

The placement of Children with Foster Carers outside of the usual fostering limit and the placement of children in an emergency outside of the foster carer's terms of approval.

This note is an attempt to clarify the law (in the form of the Children Act 1989 and its regulations) in respect of the requirements for fostering services considering the placement of children with foster carers outside of the usual fostering limits or where a change of approval needs to be made in an emergency.

Additionally, it will identify good practice arrangements in Wales that support the placement of children with foster carers whose capacity and approval align with the identified needs of the child/ren.

1. Exemption process – arrangement to place a child/ren with a foster carer over the agreed fostering limit.

Current legal position

The Children Act 1989 Schedule 7, paragraphs 3 and 4 sets out the 'fostering limit'

"A person may not foster more than three children unless –

- (a) The children are all siblings, or**
- (b) The local authority where the foster carer lives (so not necessarily the local authority with whom they are approved) exempts the person from the requirements.**

Schedule 7 sets out the process for exempting a foster carer from the usual fostering limit. The service must conduct an assessment of the proposed placement and its impact on all children in the household. It makes clear that the decision must be made with careful consideration of the foster carer's ability to meet the needs of all children in the household.

Approval for this arrangement must be documented in writing by the (resident) fostering services' Decision Maker who confirms that they are satisfied with the rationale for exceeding the limit on the basis of the needs of the child and other children in the household.

Unlike a change to the terms of fostering approval an exemption is not a qualifying determination and does not alter the foster carer's terms of approval. An exemption is not time-limited unless this is set out as a condition of the exemption being granted. The resident local authority may vary, cancel, or amend the exemption at any time by giving notice in writing.

There is no requirement to hold an annual review when an exemption has been made, and neither is there a requirement to involve fostering panel. This is because there is no change of approval. Schedule 7 Children Act 1989 (primary legislation) effectively overrides the regulations.

Good practice recommendations:

(a) Local Authority fostering services should have a robust assessment process which ensures that the decision to exceed usual limits is well-evidenced, clearly justified and compliant with regulatory requirements. This could include the following:

- Basic information including details of the foster carer and their household, details of the child or children to be placed, details of any fostered children already living in the household as well as the names of the relevant children's social worker/s and fostering social workers.
- Reason for the exemption.
- Legal and regulatory context/considerations
- Best interests of the child/ren. Why the placement is in the best interests of the child/ren to be placed. The views of the child/ren being placed, the views of all children in the household (if age and developmentally appropriate) and the views of the child/ren's social worker/s.
- Impact on the foster carer and fostering household. The foster carers capacity to meet the needs of all children. Consideration of household dynamics, routines, space and support networks. Any relevant previous experience of managing complex placement arrangements or supporting the needs of children outside of their usual fostering limit.
- Risk Assessment. Any safeguarding concerns, impact on children in the household/in placement and plans to mitigate this.
- Support Plan. Support services or respite to be provided and outline of monitoring and review arrangements.
- Management Oversight. Including recommendation of the supervising social worker and the Fostering Team Manager's comments. Decision

and rationale of Decision Maker, date and duration if service propose to set a time limit on the arrangement.

- (b) Where the exemption is likely to be longer term, an early annual review and return to panel may be regarded as necessary in order to be satisfied that the foster carer can continue to meet the needs of all children in the household and to identify any further support.

(2) Arrangement to place a child with a foster carer in an emergency whose terms of approval are not consistent with the specified needs of the child.

Current legal position

Regulation 24 of The Care Planning, Placement and Case Review (Wales) Regulations 2015 identify the conditions that need to be met to place a child with a foster carer on an emergency basis where the terms of approval are not consistent with the placement. In these circumstances the placement can be made for a duration of no longer than 6 working days. When the period of 6 working days expires the responsible authority must terminate the placement unless the terms of that person's approval have been amended to be consistent with the placement.

The implications of this are that a foster carer review should take place if the placement is likely to last longer than 6 days. This would ensure that the fostering terms of approval meet the specified placement needs of the child and are consistent with the regulatory position.

The Fostering Panel (Establishment and Functions) (Wales) Regulations 2018 make clear that a recommendation for a change of approval made at an annual review is not a ground in itself for returning to fostering panel. However, regulations are clear that a change of approval requires an annual review to ensure continued suitability of fostering approval. While practices vary regarding the involvement of fostering panel in such decisions – and the panel regulations do not explicitly mandate panel involvement – this is set out elsewhere as a legal requirement. Code of Practice 6 of the Social Services and Wellbeing Act 2014 states:

'Where the local authority has made an emergency placement and wishes to amend the terms of approval to enable the child to remain with the foster carer, the fostering panel must ensure it is satisfied that the carer has the capacity to meet the child's needs'

Practice considerations and good practice recommendations

Unlike a placement outside of the usual fostering limits, a placement in an emergency outside of approval terms is a change of approval and is therefore a qualifying determination. In England the Fostering Services (England) Regulations 2011 allow for a

fostering service to revise the terms of fostering approval if the **foster carer gives** written agreement to this. However, this provision does not exist in Wales and therefore the obligations on a fostering provider when a change of approval is made in an emergency are no different to those at any other time. There is no option in Wales to streamline the process for a change of approval through a written agreement and the foster carer must be given 28 days to make representations to the local authority or the IRM.

Consultation of fostering services across Wales evidences the difficulties for services in meeting the legal requirement for a permanent change of approval via an annual review within 6 working days. Additionally, whilst there is no available data to confirm the numbers of children in Wales placed with foster carers outside of their terms of approval, it is clear that placement sufficiency demands create many challenges for services seeking to identify suitable placements for children. The practice of placing children in an emergency outside of approval terms is therefore a common practice.

It is essential that individual services develop their own policies and procedures to support good practice within their local area, taking account of the specific regulatory requirements in Wales. However, mechanisms to achieve this could include:

- (a) An assessment of the proposed placement that requires the emergency approval. The assessment process and format suggestions in respect of placement outside of usual fostering limits would be equally applicable here. (see section 1(a)) The assessment should be presented to the Decision Maker who can agree to the temporary variation without the need for an immediate annual review or panel involvement. Provisions should be identified to ensure that the temporary approval is regularly reviewed and endorsed by the Decision Maker.
- (b) If the temporary variation is planned to last longer than 6 days as is likely in most cases, a date should be set for an annual review to consider the on-going suitability of the new fostering arrangement. In most cases it will not be possible to complete the annual review within 6 days, and in this case, it is necessary for each service to identify the appropriate timescale. Good practice would suggest that the review should be conducted within 3 months of the placement, but it will depend on individual and local requirements.
- (c) Following the annual review the usual processes for a change of fostering approval would apply. Good practice in this area would suggest that a change of fostering approval made at annual review should be presented to fostering panel.

Conclusion

The legislation in Wales sets out the requirements for the placement of children with foster carers outside usual fostering limits and in the case of emergency changes of approval. The term 'exemption' is commonly used in practice to describe both arrangements and requirements are similar. Both sets of arrangements should only be made in an emergency, and both should be preceded by an assessment that outlines the purpose of the placement and how the needs of children will be supported and protected. However, it is important for fostering services to be clear as regards the differences as they are fundamental and require a different approach. An exemption can only ever be a temporary arrangement, in that it is not a change of approval, and it can never be so, unless the children in placement are all related. Consequently, whilst an annual review and return to panel may take place this is not required legally. However, a placement outside of usual terms of approval can be temporary only for 6 days and will require a permanent change of approval, via an annual review and possible return to fostering panel.