

**LEGAL BRIEFING**

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

1. **Introduction**

Regulation 24 (R24) of the [Care Planning, Placement and Case Review (England) Regulations 2010](https://www.legislation.gov.uk/uksi/2010/959/regulation/24/made) enables local authorities to approve a connected person (a relative, friend or other person connected with a child) as a local authority foster parent for a temporary period of 16 weeks (extendable to 24 weeks) where a local authority considers this to be appropriate and necessary while they are going through the full foster carer assessment process.

This enables us to place a child with family or friends following a suitability assessment taking into account things set out in Schedule 4 of the regulations, promoting positive outcomes by enabling them to live with people they know.

This briefing provides clarification regarding particular situations when children are placed with connected carers who are not already approved as foster carers. The situations are:

1. Where a child has been living with connected carers before the decision is made by the Trust to accommodate and place them
2. Where carers inform us before we place the child with them that they do not wish to have a full fostering assessment
3. Where the carers withdraw from a full fostering assessment during the temporary approval period

***The briefing only applies to circumstances where children become accommodated/looked after by the Trust, not where children’s parents make their own private arrangements for them to live with connected persons.***

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 placement under Section 22 C (6).

The guidance states that the powers are expected to be used exceptionally (although this is not stated in the regulations) 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. The Trust is however committed to ensuring the children can live with their families where this is appropriate and necessary during the assessment process.

More detailed guidance can be found in:

* Tri.x Chapter 5.1.12 [*Placements with Connected Persons*](https://birminghamcs.proceduresonline.com/p_place_conn_pers.html)
* *[Practice Hub Quick Guide - Approving Family and Friends as Temporary](https://proceduresonline.com/trixcms2/media/13676/regulation-24-approval-practice-hub-quick-guide-02122019.pdf)*

*[Foster Carers (Regulation 24)](https://proceduresonline.com/trixcms2/media/13676/regulation-24-approval-practice-hub-quick-guide-02122019.pdf)*

* [*Extended Legal Briefing Note - R24 Temporary Approval of Foster Carers*](https://proceduresonline.com/trixcms2/media/18043/11484743-regulation-reg-24-legal-briefing-full-version-v10-311222.docx)

1. **Can Regulation 24 temporary approval be given where a child has lived with a carer for a period before a formal placement decision is made?**

The simple answer to this is yes - 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”.

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. There are two potential areas of contention:

1. ***Care proceedings/ Interim Care Order (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 completed without delay so that the approval will be effective when the ICO is made.

In care proceedings where a child has been living with a carer it is sometimes suggested that a Children Act 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. This appears to arise from the misunderstanding that temporary approval cannot be given where a child has already been living with the carer. Section 38(6) is appropriate only in specific and exceptional circumstances and it would 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 (R24).

*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.*

1. ***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.

In these circumstances then the legal position should be explained to the child’s 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 **placement**, without undertaking the appropriate process, a R24 process needs 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 Human Rights Act (1998) provisions.

1. **Can the Trust place under Regulation 24 when carers do not wish to undertake a full fostering assessment?**

The short answer to this is no - the purpose of R24 is to authorise the temporary approval of a proposed carer *pending* *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).

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?**

The short answer to this is again no - the purpose of regulation 24 is to authorise the temporary approval of a proposed carer *pending* *a full fostering assessment*.

In order to give effect to the clear purpose of regulation 24, and to satisfy the Trust’s statutory duties and responsibilities, if a carer states that they no longer wish to be part of a full fostering assessment there must be 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 their carers through agreement with parents, ultimately through a Child Arrangements Order or Special Guardianship Order.