

Topic 1 Legislative Framework and Statutory Guidance

Key Messages

- Professionals need to be aware of the range of legislation that affects their work – in particular, the new responsibilities, duties and required timescales conferred on local authorities and all adoption and fostering agencies by the changing legislation.
- Answers to questions such as ‘Who needs to do what?’ and ‘By when?’ can generally be found within the text of the legislation. Much of the detail on the new processes can be found in regulations and the associated guidance.
- The wording used in the guidance and legislation (e.g. ‘fostering for adoption’, ‘adopter assessment process’, ‘adoption passport’) helps create a common language that can be used for effective communication between all professionals and in all areas of the country. Knowing what the different terms mean is a useful tool for all professionals and local policies should reflect this common language.

This briefing lists the main pieces of legislation and statutory guidance that govern adoption and fostering. It should be read alongside the briefing [‘Adoption and fostering reform: the main areas of change’](#), which provides more detail about government reform.

Tackling delay

‘Adoption is one of the Government’s top priorities. Ministers want to create a more effective and user-friendly adoption system – a system which is truly fit for purpose. They are determined to ensure that adoption is available for children where this is in their best interests, and they want it to happen without undue delay.’ (Department for Education)

The government’s proposals to reform the adoption system in England are set in the policy document [‘An Action Plan for Adoption: Tackling delay’](#). The changes are wide-ranging and affect most stages of the adoption process, including:

- wider consideration and use of ‘fostering for adoption’
- streamlining and speeding up adopter assessment through the introduction of a two-stage training and assessment process, and introduction of a ‘fast-track’ process for previous adopters
- redressing the balance between consideration of ethnicity and the need to find long-term stability quickly by reducing the number of adoptions delayed by the wish to achieve ‘a perfect or near perfect ethnic match’ between adopter and child
- swifter use of the Adoption Register ‘in order to find the right adopters for a child wherever they might live’
- clarifying the provision of post-adoption support

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- and implementation of a National Gateway for Adoption as ‘a consistent source of advice and information for those thinking about adoption’.

The Action Plan was followed ten months later by ‘[Further Action on Adoption: Finding more loving homes](#)’ (DfE, 2013) which further focused on the challenges in recruiting sufficient numbers of adoptive parents and pushing for changes in the system to allow recruitment to take place on a larger scale. It makes further proposals for increasing the support available to adoptive families and changes to the input that approved adopters can have in finding a child.

The government’s proposals for reform were set out in:

[An Action Plan for Adoption: Tackling delay](#) (March 2012) Department for Education

[Further Action on Adoption: Finding more loving homes](#) (January 2013) Department for Education

Government announcements and updates on legislation on adoption can be found here: <https://www.gov.uk/government/policies/improving-the-adoption-system-and-services-for-looked-after-children>

Legislative framework

Between 2012 and 2014, the government’s proposals have been taken forward through a series of amendments to current legislation on adoption and fostering, and through the Children and Families Act 2014. These pieces of legislation provide much of the detail on how the system should operate and the roles and responsibilities of different professionals. Existing guidance has also been amended. A number of these guidance documents are statutory and local authorities have a duty to act.

[Children Act 1989](#) (as amended)

- sets out the duties for local authorities in terms of services to be provided to children in need
- makes provisions with respect to fostering
- establishes the principle that children are best looked after within their families.

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Adoption (Intercountry Aspects) Act 1999

- gives effect to the provisions of the Hague Convention
- makes provision for adoptions with an international element.

Care Standards Act 2000 (as amended) and National Minimum Standards (NMS)

- NMS for Adoption are issued under this Act – together with the adoption regulations, they provide the framework for the conduct of adoption agencies and adoption support agencies
- NMS for Fostering Services – together with the regulations relevant to the placement of children in foster care, these NMS provide the framework for the conduct of fostering services
- NMS are used by Ofsted during inspections.

Adoption and Children Act 2002 (as amended)

- aligns adoption law with the relevant provisions of the Children Act 1989 to ensure that the child's welfare is the paramount consideration in all decisions relating to adoption
- places a duty on local authorities to maintain an adoption service, including arrangements for the provision of adoption support services
- provides a new right to an assessment of needs for adoption support services for adoptive families and others
- sets out a new regulatory structure for adoption support agencies (requiring them to be registered under the Care Standards Act 2000)
- enables an independent review mechanism in relation to qualifying determinations made by an adoption agency
- makes provision for the process of adoption including new measures for placement for adoption with consent and placement orders
- provides for adoption orders to be made in favour of single people, married couples and unmarried couples (amended by the Civil Partnership Act) [3]
- provides for a framework to ensure a consistent approach by adoption agencies in respect of access to information held about adoptions which take place after the 2002 Act comes into force
- provides for a regulatory framework within which intermediary agencies (registered adoption support agencies or adoption agencies) will be able to assist adopted adults to obtain information about their adoption and facilitate contact between them and their adult birth relatives, where the person was adopted before the 2002 Act came into force

^[3] The definition of couple in section 144(4) of the 2002 Act has been amended by the Civil Partnership Act 2004 (2004 c.33) to include a civil partnership.

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- provides additional restrictions on bringing a child into the UK in connection with adoption
- provides for restrictions on arranging adoptions and advertising children for adoption other than through adoption agencies
- makes provision for establishing a statutory Adoption and Children Act Register
- amends the Children Act 1989 to introduce a new special guardianship order.

Children Act 2004

- places a duty on local authorities to promote the educational achievement of looked after children.

Children and Adoption Act 2006

- makes provisions with regards to adoptions with a foreign element, in particular suspending adoptions from certain countries.

Information on the Children and Families Act can be found on the Department for Education website: <http://www.education.gov.uk/a00221161/> and <https://www.gov.uk/government/news/landmark-children-and-families-act-2014-gains-royal-assent>

[A summary of all primary and secondary legislation and case law affecting adoption and fostering can be found on the BAAF website:](#)
<http://www.baaf.org.uk/res/law>

Secondary legislation

Legislation has been issued under the Acts listed above. A full list of regulations under each Act can be found by consulting legislation.gov.uk, which includes any amendments made, as well as [BAAF](#). Some of the regulations issued under the Acts and the most recent amendments include:

The Adoption Agencies Regulations 2005, amended by The Adoption Agencies (Miscellaneous Amendments) Regulations 2013 (and others)

- provides the functions of adoption agencies, including the arrangements for adoption panels, duties when an agency is considering adoption for a child and in respect of the placement of the child with a prospective adopter as well as the appointment of an independent reviewing officer.
- requires adoption agencies to refer (within the required timescale) details of children and adopters to the Adoption Register

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- defines the two-stage approval process for prospective adopters and provides detail of the written plans to be prepared by the adoption agency and timescales for assessment
- sets the revised procedures for approval of previous adopters or approved foster carers.
- Sets the need for a prospective adopter matching plan with information on the duties of the agency in relation to placement and reviews.

The Fostering Services (England) Regulations 2011, amended by The Care Planning, Placement and Case Review and Fostering Services (Miscellaneous Amendments) Regulations 2013

- provides the regulatory framework for fostering service providers including the need for a statement of purpose, management of the service and conduct
- sets the requirements for the approval of foster carers by the providers and reviews of approval
- introduces a preliminary stage in the assessment process
- introduces a more streamlined process to agree a change in foster carer terms of approval.

The Care Planning, Placement and Case Review (England) Regulations 2010, amended by The Care Planning, Placement and Case Review and Fostering Services (Miscellaneous Amendments) Regulations 2013

- makes provision about the care planning for looked after children, the content and revision of the care plan; provisions about the placement plan and types of placement; requirements for visits by a representative of the local authority and Independent Reviewing Officers
- provides the legal framework for 'fostering for adoption'
- requires the child's placement plan to set out the respective responsibilities of the child's parents, anyone else with parental responsibility and the responsible local authority; the plan is also required to identify any delegation of responsibility.

The Local Authority Adoption Service (England) Regulations 2003 (as amended)

- requires that each local authority who provides an adoption service have a statement of purpose setting out the aims and objectives of the service and must have a children's guide
- makes provision about the fitness of the managers and workers

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- makes provision about the conduct of the service, arrangements for the protection of children, the keeping of the records about staff, fitness of premises and complaints.

The Independent Review of Determinations (Adoption and Fostering) Regulations 2009 (as amended)

- makes provision for the independent review of qualifying determinations
 - on the suitability of prospective adopters and foster carers
 - (a) not to proceed with an application for the disclosure of protected information under section 51 of the 2002 Act; (b) to disclose information against the express views of the person the information is about; and (c) not to disclose information about a person to the applicant where that person has expressed the view that the information should be disclosed.

The Adoption (Recognition of Overseas Adoptions) Order 2013

- lists the countries whose adoption orders (other than a Convention adoption) are recognised in England and Wales
- identifies the documents that may be provided as evidence that an overseas adoption has been effected.

The Suitability of Adopters Regulations 2005

- sets the matters that should be taken into account when assessing the suitability of a prospective adopter.

The Restriction on the Preparation of Adoption Reports Regulations 2005

- provides for restrictions on the preparation of adoption reports
- it establishes that only social workers can prepare the adoption reports listed, if they meet the qualifications or are supervised by someone who is.

The Adoptions with a Foreign Element Regulations 2005

- makes provisions in relation to bringing children into and out of the UK for the purpose of adoption
- provides for adoptions under the Hague Convention
- sets out the requirements, procedure, recognition and effect of inter-country adoption.

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The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005

- defines adoption support services
- requires that each agency have a statement of purpose setting out the aims and objectives of the agency and must have a children's guide
- makes provision about the fitness of the managers and workers
- makes provision about the conduct of the agency, arrangements for the protection of children, the keeping of the records about staff, fitness of premises and complaints.

The Adoption Support Services Regulations 2005

- sets out the services that are adoption support services and to whom the services must be extended
- requires the appointment of an Adoption Support Service Adviser

The Local Authority (Adoption) (Miscellaneous Provisions) Regulations 2005 (as amended)

- sets requirements for the local authority to whom notice of intention to adopt is given
- enables local authorities to charge for services associated with international adoptions.

The Family Procedures Rules 2010

- provide a new code of procedure for family proceedings in the High Court, county courts and magistrates' courts, and replace existing rules of court for family proceedings.

The Voluntary Adoption Agencies and the Adoption Agencies (Miscellaneous Amendments) Regulations 2003

- concern the registration and inspection of voluntary adoption agencies and Adoption Agencies
- requires that each agency must have a statement of purpose setting out the aims and objectives of the agency and must have a children's guide.
- makes provision about the fitness of the managers and workers
- makes provision about the conduct of the agency, arrangements for the protection of children, the keeping of the records about staff, fitness of premises and complaints.

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Guidance

Statutory Guidance on Adoption (July 2013)

- the main changes to the 2005 version include the new adopter approval process, guidance on fostering for adoption and the Adoption Register
- consultation on the guidance has closed and the government will amend the guidance around ethnicity, sibling placement, adoption support, the register and post-adoption contact.

Children Act 1989 Guidance and Regulations Volume 4: Fostering services (amended)

- sets the functions and responsibilities of local authorities and independent fostering agencies.

Assessment and Approval of Foster Carers (July 2013)

- covers the amended process of assessment and approval of foster carers, fostering limits, terminations of approval and the role of the decision maker.

Care Planning, Placement and Case Review and amendments

- temporary approval of prospective adopters as foster carers – i.e. fostering for adoption
- delegation of decision-making about looked after children to their carers.

Family and Friends Care: Statutory guidance for local authorities

- sets the duties of local authorities with regards to children and young people who are living with family or friends, including those under foster care arrangements or in arrangements that may lead to an adoption order.

Looked After Children: Contact with siblings (February 2014)

- updates and supersedes the paragraphs on sibling contact in 'Children Act 1989 Guidance and Regulations Volume 2: Care planning, placement and case review' (2010) – this guidance is issued in advance of its inclusion in an updated version of the full guidance.

2014/15 legislation and guidance

The Children and Families Act

The Children and Families Act makes provisions for several aspects of the adoption process and contact, both for children in the care of local authorities and post-

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adoption. Sections of the Act come into force at different times over 2014 and 2015. Provisions in Part 1 of the Children and Families Act 2014 include:

- allow persons with a prescribed relationship (e.g. descendants) to a person adopted before 30 December 2005 access to intermediary services to facilitate contact between them and the adopted person's birth relatives
- require a local authority to consider placing a child in a Fostering for Adoption placement when adoption is the probable outcome, but where rehabilitation with the birth family is still a possibility
- removing the express statutory requirement that adoption agencies must give 'due consideration' to a child's religious persuasion, racial origin and cultural and linguistic background when placing them for adoption. The ability to meet the child's needs will be paramount in matching.
- give the Secretary of State the power to require local authorities to make arrangements for the recruitment, assessment and approval of prospective adopters to be carried out on their behalf by one or more adoption agencies (local authorities or voluntary adoption agencies)
- would offer parents a personal budget in place of support services the authority was proposing to provide
- placing new duties on local authorities to inform prospective adopters and adopters of their entitlements
- give approved prospective adopters in the pilot areas a more active role in identifying children for whom they might be suitable adoptive parents by allowing them to access the Adoption and Children Act Register directly, subject to appropriate safeguards
- changes to the arrangements for contact between looked after children and their birth parents to ensure the contact arrangements really benefit the child
- reforms the arrangements for contact between adopted children and their birth relatives and certain others, and give adopters and the adopted child the right to apply for a "no contact" order.

Associated information on the Act is on the Department for Education website:
<http://www.education.gov.uk/a00221161/>

Other pieces of legislation will be issued to underpin the requirements of the Children and Families Act. The Department for Education consulted on amendments to statutory guidance and the sets of Regulations listed below and on the revision to the second outcome in standard 13 of the adoption National Minimum standards. Responses to the consultation can be viewed on Gov.UK - <https://www.gov.uk/government/consultations/adoption-getting-it-right-making-it-work>.

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Regulations being published in 2014 include:

- The Adoption Agencies (Miscellaneous Amendments) Regulations 2014
- The Adoption and Children Act Register Regulations 2014
- The Adoption and Children Act Register Search and Inspection Regulations 2014
- Adoption Support Services (Amendment) Regulations 2014

Details of these and other regulations can be found here:

<http://www.education.gov.uk/a00221161/children-families-bill>

Throughout 2014 new versions are being published for the following guidance:

- A consolidated version of the [Children Act 1989 Guidance, Volume 2: Care Planning, Placement and Case Review](#)
- [Statutory Guidance on Adoption](#) for local authorities and adoption agencies
- [Statutory guidance on court orders and pre-proceedings](#) (replacing the Children Act 1989 Guidance and Regulations: Volume 1- Court orders)

Interlinked policy initiatives and legislation

Reforms to the family justice system

Reforms to the family justice system have significant implications for professionals working in adoption and fostering as they affect the timelines, evidence and reasoning needed to support decisions and ways of working. Changes to family justice are enacted through the Children and Families Act, which sets into law the 26-week limit for the completion of care and supervision orders and sets the conditions for when expert evidence may be used in court for children's proceedings. The revised public law outline (PLO) has led to significant changes in practice in family court, including emphasis on pre-proceedings work, better use of research in assessments and changes to the way cases are managed.

Further information:

The final report of the [Family Justice Review](#) chaired by David Norgrove
[Care proceedings reform and the Public Law Outline](#)

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Workforce development

Workforce development has been taken forward through The College of Social work and changes to the curriculum. For more information see:

[The College of Social Work: Social work education](#)

Case law

Case law sets legal precedent or provides a way by which to interpret particular legislation.

Case law that is particularly relevant for professionals working in fostering and adoption includes:

[Re B-S \(Children\) \[2013\]](#); [Re B \(A Child\) \[2013\]](#) and [Re NL \(A child\) \[2013\]](#).

[Guidance on the revised PLO \(updated to reflect new case law\) has been issued by Cafcass](#)

Summaries of further case law and key judgements can be found here:

<http://www.familylawweek.co.uk/>

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Adoption and Fostering Reform: The main areas of change

Key Messages

- Professionals need to be aware of the range of legislation that affects their work – in particular, the responsibilities, duties and required timescales conferred on local authorities and all adoption and fostering agencies.
- The government's reform programme is wide-ranging and affects many parts of the adoption and fostering system. Much of the detail on the new processes can be found in regulations and the associated guidance, including answers to questions such as 'Who needs to do what?' and 'By when?'
- The wording used in the legislation (e.g. 'fostering for adoption', 'adopter assessment process', 'adoption passport') helps create a common language that can be used for effective communication between professionals and in all areas of the country. Local policies should reflect this common language.

This briefing presents a summary of the main changes to adoption and fostering policy and services as a result of the government's reform programme and should be read alongside the briefing on '[Adoption and fostering: legislative framework and statutory guidance](#)'. This briefing covers fostering for adoption, assessment and approval of adopters and foster carers, contact, matching and ethnicity, the Adoption Register, post-adoption support, long-term foster care, delegation of authority, and 'staying put' arrangements.

Fostering for adoption

It is already possible for local authorities to place looked after children in 'fostering for adoption' placements. However, the Children and Families Act places a new *duty* on local authorities to consider placing looked after children for whom the local authority is considering adoption with foster carers who are also approved prospective adopters. Guidance will set out the considerations and safeguards that must be in place to fulfil this requirement. These include: defining those children who can be considered for fostering for adoption and the need to explore the likelihood of return to the birth family or the feasibility of placement with family and friends carers; the need for DCS approval of a decision; and the need to notify, in writing, the child's parents or guardians and the prospective adopters of the decision to make a fostering for adoption placement. (It should be noted that, in some cases, a fostering for adoption placement might not lead to adoption.)

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Further information can be found here:

[Indicative Updated Adoption Statutory Guidance – clauses 1, 2 and 5-8](#) (DfE, December 2013) – please note this is likely to be updated.

[Statutory Guidance on Adoption](#) (2013) for local authorities and adoption agencies (this guidance is scheduled to be reviewed in 2014)

John Simmonds: [Fostering for Adoption: Practice guidance](#) (2013) Coram Centre for Early Permanence and BAAF

Adopter assessment process

A two-stage training and assessment process for prospective adopters has been in place since July 2013:

- **Stage 1:** The two-month Pre-Assessment Process focuses on initial training and preparation of prospective adopters and is very much adopter-led. Local authorities will carry out prescribed checks and references to determine suitability to adopt a child.
- **Stage 2:** The Assessment Process should take place over four months, during which the agency carries out intensive training and assessment of the prospective adopter.

The [guidance](#) (which will be reviewed in 2014) also sets the duties and responsibilities for local authorities in terms of recruitment, and providing information and registering interest of potential adopters (including timescales for response at each of these stages).

Local authority performance in terms of timeliness of the approval process will be measured. There are certain breaks allowed for in the process, but reasons for all deviations from the prescribed timings should be recorded.

A fast-track process is also in place for those who have adopted before and foster carers wanting to adopt children in their care. These prospective adopters can generally proceed directly to Stage 2.

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Further information:

[Statutory Guidance on Adoption](#) (DfE, 2013)

First4Adoption's [Customer Care Standards](#) (2013) are not statutory guidance, but have been endorsed by several sector bodies, including the Association of Directors of Children's Services (ADCS), Adoption UK and the British Association for Adoption and Fostering (BAAF)

Assessment and approval of foster carers

The Care Planning, Placement and Case Review and Fostering Services (Miscellaneous Amendments) Regulations 2013 amend the Fostering Services (England) Regulations 2011 with respect to the assessment and approval of foster carers, including the independent review mechanism for a decision made on suitability to foster and information sharing between services.

Assessment consist of a (time-bound) two-part process, and includes more flexible approval arrangements for those who have previously fostered, or adopted, or have been with a different fostering service. Under the new regulations, applicants to become foster carers can only seek a review by the independent review mechanism if they are considered not suitable to foster in Stage 2 of the assessment. The new process also allows the immediate implementation of a decision to change a foster carer's terms of approval if the carer agrees in writing with the change and there is an agreement on support needs.

Further information:

[Statutory Guidance: Assessment and Approval of Foster Carers](#) (July, 2013)

Contact

The Children and Families Act clarifies the duties of local authorities in terms of allowing and promoting contact between looked after children and their birth parents, other relatives or guardians. The Act states that the duty to promote contact must be balanced with the duty to safeguard and promote the welfare of looked after children. New legislation may also be passed to set which matters local authorities should assess when deciding what contact should be considered appropriate.

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The Act introduces new requirements with regards to making post-adoption contact orders by the court. These include: who can be named in a contact order, and who can make an application for a contact order or request permission of the court to make an application for an order. Importantly, the Act clarifies that contact should be decided on by the court taking into consideration the welfare of the child, the potential for disruption and the importance of the person's relationship to the child.

Matching and ethnicity

The Children and Families Act removes the explicit legal wording around a child's ethnicity in matching to remove any impression that ethnicity should be weighed more heavily among other factors, such as the ability of a placement to meet the child's needs. Instead, when making a decision on matching, the local authority must consider the child's welfare throughout his or her life, and have regard to a range of matters including the child's needs, wishes and feelings, *and* his or her background, including religious persuasion, racial origin and cultural and linguistic background, among other factors, where relevant. In essence, a child can be placed with adopters with whom they do not share the same ethnicity, provided the adopters can meet the child's identified needs.

Further information:

[Indicative Updated Adoption Statutory Guidance – clauses 1, 2 and 5-8](#) (DfE, December 2013) (this is likely to be updated)

[Statutory Guidance on Adoption](#) (2013) for local authorities and adoption agencies (this guidance is scheduled to be reviewed in 2014)

Adoption Register

The Adoption Register works with adoption agencies and adoption consortia to make sure all children and families have the best chance of finding a suitable match – its main purpose is to find adoptive homes for those children for whom local authorities cannot find a home locally. New duties have been placed on local authorities in terms of their use of the Register. These include:

- providing approved adopters with information regarding the Register
- a three-month deadline for referring children suitable for adoption and prospective adopters (i.e. within three months of approval) to the Register, unless a particular match has been identified

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- and allowing approved adopters to self-refer to the Register (if they have been approved for three months and their agency is not actively pursuing a match).

Further information:

[Adoption Register for England and Wales](#)

[Indicative Updated Adoption Statutory Guidance – clauses 1, 2 and 5-8](#) (DfE, December 2013) (this is likely to be updated)

[Statutory Guidance on Adoption](#) (2013) for local authorities and adoption agencies (this guidance is scheduled to be reviewed in 2014)

Post-adoption support

The new regulations place a duty on local authorities to provide information relating to available adoption support and entitlements to any person who:

- has contacted the local authority to request information about adopting a child
- has informed the authority they wish to adopt a child
- or any person in their area who they become aware is a parent of an adopted child.

Local authorities are free to decide how to fulfil this duty but it is expected that most will choose to do so through a locally tailored version of the 'Adoption Passport'. This sets out the level of support services adopters can expect from the local authority as well as national entitlements, such as pay and leave from work. Local authorities will be able to supplement this with specific local information – for example, about local support services and contact details for the Adoption Support Service Adviser.

New guidance sets out what information must be provided by the local authority, appropriate routes for providing it and those circumstances in which information does not need to be provided (e.g. when all the necessary information has already been provided within the last 12 months). It is also expected that local authorities will also provide detailed information about personal budgets for adoption support services under this requirement.

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Further information:

[Indicative Updated Adoption Statutory Guidance – clauses 1, 2 and 5-8](#) (DfE, December 2013) (this is likely to be updated)

A copy of the [Adoption Passport](#) can be seen on the [First4Adoption](#) website

Long-term foster care

The government is proposing to make changes to the current statutory guidance and legislation to improve the status, security and stability of long-term foster care. The proposed changes include:

- the introduction of a legal definition of long-term foster care
- establishing a decision-making process for agreeing a long-term fostering arrangement – this will include a formal assessment approved by a named official and allowing foster carers to request an assessment to be long-term foster carers for a particular child
- a more flexible approach for scheduling social workers' visits to children in long-term foster care placements, allowing for a reduction in the frequency of visits when appropriate
- a more flexible approach to reviewing long-term foster care placements, potentially reducing the number of review meetings.

Delegation of authority

The Care Planning, Placement and Case Review and Fostering Services (Miscellaneous Amendments) Regulations 2013 amend the Care Planning, Placement and Case Review Regulations 2010 with respect to the delegation of decision making about looked after children to their carers.

Under the revised guidance:

- authority for day-to-day decision making about a looked after child should be delegated to the child's carer(s), unless there is a valid reason not to do so
- a looked after child's placement plan should record who has the authority to take particular decisions about a child
- decisions about delegation of authority should take account of the looked after child's view, age and understanding
- each local authority should have a published policy setting out their approach to the delegation of authority to foster carers.

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Deciding who should have the authority to take particular decisions will depend, in part, on the long-term plan for the child. For example, where the plan is for long-term foster care, the foster carer(s) should have a significant say in the majority of decisions, including longer-term decisions such as which school the child will attend.

The guidance distinguishes between three broad categories of decision:

- day-to-day parenting – e.g. routine health/hygiene decisions, school meetings, leisure activities, sleepovers, family holidays
- routine but longer-term decisions – e.g. choice of school
- significant events – e.g. surgery.

All decisions in the first category should be delegated to the child's carer(s) (and/or the child if appropriate). Where decisions are not delegated, the reasons should be set out in the child's placement plan. Those in the second category will require 'skilled partnership work to involve the relevant people'. Decisions in the third category are likely to be 'more serious and far reaching' and should be taken by the birth parents or others with parental responsibility, which includes the local authority, 'depending in the decision and the circumstances'. However, the wishes and feelings of the child and their carer(s) should be taken into account.

Future changes are likely to include the requirement for delegated authority to be considered at every review meeting for children in foster care placements.

Further information:

[Delegation of Authority: Statutory guidance](#) (DfE, July 2013)

Staying with foster families until 21

The Children and Families Act amends the Children Act (1989) by allowing young people to stay with their foster carers beyond their 18th birthday. The Act places a duty on local authorities to monitor the 'staying put' arrangement and support both the young person and the foster carer(s) in maintaining the arrangement. This includes advice, assistance and financial support to the former foster parent.

The local authority's responsibilities will cease when the young person reaches age 21, or if the arrangement is not consistent with the welfare of the young person, or the arrangement is no longer required. Local authorities also have a duty to determine, when devising a pathway plan for transition of looked after children into adulthood, the appropriateness of working towards facilitating a future staying put arrangement.

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The revised Ofsted inspection framework includes a sub-judgement on care leavers, including the uptake and appropriateness of staying put arrangements.

Fostering and Adoption

Fostering and Adoption

research in practice 

POLICY AND LEGISLATIVE FRAMEWORK – ADOPTION AND FOSTERING

Need for Change
Change
Future Change

1

Fostering and Adoption

research in practice 

Current legislation

- No one has a right to be a foster carer – fostering decisions must focus on the interests of the child (DfE, 2013). The same applies to adoption
- Current legislation reflects a more flexible approach to recruitment of adoptive families
- This session highlights a number, but not all, of the recent changes

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Fostering and Adoption

research in practice 

Why change was necessary

- Mismatch between children needing adoptive placements and recruitment of sufficient adoptive families
- At the end of March 2012 4,600 children were waiting for an adoptive placement
- Adopter recruitment not keeping up with the needs of children waiting for adoption
- Delay in the adoption system – in 2012 the average time between entering care and moving in with their adoptive family was one year nine months

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Fostering and Adoption

research in practice 

2013 changes

- Child's Permanence Report must contain an analysis of the arguments for and against each permanence option and a fully reasoned recommendation (see *Re B-S*)
- This analysis must be full, based on evidence, and include consideration of long-term fostering as well as adoption

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Fostering and Adoption

research in practice 

Current legislation

A long list! See hand out DfE 1 *Legal Frameworks and statutory guidance*

- Over-arching aim of Adoption & Fostering legislation must be to meet the needs of children
- The right of every child to belong to a family is underpinned by the 1989 UN Convention on the Rights of the Child. ('Ideal family' being birth parents or members of their extended family – this must be explored)

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Fostering and Adoption

research in practice 

2013 changes (2)

- Two-part approval process in both fostering and adoption, with strict timescales – completion of both stages within six months for adoption and eight months for fostering
- Delegated authority for foster carers to make more day-to-day decisions regarding the CYP in placement
- Fostering to adopt – a child may be placed with foster carers who are also approved prospective adopters on a fostering basis, while care proceedings are underway, where the local authority is considering adoption for the child

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in practice



2013 changes (3)

- 'Fast-track' assessment process for previous adopters and foster-carers
- Speedier referral to the Adoption and Children Act Register for approved adopters and children
- National Gateway for Adoption – First4Adoption – a central point of information for those considering adoption

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Fostering
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research
in practice



... and more

- Children and Families Act 2014
- Changes in the Act:
 - Power for the Secretary of State to require LAs to outsource the recruitment and assessment of adopters
 - Arrangements for contact for LAC and adopted children
 - Local authorities to accept prospective adopters 'in general' – i.e. not just for the children in their care
 - Free education from two years of age for adopted children (Sept 2014)
 - Same rights as birth parents to leave and pay for adoptive parents (from 2015)
- Other areas of legislation and guidance (see handouts)

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Topic 1 Legal Frameworks

Legislative Framework and Statutory Guidance

Methods

Suited to self-directed learning or reflection with a colleague or supervisor.

Learning outcomes

To identify the changes needed in practice to fulfil requirements following changes in law.

Time required

30 minutes review and 30 minutes reflection with a colleague or supervisor.

Process

Case law ([Re B-S](#) 2013) highlights essential areas for review and quality assurance of social work practice when adoption is being considered as a permanence pathway for a child. These include:

- analytical and evidence-based assessment of any change in parent's circumstances and the prospects of success for sustainable change
- the quality of analysis and reasoning put forward in support of the case for adoption
- ensuring timetables set by the court are met

What mechanisms are there to support professionals, and to whom can professionals turn for support to ensure these requirements are met?

Areas to consider when answering this question include:

- how are changes in legislation cascaded to teams?
- what mechanisms are used to explain and circulate changes required in practice?
- how do you/the organisation assess up-to-date research?
- which teams need to be involved?
- what tools/resources are used support analytical assessments?
- what mechanisms are in place to quality-assure work?