

**EXTENDED LEGAL BRIEFING**

**Regulation 24 (R24) Temporary Approval of Foster Carers**

1. **Introduction**

This note sets out the law and answers key questions including:

* Can Reg 24 temporary approval be given where a child has lived with a carer for a period before a formal placement decision is made.
* Can the Trust place under regulation 24 when carers do not wish to undertake a full fostering assessment?
* If during the course of a full fostering assessment (during the temporary approval period of 16 weeks) the carers withdraw from the assessment, can the Trust leave the child with the carers until the 16 week period expires, or should an alternative placement be found?

1. **The Law**

Section 22A of CA 1989 provides that where a child is in the care of a Local Authority it is the duty of the Local Authority to provide the child with accommodation.

Section 22C sets out ways in which looked after children must be accommodated. Section 22C (6) and (7) give priority to arrangements to live with parents but where this is not safe, the next priority is to place with an individual who is a relative, friend or other person connected with the child and **who is also a local authority foster parent;**

The duties set out above are continuing duties.

The relevant Regulations cover the position that there will be occasions when it is in the best interests of a child to be placed with a connected carer where they are not yet fully approved as foster carers.

This is set out in the Care Planning, Placement and Case Review (England) Regulations 2010.

Regulation 2 provides – “**placement”** means—

(ii) arrangements made by the responsible authority to provide for a child’s accommodation and maintenance by any of the means specified in section 22C(6);

Regulation 24 provides:

1. *Where the responsible authority is satisfied that –*
2. *the most appropriate* ***placement*** *for a child is with a connected person, notwithstanding that the connected person is not approved as a local authority foster parent, and*
3. ***it is necessary for a child to be placed with the connected person******before the connected person’s suitability to be a local authority foster parent has been assessed in accordance with [the Fostering Services Regulations],***
4. *they may approve that person as a local authority foster parent for a temporary period not exceeding 16 weeks (‘temporary approval’) provided that they first comply with the requirements of paragraph (2).*
5. *Before making a* ***placement*** *under paragraph (1), the responsible authority must –*
6. *assess the suitability of the connected person to care for the child, including the suitability of*
7. *the proposed accommodation, and*
8. *all other persons aged 18 and over who are members of the household in which it is proposed that the child will live,*

*taking into account all the matters set out in* ***Schedule 4. (appendix 1 below)***

1. *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 the Child’s welfare and meet the child’s needs set out in the care plan****, and*
2. *make immediate arrangements for the suitability of the connected person to be a local authority foster parent to be assessed in accordance with [the Fostering Services Regulations] (‘the full assessment process’) before the temporary approval expires.*
3. *In this regulation ‘connected person’ means a relative, friend or other person connected with the Child.*

Regulation 25 provides:

1. *Subject to paragraph (4), the responsible authority may extend the temporary approval of a connected person if –*
2. *it is likely to expire before the full assessment process is completed, or*
3. *the connected person, having undergone the full assessment process, is not approved and seeks a review of the decision in accordance with Regulations made under paragraph 12F(1)(b) of Schedule 2 to the 1989 Act.*
4. *In a case falling within paragraph (1)(a), the responsible authority may extend the temporary approval once for a further period of up to eight weeks.*
5. *In a case falling within paragraph (1)(b), the responsible authority may extend the temporary approval until the outcome of the review is known.*
6. *Before deciding whether to extend the temporary approval in the circumstances set out in paragraph (1), the responsible authority must first –*
7. *consider whether placement with the connected person is still the most appropriate placement available;*
8. *seek the views of the fostering panel established by the fostering service provider in accordance with [the Fostering Services Regulations], and*
9. *inform the IRO.*
10. *A decision to extend temporary approval must be approved by a nominated officer.*
11. *If the period of temporary approval and of any extension to that period expires and the connected person has not been approved as a local authority foster parent in accordance with [the Fostering Service Regulations], the responsible authority must terminate the placement after first making other arrangements for C’s accommodation.*

It is important to note that the regulations and guidance make no mention of the words **emergency** or **immediate.** It is about being satisfied that a placement is necessary and suitable at the point the Local Authority makes the arrangements for the child’s accommodation under Section 22 C (6).

1. **Children Act Guidance**

If the need for a placement with a connected person is such that it is not possible to fulfil all the requirements of the 2002 Regulations in approving the connected person as a local authority foster carer before placing the child, the 2010 Regulations set out the arrangements for the temporary approval of a connected person [regulations 24 and 25]. As with any other placement the responsible authority must be satisfied that the placement is the most suitable means to safeguard and promote the child’s welfare [section 22].

The guidance also provides that the powers are expected to be used exceptionally and where there are clearly identified reasons why the full assessment process can’t be undertaken before the placement. The main reason cited for this is the risk that the person may not be approved at the end of the assessment process and the child may need to be moved.

1. **Trust Guidance**

The Trust guidance Practice Hub quick guide December 19 is clear that temporary approval regulations should be used so that children should where possible be placed with suitable family members if this can be done safely and promotes the child’s interests.

1. **Temporary approval where children have lived with the carer for a period before approval is sought**

Difficulties in interpretation can arise when the child has lived with a relative who is not an approved foster carer for some time before the child becomes looked after either through the making of an Interim Care Order or through or a decision that the actions of the Trust mean that the child is in fact a looked after child under Section 20 and not in a family placement.

This difficulty appears to arise from the fact that the Regulations provide that decisions about appropriate placement, necessity and suitability are expressed in the regulations as needing to be made before the **placement** is made.

For the purposes of the Regulations placement is a technical term and means the point at which the Local Authority must meet its statutory obligation to provide a child with accommodation under Section 22 C (6).

1. **Care Proceedings and ICO**

The making of an ICO removes any doubt about a child’s looked after status. A child in care must be provided with accommodation (S22A CA). At that point the Trust must reach a decision on the **placement** of the child in accordance with the Act and Regulations. If the child is to remain with the connected carer then temporary approval under Regulation 24 is the appropriate means of ensuring the placement is lawful while a full assessment is carried out within the statutory period. The assessment of suitability and temporary approval should be in place so that the approval will be effective when the ICO is made.

This protects the Trust because it will have satisfied itself as to the regulatory provisions under R24 and in Schedule 4.

There is nothing in the statutory provisions and regulations that prevents temporary approval where a child has lived with a family member before the formal “placement”.

The only way to regulate promptly and to avoid liability and in the interests of the child would be to carry out the necessary assessment as to necessity and suitability urgently. Not to do this would be an on-going breach of duty under the Regulations.

In care proceedings where a child has been living with a carer it is sometimes suggested that a Section 38(6) order for assessment from the court should be sought rather than using R24 so that the court is effectively regulating the placement. Again this appears to arise from the misunderstanding that temporary approval cannot be given where a child has already been living with the carer.

This suggestion is usually made relying on the case of Re A. in that case despite opposition from the LA that the section was not an appropriate regulatory process the court decided to use section 38(6) to allow the court to regulate an assessment of a grandparent when a view had already been reached by the LA that this was not deemed suitable.

Section 38(6) is to allow an assessment to be undertaken of the child.  The question is what is the assessment to be undertaken in these cases?

The correct approach to the circumstances of a case where a child has living with a connected person but approval has not been sought and the Trust accepts that it is a placement would be:

The Court decides whether an ICO is necessary and proportionate, notwithstanding the unregulated placement;

If so, then the Court should order a placement pursuant to section 38(6) to allow for a viability assessment to be undertaken under Reg 24.

The matter returns to Court on the Trust confirming either temporary approval or not – which the Court will then have to consider.

The gap is remedied by a R24 assessment and decision, which then regularises the position for the Trust and the carer.

It is questionable whether that it is an appropriate use for section 38 (6) to be used to regulate a placement until a 16 week assessment and fostering decision is undertaken, because that would not be a proportionate or necessary decision on the basis that R24 would allow regulation of the placement to take place thoroughly and in accordance with regulations and is the appropriate process to follow and also ensures that appropriate support is in place.

There are sometimes situations where R24 approval is not given but the Court determines that the child’s welfare is best met in the current placement whilst the full assessment is undertaken, and therefore authorises the placement pursuant to section 38(6).  This is the Re A scenario and is at the subsequent stage of decision making and involves different considerations.

It is not proportionate or appropriate for the Court to authorise the placement for a longer period than necessary under S38(6), when there is a statutory mechanism for the Trust to consider the temporary approval of the placement (Reg 24).  This would interfere with Local Authority powers and duties as to care, which are for the LA and not the Court.

Where a child is subject to an ICO, R24 approval has been given but the statutory period of 24 weeks has come to an end then the status of the placement must change or the child must move otherwise the child will be living in an unlawful placement.

S20 status accepted after a child has lived with carer for some time.

The second area of contention is where a child has been placed and has become looked after although the status has not been recognised or acted on appropriately. The placement was seen as an informal family placement but in law through the actions taken a statutory placement has been created.

There comes a point where the status of the arrangement as accommodation is realised and that it is a **placement** but no approval has ever been given. Effectively the arrangement has been unlawful.

The question is whether the Trust is prevented from considering R24 approval in those circumstances. Can the Trust “remedy” the situation by giving temporary approval at that point.

The duties under Section 22 CA and under the regulations are continuing duties. If a child is accepted as accommodated or is in care then the child must be accommodated and maintained in a way set out by the Statute and Regulations. To remain with a connected carer in those circumstances the carer must be approved or the placement will be unlawful

When presented with a position where a **placement** has been created when the intention had been that the arrangement was a “family arrangement” then the practical steps would be to explain to all what the position is. That is the parents and the carers. If the parents decide that they object to the child being accommodated then at that point another arrangement will need to be made or an application made for a care order.

Where the Trust accepts that it has created a **placemen**t, without undertaking the appropriate process, because the duties are continuing to a looked after child, it is duty bound to rectify its error and this would require a Reg 24 process to be undertaken as quickly as possible to either regulate the placement or make the decision that the placement should not be authorised.

By not remedying the error, the Trust would be placing itself at risk of liability either in negligence (statutory breach) or in breach of HRA provisions  The most appropriate way to resolve the risk is to undertake the Reg 24 temporary approval process, as it may reveal a risk/negative outcome at an earlier stage which will ensure the child’s welfare is safeguarded.

1. **Can the Trust give R24 approval when carers do not wish to undertake a full fostering assessment?**

If it is known *before placement* that the proposed carer does not wish to undertake a full fostering assessment, then the Trust cannot make arrangements for a full fostering assessment and so cannot comply with regulation 24(2)(c). Since compliance with regulation 24(2)(c) is required for placement under regulation 24(1), it follows that the LA cannot then lawfully place under that regulation.

This approach fits with the purpose of regulation 24 which is to authorise the temporary approval of a proposed carer *pending* *a full fostering assessment*. The Trust could not be compliant with R24 if it were to be relied upon to authorise a placement in circumstances where it was known that there would be no full fostering assessment.

In these circumstances the status of the placement will need to be further negotiated with family members and an application to Court may be necessary.

1. **If during the course of a full fostering assessment (during the temporary approval period of 16 weeks) the carers withdraw from the assessment, can the Trust leave the child with the carers until the 16 week period expires, or should an alternative placement be found?**

**Key points**

The clear purpose of regulation 24

Regulation 24 *permits* temporary approval for a period *“not exceeding 16 weeks”* (and regulation 25 *permits* an extension for a period *“up to 8 weeks”* / *“until the outcome of the review is known”*); the regulations do not stipulate that approval *must* extend for the full duration of the relevant temporary period;

The regulations do not (and could not) absolve the LA of its general duties towards looked after children (Children Act 1989, s.22);

Nor do the regulations stipulate (or imply) that, once temporary approval is granted, the LA is absolved of its responsibility to keep arrangements under review (see in this regard regulations 6(1), 32, 33, 35 and schedule 7, Para 5).

In order to give effect to the clear purpose of regulation 24, and to satisfy the Trust’s statutory duties and responsibilities, a carer stating that they no longer wish to be part of a full fostering assessment must trigger an urgent reconsideration of the child’s placement.

In making decisions about other arrangements, the Trust would have to consider the range of options available, which may include:

* A move to a different foster placement;
* The child ceasing to be ‘looked after’ and continuing to live with his carers through agreement with parents ultimately through a child arrangements order or special guardianship order.

Trust Legal Team

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**Appendix 1**

SCHEDULE 4 Matters to be taken into account when assessing the suitability of a connected person to care for C

**1.**  **In respect of the connected person—**

(a) The nature and quality of any existing relationship with C,

(b) Their capacity to care for children and in particular in relation to C to—

* 1. Provide for C’s physical needs and appropriate medical and dental care,
  2. Protect C adequately from harm or danger including from any person who presents a risk of harm to C,
  3. Ensure that the accommodation and home environment is suitable with regard to the age and developmental stage of C,
  4. Promote the Child's learning and development, and
  5. provide a stable family environment which will promote secure attachments for C, including promoting positive contact with P and other connected persons, unless to do this is not consistent with the duty to safeguard and promote C’s welfare,

(c) their state of health including their physical, emotional and mental health and medical history including any current or past issues of domestic violence, substance misuse or mental health problems,

(d) their family relationships and the composition of their household, including particulars of—

* 1. the identity of all other members of the household, including their age and the nature of their relationship with the connected person and with each other, including any sexual relationship,
  2. any relationship with any person who is a parent of C,
  3. any relationship between C and other members of the household
  4. other adults not being members of the household who are likely to have regular contact with C, and
  5. any current or previous domestic violence between members of the household, including the connected person,

(e) their family history, including—

* 1. particulars of their childhood and upbringing including the strengths and difficulties of their parents or other persons who cared for them,
  2. their relationships with their parents and siblings, and their relationships with each other,
  3. their educational achievement and any specific learning difficulty or disability,
  4. a chronology of significant life events, and
  5. particulars of other relatives and their relationships with C and the connected person,

(f) particulars of any criminal offences of which they have been convicted or in respect of which they have been cautioned,

(g) their past and present employment and other sources of income, and

(h) the nature of the neighbourhood in which their home is situated and resources available in the community to support C and the connected person