

WG36071



Welsh Government
Consultation Document

Regulations to introduce a two-stage approval process for adopters

Date of issue: 3 October 2018
Action required: Responses by 9 January 2019

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview This consultation seeks your views on two new sets of adoption regulations: The Adoption Agencies (Wales) (Amendment) Regulations 2019 and the Adoption Agencies (Wales) (Amendment) (No.2) Regulations 2019. The new regulations will amend the Adoption Agencies (Wales) Regulations 2005. The new regulations will come into force in July 2019.

How to respond You can respond to this consultation by completing and returning, by midnight on the closing date, the consultation response form at the back of this document. The response should be sent to:

Legislation Implementation Branch
Social Services Directorate
Welsh Government
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

Alternatively, the consultation response form is available on our website [<http://wales.gov.uk/consultations/?lang=en>] and can be returned to us, by midnight on the closing date, via e-mail to RISCAct2016@gov.wales .

Further information and related documents **Large print, Braille and alternative language versions of this document are available on request.**

Consultation: A New Regulatory Framework for Adoption Services (4 September 2018 to 27 November 2018)
<https://beta.gov.wales/fostering-services-regulations>

Contact details For further information:

Legislation Implementation Branch
Social Services and Integration Directorate
Crown Buildings
Cathays Park
CARDIFF
CF10 3NQ

email: RISCAct2016@gov.wales

telephone: 0300 0604400

General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data holds about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

e-mail:
Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113

Website: <https://ico.org.uk/>

1. Introduction

The past four years have seen the creation of a new legal framework for social services in Wales, with the passing of two landmark pieces of legislation – The Social Services and Well-Being (Wales) Act 2014¹ and The Regulation and Inspection of Social Care (Wales) Act 2016². The overall aim has been to reform and consolidate social care law, in order to improve the well-being of people who need care and support and their carers.

As part of this programme of reform of social care law, the Welsh Government is taking the opportunity to modernise the process by which people who wish to adopt a child are assessed and approved as potential adopters. At the same time, a separate and complementary consultation³ is considering, alongside adoption regulatory reform, the operation of the Independent Review Mechanism in respect of adoption. This is a system for reviewing the conclusions of panels when they turn down an individual's application to become an adopter, or when they decide to set conditions or not to renew such an approval.

2. This consultation

This consultation runs from 3 October 2018 and closes at midnight on 9 January 2019.

Your views are sought on two sets of draft Regulations which make amendments to The Adoption Agency (Wales) Regulations 2005⁴ ('the 2005 regulations'). These currently govern the assessment and approval process for prospective adopters in Wales.

In summary, The draft Adoption Agencies (Wales) (Amendment) Regulations 2019:

- (a) introduce a two-stage process for the assessment and approval of potential adopters.

This is provided for within draft regulation 7 which substitutes Part 4 – Duties of Adoption Agency in Respect of a Prospective Adopter – in the 2005 Regulations.

- (b) require adoption agencies to refer to the Adoption Register for Wales the details of prospective adopters once they are approved, and of children for whom a decision has been made that they should be placed for adoption, within a maximum period of one month after the decision has been made.

In relation to the children, this is provided for within draft regulation 4 which inserts regulation 19A – Information to be provided for entry on the Adoption Register – into the 2005 Regulations. In relation to the prospective adopters, this is provided for within new regulation 30G of the amended Part 4.

- (c) require adoption agencies to arrange for the appointment of an 'authorised person' to act as a witness to the consent of a parent or guardian to the

¹ http://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw_20140004_en.pdf

² http://www.legislation.gov.uk/anaw/2016/2/pdfs/anaw_20160002_en.pdf

³ <https://beta.gov.wales/new-regulatory-framework-adoption-services>

⁴ http://www.legislation.gov.uk/wsi/2005/1313/pdfs/wsi_20051313_mi.pdf

placement or adoption of a child in their care, where the parent or guardian resides outside England and Wales (including abroad).

This is provided for within draft regulation 6 which inserts regulation 20A – Persons authorised to witness consent to placement for adoption – into the 2005 Regulations.

These Regulations will be subject to the National Assembly for Wales' negative resolution procedure.

The draft Adoption Agencies (Wales) (Amendment) (No.2) Regulations 2019 are a shorter set of amending Regulations which place a requirement on adoption agencies, when assessing the suitability of a couple to adopt a child, to have proper regard to the need for stability and permanence in their relationship. These Regulations complement the other set but will be subject to the National Assembly's affirmative resolution procedure.

Both sets of Regulations draw on powers, principally, within the Adoption and Children Act 2002 ('the 2002 Act').

Your consultation responses will help inform our consideration of the final Regulations. Our intention is to analyse the responses over the winter and consider whether any changes may be required before laying the Regulations before the National Assembly in spring 2019. It is intended that they will come into effect in summer 2019.

3. The case for change

The current regulations covering the approval of potential adopters (including panels, assessments, approvals, reviews and terminations) are The Adoption Agencies (Wales) Regulations 2005 ('the 2005 Regulations').

(a) Approvals process

We wish to make changes to the approval process in Wales along the same lines as the changes that were made in England in 2013. Part 4 of The Adoption Agencies Regulations 2005⁵ (which dealt with the duties of an adoption agency in respect of prospective adopters in England) was replaced by provision within The Adoption Agencies (Miscellaneous Amendments) Regulations 2013⁶. This changed the approval process in relation to England and allowed a two-stage process.

Our Adoption Technical Group, which met four times between September and November 2017, and especially the National Adoption Service, has requested that Welsh Government legislate to introduce a similar two-stage process for Wales. In essence, this change would enable an adoption agency to make an early decision 'not to proceed' with an individual's full application to become an adopter if it had collected information – for instance from a medical report showing a serious problem – which clearly demonstrated that this particular individual was not a suitable person to adopt a

⁵ http://www.legislation.gov.uk/ukxi/2005/389/pdfs/ukxi_20050389_en.pdf

⁶ http://www.legislation.gov.uk/ukxi/2013/985/pdfs/ukxi_20130985_en.pdf

child. It would mean that in such cases, there would no longer be a legal obligation to proceed to full panel consideration of a manifestly unsuitable application before it could be dismissed.

The benefits of making this change are that:

- the process of considering potential adopters for a particular child from within their own family and connected people will move along more quickly and efficiently, with less delay and uncertainty for the child as a consequence;
- potential adopters whose application is clearly not going to be successful, due to an obvious and serious difficulty with their application, will not have their hopes and expectations raised unduly;
- the overall operation of the approvals process will be streamlined and made more efficient, with consequent savings in staff and panel-members' time in preparing and considering applications.

(b) Referrals to the Adoption Register

The second principal change we wish to make through the draft Regulations is to reduce the existing time limit for requiring adoption agencies to refer to the Adoption Register for Wales the details of prospective adopters once they are approved, and of children for whom a decision has been made that they should be placed for adoption.

The current maximum is three months, which gives time for possible local and regional links to be explored before making this information available nationally through the Register. However we wish to reduce this so that the requirement would be for the necessary information to be supplied to the Register as soon as possible and no later than one month after the decision has been made. This change has been requested by the National Adoption Service.

The intention is that all children who are awaiting an adoptive placement and all approved prospective adopters across Wales would be placed on the Register immediately. This will speed up matching of children with prospective adopters (and therefore reduce the length of time that children are waiting) by giving immediate access to a national system through which the widest possible range of links from across Wales, and where appropriate other parts of the UK, can be explored. This should lead to even more good quality, lasting matches being made. Furthermore it will enable the system as a whole to be managed in a more effective way at the strategic level – for instance, through identifying patterns of particular needs among the children or groups of siblings, which might require tailored recruitment of adopters in order to be met.

(c) Establishing an 'authorised person'

The third change we wish to introduce is permitting an 'authorised person' to act as a witness to the consent of a parent or guardian to the placement (under section 19 of the 2002 Act) or adoption (under section 20 of the 2002 Act) of a child in their care, where the parent or guardian resides outside England or Wales. A similar change was made in England in 2005, when regulation 20A was inserted into The Adoption Agencies Regulations 2005.

We envisage that such an authorised person would be:

- in Scotland and Northern Ireland, a Justice of the Peace
- outside the UK,
 - a person authorised by the local law to administer an oath
 - a British consular officer
 - a notary public
 - or a commissioned officer in any of the regular armed forces of the Crown

At the same time we are taking the opportunity to clarify – through draft regulation 5 – that an adoption agency must request that CAF/CASS Cymru (on behalf of the Welsh Ministers) appoint an officer to obtain consent to such a placement or the adoption of a child in their care only where the parent or guardian resides in England and Wales.

4. Summary of new requirements on adoption agencies under the two-stage process

We intend to replace Part 4 of The Adoption Agency (Wales) Regulations 2005 ('the 2005 Regulations') with a new two-stage process for approving prospective adopters.

Our approach is a hybrid one which makes some changes along the same lines of those made recently in England to bring about a two-stage process, through The Adoption Agencies (Miscellaneous Amendments) Regulations 2013 ('the 2013 Regulations'). However, our approach does differ in places as we have chosen to retain some important elements of the 2005 Regulations.

The structures of the current Part 4 and the amended Part 4 are shown below:

Part 4 of The Adoption Agency (Wales) Regulations 2005	Part 4 as amended by the draft Adoption Agencies (Wales) (Amendment) Regulations 2019
	Stage 1 - the pre-assessment process Regulations 21 to 27 apply where a person has notified an adoption agency that they want to adopt a child and the agency has notified that person that it has decided to proceed with the pre-assessment process in respect of them.
21. Requirement to provide counselling and information	21. Registration of interest in adoption
22. Requirement to consider application for an assessment of suitability to adopt a child ⁷	22. Prospective adopter stage one plan
23. Requirement to carry out police checks	23. Prospective adopter's case record

⁷ Note that the requirement within regulation 22 of the 2005 Regulations is preserved through the draft Adoption Agencies (Wales) (Amendment) (No.2) Regulations 2019

24. Requirement to notify	24. Requirements to provide counselling, information and preparation for adoption
25. Requirement to provide preparation for adoption	25. Requirement to carry out police checks
26. Procedure in respect of carrying out an assessment	26. Other pre-assessment information
27. Function of the adoption panel	27. Pre-assessment decision
	Stage 2 – the assessment decision Regulations 28 to 30G apply where, following the adoption agency's decision that the prospective adopter may be suitable to adopt, the prospective adopter has notified the adoption agency within six months of that decision that they wish to proceed to stage 2 of the approval process.
28. Adoption agency decision and notification	28. Stage 2 assessment
29. Information to be sent to the independent review panel	29. Prospective adopter assessment plan
30. Reviews and termination of approval	30. Prospective adopter's report
	30A. Functions of the adoption panel 30B. Adoption agency decision and notification 30C. Information to be sent to the independent review panel 30D. Review and termination of approval 30E. Duties of the adoption agency in a section 83 case 30F. Application of Part 4 with modifications to specified persons 30G. Referral to the Adoption Register – prospective adopters
31. Duties of the adoption agency in a section 83 case following approval of prospective adopter	30H. Prospective adopter matching plans

Some of the new requirements on adoption agencies are highlighted below:

- **Prospective adopter stage one plan (New regulation 22)**

New regulation 22 requires the adoption agency to prepare a written plan, in consultation with the prospective adopter, which is to include information about their respective roles in the stage one process. This includes:

- Information about the counselling, information and preparation for adoption the agency will provide
- The procedure for carrying out police checks
- Details of any training that the prospective adopter has agreed to undertake
- Information about the role of the prospective adopter during stage 1

- Any applicable timescales
 - How to make a representation or complaint
 - Any other information the agency considers relevant
- **Prospective adopter's case record (New regulation 23)**

Whilst this is based on regulation 22 of the 2005 Regulations, we intend to include the more detailed requirements, concerning what the prospective adopter's case record must cover, from regulation 23 of the 2013 Regulations. These include, for example, any relevant plans, assessments, reports, decisions and reviews undertaken in respect of the prospective adopter and any of their observations in respect of these. These details are listed at paragraph 1 (a) – (j) of the new regulation 23.

- **Other pre-assessment information and pre-assessment decision (New regulations 26 and 27)**

New regulation 26 sets out the pre-assessment information that an adoption agency must obtain and new regulation 27 provides that an adoption agency must decide in light of that information whether the prospective adopter may be suitable to adopt a child. That decision must be made within two months from the date on which the adoption agency notified the prospective adopter that they had decided to proceed with the pre-assessment process. However, the agency may delay making that decision where it is satisfied that there are good reasons for doing so or upon the request of the prospective adopter.

- **Prospective adopter assessment plan (New regulation 29)**

This requires the adoption agency to prepare a written plan, in consultation with the prospective adopter, which is to include information about the procedure for assessing the prospective adopter's suitability to adopt a child.

- **Adoption agency decision and notification (New regulation 30B)**

This requires an adoption agency to decide whether a prospective adopter is suitable to adopt within four months of the date on which the agency received the prospective adopter's notification that they wished to proceed with the assessment process. The agency may delay making that decision where the agency considers that there are exceptional circumstances which mean it cannot make that decision within that time or upon the request of the prospective adopter.

Under 30B(5)(c) where the adoption agency considers that the prospective adopter is not suitable to adopt a child it must advise them that they may, within 20 working days of the notification of this decision being sent, submit any representations to the agency or apply to the Welsh Ministers for a review by an independent review panel of the qualifying determination. This limit of 20 working days is carried over from the 2005 Regulations, however the limit within the 2013 Regulations has been extended to 40 working days, in England. We are minded to retain the current 20 working day limit, as this also aligns with the 28 calendar day limit for similar applications made in respect of decisions made by fostering agencies. We would particularly welcome your views as to whether this is reasonable.

- **Review and termination of approval (New regulation 30D)**

Whilst under the 2005 Regulations the maximum period allowed for a review of approval of a prospective adopter is currently two years in Wales, the 2013 Regulations in England set a maximum of one year after approval. New regulations in respect of fostering services will also set a maximum of one year for equivalent reviews. We are therefore minded to reduce the maximum period in Wales to one year, for consistency and safeguarding reasons.

The Independent Review of Determinations

A number of requirements under these Regulations arise as a result of the operation of the mechanism for independent review of qualifying determinations for adoption (and fostering) – known as the IRM. The core requirements for the IRM are set out in the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010⁸. This process is currently under review and is subject to a separate consultation exercise.⁹

If the existing IRM system is altered or abolished, consequential changes will be required to the Regulations to reflect the new system, if any, or to remove references to the current review process.

It should also be noted that under the new, two-stage process, an application for approval as an adopter which does not pass the first, or “pre-assessment stage”, would not constitute a “qualifying determination” for the purposes of the 2010 Regulations. If the current IRM is retained, an individual who is unsuccessful at the pre-assessment stage would not be able to refer the decision to an independent panel for review; and would only be able to submit a complaint to the adoption agency in accordance with that agency’s complaints procedure (and possibly to submit an application for judicial review).

⁸ http://www.legislation.gov.uk/wsi/2010/746/pdfs/wsi_20100746_mi.pdf

⁹ <https://beta.gov.wales/new-regulatory-framework-adoption-services>

Consultation Response Form

Your name:	
Organisation (if applicable):	
Email / Telephone number:	

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please place a tick in the box:

Introduction of a two-stage process for assessment and approval of adopters.

See draft regulation 7 which substitutes Part 4 – Duties of Adoption Agency in Respect of a Prospective Adopter – in the 2005 Regulations.

1. Is it right that we should introduce in Wales a two-stage process to replace the current system for assessment and approval of adopters?

Agree

Tend to agree

Tend to disagree

Disagree

Please give your reasons:

Requirements on adoption agencies under a two-stage process.

See draft regulation 7 which substitutes Part 4 – Duties of Adoption Agency in Respect of a Prospective Adopter – in the 2005 Regulations.

2. Are the new requirements being placed on adoption agencies appropriate, workable and proportionate?

Please explain why you think so:

Reducing the maximum period allowed for referral of a child's or an adopter's details to the adoption register.

In relation to a child, see draft regulation 4 which inserts regulation 19A – Information to be provided for entry on the Adoption Register – into the 2005 Regulations. In relation to the prospective adopters, see new regulation 30G.

3. Is it right that the maximum time allowed for referral of this information is shortened to within a month of the agency's decision?

Agree

Tend to agree

Tend to disagree

Disagree

Please give your reasons:

Enabling an ‘authorised person’ to act as a witness to a parent’s or guardian’s consent.

See draft regulation 6 which inserts regulation 20A – Persons authorised to witness consent to placement for adoption – into the 2005 Regulations.

4. Is it right that where a parent or guardian resides outside of England or Wales we should broaden out the categories of people who can carry out this function?

Please give your reasons in the box below and include any comments you may wish to make about the categories of people whom we propose should be enabled to carry out this role.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>

Other Questions

The Welsh Government is interested in understanding whether the proposals in this consultation document will have an impact on groups with protected characteristics. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation.

5. Do you think that the proposals in this consultation will have any positive impacts on groups with protected characteristics? If so, which and why/why not?

Please explain:

6. Do you think that the proposals in this consultation will have any negative impacts on groups with protected characteristics? If so, which and why/why not?

Please explain:

We would like to know your views on the effects that these proposals would have on the Welsh language, specifically on

- i) opportunities for people to use Welsh and**
- ii) treating the Welsh language no less favourably than English.**

7. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Please explain:

8. Please also explain how you believe the proposed policy could be formulated or changed so as to have:

- i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and
- ii) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to tell us about them