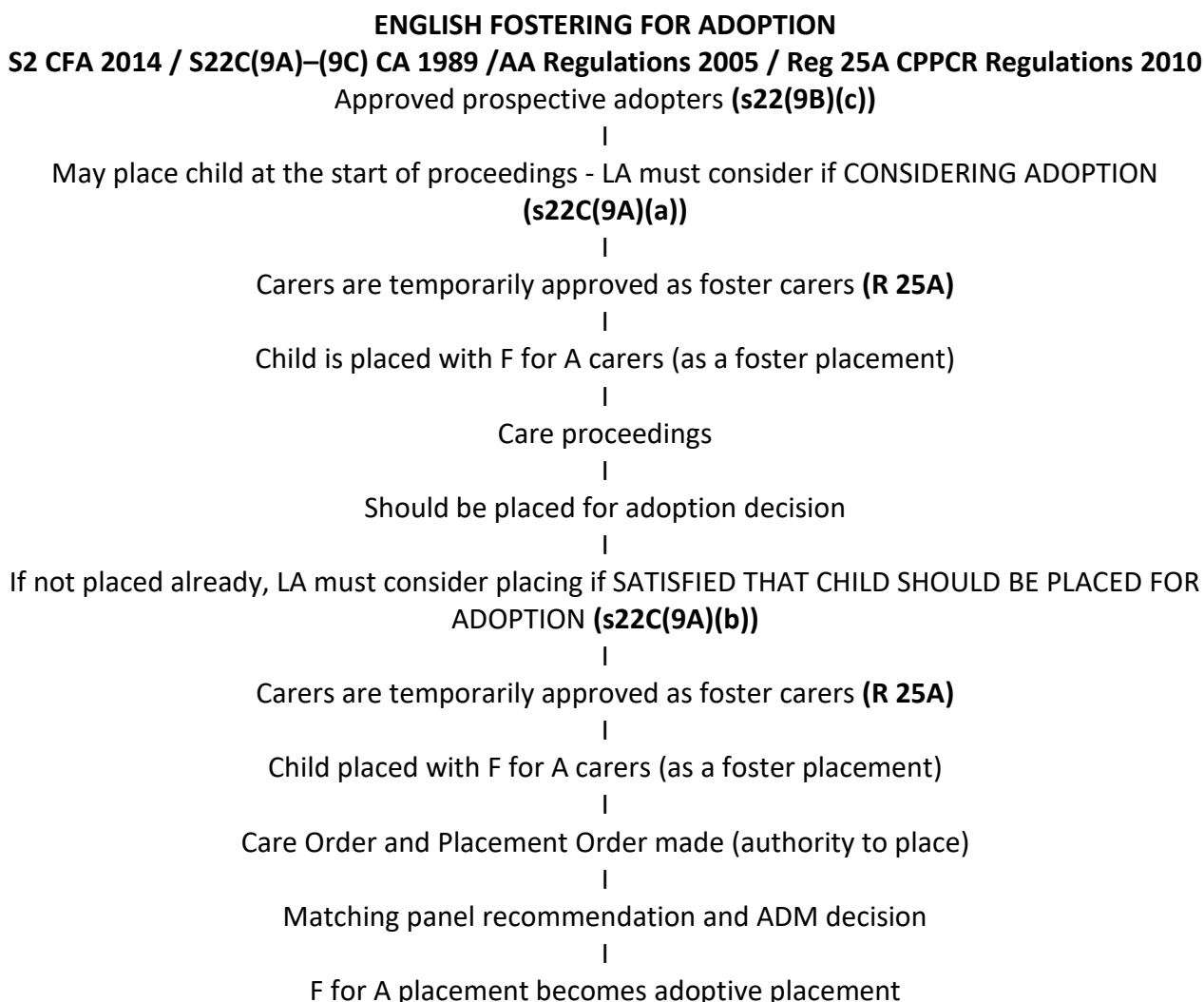


ENGLISH FOSTERING FOR ADOPTION

It is important to understand the English legal framework for this relatively new early permanence option, in order to note the differences, both with concurrency and Welsh foster to adopt.

The Children and Families Act 2014 brought in a new provision, for England only, different from concurrency (NB para 175 of the SSWB(W)A Part 6 Code of Practice is incorrect in this regard), which provides a fresh duty on local authorities to **consider** placing a child in a fostering for adoption placement if it is '**considering** adoption'. If the child is not placed in a fostering for adoption placement at an early stage there is a further **duty to consider** such a placement when a 'should be placed for adoption' decision has been made. The term '**considering adoption**' allows for the local authority to place with fostering for adoption carers at the commencement of care proceedings, where reunification and /or or placement with family and friends is still being considered, alongside adoption. As with concurrency, therefore, the child only experiences a disruption in placement if placed with parents or family and friends at the conclusion of proceedings.

The English statutory and regulatory framework for fostering for adoption is as follows:



Prospective adopters indicate that they are prepared to consider a fostering for adoption placement at the same time as their 'suitable to adopt' approval is made, having explored fostering for adoption during the course of their assessment.

WELSH FOSTER TO ADOPT

The statutory framework

Part 6 Social Services and Well-being (Wales) Act 2014 repeals and replaces Part 11 Children Act 1989 in Wales. Part 6 now contains all the statutory duties a local authority has in respect of looked after children.

S81(10) – (13) sets out the foster to adopt provision:

10) Subsection (11) applies where:

- a) The local authority is satisfied that C ought to be placed for adoption and proposes to place C for adoption with a particular prospective adopter (“A”)
- b) An adoption agency has determined that A is suitable to adopt a child, and
- c) The local authority is not authorised to place C for adoption

11) The local authority **must** place C with A, unless in its opinion it would be more appropriate:

- a) To make arrangements for C to live with a person falling within subsection (3) or
- b) To place C in a placement of a description mentioned in subsection (6)

12) For the purposes of subsection (1):

- a) “Adoption agency” has the meaning given by section 2 of the Adoption and Children Act 2002;
- b) A local authority is authorised to place C for adoption only if it has been authorised to do so under –
 - i) Section 19 of that Act (placing children with parental consent), or
 - ii) A placement order made under section 21 of that Act

13) The local authority may determine:

- a) The terms of any arrangements it makes under subsection (2) in relation to C (including terms as to payment) and
- b) The terms on which it places C with a local authority foster parent under subsection (5) or with a prospective adopter under subsection (11) (including terms as to payment but subject to any order made under section 49 of the Children Act 2004)

S81(10) states that the duty to place a child in a foster to adopt placement applies when there has been a **‘should be placed for adoption’ decision** by the adoption agency ‘Agency Decision Maker (ADM)’, the prospective adopters have been approved as ‘suitable to adopt’ and a **matching recommendation and decision** have taken place.

Note that s81(11) imposes a duty to place by using the word ‘must’. There is, therefore, a duty to place with foster to adopt carers if the provisions of s81(10) are satisfied, **unless** the local authority is of the opinion that the child should be placed with a parent, person with parental responsibility etc (s81(3)), relative or friend, local authority foster parent or children’s home (s81(6)).

S81(11) does not impose a duty to expedite a match before the placement order is made, only to place if the match **has** been made.

In summary therefore, when the local authority is satisfied that the child should be placed for adoption and the child has been matched with prospective adoptive parents, then the duty to place in a foster to adopt placement arises.

However, the provisions of s81(4) apply to s81(11) – the local authority is not required to make a foster to adopt arrangement if doing so-

- (a) would not be consistent with C's well-being, or
- (b) would not be reasonably practicable

There is, therefore, a discretion not to move to a foster to adopt placement, even if the requirements of s81(10) are met, if either (a) or (b) above apply.

The foster to adopt placement becomes an adoptive placement upon the making of the placement order, as all requirements under the AA(W)R 2005 have already been met.

This provision is therefore fundamentally different from both concurrent planning and English fostering for adoption. It is not a provision which allows an early placement at the start of care proceedings. The duty to place will be limited to situations where there has been time, during care and placement order proceedings, to have a should be placed for adoption decision and a matching decision, under the AA(W)R 2005, but still have sufficient time, before the placement order hearing takes place, to make the move to a foster to adopt placement which is consistent with the child's well-being.

The regulatory framework

The Care Planning, Placement and Case Review (Wales) Regulations 2015 contain all the regulations relating to looked after children. Regulation 28 sets out the framework for the temporary approval of foster to adopt carers:

28) Temporary approval of a particular prospective adopter as a foster parent

(1) Where the responsible authority is satisfied that:

- (a) The most appropriate placement for C is with a person who is not approved as a local authority foster parent, but that person is the prospective adopter with whom it proposes to place C for adoption ("A"), and
- (b) It is in C's best interests to be placed with A, the responsible authority may approve A as a local authority foster parent for a temporary period ("temporary approval period") provided that the responsible authority first complies with the requirements of paragraph (2).

(2) Before approving A as local authority foster parent under paragraph (1), the responsible authority must:

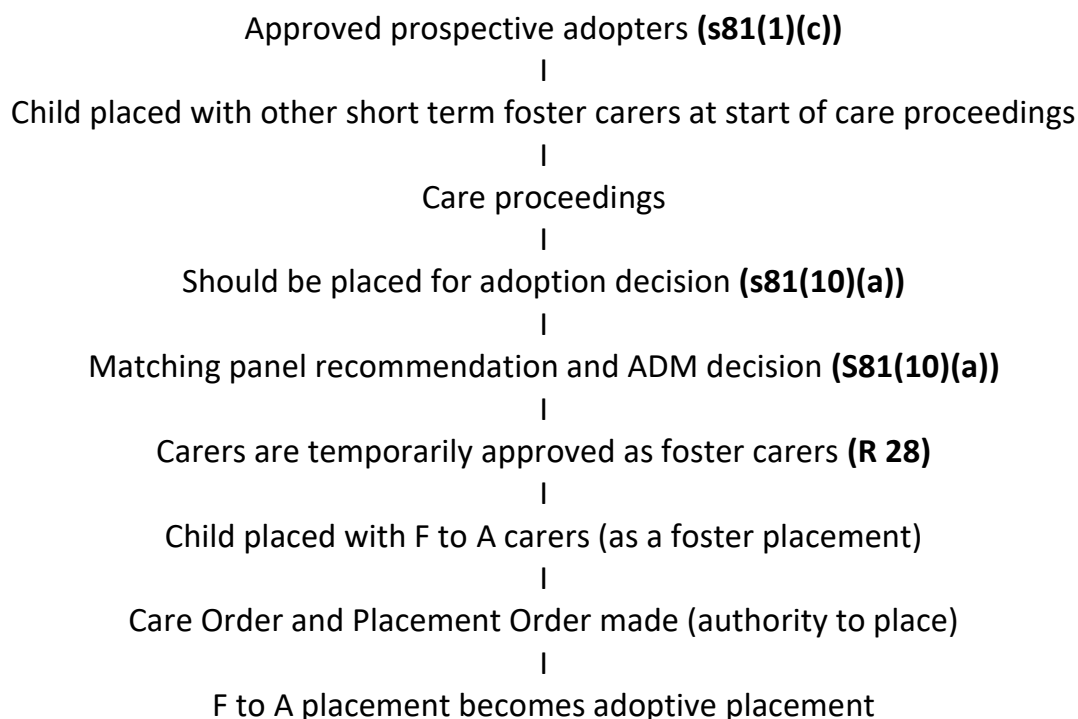
- (a) Assess A's suitability to care for C as a foster parent, and
- (b) Consider whether, in all the circumstances and taking into account the services to be provided by the responsible authority, the proposed arrangements will safeguard and promote C's well-being and meet C's needs as set out in the care and support plan.

(3) The temporary approval period expires:

- (a) On C's placement with A being terminated by the responsible authority;
- (b) On A's approval as a prospective adopter being terminated;
- (c) On A being approved as a foster parent in accordance with the Fostering Regulations or the Fostering Services (England) Regulations 2011;
- (d) If A gives written notice to the responsible authority that they no longer wish to be temporarily approved as a foster parent in relation to C, with effect from 28 days from the date on which the notice is received by the responsible authority; or
- (e) On C being placed for adoption with A in accordance with the Adoption and Children Act 2002(52)

The diagram below sets out the statutory and regulatory framework for foster to adopt.

**WELSH FOSTER TO ADOPT
S81(10)(11) SSWBA 2014
AA(W) Regulations 2005 / R 28 CPPCR(W) Regulations 2015**

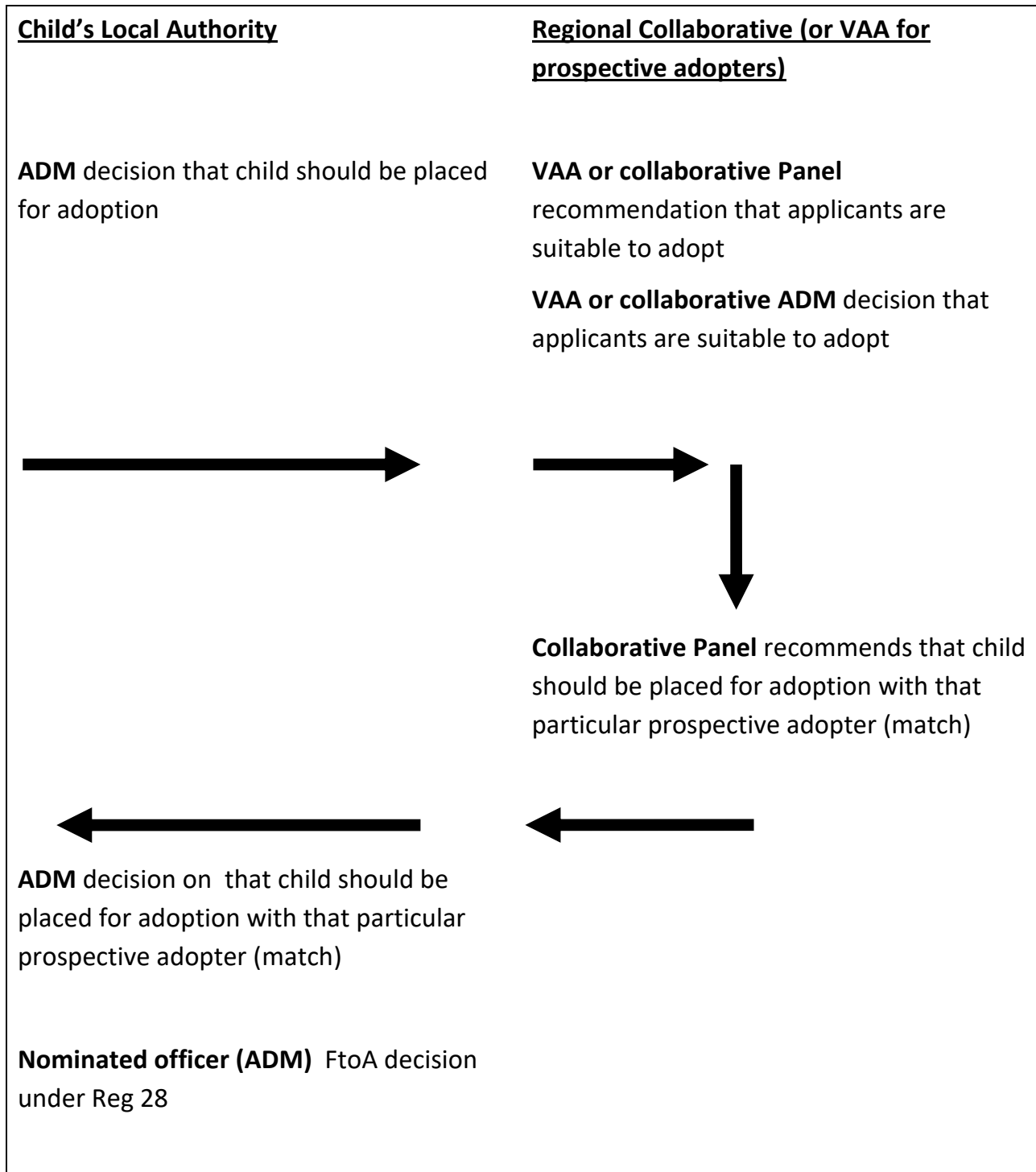


WHO MAKES THE DECISION THAT A FOSTER TO ADOPT PLACEMENT SHOULD TAKE PLACE?

Under the CPPCR(W) Regulations 2015 the 'nominated officer' will make the decision to go ahead with a foster to adopt placement under regulation 28. The nominated officer is the Director of Social Services or other senior officer of the responsible authority (i.e. the child's local authority), who is nominated by the DSS to act on his or her behalf for the purposes of the regulations.

The nominated officer will need to have a detailed knowledge and understanding of adoption and the role of foster to adopt, the best placed person to act as nominated person will be the ADM. She or he will have already made the decision that the child should be placed for adoption and will have been the ADM to decide that the match should be made, following the relevant panel recommendation. She or he may well have been the person to highlight the child's situation as being one which may require a foster to adopt placement (see below).

Below is an outline of the respective functions of each panel and agency decision maker.



THE ROLE OF THE REGIONAL COLLABORATIVE, VAA PANEL AND ADM AND LOCAL AUTHORITY ADM IN BRINGING ABOUT FOSTER TO ADOPT PLACEMENTS

The child's local authority ADM

When making a 'should be placed for adoption' decision the ADM is in a good position to assess whether the care proceedings are progressing in such a way that a foster to adopt placement may be required. This could then be flagged up with the CAR/B and any other material sent to the regional collaborative for the purposes of linking and matching.

The duty to place a child in a foster to adopt placement under s81(11) only arises when the 'should be placed for adoption' decision and matching decision have taken place. However, in order to be compliant with the duty, it is necessary to look forward and predict such a scenario so that prospective adopters may be prepared for their role as temporary foster carers

At the matching stage the child's local authority ADM will need to ensure that panel has recommended a match under the AA(W)R only and that it has taken steps to ensure that the prospective adopters understand what foster to adopt entails. It is then for the child's local authority nominated officer, under regulation 28, to make the decision on the temporary fostering approval.

The prospective adopter's panel

The regional collaborative or VAA panel has a role in foster to adopt. The panel does not recommend a foster to adopt approval, as that is made by the child's local authority's nominated officer under regulation 28. However, a panel cannot ignore the fact that applicants may have stated an interest in foster to adopt. Panel will wish to satisfy itself that the applicants are aware of the legal framework for foster to adopt, the inherent uncertainties for them and the need to have a different role for the period of the foster placement.

The regional collaborative / VAA ADM

The ADM will have approved the prospective adopters as suitable to adopt. The PAR should have addressed the fact that these prospective adopters are interested in foster to adopt. The ADM should ensure that the prospective adopters understand the implications for a foster to adopt placement.

The matching panel

It is currently unusual for a matching recommendation and decision to take place before a placement order has been granted by the court, although there is nothing in the ACA 2002 or the 2005 regulations to prevent it. Some adoption agencies in Wales have historically matched before a placement order. However, since the introduction of the 26 week timescale for care proceedings under the Public Law Outline in 2014, the opportunity to match within the timescale has been limited.

If and when appropriate during a matching panel, consideration will need to be given not only to the match and the requirements of the AA(W)R 2005 but also to the plan to place the child in a foster to adopt placement. Panel will wish to ensure that, again, the prospective adopters and child (if of sufficient age and understanding) understand the legal nature of a foster to adopt placement.

THE NEED FOR COMMUNICATION BETWEEN THE CHILD'S LOCAL AUTHORITY, REGIONAL ADOPTION COLLABORATIVES AND VAA'S

A mechanism should be established for:

- 1) Identifying foster to adopt carers from the pool of applicants coming forward for assessment and approval. These prospective adoptive parents will need to understand the legal uncertainty of a child being placed with them before the court has granted authority to place for adoption through the granting of a placement order. Until that order is made there can be no absolute certainty that the child, if placed, will remain with them after the conclusion of the proceedings. This understanding will only be possible if foster to adopt carers have a sound knowledge of the current legal framework and climate.
- 2) Ensuring that the foster to adopt carers have the capacity to manage the fostering task. Until the placement order is made this is a foster placement and foster to adopt carers will have to abide by the provisions of the Fostering Services (Wales) Regulations 2003. This will include participating in reviews, recording, training and will probably involve facilitating, or the very least at least allowing, direct contact with birth family.
- 3) Ensuring that support is provided to foster to adopt carers in providing the child placed with emotional warmth and commitment. Some carers may feel that they need to 'hold back' emotionally until the placement order is made, so undermining the whole purpose of the earlier placement.
- 4) Agreeing the contents of the report which goes to the child's ADM for a decision to place with foster to adopt carers. This should be considered at the same time as, or very shortly after, the matching decision is made. The nominated officer (in effect the ADM who has made the should be placed for adoption decision and matching decision), will need to be provided with information that addresses the prospective adopters' ability to act as a temporary foster carer.

Responsibility for training in respect of the fostering task will remain with the child's LA, but detailed knowledge of the carer's ability and motivation rests with the regional collaborative or VAA assessor. As the number of Welsh foster to adopt placements is likely to be small, it may not be viable for individual local authorities to set up discrete training courses for foster to adopt carers. If a match has been made and the prospective adopters have been identified as being interested in foster to adopt, it is at this stage that the local authority's family placement team, along with regional collaborative or VAA social worker for the prospective adopters, should ensure that the requisite preparation takes place.

There may be a case for local authorities to join together to provide discrete training, support and peer mentoring for this group of carers, jointly co-ordinated with the regional collaboratives, but the child's local authority retains the responsibility, under the CPPCR(W)R for ensuring that the prospective adopters are fit for the task of fostering on a temporary basis..

EXPIRY OF THE PLACEMENT

Regulation 28(3) sets out the ways in which this temporary fostering approval ends. In most cases it will be upon the making of the placement order when the placement becomes an adoptive placement; the child ceases to be subject to the CPPCR (W)R and becomes subject to the AA(W)R 2005. The temporary approval will also terminate upon the termination of the foster to adopt

placement, the 'suitable to adopt' approval being terminated, the carers being fully approved as foster carers under the FS(W)R 2003, or the foster to adopt carers giving notice that they no longer wish to be temporary foster carers (with 28 days notice).

THE CODE OF PRACTICE, PART 6 OF THE SOCIAL SERVICES AND WELL-BEING (WALES) ACT 2014

Paragraphs 173 – 177 explain the policy drive behind Welsh F to A. Paragraph 175 states

'The foster to adopt provisions in Wales only take place where the possibility that the child will be reintegrated with the birth family has already been discounted.'

However, it must be borne in mind that reintegration with the birth family cannot be discounted until a placement order has been granted by the court and the birth parents have not succeeded in an application to revoke the placement order or in a challenge to the making of the adoption order.

Paragraph 176 states

'Prospective adopters will often also be approved as local authority foster carers, having undergone the assessment process for both fostering and adoption.'

This is a concurrency model and, as noted earlier, there are no concurrency projects currently operating in Wales, identifying, assessing and approving carers for dual approval. There may be specific situations, as outlined earlier, or the occasional applicants who are already approved foster carers and who wish to adopt, who could offer a concurrency placement.

IDENTIFYING CHILDREN WHO MAY BENEFIT FROM A FOSTER TO ADOPT PLACEMENT

In order to comply with this provision, all those professionals involved with the child should bear in mind the duty, albeit in limited circumstances. This will require the child's social worker, team manager, IRO, children's guardian and local authority legal adviser to flag up a set of circumstances, during care and placement order proceedings, where there is likely to be significant delay, or where an 'should be placed' and matching decision may be made significantly in advance of a placement order hearing.

Before making the decision, the nominated officer / ADM will need to take legal advice from those with conduct of the care proceedings. The parties to the proceedings and the court will need to be consulted upon / informed of the proposed placement (see below for more detail).

THE CIRCUMSTANCES WHERE THE DUTY TO PLACE IN A FOSTER TO ADOPT PLACEMENT MIGHT ARISE?

The most likely circumstances in which the duty to place in a foster to adopt placement will arise will be where birth parents have had one or more children previously placed for adoption, circumstances have not changed and there is no realistic chance of reunification with birth parents or family members. Sometimes the plan will be to place the child with adopted siblings. The fact that the prospective adopters are already known may account for the ability to match at an earlier stage than is usual (ie before the placement order).

Another circumstance in which the duty to place in a foster to adopt placement arises is where a family and friends request for assessment comes to light late in care proceedings and where should be placed and matching decisions have already been made. However, the possibility of that

assessment being positive and a subsequent application, for example for a special guardianship order, being successful has to be borne in mind.

The operation of the European Convention on Human Rights (ECHR), and in particular Article 8, the right to a private and family life, should be considered when deciding on a foster to adopt placement. Legal advice should always be sought by practitioners contemplating a foster to adopt placement.

CONSIDERATIONS FOR THE CHILD

The vast majority of concurrent and English fostering for adoption placements take place with babies and children under the age of two. It is likely that any foster to adopt placements will follow this pattern.

If, however, older children are considered for foster to adopt, who may have an understanding of the nature of proceedings and the care planning process, the child's ability to cope with the inherent uncertainty of the placement - 'this may be my forever family but it may not' will be a major factor in deciding whether such a placement is in the child's best interests. It must be borne in mind that the child may have to suffer an additional change of placement if the placement order is not granted.

If an older child is involved in a foster to adopt placement, it is important that they understand the difference between the foster to adopt placement and the adoptive placement, and in particular note the transfer from one placement to the other upon the making of the placement order.

With any aged child the inherent uncertainty of the placement and the possible subsequent effects upon the child's development and security will have to be weighed in the balance when deciding on progressing with the placement.

CONSIDERATIONS FOR BIRTH FAMILY

It is imperative, in planning a foster to adopt placement, that the following takes place:

- 1) Consultation with / informing birth parents and other wider family members of the plan to place;
- 2) Informing legal representatives and the court;
- 3) Making it clear in all discussions / correspondence that the right to oppose the making of the placement order is not affected and that the foster to adopt placement does not (and cannot) prejudice the decision of the court.

Although the Welsh adoption agencies regulations have not been amended to provide a regulatory duty to inform parents of the legal implications of a foster to adopt placement (as they have in England), the operation of both Articles 6 and 8 ECHR demands that 1) to 3) above are undertaken.

CONSIDERATIONS FOR THE FOSTER TO ADOPT CARERS

Preserving anonymity

Foster to adopt carers will most probably have to accommodate contact between the newly placed child and birth family, as the provisions of s34 CA 1989 will continue to apply until such time as the placement order is made, when s26 ACA 2002 will apply. The facilitating of the contact

may compromise the anonymity of the prospective adopters. Factors such as geographical distance from birth family and the any risk the birth family may pose to the prospective adoptive family will need to be taken into account.

Information about the child

As foster to adopt carers will have been matched with the child they will have had sight of the CAR/B form and met all the relevant important people in the child's life in the same way as any other prospective adopter in preparation for a match. Practitioners should be wary of speeding up the introduction process, in order to create a foster to adopt placement, which may affect the quality of information provided and early experiences for the child.

Statutory adoption leave and pay

Adoption leave will commence once the foster to adopt placement becomes an adoptive placement, upon the making of a placement order. It will not start at the beginning of the foster to adopt placement. Care will need to be taken in informing employers of the different provisions relating to a foster to adopt placement. The 28 days notice to employers will need to be given in anticipation of the placement order being made.

Finances

S81(13)(b) gives the local authority the power to determine the terms of any arrangement it makes under s81(11), including the terms of payment. A fostering allowance should be considered as these are (temporarily) approved foster carers.

The assessment for an adoption allowance will follow the relevant legal and policy framework. Any adoption allowance payable will commence upon the making of the placement order when the placement transforms into an adoptive placement.

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ACKNOWLEDGEMENT

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LIST OF ABBREVIATIONS

ACA	Adoption and Children Act 2002	ECHR	European Convention on Human Rights
ADM	Agency decision maker	F for A	Fostering for Adoption
AA(W)R	Adoption Agencies (Wales) Regulations 2005	F to A	Foster to Adopt
CA	Children Act 1989	FS(W)R	Fostering Services (Wales) Regulations 2003
CAR/B	Child's adoption report / Annex B	IRO	Independent Reviewing Officer
CFA	Children and Families Act 2014	PAR	Prospective adopters report
CPPCR(W)R	Care Planning, Placement and Case Review (Wales) Regulations 2015	SSWB(W)A	Social Services and Well-being (Wales) Act 2014
		VAA	Voluntary adoption agency