



# LEGISLATIVE FRAMEWORK

## for Family-Based Alternative Child Care in Some European Countries

Review of international experience

## Authors

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The opinions expressed in this document are solely those of the authors, except for those referenced, and do not necessarily reflect the official position of UNICEF.

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## Introduction

Throughout Ukraine's independence, the state has declared the protection of the rights of the child as one of the main priorities of state social policy at the level of legislation, strategic and programme documents.

Creating conditions for the comprehensive and safe development of a child, taking into account his or her best interests, and supporting the family in which he or she is brought up is not only one of the state's obligations under the Constitution of Ukraine and the UN Convention on the Rights of the Child, but also an indicator of the level of humanity and civilisation of society. In addition, the Guidelines for the Alternative Care of Children, approved by UN General Assembly Resolution A/RES/64/142, have become a guideline for the child protection system.

Since its independence, Ukraine has moved from predominantly institutional childcare to the introduction and development of alternative forms of family-based care, which now dominate.

Ukrainian legislation on alternative care conditionally focuses on two main groups of children in need:

### **Children in difficult life circumstances and left without parental care.**

Alternative care for such children is provided in the families of relatives, friends, families of foster carers, and, if this is not possible, in institutional care and education institutions, and during the period of martial law – in foster families, family-type children's homes.

### **Orphans and children deprived of parental care.**

The state guarantees such children, as well as persons from among them if they are studying, full state support until the age of 23, and establishes uniform social standards and guarantees. The protection of the rights of this category of children is carried out on the basis of a decision of the guardianship and custody authority and is regulated by a number of legal acts.

Alternative care and upbringing of children who have acquired the status of an orphan or a child deprived of parental care is provided by placing the child in one of the forms of family-based care (hereinafter – FBC): adoption, guardianship, foster family, family-type children's home, or, if this is not possible, in an institutional care facility. The largest number of children live in families of guardians.

The child protection system is constantly searching for the best models to ensure the best interests of a child in need of alternative care. For a long time, there have been discussions about the system of alternative forms of child care, its effectiveness, the perfection of programmes and procedures

for training candidates who care for and educate placed children, their support, granting status to children, their placement, ensuring the right to a family for children in institutions, especially children in the first years of life, etc.

The war has significantly exacerbated the existing problematic issues of the child protection system, including alternative care, the performance of relevant functions by guardianship and care bodies, child services, and service providers for children and their families.

**Info Note:** 21% of orphans, children deprived of parental care, and children brought up in foster, short-term fostering (patronat), guardian or caregiver families were forced to leave their homes: 8200 of them (out of 3577 families) were evacuated abroad; 2618 children (out of 1463 families) moved within the country<sup>1</sup>, in addition, more than one thousand young children were evacuated as part of baby homes abroad, every 3<sup>rd</sup> of them is a child with a disability<sup>2</sup>.

In most cases, the existing legal acts on child protection proved to be inappropriate during the war. Therefore, the Government and the Verkhovna Rada of Ukraine, with the active participation of civil society organisations, urgently developed new legal norms and algorithms of action that would minimise risks to children's lives and health and meet the current situation. This process is still ongoing and, as a rule, regulates response mechanisms with a certain delay, which may not take into account important details because they are developed in a hurry, which causes additional risks for children.

Despite the ongoing war, the work of government agencies, local authorities and NGOs is already aimed at restoring the country, laying the foundations for its development on European principles, including child protection, reforming the childcare system, and ensuring the right of every child to family upbringing.

In order to improve the Ukrainian system of alternative child care and bring it in line with European standards, a study was conducted of the legislation of five European countries (Sweden, Lithuania, Poland, Bulgaria, and England).

The methodology of the study, a description of the legislation of European countries according to certain criteria, conclusions and recommendations that, in the opinion of experts, are important to implement in Ukrainian legislation on child protection and support for the development of family-based alternative care are presented in this report.

1 Children and War in Ukraine: <https://www.unicef.org/ukraine/documents/02-06-2022-CiAC-monitoring-report>

2 Children and War in Ukraine: the situation and needs of children in baby homes: <https://bit.ly/CiACrep>

## 1

# Methodology

**The purpose of the study** is to analyse the legislative framework for family-based alternative care and upbringing of children in European countries and to prepare proposals for the implementation of best practices in Ukrainian legislation.

**The subject of the study** is the legal acts of certain European countries regulating the issues of family-based forms of alternative child care.

**The objective of the study** is to analyse open official sources of information on the coverage of orphanhood in Ukraine and European countries.

**Geography of the study:** Kingdom of Sweden, Republic of Lithuania, Republic of Poland, Republic of Bulgaria, United Kingdom (England).

**The structure of the study** is a combination of desk research and expert surveys based on the defined research criteria.

## Criteria for studying the norms of legislative acts that regulate:

- definition of the concept of “alternative care”,
- categories of children who can be placed in family-based forms of alternative care;
- forms (types) of alternative care and upbringing of children;
- subjects and procedures for making decisions on the choice of an alternative form of care for a child and its placement;
- the maximum and minimum number of children who can be placed in each of the forms provided for;
- the length of stay of children in each of the family-based forms of alternative care and education;

- the issue of the number of guardians for one child;
- representation of the child's interests;
- legal status of children placed in family-based forms of alternative care;
- maintaining links with the biological parents of a child placed in a family-based form of alternative care;
- mechanisms of financial and material support for family-based forms of alternative care of children;
- monitoring and control over the provision of care and upbringing of children in family-based forms;
- issues of social support for children and families engaged in alternative care of children;
- the issue of removing a child from a family-based form of alternative care;
- peculiarities of alternative care for children with disabilities;
- training and professional development of families providing alternative care of children;
- the existence of standards for the care and upbringing of children in families that provide alternative care of children;
- the status of family-based forms of alternative care of children (whether families providing alternative care are considered social service providers);
- the main essence of the contractual relationship between the competent authorities and families.

**Sources of information:** published reports of previous studies, official open sources, regulations and information published on the official websites of government agencies of the selected European countries; interviews with experts from European countries, in particular:

- Marie Sallnäs, Professor at Stockholm University (Sweden);
- Eivilė Žemaitytė, Chief Advisor to the Ombudsperson for Child's Rights of the Republic of Lithuania;
- Josh MacAlister, Executive Chair of Early Intervention Foundation and What Works for Children's Social Care (England);
- Mariia Kolankevych, Professor, Warsaw University (Poland)

- Joanna Kocot, expert of the group for the coordination of the evacuation of children from Ukraine at the Office of the Government Commissioner for Demographic Policy of the Ministry of Family and Social Policy of the Republic of Poland.

The following concepts and abbreviations are used in this study.

## Terms and definitions:

Alternative care is the care of children who have been left without parental care for various reasons..

## Abbreviations:

Family-based forms (FBC) – family-based forms of alternative childcare;

Children – children in need of alternative care;

Sweden – the Kingdom of Sweden;

Lithuania – the Republic of Lithuania;

Poland – the Republic of Poland;

Bulgaria – the Republic of Bulgaria;

The United Kingdom – England;

IVO – Health and Social Care Inspectorate;

HVB home – Home for care or residence;

Foster family – foster care;

FTCH – Family-type children's home;

LGs – local governments;

FBFE – Family-based forms of education

In order to facilitate the perception of the material presented, as well as to draw attention to interesting European legislative practices and experience that, in the authors' opinion, deserve attention, the text of the study contains highlighted fragments.

# Key findings and summary of the study results

## 2

This section provides a brief summary of similarities and differences in the legislative practices of Sweden, Lithuania, Poland, Bulgaria and England (hereinafter referred to as European countries) and Ukraine regarding alternative care for children who, for whatever reason, have been left without parental care, focusing on positive practices and providing recommendations for their implementation in Ukrainian legislation and practice. This section is a kind of guide, as it contains references to other sections of the study and sources of information.

The study has shown that both in Ukraine and in European countries, the legislation governing alternative care for children deprived of parental care is quite extensive, consisting of codes/laws and bylaws. A list of the analysed legislation for each country is provided in Annex 1, as well as in the relevant paragraph that provides an overview of the legislative framework of a particular country. In order to clarify and correctly interpret the norms of legislative acts, interviews were

conducted with 4 key experts from such countries as England, Sweden, Lithuania, and Poland.

A common feature of all countries is that, as in Ukraine, legislation does not contain a definition of the concept of alternative care. However, the interviewed experts described its understanding in almost the same way – care and meeting the needs of children who, under various circumstances, have been left without parental care.

The peculiarity of the countries studied is that the legislation of these countries does not divide children by status, as in Ukraine, but applies common approaches to providing alternative forms of child care in the absence of parents, or the inability/incapacity of parents to care for a child at all or for a certain period of time, or in difficult life circumstances, etc.

On the basis of the analysis carried out according to the defined research criteria, the key findings and recommendations are formulated.



The legislation of both the countries under study and Ukraine is based on common approaches and reflects the norms defined by the UN Convention on the Rights of the Child and the UN Guidelines for the Alternative Care of Children. What is common is that the legislative acts of all the countries under study, including Ukraine, in particular, contain

- Norms regulating alternative child care: both family-based and institutional<sup>3</sup>;
- define and regulate the functioning of at least several types of family care;
- regulate the specialisation of family care;
- establish additional requirements and measures to support families with children with disabilities;
- provide financial mechanisms for child support and payment for childcare and education services;
- contain requirements for the care and upbringing of a foster child on the basis of an individual plan, which provides for a timeframe for its mandatory review, as well as a number of other provisions described in the relevant paragraphs of this report.

detail in the description of the experience of a particular country. A special feature is the presence of varieties of these forms or their specialisation.

**Table 1** presents the main forms of alternative care for children and young people without parental care in each of the countries studied..

- In Sweden, family-based forms of child care include: foster care, which is divided into special (permanent) and temporary care (see section 3.1).
- Lithuanian legislation already defines 3 family-based forms of care for children left without parental care: family, social family and foster care centre (professional guardian) (see section 3.2).
- There are two main family forms in Bulgaria: guardianship and foster care (which can be both regular and professional) (see section 3.4).
- A more diverse system of family-based alternative childcare in Poland and England.

Although there are formally only two key family-based forms of child care in Poland – family-type children's homes and foster family – the latter has a wide range of varieties: kinship foster family, non-professional foster family, professional foster family (which can be regular, professional and emergency) (see section 3.3).

In England, there are 4 types of family-based care:

- private foster care;
- family care (informal);
- foster care by relatives or friends;
- non-kinship foster care.

The latter two forms are part of the so-called professional foster families, which have different types/specialisations (see Section 3.5).

**At the same time, the countries studied have unique experience in family-based placements of children that deserves special attention and can be implemented in Ukraine.**

**Regarding family-based forms of alternative care.** It should be noted that most of the existing family-based forms of alternative care for children in Ukraine are represented in one form or another in the legislative acts and practice of the countries under study: guardianship and custody, foster and patronat families (professional short-term and emergency foster family in Poland, and the professional guardian in Lithuania), family-type children's homes (analogous to the family-based care in Lithuania, and the family home in Sweden).

In all the countries studied, child care in family-based alternative care (guardianship families, foster families, short-term fostering families, family-type children's homes, etc.) is considered a social service and is provided by specially trained families on the basis of a contract.

However, the basic rules for organising the functioning of these forms are somewhat different, as described in

<sup>3</sup> In the countries studied, the number of children in institutional care is limited (usually 8 to 15 persons)

**Table 1.** Forms of alternative care for children and young people

Country	Forms of alternative childcare	Forms and types of family-based child care	Adaptive forms of care for adolescents and young people
Sweden	<ul style="list-style-type: none"> <li>▪ Guardianship<sup>4</sup> ;</li> <li>▪ Foster Care;</li> <li>▪ Institutional</li> </ul>	<ul style="list-style-type: none"> <li>▪ Guardianship: special guardianship or temporary guardianship;</li> <li>▪ Foster family;</li> </ul>	<ul style="list-style-type: none"> <li>▪ Home for Care and Living (or HVB home);</li> <li>▪ Secure Care House;</li> <li>▪ Supported housing for young people (aged 16-20)</li> </ul>
Lithuania	<ul style="list-style-type: none"> <li>▪ Family guardianship</li> <li>▪ Social family guardianship</li> <li>▪ Foster care centres (non-kinship/professional care)</li> <li>▪ Institutional (inc. community-based care homes, which have up to 8 children)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Guardianship (care) in the family (temporary and permanent);</li> <li>▪ Guardianship (care) in the social family;</li> <li>▪ Guardianship (care) in a Foster care centre (professional) guardian);</li> </ul>	<ul style="list-style-type: none"> <li>▪ Family guardianship</li> <li>▪ Social family guardianship</li> <li>▪ Foster care centres (non-kinship/professional care)</li> <li>▪ Institutional</li> </ul>
Poland	<ul style="list-style-type: none"> <li>▪ Family guardianship;</li> <li>▪ Institutional</li> </ul>	<ul style="list-style-type: none"> <li>▪ Kinship foster family;</li> <li>▪ Unprofessional foster family;</li> <li>▪ Professional foster family: <ul style="list-style-type: none"> <li>▪ ordinary;</li> <li>▪ professional;</li> <li>▪ emergency family</li> </ul> </li> <li>▪ Family-type children's home</li> <li>▪ Support family.</li> </ul>	If necessary, stay in a professional foster family or family-type children's home
Bulgaria	<ul style="list-style-type: none"> <li>▪ Guardianship / care;</li> <li>▪ Foster family (professional)</li> <li>▪ Institutional</li> </ul>	<ul style="list-style-type: none"> <li>▪ Foster family</li> <li>▪ Short-term foster family</li> <li>▪ Long-term foster family;</li> <li>▪ Urgent placement foster family;</li> <li>▪ Substitute patronage family.</li> </ul>	
England	<ul style="list-style-type: none"> <li>▪ Private foster care;</li> <li>▪ Family care (informal);</li> <li>▪ Foster care by relatives or friends;</li> <li>▪ Non-kinship/professional foster care.</li> <li>▪ Institutional care</li> </ul>	<ul style="list-style-type: none"> <li>▪ Non-kinship foster care: <ul style="list-style-type: none"> <li>▪ long-term SAR;</li> <li>▪ short-term foster family;</li> <li>▪ care in an emergency situation;</li> <li>▪ care for respite or short break;</li> <li>▪ foster care as a preventive measure;</li> <li>▪ specialised therapeutic foster family.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Foster care as a preventive measure;</li> <li>▪ Specialised therapeutic foster family</li> </ul>

All countries have a separate family-based form of short-term emergency care/emergency placement of a child – analogous to the patronat family (short-term foster care) in Ukraine. The main task of this form is to provide urgent and/or short-term care for a child who, for various reasons, has been separated from his or her family for the period necessary for the relevant authority to make a decision on reunification of the child with his or her family or to choose a form of longer-term alternative care.

For example,

- in Poland it is a professional foster family of emergency nature;
- in Lithuania – a professional guardian of the Foster Care centre;
- in Bulgaria – a professional emergency placement foster family;
- in England – a short-term foster family.

**The peculiarity** is that short-term care is always provided by families acting on a professional basis; the decision to place a child in such a family is made by the relevant municipal authority, not the court; the maximum period of stay in such families varies, but does not exceed 12 months.

<sup>4</sup> It is considered not as a form, but as a feature of legal representation

- A unique form of family-based care in England is the therapeutic foster family, which provides specialised therapeutic care for children and young people with complex needs or challenging behaviour. Care is provided by experienced professional foster carers.

#### Please note!

The Poland's experience of creating conditions for respite for existing foster families and family-type children's homes – the so-called support family – is worthy of attention. Any foster family can become a support family for a certain period of time and, on the basis of an agreement with the starosta representing the local authorities, accept foster children from another foster family for a period of up to 2 months.

#### Regarding the care of children with disabilities.

In general, there are no striking differences in the placement of children with disabilities compared to children without such disabilities. Children with disabilities can be placed in any form of alternative care, **provided that they are provided with the necessary care and their needs are met.** As in Ukraine, the legislation of the countries under study provides for an increased amount of financial support for such children. The experience of England and Poland in providing a respite service **for families with a child with a disability** is worthy of note.

- The legislation of the Republic of Poland stipulates that only a professional foster family can care for a child with disabilities;
- In Lithuania, when a child with disabilities is placed in foster care, the maximum number of children who can be brought up in the foster carer's family is automatically limited.
- In Bulgaria, there is an institution of substitute foster care – defined as a social service for families of relatives, foster parents, adoptive parents who provide care and education for children with persistent disabilities left without parental care.
- A similar service in England is “respite and short breaks”, which provides care for children with disabilities, special educational needs or behavioural problems while their parents or regular foster carers are on holiday.

Instead, Ukrainian legislation provides for a number of mechanisms for special support for children with disabilities and families providing alternative care for such children: increased child benefit, the availability of a child's assistant in inclusive education. Problematic issues include the absence of restrictions on the number of children with disabilities who can be brought up in one family, and the support of families who provide care for them.

**Regarding the maximum number of children who can be placed in a family.** The practice of most countries (England, Lithuania, Poland) shows that there are restrictions on the number of children who can be placed – no more than 8 children, including their own, for any form of alternative family care. In addition, the regulations of the countries studied limit the number of children depending on the form and purpose of placement, specifics of child care, disability or difficult life circumstances.

- In Lithuania, up to 3 children can be placed in a foster family or professional guardian, from 4 up to 8 can be placed in a social family. The total number of children may exceed specified numbers hereof where that is due to keeping siblings together, but the maximum number of children is limited. The total number of children in the family including the parents' natural children may not exceed 6, in the social family – 8.
- In Poland, a regular professional foster family can have from 3 to 6 children in care; a professional foster family with specialisation (socially maladjusted children) can have up to 3 children; a family-type children's home can have up to 8 children.
- The maximum number of children placed with English foster families cannot exceed 3 children, with the exception of siblings.

This differs significantly from the Ukrainian experience, where in the most commonly used form of family-based care, such as guardianship, the number of children placed is not limited by Ukrainian legislation. The regulation of the number of children who can be placed in family-type children's homes is also problematic. Despite the fact that “the total number of children in a family-type children's home should not exceed 10, including relatives”<sup>5</sup>, the norms defined by the same provision regarding the possibility of extending the stay of children who continue their education until the age

5 Regulations on family-type children's homes <https://zakon.rada.gov.ua/laws/show/564-2002-%D0%BF#Text>

of 23 turn some FTCHs into institutions with 15, and sometimes 20 or more children.

**Regarding the duration of a child's stay in family-based alternative care.** The legal acts of all the countries studied establish the duration of a child's stay outside the family, taking into account the child's best interests and the principle of appropriateness and relevance, based on an individual plan that is systematically reviewed. The main calculation criteria are the timeframe required to restore the parents' ability to meet the child's needs and/or the timeframe required to rehabilitate the child's condition, restore parent-child relationships, etc. If this is not possible, care is provided until the child reaches the age of 18. In most countries, care can be extended, but no longer than until the person reaches the age of 20.

- In Sweden, a child can stay in foster care until he or she reaches the age of 18, in other forms it depends on the needs of the child and his or her parents, but in some family-based forms it can last until the person reaches the age of 20. In general, the time during which a child can be brought up in such families is fixed in an individual plan, which is reviewed every 6 months.
- Lithuanian law limits the period of stay of a child under permanent care to 18 years of age, and temporary care to 12 months, with the possibility of extension to 18 months if necessary.
- The duration of a child's stay in family-based care in Poland is limited to 1 year, but it can be extended until the conditions allowing the child to return to the family are met. A child can stay in a professional emergency foster family for 4 to 8 months.
- In Bulgaria, a child can stay in a short-term foster family for no longer than 1 year. Whereas in foster care and long-term foster care, a child may stay until the age of majority, and in some cases up to the age of 20.
- In England, children can stay in any family-based form of alternative care until the age of 18.

In contrast to this experience, in Ukraine, other family-based forms of care (guardianship, foster care and family-type children's homes) do not contain any restrictions on the time of a child's stay and requirements for its review, and most often become a place of perma-

nent residence for children under 18 years of age, and in some cases up to 23 years of age, as noted above.

Despite the positive aspirations of this practice in Ukraine, which provides a young person with a roof over their head and some material support, researchers have serious reservations about its feasibility and effectiveness. Firstly, the practice of such a long stay of young people in foster families or in a FTCH does not contribute to the socialisation of a young person. After leaving the family at a fairly adult age, it is more difficult for a young person to get used to living independently, change their environment, start forming their own budget, etc.

#### Please note!

The Swedish experience of supported (semi-independent) living for adolescents and young people aged 16 and over, which takes into account the degree of their readiness for independent living, as well as the experience of England in using adaptive forms of care in accordance with the characteristics/needs of the child to correct behavioural deviations, including addictions, is interesting and could be introduced in Ukraine (see Table 1).

**Regarding the number of guardians for one child.** The practice of the countries studied varies, but in most countries, legislation stipulates that more than one person may take care of a child. This is also the case in Ukraine, where, in accordance with Article 63(5) of the Civil Code of Ukraine, a child may be appointed one or more guardians or carers.

In particular,

- Under Swedish law, under certain conditions, the guardianship of children may be transferred to one or two specially appointed guardians.
- In Lithuania, a single (an unmarried) person, a married couple or one of the spouses may be appointed as a child's guardian (carer).
- Under English law, the number of guardians as persons bearing parental responsibility for a child may be one or more.
- In Bulgaria, a guardianship council is formed to take care of a child, consisting of a guardian, a deputy guardian and assistants to the guardian.

- the issue of the possibility of appointing one or more guardians or carers to a child in Polish law was not identified in the study.

**Regarding the bodies that make decisions on the placement of a child.** In almost all countries, there is a dual system of decision-making on the choice of family-based placement for children – judicial and administrative (municipality). Temporary and emergency placement is carried out by the relevant municipal authority. An exception is the experience of the Republic of Poland, where all decisions are made only by a specialised guardianship court.

For example, in England, the issue of alternative childcare can be decided by the court through special documents – orders. These documents may determine not only the form of placement of a child, but also the procedure and method of communication with the child, persons who may maintain contact with the child, the transfer of parental responsibility, the obligation to provide support and assistance to families with children, etc. As a rule, the following orders are applied: on family support; on the placement of a child; on special guardianship; on care and supervision; interim order. However, for certain forms of child placement, such a decision can also be made by the municipality (foster care by relatives or friends, non-kinship foster care), and for some forms – by parents and other persons bearing parental responsibility for the child (private foster care, family care (informal)).

In Lithuania, the decision (permission) to remove child from his/her family is made by the court on the application of the child's rights protection service. The municipal authorities are responsible for choosing the place of accommodation (care) of the child

#### Please note!

The experience of applying special orders requires further study, especially when family courts are introduced in Ukraine.

Taking into account the special circumstances of martial law, Ukraine may benefit from the experience of using an interim order, which can be applied in cases of court proceedings on deprivation of parental rights, divorce and determination of the child's place of residence, in cases of conflict situations between parents that may put pressure on the child and harm his or her mental health. However, it is important to take into account the workload of the judicial system to ensure

that the principle of reasonable time limits for consideration of family cases is observed. Perhaps the creation of specialised family courts in Ukraine, which has been discussed for many years, will be one of the ways to solve this problem.

**Regarding the support and maintenance of children placed in family-based alternative care.** Noteworthy is the experience of appointing a separate person to be in constant contact with the child and the foster family upon placement, who accompanies the family and provides them with comprehensive support, advice, facilitates the receipt of necessary services, etc.

In particular,

- In Sweden and England, this role is carried out by a social secretary and a specially appointed qualified social worker.
- In Lithuania, all guardians are assigned to a specific Foster Care Centre, which assigns a care coordinator to the guardian to coordinate the care of both the guardian and the child in care.
- In Poland, a family foster care coordinator is appointed to the foster family and the person who manages the family-type children's home from among the employees of the powiat family support centre.

The average number of families accompanied by one worker in different countries ranges from 10 to 15.

**Regarding the training and professional development of alternative family care providers.** All countries have a system of training and professional development of family caregivers, including non-professional caregivers. In most countries, such training is an obligation, which is stated in the contract.

In particular:

- In Sweden, basic training for foster care, as well as advanced training for foster parents in various specialisations, is provided by consultants from the social welfare department of the relevant municipality.
- In Lithuania, the training of persons wishing to become a child's guardian (carer), social family founder, or (professional) guardian is organised by the Foster care centre on behalf of the municipality.

Thus, a certified person (a person certified by State Child Rights Protection and Adoption Service) is appointed by order of the head of the Foster Care Centre.

- In Poland, training of candidates for foster parents and managers of family-type children's homes is organised by powiat family support centres.
- In Bulgaria, such training and in-service training is provided by the care provider: the municipality or a licensed social service provider for children. Similarly to Bulgaria, in England the training is provided by a licensed care provider, either a municipality or a public/private organisation.

**Sources and mechanisms of funding.** The overwhelming majority of European countries (four out of five) use a system of co-financing of costs associated with family-based childcare from the state and local budgets.

The exception is Bulgaria, where, like in Ukraine, child support is provided by the state budget.

The amount of payments for the maintenance and upbringing of children does not depend on the form of family care. To calculate the cost of childcare, indicators are used to determine the minimum or basic level of income.

In particular, the experience of additional annual lump-sum payments from the local budget, which is used in Poland to cover the costs of medical services, housing and communal services, and housing repairs, is interesting.

- additional allowances for the complexity of the case (England, Bulgaria).
- Bulgaria's experience of paying the minimum wage to a family that is on a laid-off basis when a child leaves home and is waiting for the next one.

**Regarding the function of management and control** over the development of alternative forms of care and observance of the rights and best interests of a child placed in a family-based form of alternative care.

The functions of selecting and establishing family-based alternative care are provided at the municipal level.

- In Lithuania, this function is performed by the State Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour and territorial units (divisions).

- In Poland, at the state level, it is the Ministry of Family and Social Policy, and at the local level, it is the powiat or municipality.
- In Sweden and England, this is the main responsibility of the municipality.
- In Bulgaria, at the state level, these powers are generally vested in the Ministry of Labour and Social Policy, and at the local level – in the municipality.

Various authorities are responsible for **monitoring** the rights and best interests of children placed in alternative forms of care.

- In Sweden, the Health and Social Care Inspectorate (IVO) operates at the state level. The activities of this Inspectorate have some similarities with the supervisory function of the National Social Service Agency.
- In Lithuania, child care in all family forms is supervised by the State Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour (Child Protection Service).
- In Poland, foster families and family-type children's homes are always under the supervision of a guardianship court, which is supposed to monitor whether they fully fulfil their duties. Foster parents or the manager of a family-type children's home are obliged to report to the court at least once a year on the child and the management of the child's property, within the timeframe set by the guardianship court.
- In Bulgaria, the guardianship and care authority is responsible for monitoring the provision of care services to children.

**The role of the public/private sector.** Legislative acts of most of the countries studied provide for the participation of public and private organisations/companies in the processes of organising the provision of social childcare services.

In particular,

- In Bulgaria, the provider of the "foster family" social service can be a municipality or a licensed provider of social services for children.
- In Sweden, private companies can also act as intermediaries in organisational aspects and support foster parents at all stages of the placement of a child in family-based care.

- In England, private organisations can organise their own network of foster carers and offer such services throughout the country or in certain regions, provide support to foster carers, including assistance with finding accommodation, training candidates, professional development, etc. A foster carer may conclude an agreement on the provision of foster care services directly with the municipality or do so through a third party – a private/charitable organisation.

**Please note!**

Ukrainian legislation does not define public and private organisations as participants in the system of alternative family care, despite the fact that in practice, NGOs are making a lot of efforts to develop this system.

A more detailed analysis of the legal and regulatory framework for the development and functioning of alternative forms of care for children deprived of parental care is provided in the description of the practice of a particular country, the annexes contain examples of legislation, and comparative tables on the application of certain norms in different countries are also provided as annexes.



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# Overview of legislation in some European countries on alternative forms of family-based child care

3



## 3.1. The Kingdom of Sweden

The main legislative acts regulating alternative childcare in Sweden are the Social Services Act<sup>6</sup>, the Young Persons' Care Act<sup>7</sup>, the Parents Code<sup>8</sup>, and the Support and Services for Certain Persons with Disabilities Act<sup>9</sup>.

Despite the fact that the concept of "alternative care" is actively used in open sources of information and in communication with the national expert, its definition is not available in the legislation of this country.

However, during an interview, Marie Sallnäs, a professor at Stockholm University who specialises in child protection, explained that in Sweden, the concept of alternative

care includes care for children deprived of parental care ("children outside their home").

### Important!

In Sweden, there is a general rule that children should live with their parents, but social services can help families by moving the child to an alternative form of care if the child's needs are not met. У сімейні форми альтернативного догляду можуть влаштовуватись діти, які з причин хвороби, інвалідності, смерті батьків, жорстокого поводження з дітьми, інших причин залишилися без піклування батьків, діти, які мають деструктивну поведінку (наркоманія, алкоголізм, проституція, вчинення злочину тощо), а також підлітки, які потребують підтриманого проживання.

Family-based forms of alternative care can be used for children who have been left without parental care due to illness, disability, death of parents, child abuse or other reasons, children with destructive behaviour (drug addiction, alcoholism, prostitution, committing a crime, etc.), as well as adolescents in need of supported accommodation.

Given the rather different groups of children who may be left without parental care, the legislation provides for a wide range of forms of care for these children:

<sup>6</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialtjanstlag-2001453\\_sfs-2001-453](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialtjanstlag-2001453_sfs-2001-453)

<sup>7</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-199052-med-sarskilda-bestammelser-om-varld\\_sfs-1990-52#overgang](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-199052-med-sarskilda-bestammelser-om-varld_sfs-1990-52#overgang)

<sup>8</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/foraldrabalk-1949381\\_sfs-1949-381](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/foraldrabalk-1949381_sfs-1949-381)

<sup>9</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1993387-om-stod-och-service-till-vissa\\_sfs-1993-387](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1993387-om-stod-och-service-till-vissa_sfs-1993-387)



- guardianship;
- foster care ;
- home for care or residence of children/young people (or HVB home), which is regulated by the Social Services Act and the Youth Care Act;
- secure care unit (based on the results of the interviews, this form is presented as one of the types of institution);
- supported housing for children and young people aged 16 to 20 (with supported accommodation) regulated by the Social Services Act.

**Guardianship.** The Swedish Parents Code provides for guardianship as a form of responsibility/legal representation of children that can be transferred from parents to other persons.

Guardianship (Chapter 6 of the Parents Code) is considered to be a feature that parents and legal representatives of a child have. A child is under the care of both parents or one of them, unless the court has assigned guardianship to one or two specially appointed guardians or a temporary guardian. A guardian may be temporary or special. The guardianship of a child lasts until the child reaches the age of 18, unless otherwise determined by the court.

If such guardians are appointed, the child retains the right to contact his or her parents, if this is not detrimental to the child's interests.

#### Please note!

To a certain extent, the essence of guardianship in Sweden overlaps with the provision of part two of Article 151 of the Family Code of Ukraine, according to which parents have the right to involve other persons in the upbringing of a child, and to transfer the child to individuals and legal entities for upbringing. However, it still remains controversial, as the mechanisms for its implementation have not yet been regulated: on the basis of what actions or documents other persons are involved in the upbringing of a child, how the powers in relation to the child are distributed between the parents and the persons involved, etc. This form became especially relevant for Ukraine during the mass migration of parents to work in the EU. Parents continued to support their children, but the actual care of their children was mainly exercised by relatives: grandparents, aunts, uncles, brothers, sisters, etc.

**Foster Care.** This family form is the most common in Sweden – two-thirds of all children are placed in a foster care family. This is a family consisting of one or two people – foster parents. Foster parents have no previous relationship with the child. The family is involved by social services of the municipality.

The placement of a child in such a family (as a service) is carried out by the municipality, which finds a family for the child through a network of family care providers, through contacts with families already hired, through advertising or in other ways. In some cases, social services may seek the assistance of special companies that offer so-called family care services.

#### Please note!

The network of foster care providers is a kind of register, formed from similar families who have established foster homes and are ready to take a child for upbringing. Thanks to this network, the municipality can find a family for each child in need of such services. This experience is positive and can be applied in Ukraine, as information about families willing to take children for foster care is consolidated into a single database and is available to territorial communities that place children, and can become a tool for finding a family for a child according to his or her needs.

**An HVB home or Home for care or living** is a form of 24-hour institutional care in Sweden for children, young people, adults or families with children. The institution provides treatment, care, support or education services. HVB homes can have a specialisation. For example, they may focus on substance abuse problems or aim to care for children deprived of parental care. Children are under the constant supervision of the facility's staff and receive ongoing care.

These facilities may be privately, municipally or cooperatively owned and operated by several municipalities.

The operating rules for HVB homes are mainly regulated by the Social Services Act<sup>10</sup>. Special permits are required to set up an HVB home. The permit can be obtained from the Health and Social Care Inspectorate (IVO).

<sup>10</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialtjanstlag-2001453\\_sfs-2001-453](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialtjanstlag-2001453_sfs-2001-453)

**Supported housing** is a form of placement for children and young people aged 16 to 20. It was introduced in 2016 as an alternative to homes for care or residence (HVBs) and is a social accommodation facility. Supported housing, which provides a supported living service, is a more independent form of accommodation and may be relevant for children who do not require the same level of care and treatment as in HVB homes.

Supported housing means that a child/young person has accommodation for a certain period of time. During the stay in this accommodation, the child receives individually adapted support according to a care plan in order to, among other things, prepare for independent living.

This support is provided in cooperation with the municipal social welfare office responsible for the adolescent. Supported housing is subject to regular supervision by the Health and Social Care Inspectorate (IVO).

This form of placement is aimed at young people aged 16 to 20 who have a low level of care needs. Children aged 16 to 17 can be placed in supported housing only for special reasons. Before making a decision on placement in such housing, social services must make sure that the child is mature enough for this relatively independent form of living.

This service is intended for:

- children and young people who have been discharged or have completed their stay in other forms of care,
- young people who have reached the age of 16 and need their own housing for family reasons,
- children deprived of parental care.
- children deprived of parental care can be placed in supported housing both during the application process for a residence permit and after they have been granted a residence permit.

### Important!

The experience of creating supported housing for orphans and children deprived of parental care would be interesting for Ukraine. This would, on the one hand, help them to acquire skills of independence and organisation of their own space, and on the other hand, would allow them to free up foster families and children's homes that provide care and education for orphans and children deprived of parental care to raise other, younger orphans and children deprived of parental care.

Given the realities of the war, the increase in the number of status children, the large number of children in institutions, the resources of foster families, and the FTCH are particularly in demand.

The municipal administration decides on the **placement of a child in foster care** upon the recommendation of the social protection unit.

### Please note!

It is worth focusing on the issue of obtaining the consent of the parents and the child when placing him or her in any type out-of-home care. Such consent of the parents/guardians is mandatory, and for the child – if he or she reaches the age of 15. In the absence of such consent of either the parents or the child, the decision on out-of-home care is made by the court, and the family form is chosen by the municipality.

The decision to change the form of placement is made by the district court where the child is registered. If the minor is not registered in Sweden, the district court where the minor resides is competent. If there is no court with the relevant competence in the district, the Stockholm District Court is competent.

This experience, according to experts, is interesting given the current situation in Ukraine due to Russia's full-scale invasion and occupation of a number of settlements, which has led to massive displacement of the children outside the place of registration, resulting in difficulties in determining the jurisdiction of the territory where the decision on the child is made.

Unlike in Ukraine, **Swedish legislation does not set a limit on the number of children who can be placed** in a particular form of family-based care. While in Ukraine such a restriction is absent only in relation to guardianship.

**Please note!**

In 2020, Mikael Eskilander submitted a statement 2020/21:136 to the Swedish Riksdag, proposing to set a limit on the number of children placed in family homes. The Riksdag rejected this proposal on 15 June 2021<sup>11</sup>. This attempt may indicate the existence of problems with the care and upbringing of children due to the unlimited number of children in foster care.

The number of children in HVB homes and supported housing depends on the capacity of such homes, which is set out in their permit to operate. For example, in 2021, 6,000 children and young people were placed in such homes, which is 2,300 fewer than in 2020<sup>12</sup>.

**The duration of a child's stay** in alternative forms of care is determined taking into account the time needed for parents to "restore" their ability to care for the child; for the child to rehabilitate, overcome difficult life circumstances, age crises, addictions, etc.

Young children cannot be placed in institutions for a long time. Also, their care in family-based care is considered in principal non-permanent. However, each of the family-based forms of care has its own specific approaches to determining the length of time a child stays there.

Guardianship, as a form of childcare, can be exercised until the child reaches the age of 18. However, the duration of temporary guardianship is decided by the court in each case.

A child can stay in a foster home up to 18 years of age and this is also decided on a child-by-child basis.

As already noted, a fundamental difference from the Ukrainian experience is that during the child's stay in family-based care, parents continue to be the child's legal representatives. However, if the child has lived in the family of the guardian or in the family home for more than two years, the law obliges to consider the transfer of guardianship of the child to foster parents (Chapter 6, §8b of the Parents Code).

A child's stay in an HVB home or a home for care and residence is temporary. In general, such placements last from six months to one year and depend on the child's care plan.

Children and young people who are mature enough can stay in supported housing between the ages of 16 and 20.

<sup>11</sup> [https://www.riksdagen.se/sv/dokument-lagar/arende/betankande/socialtjanst-och-barnfragor\\_H801SoU24#stepBeslut](https://www.riksdagen.se/sv/dokument-lagar/arende/betankande/socialtjanst-och-barnfragor_H801SoU24#stepBeslut)

<sup>12</sup> <https://www.socialstyrelsen.se/globalassets/sharepoint-dokument/artikelkatalog/statistik/2022-9-8096.pdf>

<sup>13</sup> [https://skr.se/download/18.733c9c3c18499b458ab1e8af/1669302879066/SKR%20Cirkul%C3%A4r%2022\\_41.pdf](https://skr.se/download/18.733c9c3c18499b458ab1e8af/1669302879066/SKR%20Cirkul%C3%A4r%2022_41.pdf)

**Please note!**

During the interview, the expert noted that usually the period of a child's stay in one of the forms of care other than guardianship is reviewed every 6 months.

This experience could be positive for Ukraine, as national legislation does not provide for a review of the length of stay of children placed in family-based care, which does not facilitate their integration into their biological families.

Pursuant to Article 63(5) of the Civil Code of Ukraine, a child may be appointed one or more guardians or carers. Recently, the issue of several guardians over one child has been the subject of some debate among experts. Therefore, this issue was the subject of special attention in the study.

Under Swedish law, under certain conditions, guardianship of children may be transferred to one or two specially appointed guardians (Chapter 6 of the Parents Code). Similar rules to those in force in Ukraine govern the powers of guardians in Sweden in relation to the child's property. A person who is a child's guardian is usually also tasked with managing the child's financial affairs.

Equally important is the issue of legal representation of the interests of a child placed in family-based care. Thus, parents/guardians are the legal representatives of the child. The main responsibility for the child, in the absence of a guardian, or when the child is placed in an institutional care facility, lies with the municipality. The municipality must ensure that the child has contact with his or her parents. If the care is provided in a family home or in a home for care or residence (HVB), there must be a social secretary specially appointed by the municipality's social welfare department who is responsible for contact with the child.

## Mechanisms of financial and material support for families and children and sources of funding

Foster parents in a foster care are entitled to a fee for their care services and reimbursement of childcare costs on a monthly basis in accordance with Circular 22:41: Payment and conditions for family care for children, youth and adults, transfer of guardianship, etc. for 2023<sup>13</sup>.

The fee and the amount of compensation may be increased in accordance with the tasks assigned to the foster parents and the time they take to complete them.

Basic fee amounts (per child):

- baseline amount – SEK 11,237 (hereinafter – UAH 39,484.57 at the NBU exchange rate);
- increased amounts (including the baseline amount) – SEK 13,132 (UAH 46,143.22), SEK 15,040 (UAH 52,847.55), SEK 17,255 (UAH 60,630.62).

Baseline amounts of compensation for expenses (per child):

- for children aged 0-12 years: the basic cost is SEK 4,813 (UAH 16,911.92); the maximum cost (including the basic cost) is SEK 6,781 (UAH 23,827.08);
- for children aged 13-19: the basic cost is SEK 5469 (UAH 19,216.97); the maximum cost (including the basic cost) is SEK 7656 (UAH 26,901.65).

A child's stay in an HVB home or supported housing is considered "full-time childcare" (a form of residential care) and is covered by the municipality. However, the parents whose child is in such family forms may be charged an amount for the child care depending on their income.

## Forms of control and support

The social welfare office of the municipality that placed the child in the family home or HVB home exercises a control function by monitoring the child's needs in accordance with the child's care plan<sup>1415</sup>). This should primarily take place through regular visits to the family home or HVB home and individual conversations with the child, as well as through conversations with parents and guardians, foster parents.

Conversations with the child should be carefully adapted to the child's individual needs and desires. In these conversations, the child should be given the opportunity to express his or her thoughts, feelings and questions freely. The rights and best interests of the child are of paramount importance throughout the placement.

Monitoring should also focus on the child's health, development, social behaviour, learning, leisure and relationships with relatives. Monitoring is carried out on an ongoing basis, and the results are reported for the purpose of revising the care plan twice a year.

Another instrument of control is the Health and Social Care Inspectorate (IVO). This is a state body that inspects the activities of the municipality in relation to its compliance with the legislation on the placement of children, respect for their rights and best interests. They can visit both the municipality and alternative forms of child care, communicate with children, etc. The Inspectorate's competence includes commenting on deficiencies and the ability to make decisions to revoke an institution's licence.

### Please note.

The activities of the Health and Social Care Inspectorate (IVO) have some similarities with the function of monitoring the observance of children's rights of the National Social Service.

The municipality is always responsible for the child's receipt of support and care services. For this reason, the municipality must provide foster parents with information, advice, support and other assistance both before the placement and during the child's stay in the family (Chapter 6, §7 a of the Social Services Act).

In addition, the municipality is responsible for ensuring compliance with the childcare plan and for fulfilling its financial obligations (payment of fees and compensation).

The municipality is responsible for providing support and supervision of the child's stay in the family home. Support consists of constant contact and conversations with the family, both during visits and by phone.

It is through constant contact that social services can make sure that the child receives the care and support he or she needs. Family home foster parents are entitled to regular support through social services. The support and supervision should be adapted to the complexity of the task set out in the child's care plan, take into account the individual needs and interests of the child, as well as the competence and experience of the foster parents in performing such tasks.

A foster family with a child with disabilities is entitled to various types of support through the rehabilitation centre in the region where the family home is located.

14 (Chapter 6 §7b and Chapter 13 of the Social Services Act, §13a of the Young Persons' Care Act

15 [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-199052-med-sarskilda-bestammelser-om-varld\\_sfs-1990-52#overgang](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-199052-med-sarskilda-bestammelser-om-varld_sfs-1990-52#overgang)

## Removal of children from family-based forms of alternative child care

Swedish law regulates, but not clearly (unlike Ukrainian law), the issue of removing children from family forms.

It has been established that the decision to terminate a child's stay in a family-based care is made by the municipality.

The basis for the decision to terminate care should be an assessment of whether the goals of the child's care plan have been achieved and whether the child's parents have overcome the circumstances that led to the placement of the child in family-based care.

### Noteworthy!

In Sweden, in accordance with the Social Services Act (§ 1, part 4<sup>16</sup> termination of care is possible if the parent or the child, if he or she has reached the age of 15, requests termination of care. Care must be terminated immediately if the municipality receives such a request. However, the social service must first assess whether the goals of the child's care plan have been achieved. If the goal has not been achieved, the municipality must examine the circumstances/reasons for the request to terminate the child's stay in alternative family-based care. The matter should be considered without delay.

After the child's stay in the family home is over (termination of care), foster parents can become a contact family and provide support to the child as needed.

## Caring for children with disabilities

If a child has a developmental disability, autism, an autism-like condition or other significant and long-term physical or mental impairment, the child may be eligible for intervention under the Support and Services for Certain Persons with Disabilities Act<sup>17</sup> in the form of, for example, short-term out-of-home placements or short-term supervision in connection with the school day for children over 12 years of age.

In Sweden, children with disabilities mostly stay in families with their parents. However, parents are entitled to respite care for such children. Thus, a child can be placed in an institutional setting for a short period of time.

The child's guardians/parents or the child himself/herself, if he/she is 15 years old or older, have the right to apply for assistance under the Support and Services for Certain Persons with Disabilities Act<sup>18</sup>.

If a child with a disability is placed in an institution pursuant to the Young Persons' Care Act<sup>19</sup>, the municipal social welfare office is entitled to apply for support measures for the child pursuant to Support and Services for Certain Persons with Disabilities Act.

If such a person under the age of 18 is cared for in a family home under the law, the parents are obliged to contribute to the municipality's care costs in a reasonable amount depending on their income.

An assistant<sup>20</sup> or compensation for the provision of such services<sup>21</sup> may be provided to care for such a child with a disability. The work of an assistant is paid even if the child's relatives or guardians perform the duties of such an assistant (§ 9c of the Support and Services for Certain Persons with Disabilities Act).

## Qualification of a care service and training of foster parents

In Sweden, childcare is considered a social service under the Social Services Act<sup>22</sup>, which is the responsibility of municipal social services. The municipality controls and is responsible for the quality of social services on its territory.

Foster carers is supposed to complete training provided by the municipality's social management consultants or provide a certificate that they have completed appropriate training from another training and education provider.

Foster parents must participate in continuous training. Municipalities are obliged to actively encourage foster parents to take part in training. In addition, the require-

16 [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialtjanstlag-2001453\\_sfs-2001-453#K6](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialtjanstlag-2001453_sfs-2001-453#K6)

17 [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1993387-om-stod-och-service-till-vissa\\_sfs-1993-387](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1993387-om-stod-och-service-till-vissa_sfs-1993-387)

18 [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1993387-om-stod-och-service-till-vissa\\_sfs-1993-387](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1993387-om-stod-och-service-till-vissa_sfs-1993-387)

19 [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-199052-med-sarskilda-bestammelser-om-vard\\_sfs-1990-52#overgang](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-199052-med-sarskilda-bestammelser-om-vard_sfs-1990-52#overgang)

20 in accordance with § 9a of the Support and Services for Certain Persons with Disabilities Act

21 in accordance with Chapter 51 of the Social Insurance Code

[https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialforsakringsbalk-2010110\\_sfs-2010-110#K51](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialforsakringsbalk-2010110_sfs-2010-110#K51)

22 [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialtjanstlag-2001453\\_sfs-2001-453#K6](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialtjanstlag-2001453_sfs-2001-453#K6)

ments for foster parents to participate in training could be regulated in the contract between the foster parents and the municipality.

As previously mentioned, the Health and Social Care Inspectorate (IVO) is responsible for supervising the quality of social services and their provision in accordance with the law by social service providers in accordance with Chapter 13 of the Social Services Act.

The division of responsibilities between the municipality and the foster home should be clearly stated in the contract between them.

Prospective foster parents may be denied the establishment of a foster home as a family-based form of service provision if the social service learns that (information is obtained through an extract from the relevant registers):

- the family or one of the family members has committed crimes in the past,
- the family has financial difficulties, health problems / illnesses of family members, etc.

This list is not exhaustive.

The circumstances/reasons for refusal should be shared and discussed with the family concerned and be part of the overall assessment of the family members

as candidates for foster care. An important part of the overall assessment of a family as a foster carer is the ability of the foster parents to cooperate with schools and other authorities in the best interests of the child. Difficulties in such co-operation in the past may be another reason for refusing to establish a family home.

The municipal social welfare office may prohibit or restrict the ability of foster parents (if the family home is located in the territory of the relevant municipality or district administration) to take other children into their home. Such a decision may be made if the best interests of the child so require (Chapter 5 § 2 of the Social Services Act).<sup>23</sup>

The IVO may also decide to terminate the operation of a foster home or institution (revocation of the licence). Рішення про припинення функціонування сімейного будинку чи інституції (анулювання ліцензії) також може прийняти інспекція IVO.

<sup>23</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialtjanstlag-2001453\\_sfs-2001-453#K6](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialtjanstlag-2001453_sfs-2001-453#K6)



## 3.2. Republic of Lithuania

The legislation of the Republic of Lithuania (hereinafter referred to as Lithuania) does not contain an official definition of the concept of alternative care.

Forms of child care are based on the principles of family placement in communities as a preventive measure against institutionalisation of children.

The legislation governing the operation of various forms of childcare is quite extensive and consists of laws, governmental and departmental regulations.

In particular, these are:

- The Civil Code of the Republic of Lithuania, the Law on the Fundamentals of Child Protection, the Law on Strengthening the Family;
- Rules for the organisation of childcare, approved by a resolution of the Government of the Republic of Lithuania;
- Action plan for the transition from institutional care to family and community-based services for children with disabilities and children deprived of parental care for 2014-2023, approved by the order of the Minister of Social Protection and Labour (deinstitutionalisation plan), List of social services approved by the order of the Minister of Social Protection and Labour.

According to Article 25 of the Law on the Fundamentals of the Protection of Children's Rights<sup>24</sup>, children deprived of parental care are placed in family-based care. The placement must be carried out in such a way that siblings are not separated.

Legislation provides for the main type of care for children deprived of parental care – guardianship.

**Guardianship may be temporary or permanent** (Articles 3.254, 3.257 of the Civil Code of the Republic of Lithuania).<sup>25</sup>

There are four forms of guardianship in Lithuania:

- family guardianship (care);
- social family guardianship (care);
- care in a Foster care centre (professional guardian);
- care in an institution.

**Temporary guardianship (care)** of a child is established if:

1. the parents or the sole parent are missing and are wanted (until the court recognises the parents as missing or declared dead);
2. the parents or the sole parent cannot temporarily care for the child due to illness, arrest, execution of a court sentence or other valid reasons;
3. the parents or the sole parent do not care for the child, are not interested in the child, do not raise the child properly, use violence or otherwise abuse parental responsibilities, as a result of which the child's physical, mental, spiritual, moral development and safety are at risk;
4. parents are unknown (until paternity or close family ties are established);
5. the parents or the sole parent are incapacitated or incapacitated minors.

<sup>24</sup> <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.26397>

<sup>25</sup> <https://www.infolex.lt/ta/100228>

Temporary care of a child is the care, upbringing, representation and protection of a child temporarily deprived of parental care, his or her rights and legitimate interests in a family, social family, Foster Care Centre or an institution. The purpose of such care is to return the child to the family.

**Permanent guardianship of a child** is established if:

1. both or one of the child's parents are deceased;
2. both parents or sole parent of the child have been declared dead or missing by a court;
3. the child is duly separated from his or her parents;
4. parental rights of the child's parents or sole parent are indefinitely restricted;
5. paternity or close family ties have not been established within three months from the date of discovery of the child;
6. parents or the sole parent have been declared incapacitated in accordance with the established procedure;
7. both parents or sole parent has limited parental rights.

Permanent guardianship of a child is the care and upbringing of a child left without parental care who, under current conditions, cannot return to the family, representation and protection of his or her rights and legitimate interests in the guardian's family, family or institution.

#### Interesting information!

According to Lithuanian law, each of the forms of guardianship can be used as both temporary and permanent guardianship of a child.

The legislation determines the priority of forms of child placement. When determining guardianship (care) of a child, priority is given in the following order, taking into account the best interests of the child: placement with a family of relatives; placement with a person with whom the child has a close relationship; placement with a family in which the child's brothers or sisters are already being brought up; a Foster care centre; a social family; a children's institution.

**A form of guardianship that is fundamentally different from the Ukrainian experience, the Care Centre, deserves special attention.**

**Foster care centre** is a social service institution that, exercising the rights and obligations of a child's guardian (carer), in accordance with an agreement on mutual cooperation and service provision, transfers a child deprived of parental care to a professional guardian, provides and organises the necessary social services and other assistance to the child, regular guardian, adoptive parents, family members, employees of social service institutions working with children, as well as other assistance to the child's parents when the child returns to the family.

In other words, this form combines elements of the functions performed by children's services and social service centres in Ukraine. The main difference is that in Lithuania, the Foster care centre acts as the child's legal representative.

**Professional guardian**, who may be engaged by the Foster Care Centre for direct care of a child, is a natural person who meets the requirements of the Civil Code of the Republic of Lithuania for a foster carer, has completed training and counselling courses for foster carers, and who in accordance with the agreement on mutual cooperation and provision of services, supervises children deprived of parental care, children from the social risk group with whom he/she is not related, or in cases stipulated by the service agreement, provides other assistance to the child's parents in returning the child to the family. The professional guardian carries out activities in accordance with the certificate of individual activity.

The analogue of a professional guardian in Ukrainian law is a foster carer.

Under Lithuanian law, a number of institutions and bodies are involved in making a decision on child guardianship.

Thus, temporary guardianship (care) of children is organised by the state institution for the protection of children's rights (the vertical of the State Child Rights Protection and Adoption Services under the Ministry of Social Security and Labour) and municipal administrations.

The form of temporary guardianship (care) over a child is determined within three working days from the date of registration of the order of the state institution for the protection of children's rights in the municipality by the decision of the head of the municipal administration (Article 3. 262 of the Civil Code).



However, permanent guardianship of a child is established by a court decision upon the application of a state institution for the protection of children's rights or a prosecutor. State and non-governmental organisations involved in the protection of children's rights, as well as other individuals and legal entities, may apply for permanent guardianship of a child to the municipal child protection service (Article 3.263 of the Civil Code).

#### Note:

The maximum and minimum number of children in care depends on the form of placement.

**Family care – no more than 3 children** (the total number of children, including relatives, is no more than 6. Except when it is necessary not to separate siblings).

**Social family care – 4 or more children** (the total number of children, including relatives, is not more than 8).

The duration of child guardianship depends on the type of guardianship.

Temporary guardianship of a child can last up to 12 months, in exceptional cases it can be extended, but not more than 18 months. After 12 months of temporary guardianship of a child, the child protection service reviews the child's care plan and decides whether to extend the temporary guardianship of the child or to apply to the court for guardianship of the child, establishing permanent guardianship of the child or adopting the child.

Permanent guardianship is not limited in time. It should be noted that the law in Lithuania defines the grounds for termination of permanent guardianship of a child: the child reaches the age of majority; return to parents; adoption of a child; marriage.

Similar to the Swedish experience, the subject of the study of existing Lithuanian practices was the number of guardians that can be appointed to one child.

In the Republic of Lithuania, a single person or a married couple (one of the spouses) may be appointed as a child's guardian (carer).

The issue of **legal representation of a child** placed in a particular family-based form has its own peculiarities.

As a general rule, as in Ukraine, the legal representatives of a child are parents, guardians, carers and other persons who, in accordance with the law or other legal

act, are obliged to take care of the child, bring him or her up, take care of him or her, represent him or her, and protect his or her rights and legitimate interests (Article 3 of the Law on the Fundamentals of Protection of the Rights of the Child).

Guardians, except for professional guardians, are legal representatives of children. If a child is placed with a professional guardian, the child's legal representative is the Foster Care Centre.

In all cases where temporary guardianship of a child is established, the child's parents retain their parental rights and obligations towards the child.

## Mechanisms of financial and material support for families and children and sources of funding

Child care in any form of foster care is funded from municipal and state budgets.

Social services are funded by the state, municipal budgets, social service institutions, European Union structural funds, foreign funds, support (donations), individual (family) payment for social services and other funds.

**The allowance for a child** under guardianship (care) in a family, social family care, Foster care centre (with a professional guardian) is granted and paid in the following amounts:

1. a monthly payment of 5.2 basic social benefits for a child under 6 years of age<sup>26</sup>;
2. for a child aged 6 to 12 years – a payment of 6 basic social benefits per month;
3. for a child aged 12 to 18 years or until the minor acquires full civil capacity or marries – a monthly payment of 6.5 times the amount of the basic social benefit;
4. for a child with a disability, regardless of his or her age, – a monthly payment of 6.5 basic social benefits.

As in Ukraine, the amount of child benefit is equal to the difference between the amount of the established guardianship allowance and the amount of the survivor's pension and/or monthly periodic child support payments received.

<sup>26</sup> The basic social payment in 2023 is EUR 49.

This allowance is paid until the child reaches the age of majority, acquires full civil capacity or marries. The payment of the guardianship allowance (318.5 euros) can be extended until the age of 24 if the young person is studying, as well as in the event of the death of both parents.

#### For reference.

As of 1 January 2023, when caring for a child in a family, social family care, Foster care centre (with a professional guardian) or childcare facility, the amount of allowance is<sup>27</sup>:

- for a child under 6 years of age – EUR 254.8 (EUR 1 = UAH 40.28 – UAH 10,263.3) per month, for a child aged 6 to 12 years – 294 euros (UAH 11,842.3) per month,
- for a child aged 12 to 18 years and a person with disabilities, regardless of age – 318.5 euros (UAH 12,829.18) per month

When a child is under the care of a family, social family care or Foster care centre (with a professional guardian), a **targeted supplement to the childcare allowance** is paid monthly in the amount of EUR 196 (UAH 7,894.88).

## Forms of control and support

In all family forms, child care is supervised by a state institution for the protection of children's rights (child protection service), which interacts with municipal administrations.

The Child Protection Service cooperates with the child's guardians in drawing up a plan to help the child. It is the responsibility of the guardians to implement the provisions of this plan.

The Child Protection Service reviews the child's care plan in the case of temporary guardianship once every six months, and in the case of permanent guardianship once a year, and decides whether to extend the guardianship.

#### Please note!

In case of detection of a possible violation of a child's rights, no later than the next working day, a specialist of the Child Protection Service initiates the appointment of a case manager and ensures the work of a mobile team (30 days + 10 days in case of a crisis). The mobile team includes a psychologist, a social worker and other specialists as needed.

In addition to controlling the conditions of care for a child placed in any family-based form, Lithuanian legislation provides for a fairly wide range of different services and support for families of caregivers.

All guardians are assigned to a specific Foster care centre.

The description of the work of the Foster care centre and the organisation of care provided by the professional guardian of the child, the procedure for providing quality care, approved by the Ministry of Social Protection and Labour<sup>28</sup> (document of 19 January 2018, No. A1-28). In particular, the following types of assistance/services provided by the Foster care centre can be distinguished (see Table 2).

In order to coordinate assistance to the guardian (care), professional guardian, family members, adoptive parents (if they apply for assistance) and their family members living together, the head of the Foster Care Centre or a person authorised by him/her appoints a **care coordinator**.

The functions of the care coordinator include, in particular, maintaining the personal file of the professional guardian, guardian (carer), which contains an individual assessment of their needs, strengths and weaknesses, a plan of assistance to the child and the progress of the provision of the necessary services (Assessment of the need for assistance to the child and professional guardian, guardian (carer), family members, adoptive parents and the plan of assistance<sup>29</sup>). An extended list of coordinator responsibilities is provided in **Annex 2**.

<sup>27</sup> <https://socmin.lrv.lt/lt/veiklos-sritys/socialine-parama-kas-man-priklauso/globoju-vaika?lang=uk>

<sup>28</sup> <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/6d43d002caee11eb91e294a1358e77e9>

<sup>29</sup> <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/6d43d002caee11eb91e294a1358e77e9>

**Table 2.** Types of assistance provided by the Foster Care Centre (Lithuania)

Type of assistance/ services	Content	Recipient
Coordinated care	<ul style="list-style-type: none"> <li>▪ purposeful;</li> <li>▪ consistent;</li> <li>▪ planned and mutually agreed actions of the care coordinator;</li> <li>▪ arrangement of counselling, social, psychosocial, educational, legal and other specialised assistance</li> </ul>	<ul style="list-style-type: none"> <li>▪ foster (adopted) child;</li> <li>▪ guardian (carer);</li> <li>▪ professional guardian;</li> <li>▪ adoptive parents;</li> <li>▪ family members or persons living with them</li> </ul>
Uncoordinated care	<ul style="list-style-type: none"> <li>▪ individual;</li> <li>▪ short-term;</li> <li>▪ informational;</li> <li>▪ consulting;</li> <li>▪ social;</li> <li>▪ psychosocial;</li> <li>▪ educational;</li> <li>▪ legal;</li> <li>▪ training</li> </ul>	<ul style="list-style-type: none"> <li>▪ foster (adopted) child;</li> <li>▪ guardian (carer);</li> <li>▪ professional guardian;</li> <li>▪ adoptive parents;</li> <li>▪ family members of the guardian or persons living with them</li> </ul>
Intensive care	social services	<ul style="list-style-type: none"> <li>▪ foster (adopted) child;</li> <li>▪ guardian (carer);</li> <li>▪ professional guardian;</li> <li>▪ adoptive parents;</li> <li>▪ family members of the guardian or persons living with them</li> </ul>
Temporary respite	services to restore the childcare provider's ability to work	<ul style="list-style-type: none"> <li>▪ professional guardian;</li> <li>▪ guardian (carer)</li> </ul>

The practice of revising the Plan is noteworthy:

- every 3 months, if temporary guardianship (care) is established over the child and after an assessment of individual needs, areas where assistance in meeting the needs is required are identified;
- every 6 months, if the child is placed in permanent guardianship or adopted, and after an assessment of individual needs, areas of assistance are identified to meet the needs;
- every 12 months, if the child is placed in permanent guardianship or adopted and no area requiring comprehensive assistance in meeting the need has been identified, or if the child's needs are met through the provision of comprehensive assistance (self-help groups, training, social and cultural services, etc.

Ministry of Social Security and Labour) is appointed by order of the head of the Foster care centre for persons wishing to become guardians (carers), adoptive parents, intending to take in a child in the case of providing temporary respite services to his or her parents, as well as for members of their families living together. This order specifies the responsibilities, name and surname of the certified person, as well as the name, surname and date of birth of the person to whom the services will be provided.

Among other things, a certified person<sup>30</sup> assesses the readiness to become a guardian (carer), professional guardian, adoptive parent, prepares a conclusion on their readiness to care for children, organises psychological counselling for guardians and foster children, prepares ongoing trainings, etc. The responsibilities of a certified person are listed in **Annex 3**.

#### Noteworthy!

The functions of a care coordinator do not include the functions of a certified person, and the functions of a certified person do not include the functions of a care coordinator (there must be two separate positions)

**A certified person** (a person certified the State Child Rights Protection and Adoption Service under the

<sup>30</sup> <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/133c4571ec4f11eab72ddb4a109da1b5>

Thus, the system of control and support of family-based forms in Lithuania is in many ways similar to the Ukrainian one. However, it is clearer in terms of the division of functions, which deserves attention. Families and children are supported by a care coordinator. However, the search for candidates for foster care, their training, and case management is carried out by a certified person. In Ukraine, all these functions are performed by specialists from social service centres.

## Removal of children from family-based forms

Legislation does not contain a complete and clear list of grounds for removing children from a particular family-based form.

First of all, this may happen if the child is not satisfied with the type, form or guardian. In such cases, the child has the right to apply to the child protection service, which is obliged to consider the child's application and, if the application is justified, take it into account when changing the type of guardianship, form, guardian or terminating guardianship.

Also, the municipal child protection service and its social partners (case manager), as well as parents, can independently apply to the court for termination of guardianship.

## Caring for children with disabilities

The country's legislation does not distinguish special forms of care for children with disabilities.

However, when such a child is placed under the care of a guardian, the law automatically limits the maximum number of children that can be brought up in the guardian's family.

According to the expert, the Foster Care Centres provide individual services to both: children and carers who have a child with a disability in their family. There is an increased allowance for caring for a child with a disability.

## Qualification of care service and training of carers

According to the Law on Social Services<sup>31</sup>, childcare is a social service.

The service agreement is concluded only with professional guardians. They conclude a contract with the

Foster care centre, which is the child's guardian, for the care of the child. Other guardians act on the basis of the law.

The agreement with the professional guardian may be terminated at the initiative of the professional guardian or in connection with the improper performance of his/her duties.

A guardian may be dismissed for improper performance of his or her duties. A guardian may also be relieved of his or her duties at his or her request, provided that there is no fault on his or her part. The entity that appointed the guardian removes or discharges the guardian from his or her duties. The powers of a child's guardian may be terminated by a court decision based on an application from the child's rights protection service if the child's guardian fails to properly perform his or her duties or refuses to take care of the child.

By analogy with the Ukrainian experience, guardians suspended from performing their duties or professional guardians whose contract has been terminated due to improper performance of their duties cannot continue to be guardians, duty guardians, or adoptive parents.

### Interesting information!

During the interview, it was found out that there are no approved standards for raising children. In each case, the individual characteristics of the child and his or her life situation are taken into account. The fulfilment of the duties of the guardian and the professional guardian, as set out in the Civil Code, and ensuring the best interests of the child are assessed. But all forms of violence, as well as corporal punishment have been prohibited; the prohibition to leave children of young age unattended have been established.

The training of a guardian is organised and coordinated by the child rights protection services and other organisations and institutions that have experience in this area.

The issues of selection and training of candidates for guardians are regulated by the order of the State Service for Child Protection and Adoption of the Ministry of Social Protection and Labour<sup>32</sup>.

The training of a person wishing to become a child's guardian (carer), family founder, professional guardian or adoptive parent is organised by the Foster Care Centre on behalf of the municipality and is carried out ac-

31 <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.270342/asr>

32 <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/6b786210e93911e99f05bdf72918ad4e>

cording to a programme approved by the State Service for the Protection of Children’s Rights and Adoption under the Ministry of Social Protection and Labour<sup>33</sup> (hereinafter – the training programme).

There is a differentiation in training depending on the type of guardianship:

- for persons wishing to become a child’s guardian or adopt a child, training is organised according to the main part of the training programme, which consists of 7 training topics and at least 2 individual meetings. It is mandatory to attend at least 6 training topics and participate in all individual meetings.
- for persons wishing to become professional guardians or founders or members of a social family,



### 3.3. Republic of Poland

The main legislative acts of the Republic of Poland (hereinafter – Poland) regulating family-based care are the Family and Guardianship Code, the Law on Family Support and Foster Care System, the Law on Support and Social Rehabilitation of Minors, and the Law on Social Assistance.

There is no official definition of alternative care in the legislation of this country.

A foster care system has been introduced for children in need of special protection and assistance, which provides for:

- principles and forms of support for families experiencing difficulties in performing educational functions;

training is organised in the main and specialised parts of the training programme, which consist of 13 training topics and at least 3 individual meetings. It is mandatory to attend at least 12 training topics and participate in all individual meetings.

- for close relatives of the child, training is organised as part of the “Close Relatives” training programme, which consists of 6 training topics and at least 2 individual meetings. It is recommended to attend at least 4 training topics and participate in at least 2 individual meetings.

- rules and forms of foster care and assistance in raising young people from among foster children to become independent;
- tasks of public administration in the field of family support and the foster care system;
- principles of financing the system of family support and foster care;
- tasks in the field of adoption.

Foster care is used for children who have been deprived of parental care for various reasons.

#### Attention:

Poland’s law distinguishes the specifics of the placement of children with disabilities, children in conflict with the law, and underage mothers with children.

The Law on Family Support and the Foster Care System<sup>34</sup> defines two forms of care for children deprived of parental care: family-based and institutional. The forms of family-based alternative care are presented in **Table 3**.

<sup>33</sup> No. BV-66 dated 01.06.2018

<sup>34</sup> <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20111490887>

**Table 3.** Family-based forms of alternative care for children (Poland)

Form	Foster family					Family-type children's home
	Types / subtypes	Kinship (family)	Непрофесійна	Professional		
Ordinary				Professional	emergency family	
By whom it is formed	By relatives of the child (grandmother, grandfather)	Not by relatives of the child or distant kinship	Not by relatives	Not by relatives	Not by relatives	Not by relatives

A foster family or family-type children's home is established by a couple or one person who places a child deprived of parental care with the aim of providing family upbringing (Article 41 of the Law on Family Support and the Foster Care System).

To a certain extent, these family-based forms are identical to family-based forms in Ukraine: guardianship/care, foster care, family-type children's home.

However, Polish legislation distinguishes the specialisation of foster families, and a family-type children's home functions as a combination of such forms as a family-type children's home and a small group home.

**A special feature of professional foster care** is the placement of socially maladjusted children or children with various disabilities, health problems, who need special care and attention, and underage mothers with children.

It is important to note that children with disabilities and socially maladjusted children cannot be placed in professional foster care at the same time.

The function of a professional foster family cannot be combined with the function of a non-professional foster family. However, the function of a kinship family can be combined with the function of a professional or non-professional foster family.

No more than 3 children can be placed in a professional emergency family for a temporary stay until the child's life situation is normalised. This family-based form is comparable to foster care in Ukraine.

The contract for the performance of the function of a professional foster family is concluded for a period of at least 4 years. If the contract is concluded by a married couple, the remuneration belongs to the spouse specified in the contract. The starosta also concludes a service agreement with the person who manages the family-type children's home, under which he/she is entitled to a monthly remuneration.

A person entitled to remuneration for the performance of the function may not continue or start additional work or other paid work without the starosta's consent. The period of performing the function of a professional foster family is included in the period of work required to acquire or maintain labour rights.

**It is noteworthy** that if there are more than 3 children in a professional foster family or non-professional foster family, or more than 4 children in a family-type children's home, and in particularly justified cases, a person may be engaged to assist in childcare and agricultural work at the request of the foster family or the manager of the family-type children's home. A person who is engaged to help with childcare and agricultural work may also be a person who does not receive remuneration under a contract for the performance of the function of a professional foster family.

Unlike Ukrainian legislation, the placement of a child in a foster family is carried out by a court decision.

In case of urgent need, at the request or with the consent of the child's parents, the placement of a child in family-based care may be carried out on the basis of an agreement concluded between the foster family or the manager of a family-type children's home and the starosta at the place of residence of the family or the place of maintenance of the family-type children's home. The starosta shall immediately notify the court of the agreement. The agreement is terminated upon completion of the court proceedings.

It is also worth noting that all types of family-based forms have a certain number of children who can live in the family at the same time. Thus, in a professional or non-professional foster family, up to 3 children or persons who have reached the age of majority and are continuing their education (up to 25 years old) can live together. A family-type children's home can accommodate up to 8 children.

**Please note!**

In case of combining the function of a kinship foster family with the function of a professional or non-professional foster family, this family can have no more than 3 children and persons who have reached the age of majority and are continuing their education.

The only exception is if a family group of children is placed in a foster family. In this case, the placement of siblings is subject to the consent of the foster family or the manager of the family-type children's home and after receiving a positive opinion from the family foster care coordinator.

A professional foster family may be transformed into a family-type children's home, provided that it meets the relevant requirements for maintaining a family-type children's home and has at least 3 years of experience as a professional foster family if the family has 6 children in care.

The child's stay in family-based care lasts until conditions are created that allow him or her to either return to the family or be placed in a foster family.

The placement of a child in one of the family-based forms is for a period of no more than one year and can be extended if necessary.

A child stays in a professional emergency foster family until his or her condition is normalised, but not longer than 4 months. In particularly justified cases, this period may be extended with the consent of the family-based care organiser up to 8 months or until the end of court proceedings in relation to the child:

1. returning the child to the family;
2. adoption;
3. placement in foster care.

**Interesting information!**

If it is justified by the best interests of the child, the court may temporarily, but not for more than 6 months, assign the functions of a foster family to spouses or unmarried persons who are not related to the child and who do not meet the conditions of the necessary training specified in the regulations on family support and the foster care system in relation to foster families.

It should also be noted that Polish law provides for the care of a child in a support family. A non-professional foster family, a professional foster family or a fami-

ly-type children's home can take a child as a support family, regardless of the number of children they have. The basis for placing a child in a support family is an agreement between the local authorities and the support family. The starosta immediately notifies the court of the agreement.

**Noteworthy!**

The care of a child may be entrusted to a support family, in particular in connection with the foster parents' or family-type children's home manager's holidays, hospitalisation, participation in training, or if unforeseen difficulties or events occur in the foster family or family-type children's home.

A child's stay in a support family cannot exceed 2 months. A support family provides assistance primarily on the basis of its own resources, skills and knowledge of family functioning and proper child-rearing. According to experts, it is more of a form of family support.

As in Ukrainian law, the persons with whom children are placed replace parents in all their duties, and they control and protect the child's personal and property interests.

Meanwhile, regardless of parental authority, parents and their child have the right and obligation to maintain contact with each other. Contacts with the child include, in particular, staying with the child (visits, meetings, taking the child to the place of permanent residence) and direct communication, correspondence, and the use of remote communication.

**Please note!**

If the best interests of the child so require, the court may restrict parental contact with the child. The court may, in particular: prohibit meetings with the child; allow meetings with the child only in the presence of the other parent or guardian, a probation officer or another person designated by the court; limit contact to specific means of remote communication; prohibit remote communication.

The issue of the possibility of appointing one or more guardians or carers to a child, as provided for in Article 63(5) of the Civil Code of Ukraine, was not identified in Polish legislation in the framework of the study, as such a family form is not provided for. As noted above, a foster family or family-type children's home is established by a married couple or a single person.

## Mechanisms of financial and material support for families and children and sources of funding

Financial and material support for children and foster families<sup>35</sup>, is provided from both the state and local budgets (**Annex 4**).

### For reference

From 1 June 2022, allowance to cover the cost of childcare was provided in the amount not lower than<sup>36</sup>:

- PLN 785 (785 x 8.5 = UAH 6,672.5) per month – for kinship foster families;
- PLN 1189 (UAH 10,106.5) per month – for non-professional foster families, professional foster families and family-type children's homes;
- parental allowance of PLN 500 zlotys (UAH 4,200) per month – no longer than until the child reaches the age of 18;
- PLN 239 (UAH 2,031) – allowance for a child with a disability;
- PLN 239 (UAH 2,031) – allowance for a child placed in a professional foster family on the basis of the Juvenile Proceedings Act.

In addition, the local budget provides co-financing for recreation of children aged 6 to 18 outside their place of residence and funds to cover the costs associated with the provision of medical care (one-time or periodically).

Non-professional and professional foster families and family-type children's homes are provided with financial support for the maintenance of their living quarters in the amount corresponding to the family's expenses. A professional foster family or family-type children's home may receive a remuneration once a year to cover the costs of necessary repairs to the living space.

### Important!

The Powiat Council may, by its resolution, increase the amount of the allowance for children placed in families of various forms and types.

## Forms of control and support

The guardianship court supervises the care of the child. Foster families and family-type children's homes are always under the supervision of the guardianship court, which is supposed to monitor whether the foster parents or the manager of a family-type children's home are fulfilling their duties. The court can give instructions and demand explanations in case of violations of the child's rights.

Foster parents or the manager of a family-type children's home are obliged to report to the court at least once a year on the child and the management of the child's property within the timeframe determined by the guardianship court.

Foster families and persons managing a family-type children's home are supported in the performance of tasks arising from foster care by a coordinator of family foster care or, in the case of families who have not chosen to cooperate with a coordinator, by a social worker who performs the tasks of the organiser of family foster care (a structural unit of the powiat or a person entrusted with this task by the powiat or an institution). According to the monitoring of the Polish media, in most cases, powiat family support centres are appointed as organisers of family foster care.

### The coordinator of family foster care cannot exercise a supervisory function.

In essence, the powers of a family foster care coordinator include the functions of a social work specialist in Ukraine: organising work with the family, implementing a plan to help the child, establishing mutual contact, and submitting an annual report on the results of work to the family foster care organiser (**Annex 5**).

A foster family coordinator cannot work with more than 15 foster families or family-type children's homes.

The coordinator is also in constant contact with the judicial, educational, medical and other institutions that cooperate with the foster family.

For each child, the coordinator, together with the foster family, develops a plan of assistance for the child, which includes goals and objectives to be implemented for every six months of the child's stay in the foster family (in the case of a child under 3 years of age – at least once every three months), which is analysed at the end of the six-month period and a new plan for the next six months is drawn up.

<sup>35</sup> It is defined, in particular, by Articles 80-90 of the Law on Family Support and the Foster Care System

<https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20111490887>

<sup>36</sup> <https://www.infor.pl/prawo/dziecko-i-prawo/rodzina-zastepcza/5460630,Swiadczenia-dla-rodzin-zastepczych-2022.html>



Meetings with foster families are held at the place of residence of the foster family, depending on the identified and declared needs, but at least once every six weeks by the coordinator and once every four months by a social worker.

A support group for foster families operates in powiat family support centres. Persons representing foster families and children, depending on their needs, can benefit from psychological, legal, educational, social support and counselling services.

Staff supporting foster families organise meetings to assess the situation of a child placed in foster care in order to:

- determine the child's current situation;
- analyse the methods of working with children and families;
- make changes to child support plans;
- monitor the adoption procedures for children with a regulated legal status allowing adoption;
- assess the child's health and current needs;
- assess the legality of the child's continued stay in a foster family.

The organiser of family-based care conducts a final assessment of the child's situation during a meeting of consultants appointed as part of the assessment team for the child placed in family-based care.

The meeting is attended by foster families and persons managing the family-type children's home, the coordinator of family foster care or a social worker of the family foster care organiser who cooperates with the foster carer, the child's parents, a representative of the social protection centre that supports parents in taking care of their child, a representative of the school, kindergarten, day care centres and other people important to the child.

#### Please note!

The peculiarity of the functioning of professional foster families is that once a month they are obliged to submit a written report on the facts concerning the child, in particular: dates of meetings of the child with the biological family with a brief description of their course; medical visits; school events (failures, successes of the child); other events that affect the child's situation. Reports can be submitted in person, by mail or fax.

## Removal of children from family-based forms

It is established that the decision to remove a child from the family is made by the guardianship court.

The family-based care provider interacts with the court and informs the competent court at least once every 6 months about the general personal situation of the child placed in a foster family or family-type children's home and the child's stay in the family.

If the reason for placing the child in a foster family or family-type children's home no longer exists, the family-based care organiser notifies the competent court of the possibility of returning the child to the family. The report shall be accompanied by the opinion of the community or entity working with the family and the opinion of the foster family coordinator.

If criminal proceedings are initiated against a person acting as a foster family or against the manager of a family-type children's home for an offence prosecuted by public prosecution, pending the final conclusion of the proceedings, the starosta may:

- transfer the child to another foster family for upbringing;
- identify another person who meets the conditions for continuing to run the family-type children's home, and when this is not possible, ensure that children are brought up in a family foster home or other family-type children's home.

## Caring for children with disabilities

Polish law stipulates that foster care for a child with disabilities, including moderate or severe disabilities, is primarily the responsibility of a professional foster family.

## Qualification of care service and training of foster parents

Foster family and family-type children's homes are services.

The starosta concludes an agreement on performing the function of a professional foster family with a non-professional foster family that meets the conditions for performing the function of a professional foster family, has an opinion of the family coordinator of the foster family and at least 3 years of experience as a foster family, running a family-type children's home.

The starosta may authorise the head of the district family support centre to conclude and terminate contracts. The agreement is concluded for a period of at least 4 years. The provisions of the agreement are listed in **Annex 6**.

The principle of concluding an agreement with a professional foster family or a family-type children's home is similar.

As in Ukraine, candidates for foster care must undergo a qualification procedure, which is the responsibility of the family foster care organiser and includes several stages (**Annex 7**).

**Note:**

The peculiarity of the preparation of candidates for family-based foster care is that they must undergo a psychological test for aptitude and motivation to perform the functions of foster parents after receiving an initial positive qualification.

One of the components of the qualification procedure is the training of candidates for the establishment of a professional or non-professional foster family or family-type children's home, which is carried out in accordance with the programme approved by the Ministry of Family, Labour and Social Policy. The scope of the training programme includes elements of family law in the field of children's rights, certain elements of pedagogy, developmental psychology and education, knowledge and skills in recognising and assessing the child's family situation, basic knowledge of addictions and information on the tasks and competences of support institutions, as well as practical training.

The course lasts about three months, including 10 hours of hands-on training.

Upon completion of the training and psychological testing, candidates who receive a positive assessment from the training group receive a qualification certificate. Persons who are entitled to act as professional or non-professional foster families or to run a family-type children's home are entered in a register kept by the starosta. The data from the above-mentioned register is submitted to the competent court.

**Interesting information!**

Training of candidates for kinship foster care can be carried out according to an individual training plan, depending on the needs of the family and the child.

Foster parents and organisers of family-type children's homes are obliged to systematically improve their qualifications, in particular by participating in trainings.

It is worth noting that foster parents and managers of family-type children's homes are required to visit a psychologist every 2 years, who provides an opinion on the aptitude and motivation to act as a foster family or manage a family-type children's home.

The list of tasks of the family foster care organiser is provided for in Article 76 of the Law on Family Support and the Foster Care System<sup>37</sup> (**Annex 8**).

<sup>37</sup> <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20111490887>



## 3.4. Republic of Bulgaria

Compared to the other countries studied in this research, the Bulgarian legislation regulating alternative child care is not extensive and consists of: The Family Code of the Republic of Bulgaria<sup>38</sup>, The Law of the Republic of Bulgaria “On Protection of Childhood”<sup>39</sup>, The Rules for the Implementation of the Law On Protection of Childhood, approved by the Council of Ministers of the Republic of Bulgaria (14.07.2003, No. 153)<sup>40</sup>, The Regulations on the Conditions for the Registration, Selection and Approval of Foster Families and Placement of Children in Them, approved by the Council of Ministers of the Republic of Bulgaria (04.12.2006, No. 314)<sup>41</sup>.

The Ministry of Labour and Social Policy has also approved the Methodology of Conditions and Methods of Providing the “Foster Family” Social Service<sup>42</sup>.

The legislation of the Republic of Bulgaria (hereinafter referred to as Bulgaria) does not contain a definition of the concept of alternative care.

However, based on the content of the legislation, alternative care is considered to be the placement of a child out of his or her family (hereinafter referred to as children deprived of parental care). Such placement is seen as a child protection measure when all possibilities for protecting and keeping the child in the family have been exhausted, except in cases of urgent removal. Such care is an alternative to institutional care.

According to Article 25 of the Law “On Protection of Childhood”, children without parental care can be placed in family-based forms. In particular, children:

- whose parents are deceased, unknown, deprived of parental rights or restricted in parental rights;
- whose parents, guardians or carers fail to take care of the child without valid reasons;
- whose parents, guardians or carers are unable to raise them on a full-time basis;
- who are victims of domestic violence and there is a serious risk of harm to their physical, mental, moral, intellectual and social development;
- in cases under Article 11 of the 1996 Convention (illegal transfer and non-return of children from abroad);
- who have agreed to participate in television broadcasting, but their parents, guardians or carers refuse to stop their participation in broadcasting within the meaning of the Law on Radio and Television<sup>43</sup> and thereby create a danger to their physical, mental, moral and social development.

### Please note!

Bulgarian legislation stipulates that the decision to place a child deprived of parental care is taken as a measure of protection after all possibilities of protection and keeping the child in the family have been exhausted, unless urgent removal is necessary. When a child is placed, the possibility of placing the child in a family of relatives or friends is investigated (Article 25 of the Rules for the Implementation of the Law On Protection of Childhood).

Bulgarian legislation defines **two main forms of family care**: guardianship and foster care.

**Guardianship** is established over minor children whose parents are unknown or deceased, as well as in the case of full guardianship over parents (analogous to incompetent parents under Ukrainian law) or deprivation of parental rights.

**Care** is established over underage children whose parents are unknown or deceased, as well as in the case of full guardianship over parents (analogous to incompetent parents under Ukrainian law) or deprivation of parental rights.

38 <https://www.justice.government.bg/home/normdoc/2135637484/>

39 <https://www.mlsp.government.bg/uploads/35/sv/zakon-za-zakrila-na-deteto.pdf>

40 <https://www.mlsp.government.bg/uploads/35/sv/pravilnik-za-prilagane-na-zakona-za-zakrila-na-deteto.pdf>

41 <https://www.mlsp.government.bg/uploads/35/sv/naredba-za-usloviqta-i-reda-za-kandidatstvene-podbor-i-utvyrjrdavane-na-priemni-semejstva-i-nastanqva.pdf>

42 <https://chrdri.net/sites/default/files/uploads/elibrary/05/%D0%9C%D0%95%D0%A2%D0%9E%D0%94%D0%98%D0%9A%D0%90.pdf>

43 <https://lex.bg/laws/ldoc/2134447616>

**Please note!**

The category of children who can be placed in foster care is not broad, unlike the Ukrainian experience, when it comes to children whose parents are in custody or in prison, or refused to take the child back from a medical institution, etc.

The peculiarities of establishing child guardianship in Bulgaria are interesting in terms of strengthening the capacity of the guardian.

**Important!**

Placing a child under guardianship in Bulgaria means appointing not just one person as a guardian, but several – a guardianship board.

Thus, the guardianship and care authority at the child's permanent place of residence appoints a guardian, a deputy guardian and two counsellors from among the minor's relatives and friends who will best ensure the interests of the child (subject to their written consent). They form a guardianship board.

Counsellors assist the guardian and deputy guardian in the performance of their duties and inform the guardianship and care authority of problems in the upbringing and education of the child, as well as problems in protecting the rights and interests of the child in care. Counsellors may propose the dismissal of the guardian.

The deputy guardian replaces the guardian if the latter is unable to perform his/her duties or if there is a conflict between his/her interests and the interests of the child under guardianship. In these cases, the guardianship and care authority may appoint a special representative. The deputy guardian may propose to the guardianship and care authority to dismiss the guardian (Articles 153, 156, 166, 169 of the Family Code of Bulgaria<sup>44</sup>).

Other persons may also be included in the guardianship board.

**A foster family** is a couple or an individual to whom a child is placed for upbringing under an agreement (part one of Article 31 of the Rules for the Implementation of the Law On Protection of Childhood<sup>45</sup>).

A foster family may have a specialisation, taking into account the possibility of taking in children of a certain category. Such a family has the status of a professional foster family. In this case, foster parents must have additional qualifications to raise children. They conclude an agreement with the municipality and/or a licensed service provider (Article 31, part four of the Rules for the Implementation of the Law On Protection of Childhood<sup>46</sup>).

Most children are placed in professional foster care:

- children under the age of 3;
- children with disabilities;
- children who are victims of violence or trafficking in human beings;
- children subject to 'police protection' measures;
- children in substitute care;
- children with behavioural problems<sup>47</sup>.

Depending on the child's life circumstances, placement in a foster family can be short-term, long-term or urgent.

**Short-term placements** are made for a period of up to one year with the aim of supporting the biological family and returning the child to it. During this period, measures are taken to prevent the homelessness of children in accordance with the Regulation on the conditions and procedure for taking measures to prevent unjustified treatment of children and their placement in institutions, as well as their reintegration, or taking measures to adopt a child if reintegration is not possible.

**Long-term placement** are made for a period of more than one year for children: whose parents are deceased, unknown, deprived of parental rights or restricted in parental rights; whose parents do not take care of them on a regular basis without valid reasons; whose parents are permanently unable to raise them; in cases where the return of the child to the biological family within one year is impossible; in cases where adoption of the child is impossible.

<sup>44</sup> <https://www.justice.government.bg/home/normdoc/2135637484/>

<sup>45</sup> <https://www.mlsp.government.bg/uploads/35/sv/zakon-za-zakrila-na-deteto.pdf>

<sup>46</sup> <https://www.mlsp.government.bg/uploads/35/sv/pravilnik-za-prilagane-na-zakona-za-zakrila-na-deteto.pdf>

<sup>47</sup> Article 25 of the Regulation on the Conditions for the Registration, Selection and Approval of Foster Families and Placement of Children in Them <https://www.mlsp.government.bg/uploads/35/sv/naredba-za-usloviqta-i-reda-za-kandidatstvine-podbor-i-utvyrdjavane-na-priemni-semejstva-i-nastanqva.pdf>

**Urgent (emergency) placement** is made in order to preserve the life and health of children for those categories of children who are subject to placement in a professional foster family (children in an emergency situation; after the end of the 'police protection' measure; victims of violence and trafficking in human beings; under the age of 3, including newborns, etc.)

Article 29 of the Law On Protection of Childhood also stipulates that the placement of a child out of the family shall be terminated upon reaching the age of majority, and if the child is studying, upon completion of general secondary education, but no later than the person reaches the age of 20.

Bulgaria's experience with such an institution as a substitute foster family deserves special attention.

#### Please note!

Substitute foster family (or substitute care) is a social service for families of relatives, foster parents, adoptive parents. The possibility of using this assistance is stipulated in the decision on the placement of a child deprived of parental care, made in an administrative procedure and/or in a court decision. Parents, guardians or caregivers raising a child with a permanent disability can apply for substitute care services.

The service of substitute care is provided in cases of need:

- to ensure that professional foster families who take care of a child receive adequate annual leave;
- to support the families of relatives and friends with whom the children are placed;
- to care for a child in case of illness of a foster family member – for the duration of sick leave, when another family member cannot provide proper care;
- to support children in specialised institutions to facilitate their socialisation;
- to provide support to parents caring for a child with a disability in order to prevent institutionalisation (Article 3 of the Regulation on the Conditions for Registration, Selection and Approval of Foster Families and Placement of Children in Them<sup>48</sup>, Articles 21, 21a of the Rules for Implementation of the Law on Child Protection<sup>49</sup>).

**The decision on the placement of a child in any family-based form** (family of relatives or friends, foster family) or social or comprehensive medical and social inpatient care service is made by the court.

Pending a court decision, the Social Assistance Department at the child's place of residence provides temporary placement under an administrative procedure (Article 26 of the Law On Protection of Childhood).

Article 27 of the Law On Protection of Childhood also provides for the possibility of placing a child in a family of relatives or friends, a foster family, and a social or integrated medical and social service of a stationary type by order of the Director of Social Assistance Department.

However, within a month of the order being issued, the Social Assistance Department submits a request to the district court to make a decision on the child's placement.

#### Noteworthy!

As in Sweden, Bulgarian legislation does not contain any rules that would determine the maximum number of children who can be placed in family-based care.

Bulgaria has **peculiarities regarding child guardianship in the context of legal representation**, the number of guardians, etc.

Pursuant to Article 122 of the Family Code<sup>50</sup>, each parent is the bearer of parental rights and responsibilities in relation to a child under the age of majority. Parents have equal rights and obligations regardless of whether they are married.

The legislation does not provide for the possibility of double guardianship over one child.

Instead, as noted above, the guardianship and care authority, which according to Article 154 of the Family Code is the mayor of the municipality or an official appointed by him/her, appoints a guardianship board in respect of the family of the guardian and the deputy guardian.

48 <https://www.mlsp.government.bg/uploads/35/sv/naredba-za-usloviqta-i-reda-za-kandidatstvane-podbor-i-utvyrydavane-na-priemni-semejstva-i-nastanqva.pdf>

49 <https://www.justice.government.bg/home/normdoc/2135637484/>

50 <https://www.justice.government.bg/home/normdoc/2135637484/>

**Please note!**

A spouse or a person in a foster family is not a holder of parental rights and obligations (Article 31 of the Law On Protection of Childhood).

It is established that the foster family and the family of relatives or close friends are obliged to provide the parents with information about the child and assist them in their personal relations with the child. If such relations are in the best interests of the child, the district court shall issue a ruling on the regime of meetings and communication between the child and the parents.

According to Article 34 of the Law On Protection of Childhood<sup>51</sup>, foster parents, family members or relatives have the right to express their opinion on the decision to change the form of placement of a child. In addition, according to Article 164 of the Family Code<sup>52</sup>, foster parents have the right to represent the child and give consent to legal actions in their interests.

During the child's stay in the family, foster parents are responsible for the protection of the child's life and health, as well as for his or her upbringing.

**Please note!**

Persons entrusted with guardianship over a child, as well as foster parents, do not acquire parental rights and obligations in relation to the child (Article 137 of the Family Code).

Guardians may, without the consent of the parents, make decisions and take actions to preserve the life and health of the children under their care.

The guardians with whom a child stays by court order have the right and obligation to live with the child, and are obliged to take care of the child's physical, mental, moral and social development, education, and personal and property interests.

The guardians with whom the child stays by court order take the necessary legal actions to protect the child's personal rights related to his or her health, education and civil status, as well as to issue identity documents. If the child has inherited funds, as well as state child benefit funds, insurance payments and other assets, the guardian is obliged to deposit these funds in the child's name in a bank within 7 days of receiving them.

In accordance with Article 171 of the Family Code<sup>53</sup>, the head of a social or integrated medical and social

service is a guardian or carer of a child whose parents are unknown in the event of the child's placement in an inpatient care facility.

## Mechanisms of financial and material support for families and children and sources of funding

Financial assistance may be provided for the maintenance of the child and family. The assistance is intended to prevent child neglect, raise the child with relatives and friends, or in foster families for reintegration (Article 46 of the Rules for the Implementation of the Law On Protection of Childhood<sup>54</sup>).

In addition to the monthly allowance for raising a child with relatives and friends and in foster families, a one-off allowance may be provided up to four times a year (Article 48 of the Rules for the Implementation of the Law On Protection of Childhood).

**Please note!**

A one-off allowance is an allowance other than a monthly allowance that is intended to meet a specific need that has arisen due to extraordinary circumstances and is not related to the maintenance of a child. The total amount of one-off assistance per year is up to 10 times the guaranteed minimum income. The one-off allowance is provided in cash.

For children placed in foster care with relatives and friends, the Social Assistance Department may grant a monthly allowance if the average monthly income of each spouse or parent living with minor children is less than 5 times the guaranteed minimum income (Article 49 of the Rules for the Implementation of the Law On Protection of Childhood).<sup>55</sup>

The amount of this monthly allowance is determined on the basis of a recommendation from a social worker of the Social Assistance Department and is differentiated according to the child's age:

- up to 3 years – up to 4 times the guaranteed minimum income;
- from 3 to 14 years – up to 3.5 times the guaranteed minimum income;
- from the age of 14 until the child reaches the age of majority, and if he or she is studying – until complete secondary education, but not more than

51-55 <https://www.justice.government.bg/home/normdoc/2135637484/>

until the age of 20 – up to 4 times the guaranteed minimum income.

For children placed in foster care, funds for the maintenance and upbringing of the child are provided based on an administrative order or court decision on placement (Article 50 of the Rules for the Implementation of the Law On Protection of Childhood).

Allowances for children in foster care are paid directly by the municipality or the Social Assistance Department with which the foster family has concluded an agreement.

The funds are a monthly payment and are differentiated according to the child's age in the amount of: up to 3 years – 4 times the guaranteed minimum income; from 3 to 14 years – 3.5 times the guaranteed minimum income; from 14 years until the child reaches the age of majority, and if the child is studying – until complete secondary education, but not more than 20 years – 4 times the guaranteed minimum income.

Article 51 of the Rules for the Implementation of the Law on Law On Protection of Childhood stipulates that children with disabilities receive a supplement to their monthly allowance of 120 per cent of the guaranteed minimum income, which is paid regardless of the family's income.

#### Please note!

Bulgarian legislation establishes the same amount of payments for the maintenance and upbringing of children, regardless of the family-based form chosen for them. However, in the case of foster care, such payments are not mandatory, but depend on the income of the relatives or friends to whom the child is placed. The source of funding for child benefits is the state budget.

The amount of payment is different for a professional foster family. Professional foster parents receive a monthly remuneration for the provision of services in accordance with Article 57c of the Rules for the Implementation of the Law On Protection of Childhood. The amount of the monthly remuneration of a professional foster family is specified in the contract, depends on the number of children placed and cannot be less than:

- 150 per cent of the national minimum wage – in case of placement of one child;

- 160 per cent of the national minimum wage – in case of placement of two children;
- 170 per cent of the national minimum wage – in case of placement of three or more children.

For the period of absence of placed children, a professional foster family is paid a monthly remuneration in the amount of the national minimum wage.

Funding is provided from the state budget on the basis of an agreement between the municipality and the foster family, as agreed between the executive director of the Social Assistance Agency and the mayor of the municipality.

The control over the targeted use of funds received as monthly and/or one-off child allowance is carried out by a social worker who submits a report on monthly child allowance every 6 months, and for one-off allowance – during the next review of the action plan for a particular case.

## Forms of control and support

Monitoring of the provision of services by foster families is defined in Section 6 of the Regulation on the Conditions for the Registration, Selection and Approval of Foster Families and Placement of Children in Them<sup>56</sup>.

The social service provider, represented by the Social Assistance Department and/or the engaged social service provider, monitors and supports the foster family.

#### Noteworthy!

Social support for a foster family is provided separately for the child and separately for the family.

A social worker from the Social Assistance Department who works with the child visits the child in the foster family at least twice during the first month and once each month thereafter.

The social worker assigned to work with the foster family visits the family at least twice during the first month and once each month thereafter.

A foster family provides social workers with the opportunity to communicate personally with a child.

Social workers discuss the child's development with the foster family at least once a month.

<sup>56</sup> <https://www.mlsp.government.bg/uploads/35/sv/naredba-za-usloviqta-i-reda-za-kandidatstvane-podbor-i-utyryjdavane-na-priemni-semejstva-i-nastanqva.pdf>

The Social Assistance Department and/or the social service provider provides support and assistance to foster parents in fulfilling their responsibilities related to the care and upbringing of the child through supportive training, counselling, self-help and support groups or other services.

A social worker working with a foster family conducts an inspection of an already established foster family at least once a year by meeting with them, visiting them at home and drawing up a special report based on the results.

If circumstances are established that pose a threat of harm to the child's physical, mental, moral, intellectual and social development, the social worker must prepare a social assessment report.

For each child placed in a foster family or a family of relatives or friends, the director of the Social Assistance Department appoints a social worker to monitor the child<sup>57</sup>.

Somewhat different approaches are applied to families of guardians. Bulgarian legislation provides for the possibility of providing support to families of guardians, but does not provide for social support for such families, but establishes a procedure for monitoring them. Control over the activities of the guardian is exercised by the guardianship and care authority<sup>58</sup>.

Every year, by the end of February, the guardian submits a report on his or her activities to the guardianship board and presents it to the guardianship and care authority. The guardian also reports upon dismissal and at the request of the guardianship and care authority. At the request of the guardianship and care authority, the guardian gives an explanation of his or her activities in the presence of the deputy guardian.

The guardianship and care authority makes a decision on the report of the guardian and the explanations of the deputy guardian, and in case of violations, requires their elimination. When establishing guardianship or care of a child under the age of majority, the Social Assistance Department also expresses its opinion.

If a guardian or carer fails to appear or submit a report without good reason, the guardianship and care authority imposes a fine of BGN 50 to 500 (UAH 1,032 to 10,326) and requires a report from the deputy guardian.

According to Article 34a of the Law On Protection of Childhood<sup>59</sup>, families of relatives or friends, applicants for foster families and established foster families are supported through social services, including measures for the selection and assessment of candidates for foster families, training, mutual adaptation, support and supervision of the child's upbringing.

As mentioned above, social services are provided by municipalities represented by the Social Assistance Department and licensed social service providers.

In accordance with Article 21 of the Rules for the Implementation of the Law On Protection of Childhood<sup>60</sup>, families of relatives or friends and foster families with whom children are placed may apply for substitute care to the Social Assistance Department.

## Removal of children from alternative care

Bulgarian legislation provides for a clearly defined list of grounds for removing a child from any form of family-based alternative care.

For example, Article 29 of the Law "On Protection of Childhood"<sup>61</sup> stipulates that out-of-family placements are terminated:

1. upon termination of the agreement;
2. after the expiry of the term;
3. by mutual agreement of the parties to the agreement;
4. with the adoption of a child;
5. upon reaching the age of majority, and if the child is a student, until he or she completes general secondary education, but not more than 20 years of age;
6. with the elimination of the grounds for deprivation of parental rights or restriction of parental rights;
7. in the event of the death of a spouse or a person from a foster family;
8. when changing the measure of protection;
9. in case of changes in the child's circumstances, if it is in the child's best interests;

57 Article 18(3) of the Criteria and Standards for Children's Services 2003 <https://lex.bg/laws/ldoc/2135474534>

58 Article 170 of the Family Code

59-61 <https://www.justice.government.bg/home/normdoc/2135637484/>



10. in the event of the death of a person (persons from the family of relatives or close friends);

11. in the event of a child's death.

However, the temporary termination of residence may be carried out by the Social Assistance Department until a court decision is issued. In this case, the Department may decide on the further upbringing and education of the child or adopt another temporary measure of protection, if the best interests of the child are thus ensured.

The decision to terminate the residence is enforced administratively.

## Caring for children with disabilities

Bulgarian legislation does not provide for any specific forms of placement for children with disabilities.

### Important!

When placing a child with a disability in a foster family, priority is given to professional foster families, i.e. those with special qualifications.

At the same time, children with disabilities receive a supplement to their monthly allowance of 120 per cent of the guaranteed minimum income, which is paid regardless of the family's income<sup>62</sup>.

In addition, a parent, guardian or carer raising a child with a permanent disability may apply for substitute care provided by a foster family by submitting a written application to the Social Assistance Department at the child's current address of residence<sup>63</sup>.

## Qualification of care service and training of foster parents

Child care in a foster family qualifies as a social service.

According to Article 26 of the Regulation on the Conditions for the Registration, Selection and Approval of Foster Families and Placement of Children in Them<sup>64</sup>,

applicants for a professional foster family receive basic training according to an approved programme and additional qualifications in child-rearing.

You can obtain additional qualifications for raising children by completing training (at least 24 hours) according to an approved programme.

According to Article 25 of the Rules for the Implementation of the Law On Protection of Childhood<sup>65</sup>, the Social Assistance Department and social service providers independently and/or jointly organise consultations and training for foster parents.

The Ministry of Labour and Social Policy has approved the Methodology of Conditions and Methods of Providing the "Foster Family" Social Service<sup>66</sup>.

According to Article 4 of the Regulation on the Conditions for the Registration, Selection and Approval of Foster Families and Placement of Children in Them, the provider of the "foster family" social service may be the Social Assistance Department, a municipality or a licensed provider of social services for children.

According to Article 31 of the Law on Protection of Childhood<sup>67</sup>, a child is placed in a foster family on the basis of an agreement.

An agreement for raising a child in a professional foster family is concluded before the child is placed in such a family.

The agreement must specify the subject matter of the agreement (the content of the service); the rights and obligations of the parties; the amount of remuneration of the host family and the method of payment; the term of the agreement; liability in case of default; and the terms of amendment and termination of the agreement.

The amount of the monthly remuneration of a professional foster family is determined in the agreement, but its minimum amount is stipulated by law..

62 Article 51 of the Rules for the Implementation of the Law On Protection of Childhood

63 Article 21a of the Rules for the Implementation of the Law On Protection of Childhood

64 <https://www.mlsp.government.bg/uploads/35/sv/naredba-za-usloviqta-i-reda-za-kandidatstvane-podbor-i-utvyrjdavane-na-priemni-semejstva-i-nastanqva.pdf>

65 <https://www.justice.government.bg/home/normdoc/2135637484/>

66 <https://chrdri.net/sites/default/files/uploads/elibrary/05/%D0%9C%D0%95%D0%A2%D0%9E%D0%94%D0%98%D0%9A%D0%90.pdf>

67 <https://www.mlsp.government.bg/uploads/35/sv/zakon-za-zakrila-na-deteto.pdf>



## 3.5. England

The main legislative acts regulating the operation of alternative childcare in England are the Children Act 1989<sup>68</sup>, the National Minimum Standards for the Welfare of Children (NMS)<sup>69</sup>, the Fostering Services (England) Regulations 2011<sup>70</sup>, the Children (Private Arrangements for Fostering) Regulations 2005<sup>71</sup>.

There is no official definition of “alternative care” in the legislation.

Expert Josh MacAlister, a social entrepreneur and reformer focused on the most marginalised children, says that alternative care is any care for children that is provided outside the parental/family home, or, in other words, for children deprived of parental care.

Children deprived of parental care can be placed in family-based forms of care. In particular, these are: children who do not have parents or other persons bearing parental responsibility for them, as well as children who have parents, children whose parents are addicted, children in need of care in connection with an emergency, children with special needs who need professional, special care.

### Please note!

It is important to note that both children who do not have parents or other legal representatives and children who have persons who bear parental responsibility for them (legal representation within the meaning of the Children Act 1989) can live in family-based forms.

England’s legislation provides for the functioning of the following family-based childcare:

1. **PRIVATE ARRANGEMENTS FOR FOSTERING CHILDREN** is a private arrangement whereby a child is cared for 28 days or more (or it is understood that the arrangement will last for 28 days or more) by someone who is not a parent and is not a close relative. The term “relative” includes a grandparent, brother, sister, uncle or aunt (full-blooded, half-blooded, married or in a civil partnership) or step-parent. A child is not considered to be under the care of local authorities. The arrangement is assessed by the local authority, but such a person is not approved by the local authority as a foster carer. Such an arrangement/agreement may be prohibited if the local authority finds it unacceptable<sup>72</sup>
2. **Family care (informal)** — a relative takes care of the child, but does not have parental duties/responsibilities, and no arrangements are made with the local authorities. The child is not considered to be under the care of the local authorities. A relative may consider the parents unable to care for the child; or in the event of the parents’ death, or the parents are otherwise unable to care for the child (e.g., imprisonment); or there may be an agreement between relatives to care for the child due to difficult family circumstances.
3. **Family and friends foster care** — local authorities place a child with relatives or friends because the person who was taking care of the child is not providing proper care. The child is considered to be in the care and guardianship by the local authorities. Therefore, the municipality must decide to approve a relative or family friend as a foster parent on behalf of the municipality. A child may be placed voluntarily, with the consent of the parents or in accordance with a guardianship order. Foster parents are approved in this status by the local authorities.

68 <https://www.legislation.gov.uk/ukpga/1989/41/contents>

69 <https://www.gov.uk/government/collections/national-minimum-standards>

70 <https://www.legislation.gov.uk/uksi/2011/581/contents/made>

71 <https://www.legislation.gov.uk/uksi/2005/1533/contents/made>

72 Title IX of the Children Act 1989

73 <https://www.legislation.gov.uk/ukpga/1989/41/contents>

**4. Unrelated foster care** – a child is in the care of a local authority under section 20 of the Children Act 1989<sup>73</sup> or a relevant guardianship order. The municipality places the child with a foster family. The local authorities may also decide to place the child in a residential institution if this best meets the child's needs. Foster parents/carers are approved in this status by the local authorities<sup>74</sup>.

Special attention should be paid to the existence in England of specialised forms of placement depending on the length of stay and the purpose of the child's stay:

- Long-term foster placements – children who cannot be adopted are placed in foster care
- short-term foster care – care is provided for a few days or weeks
- emergency care – a child is provided with a safe place to stay for several nights.
- respite and short breaks – care is provided for children with disabilities, special educational needs or behavioural problems while their parents or regular foster carers have a break.
- Guardianship as a preventive measure – guardianship of young people in custody. Special training is usually required.
- Specialised therapeutic foster care – specialised therapeutic care is provided for children and young people with complex needs or behavioural difficulties. Care is provided by experienced foster parents or those with specific skills.

#### Noteworthy!

The experience of England in specialising the forms of placement may be useful for Ukraine, as under martial law there is a need to increase the number of families willing to take children for foster care. There is also a possibility that not all Ukrainian citizens are ready to take a child for a long-term placement, but they do accept the possibility of a short-term placement. The creation in Ukraine of a specialised family form of care for children with disabilities or complex developmental disorders, provided by professional caregivers, will help to remove children from institutions. Thus, the introduction of specialised foster/adoptive families in Ukraine will expand the possibilities of family-based care for children according to their needs and generally ensure the right of children to be brought up in a family.

It is worth noting that the vast majority of children who are not brought up in their own families are in foster care. That is, in families that do not have full parental responsibility. Quite often, such care is temporary, so the child does not have a sense of stability, "family", or safety.

**The decision on the placement/stay of a child in one of the forms** can be determined:

- involving the municipality and requiring its approval (foster care by relatives or friends; foster care by non-relatives) or
- without the involvement of the municipality and its approval (private foster care, family care (informal)).
- In the first case, the municipality bears parental responsibility for the child, and in the second case, the child's parents or other persons bear parental responsibility.

#### Please note!

Given that England has an Anglo-Saxon (case law) legal system, the court plays an important role in alternative childcare issues by means of special documents – orders. These documents can determine not only the form of placement, but also the procedure and method of communication with the child, persons who can maintain contact with the child, the transfer of parental responsibility, the obligation to provide support and assistance to families with children, etc.

Table 4 below provides examples of such acts..

**Table 4.** Types of child protection and family support orders (England)

Name of the order	Content
Child arrangements order	<p>issued by a court and regulates the conditions of living, spending time with the child or other contacts of the child (in particular, when the child can spend time or otherwise contact any person). An application for such an order may be submitted by any person:</p> <ul style="list-style-type: none"> <li>▪ any participant in a marriage or civil partnership in relation to whom the child is a foster child (primarily a stepmother who has not acquired parental responsibility);</li> <li>▪ any person with whom the child has lived for at least 3 years;</li> <li>▪ if the child is under the care (parental responsibility) of a local authority, any person who has the consent of the local authority; or</li> <li>▪ any person who has the consent of each of the parents or persons with parental responsibility;</li> <li>▪ a relative of the child may apply for a child arrangements order, which specifies with whom the child should live, provided that he/she has been caring for the child for at least one year immediately before the application.</li> <li>▪ a foster carer from a local authority may apply for a child arrangements order specifying with whom the child should live, provided that he/she has been caring for the child for at least one year immediately before the application.</li> </ul>
Special guardianship order	<p>issued by the court and gives the special guardian parental responsibility for the child. This order can only be issued in favour of a person who has reached the age of 18 and is not the child's father or mother. The following persons may apply for such an order:</p> <ul style="list-style-type: none"> <li>▪ any person with whom the child has lived for 3 of the last 5 years;</li> <li>▪ if the child arrangements order is valid, any person named in the order as the person with whom the child is to live;</li> <li>▪ a foster parent or relative with whom the child has lived for at least one year immediately prior to the application.</li> </ul> <p>The court can issue such an order only if it has received a report from the local authority stating that the applicant is suitable to be a special guardian.</p>
Family assistance order	<p>issued by the court and is intended to engage a worker from the Children and Family Court Advisory and Support Service (Cafcass) or a local authority representative to provide advice, assistance or counselling to any person named in the order. The order is also aimed at providing targeted short-term assistance to the family to overcome problems and conflicts related to the parents' divorce; the term of such an order is no more than 12 months. The court may issue a family assistance order only with the consent of each person (except for the child) who will be named in the order. A family assistance order may also be issued with the consent of a local authority, which will send an employee to work with the family.</p>
Care order or a supervision order	<p>issued by a court and gives local authorities parental responsibility. According to Article 31 of the Children Act 1989<sup>75</sup>, upon the application of any local authority or authorised person, the court may make a care or supervision order. The court may issue a care or supervision order only if it is satisfied that</p> <ul style="list-style-type: none"> <li>▪ the child concerned is suffering or is likely to suffer significant harm;</li> <li>▪ the harm or probability of harm is related to: <ul style="list-style-type: none"> <li>failure to provide childcare;</li> <li>the child's stay outside the control of the parents</li> </ul> </li> </ul> <p>The care order places the child under the care of the local authority and:</p> <ul style="list-style-type: none"> <li>▪ the local authority must provide him or her with accommodation, support, move him or her to a safe place, and promote the child's welfare. The order gives local authorities parental responsibility for the child and the power to determine the extent to which the child's parents and other persons with parental responsibility can fulfil their responsibilities if this is necessary to protect or promote the child's welfare;</li> <li>▪ a care order automatically cancels a child arrangements order (or any other order issued under section 8 of the Children Act 1989), a supervision order;</li> <li>▪ the care order is automatically cancelled by issuing a special guardianship order or a child arrangements order;</li> <li>▪ the order expires when the child reaches the age of eighteen, unless it is terminated earlier.</li> </ul> <p>A supervision order places a child under the supervision of an authorised local authority. According to the order, the local authorities must advise, assist and support the child; the order may require the child to comply with any instructions from the local authorities, including:</p> <ul style="list-style-type: none"> <li>▪ reside in the place indicated in the referral provided by the local authorities;</li> <li>▪ participate in certain activities;</li> <li>▪ report being in certain places at certain times.</li> </ul> <p>The order is valid for up to 1 year. It can be extended for any period not exceeding 3 years from the date of the first application for an order. When issuing a care order, the court must review the child's care plan.</p>

75 <https://www.legislation.gov.uk/ukpga/1989/41/contents>

Name of the order	Content
Interim orders	<p>the court may, in certain circumstances, issue an interim care order or an interim supervision order to temporarily place a child in the care or supervision of local authorities while the child's case is being considered. Interim orders impose the same obligations on local authorities as care and supervision orders, except that the court determines the duration of the interim order. The court may also give instructions to the local authorities regarding a medical or psychiatric examination or other examination of the child.</p> <p>When issuing an interim order, the court has the right, under certain circumstances, to include an «exclusion requirement». That is: to require the person concerned to leave the place where he or she lives with the child; to prohibit the person concerned from entering the house where the child lives; or to exclude the person concerned from the specified territory in which the house where the child lives is located.</p> <p>The courts may issue interim orders for a period deemed necessary in the particular circumstances of the case. However, no interim order will be able to last beyond the completion of the main court proceedings.</p>

### Noteworthy!

The introduction of interim orders for the period of court proceedings is quite an interesting experience that can be adopted by Ukraine. In particular, such an instrument can be used in cases of divorce and child guardianship proceedings, which may be delayed due to, inter alia, the division of joint property of the parents, and in cases of conflict situations between parents that may put pressure on the child and harm his or her mental health..

### In England, there is a limit on the number of children placed in foster care.

The general rule established by the Children Act 1989 (Chapter 7) is that there should be no more than 3 children in an adoptive/foster family. This limit may be exceeded if all foster children are siblings to each other, or if the local authority has made a special decision to do so, which is justified by the ability to raise the appropriate number of children and to safeguard their welfare.

Unlike in England, in Ukraine these limits are higher, which may have the risk of excessive burden on foster parents, foster carers, which in turn may negatively affect the quality of upbringing of the child.

**The duration of a child's stay in one of the forms** depends on the specific circumstances in which the child is placed there and the purpose and plan of care for the child in need.

The duration of private foster care is set at the discretion of the person with parental responsibility and in accordance with the readiness of the foster/adoptive family.

The duration of informal family care is set at the discretion of the person with parental responsibility.

A child stays in a foster family (non-kinship) as long as such placement is in line with the care plan determined by the local authorities.

Under a child arrangements order, a child stays in a foster family until the age of 18, and under a special guardianship order – until the age of 18, unless otherwise determined by the court.

It is worth noting the peculiarities of **legal representation** – the presence of parental responsibility for the child.

### Please note!

Under English law, the placement of a child in a foster family or with relatives/friends does not automatically confer parental responsibility on such persons. Parental responsibility can be acquired by persons who are raising a child only at their own request and initiative, by applying to the court for a relevant order.

In accordance with Article 2(1)(5) of the Children Act 1989<sup>76</sup>, there may be one or more guardians as persons bearing parental responsibility.

According to Article 5 of the Children Act 1989, a court may, by its order, appoint a person as a child's guardian if:

- the child has no parents who would be responsible for him or her; or
- one of the parents, the child's guardian, identified in the child arrangements order as the person with whom the child was to live, died while the order was in force.

<sup>76</sup> <https://www.legislation.gov.uk/ukpga/1989/41/contents>

Speaking of parental responsibility, it should also be noted that under the Children Act 1989, the child's parents/guardians may designate a person who will bear parental responsibility for the child in the event of their death.

Parental responsibility can also be transferred to local authorities by a relevant order. In such cases, the municipality undertakes to place the child in an alternative form of care.

The Children Act 1989 provides that a child shall be under the care of local authorities if he or she is under their care on the basis of a guardianship order or if the municipality provides the child with accommodation in accordance with Article 20 of the Act 1989 for more than 24 hours with the consent of the parents or the child himself or herself if he or she is 16 years of age or older (Article 22(1) and (2) of the Act 1989).

#### Interesting information!

The experience of England in organising the provision of foster care services and involving private legal entities (organisations) in the provision of these services is worthy of note. A foster carer may conclude an agreement on the provision of foster care services directly with the municipality or do so through a third party – a private/charitable organisation.

Private organisations can organise their own network of foster carers and offer such services throughout the country or in certain regions, disseminate information about their services, provide support to foster carers at all stages of the placement, help with finding housing, training, professional development and family support, etc. The activities of such organisations are widespread in England. However, the private sector is often chosen, as in this case, service providers are more professional and such organisations focus exclusively on providing services for the placement of children in families (as opposed to local authorities, which also deal with issues of providing public services, education, etc.)

However, the final decision on the placement of a child and control over his/her stay in a foster family is made by the municipality and the inspection that supervises organisations involved in the selection of foster parents/carers.

This experience is quite positive, as with the help of such organisations, the municipality can select such

a family, depending on the child's needs, from several options offered by one or more organisations.

This practice could be adopted by Ukraine. However, the risks of bias in the selection of foster care providers should be taken into account, and effective monitoring of the activities of such organisations and foster families to ensure that they are protecting the rights of placed children should be introduced.

## Mechanisms of financial and material support for families and children and sources of funding

Each form of financial and material support has its own specifics.

In the case of private foster care, the financial responsibility for the child's support remains with the person with parental responsibility. However, the private foster carer may claim financial assistance for the child and tax credit (or special tax benefit) for the child if such benefits are not provided to the person with parental responsibility. Local authorities have the right to make one-off or regular payments in accordance with section 17 of the Children Act<sup>77</sup>.

#### Please note!

A tax credit or special tax benefit hereinafter means that the foster parent pays income tax only on income above a threshold. This threshold may change every year. And if the foster parent raises the children full-time and has no other income, he/she will have a personal tax benefit in addition to the special tax benefit granted to foster parents.

In the case of family-based (informal) care, the situation is similar to private foster care. Allowance to foster carers is paid if both parents of a child are deceased, or one of the surviving parents is missing or serving a prison sentence of 2 years or more. Local authorities have the right to make one-off or regular payments in accordance with section 17 of the Children Act.

In the case of foster care (non-kinship), the child benefit and tax credit do not apply. A weekly allowance is paid to cover childcare costs. It must not be less than the national minimum wage.

The minimum is usually between £154 (about UAH 7,085) and £270 (about UAH 12,423) per week<sup>78</sup>.

<sup>77</sup> <https://www.legislation.gov.uk/ukpga/1989/41/contents>

<sup>78</sup> <https://www.gov.uk/becoming-foster-parent/help-with-the-cost-of-fostering>

Some foster care service providers pay their foster carers, guardians a fee in recognition of the skills, experience and quality of care provided by foster carers.

#### Please note!

The statutory guidance on foster care services requires that any fee policy should be the same for all foster carers who meet the stated criteria. Such a policy should not discriminate against individual foster carers based on their previous relationship with the child or the presence or absence of family ties to the child.

If a child is living with a person under a child arrangements order or a special guardianship order, such a person may claim child benefit and child tax credit if such benefit is paid to the child's parents.

Local authorities have the discretion to pay an allowance if the child is living under a child arrangements order – usually if the child was previously in foster care, or in exceptional cases if the child arrangements order has prevented the local authority from establishing care for the child. Any allowance is reviewed annually.

Regular or lump sum payments may be ordered under a special guardianship order in accordance with the Special Guardianship Regulations 2005<sup>79</sup>.

## Forms of control and support

The municipality controls the child's stay in the foster family. Each approved foster parent is supervised by a specially appointed qualified social worker who visits the foster parent, including at least one unannounced visit per year.

The social worker's meetings with foster parents have a clear purpose and provide an opportunity to monitor the work of the foster parent, ensure that the foster carer meets the child's needs, taking into account the child's wishes and feelings, and offer support for the development of their competencies and skills. The frequency of meetings for foster carers should be proportional to the amount of care provided. Records of all such supervisory meetings shall be attached to the personal files of foster carers.

The main purpose of an unannounced visit (once a year) is to check the child's environment: who lives at home; who takes care of the child; if the child's caregiver is temporarily absent, what measures have been taken to care for the child.

Special attention should be paid to the question of accompanying and supporting children and foster/adoptive families.

In accordance with paragraph 17 of the Fostering Services (England) Regulations 2011, the foster care provider (municipality or independent organisation) must provide foster carers with training, advice, information and support, including out-of-hours support, that is necessary in the best interests of the children placed with them.

The provider of foster care services (municipality, private organisation) must also ensure that the foster parents/carers are informed of any information about the child who has been or will be placed with them. This information is kept up to date so that the foster parents/carers can ensure that the child is properly cared for. Each foster parent should receive a copy of the most recent version of the child's care plan.

The social worker assigned to the foster family checks and follows up on any issues that have arisen during the placement, if necessary; discusses any concerns with the foster parents and makes sure that appropriate support/advice is provided at the appropriate time.

However, some alternative forms have their own peculiarities in terms of obtaining support from the municipality.

In private foster care, advice and support is provided as necessary by the local authority, which can assess the child as being in need of support, draw up a needs plan to support the child and provide services/support for the child/family (section 17 of the Children Act 1989).

In informal family care, support services are not provided, but local authorities can assess a child as being in need of support, draw up a needs plan to support the child, and provide services/support for the child/family (section 17 of the Children Act 1989)

During the child's stay in foster care, support is provided to meet the child's needs, including a health plan and a personal learning plan. Training and practical support is also provided to foster carers in accordance with the Fostering Services Regulations.

It is important to note that a young person may be eligible for support services after leaving the foster care system.

<sup>79</sup> <https://www.legislation.gov.uk/ukSI/2005/1109/contents/made>

In the case of a child's placement under a child arrangements order, support is not provided, but local authorities may provide services/support to the child or family.

If a child is placed under a special guardianship order and if the child was under the supervision of the local authority before the order was issued, the local authority must assess the need for special guardianship support services. The local authority has the right to decide at its own discretion whether to provide support.

## Removal of children from alternative forms of care

English law provides that the decision to remove a child from a foster family is made by the municipality.

The basis for such a decision is a change in the circumstances in which the child was placed there, as well as a mismatch (in interests, other matters) between the child and the foster parents. However, the decision to take away parental responsibility is made by the court.

When placing a child in a foster family, it is mandatory to check the child's care plan (at least 6 times a month) and to have approved foster carers inspected annually by local authorities.

## Caring for children with disabilities

In general, there are no striking differences in the specifics of the placement of children with disabilities from those of children without such disabilities. Children can be placed in one of the alternative forms, provided that they are provided with the necessary care and their needs are met.

According to the expert, parents and foster carers raising children with disabilities have the right to short breaks: they can place the child in an institution for a short period of time, where he or she will receive proper professional care.

However, they rarely use this opportunity, as this service is quite expensive and in most cases is not paid for by local authorities.

In addition, according to the expert, when caring for a child with a disability, people are entitled to an increased amount of payments.

## Qualification of care service and training of foster/adoptive families/carers

The provision of fostering services is considered a social service if the procedure for establishing a foster family complies with the provisions of the Fostering Services (England) Regulations 2011<sup>80</sup>.

The service is provided by a supplier who "finds" foster families for the municipality.

This again proves the possibility of active involvement of the private sector in the process of selecting a foster family for a child.

The provider must register such an agency and develop a policy that is consistent with the objectives of fostering and the best interests of the child. The local authority must appoint one of its officials to coordinate the placement and meet the needs of children by the entity established to provide services (Article 10).

Foster parents may not be persons under the age of 18, as well as persons or their family members who have committed crimes against a child, have a history of sexual behaviour towards children under the age of 16 (including photographs of such behaviour) (Article 26).

All candidates for foster parents receive special training/education at the beginning and throughout the entire period of the foster care. There is an inspectorate that monitors organisations involved in the recruitment of foster parents.

There are also the National Minimum Standards for the Welfare of Child (NMS)<sup>81</sup>, which set out the basics of child care, and which are used to train foster parents..

<sup>80</sup> <https://www.legislation.gov.uk/ukxi/2011/581/contents/made>

<sup>81</sup> <https://www.gov.uk/government/collections/national-minimum-standards>





81 <https://www.gov.uk/government/collections/national-minimum-standards>



## 4

# Recommendations on the possible application of certain aspects of the experience of European countries in Ukrainian legislation

The analysed legislation of European countries demonstrates a fairly systematic approach to providing assistance to parents and caregivers in family-based alternative care, organising their work and supporting children without categorising them (regardless of the child status), supporting the functioning of family-based care and upbringing, training of specialists for this system and certification of relevant activities, and engaging the public and private sectors in cooperation. In all the countries studied, institutional care is used in some cases, but the number of children in these facilities is limited to 8-15. It is worth noting that legislators do not provide benefits for both children and their caregivers, except in England, where a tax credit or special tax benefit is applied. Instead, there is a well-organised system of services for childcare providers: respite, ongoing supervision and support, opportunities for continuous professional development, and additional targeted payments. The system of supervision and control over the quality of childcare services is also noteworthy, as well as many other issues described in Section 3, "Key Findings and Summary of the Study Results".

**In view of the above, we believe it is necessary to focus on the possibility of implementing the following provisions into Ukrainian legislation:**

- 1 limiting the number of children in foster care and family-type children's homes to 5 and 8 children respectively, including siblings; and to 3 and 5 children respectively in the case of placement of a child with a disability;
- 2 introducing adaptive forms of care for adolescents and young people, including supported living services and services for young people to prepare them for independent living;
- 3 lowering the maximum age for staying in foster care and children's homes for foster children to 20 years;
- 4 limiting the establishment of guardianship to relatives only. However, at this stage, taking into account the experience of the countries studied, we propose not to change the number of possible guardians for one child;
- 5 to define all family-based forms of care, except for guardianship/care, as a social service (i.e. those based on a contractual basis);
- 6 introduce specialisation of adoptive families, and possibly foster families: for children with disabilities, deviant behaviour, children in conflict with the law. This specialisation could be introduced by requiring foster parents to take a special training course;
- 7 introduce respite services for families raising a child with a disability: biological parents, foster families, family-type children's homes, adoptive parents, guardians/carers. Such a service could also be introduced for guardians, adoptive parents, foster parents raising 3 or more foster children.
- 8 formalise and define the types of activities that can be carried out by civil society organisations in the process of selecting, training and operating different forms of alternative family-based care, including through certification of their services;
- 9 introduce social support for children in family-based alternative care, including children under guardianship, and foster parents, foster carers, and guardians;
- 10 combine the existing individual plans/programmes for child protection/rehabilitation/support in Ukraine into a single form of child protection plan with mandatory periodic review depending on the form of placement;
- 11 not to limit the number of different types of family-based alternative child care in Ukraine.

# Annexes

## Annex 1. Key legislative acts of the countries studied that regulate the development of family-based alternative forms of child care

Country	Sweden	Lithuania	Poland	Bulgaria	England
Basic laws	<ul style="list-style-type: none"> <li>▪ Social Services Act<sup>82</sup>;</li> <li>▪ Young Persons' Care Act<sup>83</sup>;</li> <li>▪ Parents Code<sup>84</sup>;</li> <li>▪ Support and Services for Certain Persons with Disabilities Act<sup>85</sup>;</li> <li>▪ Social Insurance Code<sup>86</sup>.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Civil Code of the Republic of Lithuania<sup>87</sup>;</li> <li>▪ Law on the Fundamentals of Child Protection<sup>88</sup>;</li> <li>▪ Law on Strengthening the Family<sup>89</sup>.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Family and Guardianship Code<sup>90</sup>;</li> <li>▪ Law on Family Support and Foster Care System<sup>91</sup>;</li> <li>▪ Law on Support and Social Rehabilitation of Minors<sup>92</sup>;</li> <li>▪ Law on Social Assistance<sup>93</sup>.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Family Code of the Republic of Bulgaria<sup>94</sup>;</li> <li>▪ Law of the Republic of Bulgaria «On Protection of Childhood»<sup>95</sup>.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Children Act 1989<sup>96</sup>;</li> <li>▪ Fostering Services (England) Regulations 2011<sup>97</sup>;</li> <li>▪ Children (Private Arrangements for Fostering) Regulations 2005<sup>98</sup>.</li> </ul>
Main bylaws and regulations	<ul style="list-style-type: none"> <li>▪ Circular 22:41: Payment and conditions for family care for children, youth and adults, transfer of guardianship, etc. for 2023<sup>99</sup>.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rules for organising childcare<sup>100</sup>;</li> <li>▪ Action plan for the transition from institutional care to family and community-based services for children with disabilities and children deprived of parental care for 2014-2023<sup>101</sup>;</li> <li>▪ List of social services<sup>102</sup>.</li> </ul>		<ul style="list-style-type: none"> <li>▪ Rules for the implementation of the Law on Protection of Childhood<sup>103</sup>;</li> <li>▪ Regulations on the conditions of registration, selection and approval of foster families and placement of children in them<sup>104</sup>;</li> <li>▪ Methodology of conditions and methods of providing the «foster family» social service<sup>105</sup>.</li> </ul>	<ul style="list-style-type: none"> <li>▪ National Minimum Standards for the Welfare of Children (NMS)<sup>106</sup>.</li> </ul>

82 [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialtjanstlag-2001453\\_sfs-2001-453](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialtjanstlag-2001453_sfs-2001-453)

83 [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-199052-med-sarskilda-bestammelser-om-varld\\_sfs-1990-52#overgang](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-199052-med-sarskilda-bestammelser-om-varld_sfs-1990-52#overgang)

84 [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/foraldrabalk-1949381\\_sfs-1949-381](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/foraldrabalk-1949381_sfs-1949-381)

85 [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1993387-om-stod-och-service-till-vissa\\_sfs-1993-387](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1993387-om-stod-och-service-till-vissa_sfs-1993-387)

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87 <https://www.infolex.lt/ta/100228>

88 <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.26397>

89 <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/71039aa2b98511e7967a9645b537eb05>

90 <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19640090059>

91 <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20111490887>

92 <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20220001700>

93 <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20210002268>

94 <https://www.justice.government.bg/home/normdoc/2135637484/>

95 <https://www.mlsp.government.bg/uploads/35/sv/zakon-za-zakrila-na-deteto.pdf>

96 <https://www.legislation.gov.uk/ukpga/1989/41/contents>

97 <https://www.legislation.gov.uk/ukxi/2011/581/contents/made>

98 <https://www.legislation.gov.uk/ukxi/2005/1533/contents/made>

99 [https://skr.se/download/18.733c9c3c18499b458ab1e8af/1669302879066/SKR%20Cirkul%C3%A4r%2022\\_41.pdf](https://skr.se/download/18.733c9c3c18499b458ab1e8af/1669302879066/SKR%20Cirkul%C3%A4r%2022_41.pdf)

100 <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.163202/asr>

101 <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/e4169490984411e3aad2c022318814db?jfwid>

102 <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.274453>

103 <https://www.mlsp.government.bg/uploads/35/sv/pravilnik-za-prilagane-na-zakona-za-zakrila-na-deteto.pdf>

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105 <https://chrdri.net/sites/default/files/uploads/elibrary/05/%D0%9C%D0%95%D0%A2%D0%9E%D0%94%D0%98%D0%9A%D0%90.pdf>

106 <https://www.gov.uk/government/collections/national-minimum-standards>

## Annex 2. Responsibilities of the Care Coordinator of a Foster Care Centre in Lithuania

- ✓ Maintaining a case file for each foster carer, guardian, family members, and adoptive parents, which includes an individual assessment of their needs, strengths and weaknesses, a plan for helping the child, and the progress of the necessary services.
- ✓ Within 30 calendar days from the date of placement of the child in the family, jointly with the professional guardian and other specialists of the Foster care centre, prepare an assessment of the need for assistance to the child and the professional guardian, guardian (carer), family members, adoptive parents and a plan for the child's assistance, which is subject to review in the event of important circumstances or new assistance needs that have a significant impact on the implementation of the plan or the quality of service provision.
- ✓ Regularly (at least once every two weeks, in cases of intensive care – at least 1-2 times a week) conducting and/or organising individual consultations for the professional guardian and the child in care. If it is determined that there is a need, more frequent individual consultations with the specialists of the Foster care centre may be arranged and/or intensive assistance may be provided at the place of residence of the professional guardian.
- ✓ Maintaining contact with the professional guardian and the child in his/her care directly and/or through communication tools (calls, emails, chat applications, etc.) and providing emotional support and assistance.
- ✓ Organising regular psychological consultations for the professional guardian and the child in his/her care. During the period of the child's adaptation, after the child is temporarily placed with the family of the duty guardian, permanent care is established in another family or the professional guardian changes, intensive psychological support is provided to the professional guardian and the child in his/her care. At this time, the psychologist conducts 2-5 additional consultations.
- ✓ In addition, in the case of the return of a foster child to the family, the professional guardian and the foster child are provided with 2-5 additional psychological consultations before the child returns to the family and 2-5 additional psychological consultations after the child returns to the family. As soon as the need is identified, psychological assistance is organised for the family members of the professional guardian who live together. In the event of a crisis, psychological assistance should be provided at the home of the professional guardian after assessing the need.
- ✓ Together with the professional guardian, he/she arranges for the assistance of other specialists (speech therapists, special educators, lawyers, psychotherapists, non-formal education and/or employment services for children, etc.), taking into account the identified needs of the child in care, provides educational assistance (special needs related to education), medical care or other necessary services.
- ✓ Taking into account the needs of the duty guardian, his/her family members living together, and/or the individual needs of the child under his/her care, representation of the child's interests in other institutions.
- ✓ Analyse the training needs of the professional guardians on relevant topics and organise training for at least 16 hours per year.
- ✓ Providing information and coordinating actions with the professional guardian regarding the child's meeting with parents, close relatives and persons with whom the child is emotionally connected.
- ✓ If necessary, assist the guardian (carer) or family members in preparing to represent the child's interests in law enforcement or other institutions.

### Annex 3. Responsibilities of a certified person of a Foster care centre in Lithuania

- ✓ Informing and advising persons wishing to become professional guardians, guardians (carers), adoptive parents, family founders, participants wishing to take a child for a temporary visit or provide a temporary respite service, and working persons wishing to work in community-based children's homes.
- ✓ Provide training for professional guardians, foster parents, adoptive parents, family members, persons willing to provide respite services, and community-based children's home workers according to the training programme. The Foster care centre must employ at least two certified persons.
- ✓ Assessment of readiness to become regular guardians, foster parents, adoptive parents, family founders, persons providing temporary respite services, preparation of an opinion on their readiness to care for children. Sending the opinion in writing to the municipal administration.
- ✓ Upon written request of the territorial department of the State Service for Child Protection and Adoption, reassessment of a person's readiness to care for a child, taking into account the quality of service (care).
- ✓ Preparation of continuous periodic trainings for professional guardians, guardians (carers), adoptive parents, family members according to the training programme for staff of community-based children's homes, staff of Foster care centres and service providers;
- ✓ Providing methodological assistance to social service institutions, families, professional guardians, and employees of community-based children's homes in the community through a training programme.
- ✓ At least once a month, organise self-help group sessions for guardians (carers), professional guardians, family members and adoptive parents.
- ✓ Keeping in touch with a person who wishes to become a professional guardian, guardian (carer), adoptive parent or person temporarily placing a child;
- ✓ Participation in the assessment of needs and development of a child's care plan.
- ✓ Provision of counselling services to a child in care, professional guardian, guardian (carer), their family members or adoptive parents.

## Annex 4. Financial and material support for families and children in Poland

Family type / type of support	Kinship foster family	Unprofessional foster family	Professional foster family	Family-type children's home
Child support allowance under law	not less than PLN 660	not less than PLN 660	not less than PLN 1000	not less than PLN 1000
Supplement for a child with a disability is at least PLN 200	yes	yes	yes	yes
Supplement for a child in conflict with the law is at least PLN 200	no	no	yes	yes
Remuneration for work (minimum amount – PLN 2000, family emergency – PLN 2600)	no	no	yes	yes
Other assistance	Subsidies provided for in the Law are not specified in terms of amounts. It is the responsibility of the county to issue relevant local acts establishing specific amounts and conditions for their receipt			
Co-financing of respite outside the place of residence of a child aged 6 to 18	yes once a year	yes once a year	yes once a year	yes once a year
Co-financing of expenses related to unforeseen circumstances or other events that affect the quality of care	yes once or periodically	yes once or periodically	yes once or periodically	yes once or periodically
Funds for the maintenance of a dwelling in an apartment building or a detached house in the amount corresponding to the costs	no	yes	yes	yes
Assistance to cover the costs associated with the necessary repairs	no	yes once a year	yes once a year	yes under the contract
Coverage of other necessary and unforeseen expenses related to the care and upbringing of the child or the functioning of the family-type children's home	no	no	no	yes under the contract

## Annex 5. Responsibilities of the coordinator of family foster care in Poland

The powers of the family foster care coordinator include:

1. assisting foster families and families of family-type children's homes in fulfilling the tasks of a foster family;
2. preparing, in cooperation with the foster family, or maintaining a family-type children's home and a family assistant, and in case the child's family does not have a family assistant, in cooperation with the entity organising work with the family, a plan for the child's assistance;
3. assisting foster families and family-type children's homes in establishing mutual contact;
4. providing foster families and families in family-based children's homes with access to specialised child care, including psychological, re-education and rehabilitation services;
5. providing adoption centres with information on the legal status of children in order to find foster families for them;
6. support for adult foster children in family-based care;
7. submission of an annual report on the results of work to the family patronage organiser.

## Annex 6. Basic terms of the contract with a foster family in Poland

1. parties to the contract;
2. the purpose and subject matter of the contract;
3. the place of residence of the foster family;
4. the method and amount of funding for the foster family;
5. the number of children placed in foster family;
6. the maximum number of children who can be placed in a given foster family;
7. willingness to act as a professional foster family specialist to take care of:
  - a child with a disability,
  - a child in conflict with the law,
  - a minor mother with a child;
- 7a. willingness to exercise foster care over a minor by a decision of a court or other authority of a foreign country with the consent of a Polish court;
8. willingness to act as a family emergency service;
9. the amount of remuneration due to the foster family and the method of payment;
10. the possibility of using training and other forms of professional development for persons forming a foster family;
11. the amount of assistance needed in case of illness of the persons forming the foster family or in case of problems with foster children;
12. conditions for the temporary absence of the family in case of its replacement, related, in particular, to respite;
13. the amount of expenses for the maintenance and operation, including routine repairs, of the premises of a residential dwelling in an apartment building or a single-family house in which the foster family function is to be performed;
14. starosta's powers in the area of routine supervision of the contract performance;
15. the time for which the contract is concluded;
16. terms and procedure for amending and terminating the contract.



## Annex 7. Stages of the qualification procedure for candidates to establish a foster family and family-type children's home in Poland

**I Initial informational interview with candidates for foster parents.** The foster family organiser informs the candidates about the process of establishing a foster family or family-type children's home and introduces the formal requirements.

**Candidates for foster parents need to submit the following documents:**

- certificates of no health contraindications for fostering issued by a general practitioner for both candidates separately;
- certificates of employment and income for the last year;
- a statement of no criminal record for both spouses separately.

**II The organiser of family foster care collects information and analyses personal, family and property status at the place of residence of candidates for foster parents.**

**III Candidates for foster parents must be tested for their aptitude and motivation** to become foster parents after receiving an initial positive qualification. This includes psychological counselling and verification examinations conducted by the foster care organiser.

**IV Preparing candidates for foster care.** Candidates for the role of a professional or non-professional foster carer or manager of a family-type children's home must complete training. Upon completion of the training, they receive a certificate of completion, which, in addition to the prerequisites and aptitude and motivation to provide foster care, is an element necessary to obtain a qualification certificate that allows them to establish non-professional, professional foster families or family-type children's homes.

The training of candidates for foster families is carried out in accordance with the training programme approved by the Ministry of Family and Social Policy, which aims to familiarise candidates with the rules of operation of foster families, typical problems related to childcare and ways to deal with them.

The training prepares candidates to care for and educate children, meet their developmental needs and compensate for delays, keep the child connected to his or her birth family, and ensure that the child establishes safe, positive and strong ties.

The scope of the training programme covers elements of family law in the field of children's rights, certain elements of pedagogy, developmental psychology and education, knowledge and skills in recognising and assessing the child's family situation, basic knowledge of addictions and information on the tasks and competence of support institutions, as well as practical training in family-based and institutional forms of professional foster care.

The training is conducted using a masterful method and lasts about three months, including 10 hours of practice.

A certificate of completion of training is not equivalent to a qualification certificate entitling candidates to perform the functions of non-professional and professional foster families and persons forming a family-type children's home.

**V Qualification certificate.** After completing the training and passing psychological testing, candidates who have received a positive assessment from the training group receive a qualification certificate confirming that they have completed the training and have met the conditions for becoming a foster family or running a family-type children's home.

According to the Law on Family Support and the Foster Care System, persons who are entitled to act as professional or non-professional foster families or to run a family-type children's home are entered in a register kept by the starosta. The data from the above-mentioned register is submitted to the competent court.

## Annex 8. Tasks of a family foster care organiser in Poland

### The tasks of a family foster care organiser include:

- ✓ recruitment of candidates for professional foster care, non-professional foster care or running of a family-type children's home,
- ✓ qualification of candidates for foster care or running of a family-type children's home and issuance of qualification certificates containing confirmation of training, an opinion on the fulfilment of conditions and an assessment of aptitude for foster care,
- ✓ organising trainings for candidates for the role of foster family or running of a family-type children's home,
- ✓ organising training for candidates for the position of head of a family-type children's home, issuing certificates of completion of this training and opinions on the aptitude to perform the functions of a head and educator in a family-type care facility,
- ✓ providing foster families and managers of family-type children's homes with training aimed at improving their skills, taking into account their needs,
- ✓ providing assistance and support to people in foster care, in particular in support groups and support families,
- ✓ organising volunteer assistance to foster families and managers of family-type children's homes,
- ✓ cooperation with the local community, including the district family support centre, social assistance centre, courts and their auxiliary bodies, educational institutions, medical facilities, as well as churches and religious associations, and public organisations,
- ✓ providing counselling and therapy to persons under family care and their children and children in care,
- ✓ providing legal assistance to persons under the care of foster families, especially in the field of family law,
- ✓ periodic assessment of the situation of children in family-based care,
- ✓ conducting diagnostic and counselling activities aimed at recruiting, training and qualifying persons who declare their willingness to perform the functions of a professional foster family, non-professional foster family and running a family-type children's home, as well as educational, psychological and pedagogical support for foster carers and parents of children,
- ✓ conducting pedagogical and psychological tests and analyses of candidates for foster families or running a family-type children's home,
- ✓ providing professional and non-professional foster families and heads of family-based children's homes with counselling aimed at supporting and strengthening their competencies and counter-acting the phenomenon of professional burnout,
- ✓ submitting an annual report on the results of the work to the starosta and the powiat council,
- ✓ providing information about children with regulated legal status to adoption centres in order to find foster families for them,
- ✓ organising child care when a foster family or the manager of a family-type children's home is temporarily unable to provide care, in particular, for health or life reasons or due to planned holidays.



