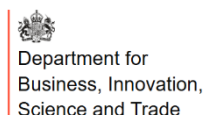


Policy statement – October 2026

Department for Education



Department for Business, Innovation, Science and Trade

We recognise the significant contribution made every day by foster carers who provide care, stability and support for some of the most vulnerable children in society. The government is committed to reforming children's social care so that more children can experience the stable, loving relationships they need to thrive, while ensuring that carers are valued and supported in the vital role they play. Put simply, the children's social care system could not function without foster carers.

Recruiting and retaining more foster carers is critical to improving outcomes for children. The government's [fostering action plan](#) sets out the urgent steps we are taking to reverse the decline in foster carers and reform the system. It outlines the challenges we face, our vision for the future, and the actions we are taking now to build a stronger, more resilient fostering system. These reforms are backed by £88 million over the next two years, which represents record levels of government investment into fostering.

We recently [consulted](#) on new national fostering standards to establish clearer expectations for fostering services and improve consistency in the support, training and experiences provided to foster carers and children. The new standards are designed to humanise and simplify the fostering system, setting clear expectations and trusting high-quality foster families with day-to-day decisions for the children they care for. We will publish our response to the consultation later this year.

The Government is clear in its view that foster carers are not workers under the existing statutory framework, and that employment status would not be suitable for foster care. Children who cannot live with their birth families must feel that they are cared for because they matter, and not feel like they are a work responsibility. This does not mean foster carers should be anything less than fully supported and appropriately remunerated.

Employment issues

We have been made aware of a letter circulating from the National Union of Professional Foster Carers (NUPFC), concerning the Employment Rights Act 2025 and its implications for fostering services. The NUPFC letter is included at the bottom of this document for reference.

This note sets out the Government's position on the matters addressed in the NUPFC's letter. Fostering services may wish to seek their own legal advice.

The NUPFC letter relates to the employer duty to inform workers of their right to join a trade union. It contains a number of statements about the scope and operation of the new duty which do not reflect the Government's position on the legislation and proposed policy. This note addresses the points most relevant to fostering services.

The duty to inform workers of their right to join a trade union via written statement is planned to come into force on 1 January 2027, and is set out in section 136A of the Trade Union and Labour Relations (Consolidation) Act 1992 (inserted by the Employment Rights Act 2025). The relevant legislation (currently partially in force) is available here: <https://www.legislation.gov.uk/ukpga/1992/52/section/136A>.

Section 136A provides that, for the purposes of the new duty, ‘worker’ and ‘employer’ have the same meanings as in [section 230\(3\) of the Employment Rights Act 1996](#).

The Government’s position, applying the existing authorities, is that foster carers who foster under a foster care agreement do not work under a contract and therefore do not fall within the definition of “worker” in s.230(3) of the Employment Rights Act 1996. In *W v Essex County Council [1999] Fam 90*, the Court of Appeal held that the foster care agreement considered in that case did not constitute a contract. That conclusion remains binding authority.

In *NUPFC vs Certification Officer [2021] EWCA Civ 548*, the Court of Appeal held that, for the purpose of section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992, as applied in sections 2 to 4 of that Act, the definition of “worker” in s.296(1) of that Act (not the definition in s.230(3) of the Employment Rights Act 1996) extended to persons who were parties to the relevant foster care agreements. This enabled the NUPFC to seek entry on the Certification Officer’s list of trade unions. The judgement did not determine whether foster carers fall within the separate definition of “worker” in section 230(3) of the Employment Rights Act 1996, which section 136 of the Trade Union and Labour Relations (Consolidation) Act 1992 expressly adopts.

There is also a section in the letter which sets out financial penalties for ‘not allowing trade unions to attend meetings’. The financial penalties listed in the letter relate to breaches of a statutory access agreement. There is a code of practice on the right of trade unions to access workplaces here: [Code of Practice: Right of trade unions to access workplaces](#).

Fostering services may be aware that there is ongoing litigation in which three foster carers have brought claims for various workers’ rights on the basis that they are workers. The Secretary of State for Education has intervened in that case. As set out above, the Government is clear in its view that foster carers are not workers under the existing statutory framework.

Fostering policy

Aside from questions of employment status, DfE’s position is that fostering services should work in collaboration and partnership with their foster carers, and to respect their carers’ decisions about support. Fostering services may wish to proactively signpost foster carers to support services. Any such signposting could be to a wide range of support organisations and is separate from the statutory duty under section 136A of the Trade Union and Labour Relations (Consolidation) Act 1992.

If you have any questions about the points raised in the above statement, please contact fostering.programme@education.gov.uk.

Annex: letter from National Union of Professional Foster Carers for reference

Urgent: Foster Carers and the New Employment Act 2025 – Duty to inform workers of their right to join a trade union

I am sure that you will be aware that the new Employment Act came into force in November 2025.

I am also sure that you know that the National Union of Professional Foster Carers (NUPFC) are the only Government Certified Trade Union in the United Kingdom, solely supporting and representing Foster carers (including kinship carers and staying put).

I am writing to you today in case you were not aware that from 30 October 2026 it is mandatory that you inform anyone who works for you (i.e. anyone you pay in any way), in writing of their right to join a trade union and suggest to them a suitable trade union for them to join.

The Government have laid down strict rules about how this must be done:

- A paragraph in their joining letter
- A paragraph on every pay slip
- A letter given when they start with a reminder every six months
- A paragraph in a regular newsletter

I have enclosed (attached) to this letter our basic flyer which I would ask that you send out to each one of your carers when you notify them about trade union membership. We can supply more flyers on request.

As well as the penalties for not providing the specific notice about union membership, there are new rules about allowing trade unions to attend meetings which carry several escalating fines reaching up to £500,000 for repeat non-compliance and denying trade unions physical or virtual access:

- First breach – up to £75,000
- Second breach – up to £150,000
- Repeated non compliance – up to £500,000

The Good news:

To comply with the new laws, you need only to inform the carers about the union; you don't have to endorse it, and it is up to them if they join. For a single carer, the cost is only £10 per month.

The good news for you is that membership of the NUPFC costs you nothing, unlike other support services that often charge you an hourly rate to attend meetings. Union members pay our fee themselves and can claim it back on their tax return as an expense. This will save you money on your budget

The NUPFC caseworkers work 7 days a week at times that suit carers with problems, and our job is to mediate and achieve the best possible resolution and outcomes for the children involved through discussions with your team and the carer. Our aim is to retain and keep good carers caring and placements stable wherever possible, which saves you money on recruitment, as happy carers recommend other people to become carers.

The NUPFC can help you with difficult cases by introducing you to independent social workers.

The NUPFC can help you by providing tailor-made training programmes for carers.

The NUPFC have regular meetings with the Department for Education and Ministers and can bring up any matters you or your carers feel necessary.

The NUPFC are available to attend support groups either in person or virtually to explain what we do and how we work. To arrange this, please contact me.

Our website is: www.nupfc.com

The joining link to share with your carers is: www.nupfc.com/join

If you have any questions or queries, please do not hesitate to contact me.

I look forward to working together with you to build a successful fostering team around your corporate children.

Best regards



ROBIN FINDLAY

General Secretary