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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation – summary of response

Fostering Services Regulations

Implementing a new regulatory framework

December 2018

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

Overview

This document provides a summary of the responses received by the Welsh Government to our consultation:

WG34313 – Phase 3 implementation of the Regulation and Inspection of Social Care (Wales) Act 2016 – Fostering Services.

The consultation was published on 24 May 2018 and closed on 16 August 2018. 27 responses were received from a range of stakeholder and interested parties.

Action Required

For information only.

Further information

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Additional copies

This document can be accessed from the Welsh Government's website:

<https://beta.gov.wales/fostering-services-regulations>

Large print, Braille and alternate language versions of this document are available on request.

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Section 1

1.1 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 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 those who look after them.

The Social Services and Well-being (Wales) Act 2014¹ ('the 2014 Act'), which came into force on 6 April 2016, establishes a new framework that brings together and modernises the law in relation to most local authority social services in Wales.

The Regulation and Inspection of Social Care (Wales) Act 2016² ('the 2016 Act') received Royal Assent on 18 January 2016. It sets the new statutory framework for the regulation and inspection of social care services and reforms the regulation of the social care workforce in Wales. Therefore it replaces relevant systems previously put in place under the Care Standards Act 2000³.

Both Acts enable the Welsh Ministers to put in place a number of items of subordinate legislation through the making of regulations, together with the publication of statutory guidance and the issuing of codes of practice.

Implementation of the 2016 Act is being substantially undertaken within three overlapping phases:

- **Phase 1 (2016/17)** included regulations relating to the new system of workforce regulation required by the Act. These came into force on 3 April 2017. Alongside these, Social Care Wales developed the rules and procedures which govern the process of workforce registration and regulation.
- **Phase 2 (2017/18)** saw new systems for registration of regulated services put in place and operated by Care Inspectorate Wales from April 2018. This phase also included regulations and statutory guidance relating to the requirements and standards expected of service providers and responsible individuals of care homes (including children's homes), secure accommodation for children, residential family centres and domiciliary support services. These came into force on 2 April 2018.

Links to all of the phase 1 and phase 2 regulations and statutory guidance can be accessed via the Social Care Wales Information and Learning Hub⁴:

- **Phase 3 (2018/19)** is the current phase and includes development of regulations and statutory guidance relating to the requirements and standards expected of service providers and responsible individuals of adoption services, fostering services, adult placement services and advocacy services. It is intended that these will come into force in April 2019.

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 http://www.legislation.gov.uk/ukpga/2000/14/pdfs/ukpga_20000014_en.pdf

⁴ <https://socialcare.wales/hub/riscact-regulations>

1.2 The context for change

Regulation of services under The Care Standards Act 2000

A great deal has been achieved by the regulators (Care Inspectorate Wales and Social Care Wales⁵), and the wider social care sector, in pursuing the ambitions set out in the Care Standards Act 2000. This framework provided a baseline of standards, both for care and support services and for the workforce delivering them, and has undoubtedly improved public protection. It has also delivered much greater consistency, protection from abuse and exploitation, and greater exposure of sub-standard practices. Collectively, we have succeeded in raising performance and continue to use regulation and inspection to eliminate poor standards.

However, since that time we recognise that many things have changed within and around the sector, and have identified both the need to avoid our regulatory arrangements becoming out of date and the need to support the provision of sustainable services.

Our reform of the regulatory system, driven primarily through the 2016 Act, rests on five key principles:

- responsiveness to the reforms introduced by the Social Services and Well-being (Wales) Act 2014⁶ ('the 2014 Act')
- ensuring citizens are at the heart of care and support
- developing a coherent and consistent Welsh approach
- tackling provider failure
- responsiveness to new models of service and any emerging concerns over the quality of care and support services.

Regulation of fostering services

The current regulations covering fostering services in Wales are The Fostering Services (Wales) Regulations 2003⁷ ('the 2003 Regulations'), as amended. These were made under the Care Standards Act 2000 and the Children Act 1989⁸, and place requirements upon local authority fostering services and independent fostering agencies relating to the management and conduct of fostering services and the approval of foster parents (including fostering panels, assessments, approvals, reviews and terminations). They also include regulations on the placement of children by voluntary organisations.

Part V of the 2003 Regulations, relating to placements of children in foster placements by local authorities, was replaced by The Care Planning, Placement and Case Review (Wales) Regulations 2015⁹, which came into force on 6 April 2016.

In reforming the regulation and inspection of regulated services, as required to implement the 2016 Act, it is our intention to replace the remaining parts of the 2003 Regulations, from

⁵ Care Inspectorate Wales was (until January 2018) the Care and Social Services Inspectorate Wales. Social Care Wales was (until April 2016) the Care Council for Wales.

⁶ http://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw_20140004_en.pdf

⁷ http://www.legislation.gov.uk/wsi/2003/237/pdfs/wsi_20030237_mi.pdf

⁸ <http://www.legislation.gov.uk/ukpga/1989/41/contents>

⁹ http://www.legislation.gov.uk/wsi/2015/1818/pdfs/wsi_20151818_mi.pdf

April 2019, using powers within the 2016 Act. The provisions of the 2003 Regulations which relate to non-regulated fostering services provided by local authorities will also be replaced using powers under the 2014 Act.

This reform of social care law is being supported by wider policy initiatives, including the Welsh Government's 'Improving Outcomes for Children' programme. This programme is overseen by a Ministerial Advisory Group of key stakeholders from local government, academia and the third sector, and focuses on improving outcomes for children on the edge of care, looked after children and care leavers. It has included the development of a National Fostering Framework for Wales, which is being implemented over three years from 2017/18.

1.3 This consultation

The consultation, which ran from 24 May to 16 August 2018, sought views on:

The draft Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019, ('the draft Regulations'), which in summary looked to:

- place new requirements on independent fostering service providers (IFAs) and responsible individuals, under sections 27 and 28 of the 2016 Act
- place similar requirements, where applicable, upon local authority fostering services, under section 94A of the 2014 Act
- replace Part IV of The Fostering Services (Wales) Regulations 2003 on approvals of foster parents by independent and local authority fostering services
- repeal the remaining provisions in Parts V and VI of the 2003 Regulations, on placements by voluntary organisations.

It also invited views on:

- draft statutory guidance for independent fostering service providers and responsible individuals in meeting service standards, under section 29 of the 2016 Act
- a draft code of practice for local authority fostering services, under section 145 of the 2014 Act.

27 responses were received to the consultation. Some of these were purely narrative and therefore do not appear in the summary of tick box responses within this report. All responses have been considered equally in terms of the comments received. A list of respondents is attached at Annex A.

A summary of the responses, together with the Welsh Government's analysis and conclusions can be found at Section 2.

1.4 Consultation events

Two consultation events were held as part of the consultation process. The events aimed to encourage stakeholders to respond and to enable those attending to:

- gain an overview of the draft legislation and key changes it will effect;
- check their understanding of the proposals and seek clarity, if needed;
- consider potential implications for their role and organisation

The first event was held on 16 July in Glyndwr University, Wrexham and the second event was held on 19 July in Sophia Gardens, Cardiff.

Overall the uptake of places for the events – which covered consultations on adult placement, advocacy and fostering services – was positive, with approximately 90 attendees in total in Cardiff and 40 delegates in total in Wrexham. A range of public, private and third sector organisations were represented, including a number of service providers.

1.5 Next steps

Following procedural advice from Welsh Government Legal Services, the Welsh Ministers have agreed that the draft Regulations as consulted upon will be laid before the National Assembly for Wales in December 2018 in three separate statutory instruments. These are:

- The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019
- The Local Authority Fostering Services (Wales) Regulations 2018
- The Fostering Panels (Establishment and Functions) (Wales) Regulations 2018.

The regulations placing requirements on independent fostering services providers (which are ‘regulated services’ under the 2016 Act) will be subject to the affirmative procedure. If passed by the National Assembly in January 2019 they will come into force in April 2019. The regulations placing requirements on local authority fostering services, and those concerning the establishment and functions of fostering panels, will be made using powers within the 2014 Act, and will be subject to the negative procedure. They are also scheduled to come into force in April 2019.

It is our intention that the code of practice in respect of local authority fostering services, to be issued under the 2014 Act, will also be laid before the National Assembly in December 2018. There is no procedure required in respect of the statutory guidance for independent fostering services providers and their responsible individuals. Both the code of practice and statutory guidance will come into effect at the same time as the regulations, in April 2019.

Section 2

2.1 Summary of responses received and Welsh Government response

Note: Due to rounding, some percentages may not add up to 100% overall.

PARTS 2 - 4: Requirements for Independent Fostering Services Providers

Question 1: Are the requirements in these parts of the draft Regulations right for independent fostering services providers?				
Agree	Tend to agree	Tend to disagree	Disagree	Not specified
1	15	3	1	7
4%	56%	11%	4%	26%

Summary of responses

Several respondents expressed concern about the notification requirements in relation to changes to a provider's statement of purpose. It was suggested that only significant changes need be notified, rather than all changes. Some questioned whether it was appropriate to notify all fostered children of changes, given that the fostering service was not providing care and support directly to them, and also because children in placement want to be treated as 'normally' as possible. There were also queries whether there may be practical difficulties with contacting birth parents, whose details independent providers may not necessarily have.

Concern was expressed about the references to children placed by an independent provider, particularly in relation to the requirement to ensure the suitability of the service (regulation 5). It was pointed out that local authorities are legally responsible for placing a looked after child. Alternatives suggested included 'placed with' or 'accommodated by'.

Various suggestions were made about the requirements concerning suitability of the service. It was suggested that other children in placement (or their social worker) should be consulted about another child being placed in the household, and suggestions were made for strengthening the guidance to emphasise the need for early notification of potential placement breakdown and on minimising distress to children when placement termination was proposed.

A number of respondents commented on Schedule 1 (notifications). There was a suggestion that the requirement for the Welsh Ministers and the placing authority to be notified of any serious incident where the police are called to the foster parents home (Schedule 1, Part 1 paragraph 7 and Part 2 paragraph 7) should also cover serious incidents involving other members of the household. It was suggested that the term

'absconding' in Schedule 1 be replaced with a reference to a child going missing or unauthorised absence; that references to child sexual exploitation throughout the Schedule should also cover other types of exploitation such as trafficking and gang-related exploitation; that references to prostitution be replaced, (as this is a form of child sexual exploitation); and that the area authority be notified of an outbreak of infectious diseases.

Several respondents questioned why the duty of candour applied only to IFAs and not to local authorities. Others questioned the added value of placing this duty on service providers, feeling either that it was too general a term or that it was already covered by the Code of Professional Conduct.

Welsh Government response

We have decided against changing the requirement on service providers to notify the specified individuals of changes to the statement of purpose. These statements contain important high-level information about the service provided, and as such all changes will be significant and have a potential impact on the lives of those who benefit from the service. We appreciate that it is a placing authority's responsibility to pass on the birth parents' details to the provider. However, we expect providers to contact the relevant local authority if these have not been supplied, and providers would not be held to account if that local authority failed to pass on the necessary details when reasonably requested to do so.

Whilst we agree that the local authority which is looking after a child is responsible for the placement of a child with local authority foster parents, the independent fostering provider nonetheless places the child with foster parents which it has approved on the local authority's behalf. To clarify this, when this term first appears in the regulations which relate to regulated services, after the words 'place with', we have added 'with foster parents'. Requirements on placing authorities are clearly marked as such in the relevant regulations and guidance, and a local authority's duties in respect of placements for looked after children are clearly set out in the 2014 Act, the Care Planning, Placement and Case Review (Wales) Regulations 2015 and the Part 6 Code of Practice.

Where appropriate, we will strengthen the guidance to make it clear that providers must consider the impact on the wider household when determining the suitability of any proposed fostering arrangements (including the views of other children). We will also highlight in guidance the need to give early notification of potential breakdown, and the requirement for service providers to have processes in place to minimise the impact of a placement ending.

We will expand the references to child sexual exploitation in the Schedule to refer to 'child sexual exploitation and child criminal exploitation'; we will also refer to children being 'absent without permission' rather than 'absconding', which is usually associated with youth justice. We have decided against requiring notification of serious incidents involving other members of the household to be made on the basis that this may unduly interfere with an individual's right to privacy. If any incident in any way raises safeguarding concerns, or means that a child's needs will no longer be met, then there are already mechanisms in place to alert the placing authority of these, and for action to be taken.

Ministers have decided that the duty of candour should apply equally to local authority and independent fostering services. The duty to be open and transparent in dealing with

children, parents, foster parents and placing / area authorities is a common requirement across all services regulated under the 2016 Act, and we consider it should apply equally to local authority fostering services.

We will also amend the regulations to provide that managers of both regulated and local authority fostering services must be registered with SCW only after 1 April 2022, in order to ensure the workforce has sufficient time in order to gain the necessary qualifications.

PART 5: General Requirements for Local Authority Fostering Services Providers

Question 2: Are the requirements in this part of the draft Regulations right for local authority fostering services providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
8	11	3	1	4
30%	41%	11%	4%	15%

Summary of responses

There were two main areas of concern about the requirements relating to local authority fostering services. The first was how these requirements supported or cut across the development of more regional approaches under the National Fostering Framework, as the draft Regulations place requirements on individual local authorities only. For example, they require a local authority to appoint one of its own officers as a fostering services manager. There was also a concern that the reference in the guidance to the requirement for the fostering manager to have experience of running a fostering service was too restrictive.

The other area of concern mirrored those raised above in relation to regulated fostering services about the statement of purpose and notification of changes to the statement. These partly concerned the appropriate type and level of information to share with children and young people, birth parents and foster parents.

Welsh Government response

The National Fostering Framework (NFF) for Wales remains a priority for the Welsh Government, as part of our Improving Outcomes for Children Programme, and successful implementation of the NFF requires greater collaboration and regional working between local authorities. Individual local authorities retain their responsibilities as corporate parents for the children they look after and place under the 2014 Act and the Care Planning, Placement and Case Review (Wales) Regulations 2015, and as fostering providers under these Regulations. However, nothing in these Regulations should get in the way of regional working under the NFF. We will therefore amend the requirement to appoint a fostering services manager (draft regulation 22) so that it refers to 'an officer' rather than one of the local authority's own officers, so that two or more authorities may appoint the same manager for a regional service.

The draft Regulations required the person appointed as a fostering services manager to have the qualifications, skills, competence and experience necessary for the work they are to perform, and that the person is registered as a social care manager with Social Care Wales. We will amend the code of practice so that it refers to the fostering services

manager having experience of managing a care service, rather than specifically a foster care service. This would be consistent with the approach being taken with respect to managers of services regulated under the 2016 Act (including independent fostering services).

We will also amend the regulations to provide that managers of both regulated and local authority fostering services must be registered with SCW only after 1 April 2022, in order to ensure the workforce has sufficient time in order to gain the necessary qualifications.

The requirement on providers to notify the specified individuals of changes to the statement of purpose (draft regulation 20) remains, on the grounds that these statements contain important high-level information about the service provided, and all changes may have a potential impact on the lives of those who benefit from the service.

See below for comments in relation to Part 6 on information about policies and procedures and the guide to the service.

PART 6: General Requirements on Independent Fostering Services Providers and Local Authority Fostering Services Providers

Question 3: Are the requirements in this part of the draft Regulations right for independent fostering services providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
3	10	6	0	8
11%	37%	22%	0%	30%

Summary of responses

Several suggestions were made about the written guide, such as including information about independent visitors as well as advocacy, including information about the support available where an allegation has been made against a foster parent, and ensuring that children receive feedback on their views. Some respondents questioned whether there might be information overload if children had to be given a copy of the statement of purpose, the written guide, and copies of policies and procedures.

In relation to standards of care and support, it was suggested that reference be made to preparation for adulthood, drawing in some of the material currently in the National Minimum Standards (standard 14).

Some respondents suggested that the guidance on promoting contact should be expanded, for example to include foster parents' role in advocating for a reduction in contact where the child wants this or the foster parent feels it is not in the child's best interests.

With regards to records, it was suggested that the guidance should refer to the General Data Protection Regulations (GDPR). There were also representations around the retention period of 15 years, with several respondents suggesting that this was too short in the case of a looked after child.

The Children's Commissioner for Wales suggested that the Welsh Government give serious consideration to who retains daily recordings taken by foster parents, and for what period; and also to the entitlement of children and young people to access these, given that providers should be able to give children a detailed record of their life in care.

Welsh Government response

The written guide to the service (draft regulation 27) is the key document which sets out what children in a foster placement, their foster parents and others need to know about the fostering service. The guide for children could include a child-friendly summary of the statement of purpose, and we have included a new requirement for appropriate summaries of relevant policies and procedures, as appropriate, to be included in the guide. It is good

practice for service providers to be proactive in seeking the views of children and young people as to the most appropriate information and format to include in their guide.

We have decided not to include a requirement to include information about independent visitors, as it is up to the local authority that is looking after the child to determine whether they would benefit from an independent visitor under the 2014 Act. It is not an entitlement in the same way as advocacy. We have also decided not to include a reference here to support during allegations, as we think it would be better to include this in the statutory guidance / code of practice relating to the requirements around support for foster parents (draft Part 10). Giving feedback to children and young people whenever their views are sought is already included in the guidance on requirements in relation to monitoring and improvement (draft regulations 7 and 21).

We accept that the requirement around care and support should also include a reference to the pathway plan prepared when a child turns 16, and the guidance will be amended to include this and to strengthen the information on requirements relating to appropriate preparation for children leaving care.

We have decided that it is not necessary to expand the guidance on promoting contact, as these are primarily practice issues and any concerns the child or foster parents have around contact arrangements should be picked up through the LAC review process.

We will include a reference to the new GDPR legislation in the guidance on records. We have, however, decided not to increase the minimum retention period of 15 years for service providers, given that all records must ultimately be returned to the placing authority, which has an obligation to keep them for 75 years. Independent providers may consider keeping records for longer if they wish, and we know that many of them do so. The records to be kept are set out in Schedule 3 to the Regulations, but do not include daily recordings made by foster parents. We will give further thought to the status of these records and a fostered child's rights to see them, if necessary taking advice from the Information Commissioner.

PART 7: Policies, Procedures and Other Standards

Question 4: Are the requirements in this part of the draft Regulations right for independent fostering services providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
4	12	3	0	8
15%	44%	11%	0%	30%

Summary of responses

There were several comments on the requirement (draft regulation 35) to make policies and procedures for the fostering service available to relevant children and young people in appropriate formats. These ranged from whether children needed to know about all the listed procedures, how this related to the requirement to produce a children's guide to the service, and how appropriate it was to involve children in developing some of these procedures.

With regard to specific policies, it was suggested that the regulation relating to bullying and being absent without permission (draft regulation 38) should be separated, as they deal with different matters.

It was noted that the requirement to record any incident of control or restraint (draft regulation 39) did not include a requirement for the foster parent to pass that record on to the provider.

There were calls for further detail within the guidance relating to the Deprivation of Liberty Safeguards and the role of fostering services (draft regulation 40).

The Children's Commissioner for Wales raised a particular concern about the inclusion of children in the regulation on the whistleblowing policy and procedures (draft regulation 42).

Welsh Government response

We accept that not all of the policies and procedures a fostering services provider needs to put in place will be relevant or appropriate for children and young people. This applies particularly to the policies and procedures on whistleblowing, supporting and developing staff (draft regulation 56), and staff discipline (draft regulation 58). We will remove the requirement that providers have to ensure the content of all policies are in an appropriate format for children of all ages, and will instead require service providers to include information in the children and young people's version/s of the guide, in appropriate formats, about the policies and procedures relevant to children's needs. We believe it is absolutely

right for children and young people to be involved in the development of the policies and procedures that affect them and their placement.

We will split the regulation which covers policies and procedures on bullying and being absent without permission, so that these can be dealt with separately.

Providers are required to record any incident of control or restraint used by foster parents. This will require providers to put in place a procedure so that foster parents inform them of any incident in which control or restraint is used within 24 hours of it happening. The Welsh Government is currently commissioning guidelines on the use of restrictive practices across social care, health and education settings, which will help foster parents develop their policies and procedures.

We have noted the calls for further guidance in relation to the Deprivation of Liberty Safeguards, and will consider what further work may be needed in this area. At present DOLS are not applicable to children, but the situation in relation to 16-17 year olds is currently under review by the UK Government. Currently, a parent of a child who is not competent may provide authority. 16 and 17 year olds without capacity may be subject to applications to the Court of Protection and to the High Court in exercise of the High Court's inherent jurisdiction.

We accept the Children's Commissioner for Wales' concern that it is inappropriate to bring children and young people into the scope of the whistleblowing policy, which has been amended to apply only to employees and volunteers. It also no longer applies to foster parents. There must be specific procedures for children or foster parents who wish to raise concerns under the complaints policy.

PART 8: Health and Education

Question 5: Are the requirements in this part of the draft Regulations right for independent fostering services providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
7	9	3	0	8
26%	33%	11%	0%	30%

Summary of responses

Several suggestions were made for strengthening the regulations concerning the promotion of the health and education of children and young people in foster placements (draft regulations 44 and 45). These included making a specific reference to mental and emotional health and development, including opticians in the list of services a child must be provided with access to, and including a specific reference to the UNCRC right to play. There was also a suggestion that the regulation or guidance in relation to education and employment should include some of the criteria within the current National Minimum Standards around preparation for adulthood and independent living.

Welsh Government response

We accept that the regulation referring to a child's health and development should be strengthened to include an explicit reference to physical, mental and emotional health and development.

We will include a requirement to provide each child with access to an optician.

We will also expand the regulation on promoting a child's leisure interests, so that it includes supporting them to engage in play and recreational activities appropriate to their age and to participate freely in cultural life and the arts. This will explicitly reflect the UNCRC Article 31 right to play, in line with the Welsh Government's obligation to take account of the Convention rights in the development of policy and legislation.

We will consider what material from the current NMS standard 14 it would be appropriate to include in the guidance, and how this might best fit with the requirements around supporting a young person with education, training and employment.

PART 9: Premises, Facilities and Equipment

Question 6: Are the requirements in this part of the draft Regulations right for independent fostering services providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
10	5	3	0	9
37%	19%	11%	0%	33%

Summary of responses

There were few responses in respect of this Part. There were a couple of calls for clarification around who should be responsible for extra activities or specialist equipment.

Welsh Government response

We have decided not to be more prescriptive around equipment and activities, as this sort of detail should be clearly set out in the child's care and support plan and the foster care agreement which governs the placement.

PART 10: Support for Foster Parents

Question 7: Are the requirements in this part of the draft Regulations right for independent fostering services providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
2	13	2	0	10
7%	48%	7%	0%	37%

Summary of responses

Several respondents expressed concern that the requirements around supervision of foster parents within this Part were not detailed enough, and that the guidance in relation to this did not adequately reflect the current National Minimum Standards.

A number of responses mentioned the need to deal with the issue of children's savings in the regulations on supporting children to manage their money. Reference was made to a recent ruling by the Public Services Ombudsman for Wales on this. This included what happened to a child or young person's savings when the placement ended.

Welsh Government response

The purpose of the regulation on supervision of foster parents (draft regulation 50) is to ensure that supervision takes place. The detail of the arrangements should be down to each service provider. We will, however, consider whether any further detail is needed in the guidance / code of practice on this.

The Welsh Government gave a commitment, in response to the Ombudsman's report, to consider what could be done to strengthen the statutory guidance around savings for young people in care. Having considered the responses to this consultation, and the scope provided by these regulations and guidance / code in relation to fostering services, we have decided to add two new requirements to the regulation on supporting children in managing their money (draft regulation 52). These are: a requirement that a service provider's policy and procedures ensure that there is adequate oversight and monitoring by the placing local authority of savings which are made by foster parents on behalf of children, and that foster parents pass on all records of such savings (including expenditure from savings) to the placing local authority when the placement of a child to whom the records relate comes to an end.

PART 11: Staffing

Question 8: Are the requirements in this part of the draft Regulations right for independent fostering services providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
4	8	2	0	13
15%	30%	7%	0%	48%

Summary of responses

There was general agreement with the provisions in this Part, although it was questioned by one local government region whether the restrictions on employment would affect the ability of foster parents to undertake support roles such as the pioneer role developed in Rhondda Cynon Taff under the Fostering Wellbeing pilot.

Concern was expressed about the possible impact on family members of the restrictions on employment – for example, where a family member was caring for a child on a voluntary basis for more than five hours a week, or where an adult child of a fostering family was employed by the local authority as a support worker in social services.

Welsh Government response

The provisions around restrictions on employment should not affect foster parents who undertake volunteer roles such as fostering ambassadors, pioneers etc., as these are not roles for which an individual is employed. The regulation operates so as to prevent providers from employing foster parents or household members from certain roles within the fostering service.

We have decided to retain the restrictions on family members. The restriction is limited to management, social work or any other professional permission within the fostering service, and is meant to prevent conflicts of interest where that person is living with a foster parent who has been approved by that provider. It does not affect non-professional positions such as support workers, and does not preclude the person from working for other providers or elsewhere within the local authority.

PART 12: Duties of Responsible Individuals

Question 9: Are the requirements in this part of the draft Regulations right for independent fostering services providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
3	5	5	0	14
11%	19%	19%	0%	52%

Summary of responses

Two main concerns were expressed about the provisions contained in this Part. One concerned the requirement upon responsible individuals to visit the premises from which the service is provided at least every three months (draft regulation 61), and the other the frequency of quality of care reviews (draft regulation 72). The requirement to visit every three months was thought to be impractical if that involved meeting with every child in a foster placement with that service provider. The requirement to undertake a quality of care review every six months was felt to be disproportionate and unfair in so far as local authorities are only required to undertake these annually (draft regulation 85). It was pointed out that some independent providers will have more foster parents within their service than smaller local authorities, even allowing for the volume of kinship care placements within local authorities. Service providers also questioned how these reviews would fit with the quality reporting they undertake as framework providers with the Children's Commissioning Consortium Cymru.

Welsh Government response

The draft Regulations do not require the responsible individual to visit every child in a foster placement with the service provider every three months. The regulation requires the responsible individual to visit the premises from which the service is provided, and these are not foster parents' homes, but rather the offices and other premises from which the provider operates. It also requires the responsible individual to meet with members of staff and with the children in foster placements as frequently as they determine it to be necessary, but at least every three months. However, it does not specify that they have to meet every member of staff or every child in placement. It could be a representative sample of staff and children that the responsible individual meets. However, in order to provide further clarification as to the nature of the requirement on providers to visit children, we have changed the regulation to read "meet with children" instead of "meet with the children".

Above all, what the responsible individual needs to have in place is a mechanism for seeking the views of the children in placement on the quality of the service and how it might be improved. There should be a rolling programme of engagement in place, of which the quarterly meeting and visits play a part.

We are mindful that many fostering services providers have quality assurance processes in place, including the detailed processes through the 4Cs consortium Fostering Framework, of which most providers are members. This would equally apply to other providers in sectors which are, nonetheless, subject to the 6-monthly requirement. We consider that it should be possible for providers to use these existing quality assurance arrangements in order to deliver the requirements at relatively low impact to themselves and will be exploring further with CIW how they would expect providers to evidence compliance with this requirement so that we can express it in guidance.

We feel that the overall drive for quality improvement in the interests of service users is better served by requiring reviews to be undertaken (in a proportionate way which builds on providers' own quality systems) six-monthly and that this overrides arguments about additional burden.

We note that independent fostering providers have argued strongly for consistency between the requirements on their services and on local authority services. We acknowledge the argument put forward around the respective size of local authority and independent services and find it persuasive. We therefore agree that in the interests of fairness and equity between service providers and service recipients, there should be one frequency across all fostering services. Given our conclusion that arguments around driving quality improvement outweigh the arguments around burden, we further consider that this should be set at six monthly.

PART 13: Duties of Local Authority Fostering Services Managers

Question 10: Are the requirements in this part of the draft Regulations right for independent fostering services providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
8	9	1	0	9
30%	33%	4%	0%	33%

Summary of responses

There were few responses in respect of this Part. The discrepancy in the frequency of quality of care reviews by local authority fostering managers and independent providers was noted and commented upon.

Welsh Government response

As in our answer to question 9, we note that independent fostering providers have argued strongly for consistency between the requirements on their services and on local authority services. In particular, they have pointed out that the argument which partly underpinned our decision to consult on less frequent reviews for local authority services (that such services were commonly bigger than independent services, and therefore would have a larger volume of reviews to undertake) is flawed when the larger independent fostering providers are compared with the smaller local authorities. We find this argument persuasive and agree that in the interests of fairness and equity between service providers and service recipients, there should be one frequency across all fostering services. Given our conclusion that arguments around driving quality improvement outweigh the arguments around burden, we further consider that this should be set at six monthly.

PART 14: Establishment of Fostering Panels

Question 11: Are the requirements in this part of the draft Regulations right for independent fostering services providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
5	8	3	2	9
19%	30%	11%	7%	33%

Summary of responses

There was general agreement to the two main changes introduced by these Regulations: the requirement to maintain a central list of panel members; and the introduction of a two stage assessment process for prospective foster parents.

There was a concern that the requirement for each local authority to maintain a central list might cut across the development of regional working promoted through the National Fostering Framework. At the very least the requirement should not hinder the development of regional approaches to recruitment and retention of local authority foster parents as these develop over time.

Some providers asked if the maximum term of office for foster panel members (a total of three three-year terms, followed by an intervening period of at least three years) could be extended to four three-year terms. Alternatively, it was suggested that the term might depend upon the overall number of panels a member sat on or the size of the agency. It was argued that this would particularly help smaller independent providers which hold only a limited number of panels each year.

There were comments on the part that medical advice played on panels, and whether the regulations should specify that every panel have a medical adviser, as is the case with adoption panels.

The issue of how kinship foster parents were assessed was raised in a number of responses and at the consultation events. The key point made was that kinship carers are assessed for their suitability to look after a particular child or group of siblings, whereas mainstream foster parents are assessed for their suitability to care for any child placed with them. However both kinds of foster parents are assessed against the same criteria. It was suggested that this could be addressed by creating a new Schedule within the Regulations specifically dealing with kinship care assessments, more in line with the criteria used to assess special guardians.

Several respondents questioned why there was a 12 month limit on requiring references from another service provider where a prospective foster parent had been a foster parent before. It was felt strongly that such a reference should be sought if the applicant had ever previously been a foster parent.

It was also suggested that the prohibition on people becoming a foster parents if they had ever committed one of the specified offences at age 18 or over, should also be extended to include offences committed before the age of 18. Similarly, it was suggested that offences committed by any member of the household under 18 should also be included, and not just those age 18 and over as within draft regulation 91.

There were various suggestions as to what might be included in good practice guidance to support this part of the Regulations. These included:

- make up of panel membership
- recruitment processes for panel chair and members
- experience range required by panel members
- induction and training of panel members
- support, supervision and appraisal of panel members
- how to keep a central list
- two stage assessment process
- what a reference from a fostering service should include as a minimum.
- foster parents moving to other agencies, or from an independent provider to a local authority fostering service
- agency decision maker – what qualities and experience needed, what information to take into account and how to link with the panel.

It was also suggested that we take into account research and work that has sought the views of children and young people about what they feel makes for a good foster parent.

Welsh Government response

We have endeavoured to future-proof these Regulations to ensure that they allow for new approaches to regional working under the National Fostering Framework. The requirement for each local authority to create a central list of people suitable to sit on fostering panels (draft regulation 87) does not preclude two or more local authorities creating a common central list, and the requirements about membership of panels (draft regulation 88) also do not prevent local authorities creating regional panels in future.

We have considered the request, from a smaller service provider, for the maximum length of time a person may serve on fostering panels without a break to be extended. We have decided it is appropriate to keep the original period of three three-year terms, and not to make any exceptions. We believe that a nine year period of continuous service is generous, and allows all panel members to develop and exercise their skills and experience, whilst encouraging service providers to bring in new panel members on a regular basis.

We have also considered whether there is a specific need for each panel to have access to a medical adviser. We cannot, through these Regulations, place requirements upon health boards to provide a medical adviser; and the Schedule already specifies that the information

a service provider must obtain must include details of a prospective parent's health, supported by a medical report.

The issue of how kinship carers should be assessed has been part of wider discussions the Welsh Government has been having with local authorities and other partners about the nature of kinship care. These issues have been brought into clearer focus by the Care Crisis Review¹⁰, and through discussions around the National Fostering Framework and the new code of practice on Special Guardianship Orders¹¹. In principle, the Welsh Government accepts that there is a case for assessing kinship foster carers more in line with how special guardians are assessed, potentially by means of a bespoke Schedule, rather than against the same criteria as prospective mainstream foster parents. It is our intention to establish a kinship care working group to consider this and other issues, with a view to issuing a consultation on kinship care in spring/summer 2019. If appropriate, this may include consultation on a new Schedule to these Regulations. We would expect any new arrangements to come into force in April 2020 at the earliest. Until then, the assessment requirements for all types of foster parents in these Regulations will remain as drafted, to come into force in April 2019.

We accept that, where a prospective foster parent has been a foster parent before with another agency, the time limit for requiring a reference from that other provider is currently too short. A prospective foster parent's experience of parenting (in whatever context) is a relevant consideration for the fostering panel. We have therefore increased the time limit from 12 months to 3 years, which we feel to be proportionate.

In the 2003 Regulations, the prohibition on people becoming foster parents if they (or members of their household) had ever committed one of the specified offences at age 18 or over does not include offences committed by them before the age of 18. The purpose of this age exception was to allow local authorities discretion to make a decision to approve a person as a foster carer, notwithstanding that the person or a member of their household had a conviction or caution in respect of a specified offence which was committed under the age of 18, provided, after a full risk assessment, the local authority considered that doing so was in the best interest of the child. For example, where a child was related to the prospective foster carer or to a member of their household, it may be justifiable to exercise some discretion to allow a local authority to assess the overall effect on the welfare of the child when considering whether to place that child with a former youth offender. If the local authority considered it justified, in the interests of the particular case, for the person to foster that child, it could approve the person as a foster carer on that basis.

After careful consideration, we have decided to retain this age exception. It is, however, important to note that the age exception is only an exception to automatic disqualification. The local authority or regulated service provider can still exercise their discretion through the approvals process to decide that a person is not suitable to be a foster parent, notwithstanding that the conviction or caution was in respect of a crime committed when they were under the age of 18.

¹⁰ <https://frg.org.uk/involving-families/reforming-law-and-practice/care-crisis-review>

¹¹ <https://gov.wales/docs/dhss/publications/180328pt6en.pdf>

PARTS 15 and 16: Offences and Penalty Notices

Question 12: Is the approach taken in relation to offences within the draft Regulations (regulation 14 in relation to independent fostering services providers and regulation 78 in respect of responsible individual) sufficient and proportionate?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
7	7	4	1	8
26%	26%	15%	4%	30%

Question 13: Is the approach in relation to penalty notices, as illustrated at Annex A, sufficient and proportionate? Are the levels of penalty appropriate?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
6	5	3	1	12
22%	19%	11%	4%	44%

Summary of responses

Although the balance of responses above suggests agreement that the approach taken to offences and penalties is proportionate, the written comments expressed concern about the disproportionality of some of the provisions – e.g. up to two years in prison for not updating the service guide, not advising specified people of changes to the statement of purpose, or not completing the quality of care review. It was noted that the offences seem to focus on operational requirements rather than safeguarding of children and on fraud. Some thought the onus should not be on the responsible individual. One respondent suggested that it was discriminatory that these penalties only applied to independent providers. Another suggested that the proposed fines are disproportionate for smaller agencies.

Welsh Government response

The concerns above are addressed through Care Inspectorate Wales' Securing Improvement and Enforcement policy¹² which provides for enforcement procedures which

¹² <https://careinspectorate.wales/sites/default/files/2018-06/180601-securing-improvement-enforcement-policy-en.pdf>

are only instigated when non-compliance has been identified following an inspection. The service provider and responsible individual will have an opportunity to rectify the non-compliance before civil enforcement action (e.g. restrictions on the service provider's registration) or criminal enforcement action (i.e. penalties) are considered. Where there is persistent non-compliance, consideration will be given as to whether civil enforcement action may be taken before any criminal action.

Placements by voluntary organisations

Question 14: Placements by voluntary organisations. Are we correct in our understanding of the way Part VI of the 2003 Regulations might have been used in practice, and in our conclusion that these provisions are redundant and can therefore be repealed?

Summary of responses

There were seven responses to this question. They all agreed with our assessment that these provisions are obsolete and should be repealed.

Welsh Government response

The provisions in Part VI of the 2003 Regulations will now be repealed from April 2019.

Independent Review Mechanism

Question 15: We would welcome your views on the future of independent reviews of determinations (IRDs) and the Independent Review Mechanism (IRM). In giving your views, please consider the following questions:

Is there a continuing need for independent reviews of determination for fostering?

- **Would there be any disadvantages to removing the requirement for an independent review of determinations for fostering?**
- **Should we retain the current arrangements for independent reviews supported by an IRM? Please give reasons for your answer.**
- **Are there new or alternative arrangements which could be put in place for reviewing qualifying determinations for fostering? If so, what could those arrangements be?**
- **If you want to propose new or alternative arrangements, please be as specific as you can about how those arrangements might work in practice, and explain how any proposals would demonstrate transparency, independence and promote fostering.**

Summary of responses

Three respondents expressed unequivocal support for retaining the IRM. Comments included:

- Essential to retain the IRM, as decisions can rest on the opinion of a single social worker, without recourse or opportunity for foster parent / prospective foster parent to put forward their full case.
- The IRM benefits small agencies which would not be able to easily provide a completely independent service to review decisions.
- 'Have always valued the IRM as a backup, and would not like it to disappear even though I have never used it'.

Others were clear that the IRM was no longer needed. Comments included:

- IRM not required. Foster parents can be heard and have a voice if the agency / local authority panel do their job well. Instead, people should use the appropriate complaints procedure.
- Not convinced the IRM is necessary. Complaints procedures (especially stage 3) offer a robust and independent review.
- The IRM does not provide value for money. Prefer to see mediation or complaints service used in its place.
- Current model is bureaucratic and over complex. No continuing need. Integrate process into local authority complaints procedures which have matured over the years since the IRM was set up.

- There may no longer be a need for IRDs, provided the processes and guidance are robust and correctly enforced.
- From personal experience, the IRM is ineffective and prolongs the process of termination. It cannot offer a holistic approach to reaching a recommendation.
- No need to continue. It has no authority and cannot override the agency decision maker. Unnecessarily costly service and provides false hope for foster parents.
- Need for the IRM becoming less and less as assessments are becoming more robust. Local authority's quality assurance process should be robust enough. Lengthy and costly process. Needs to be a better process in place which shortens and lessens stress.
- Hard to provide evidence from 8 years of operation that the IRM is meeting its original objectives.

Others recognised the need for independent reviews or for a limited IRM process.

Comments included:

- Limited need for the IRM process. Need to ensure foster parents' voices are heard.
- Need for some kind of independent review if necessary.
- Does need to be mechanism for redress.
- Independent reviews enable transparency and consistent approaches. It gives confidence to the process and gives a route for appeals that is independent of the original decision maker.
- There is a limited need for an IRD, but the IRM decision carries no authority with the agency and foster parents often feel that their position at the review is not equal to other people there. Reviews only look at the foster parent, not at wider context of agency's responsibilities.
- If the IRM is removed, there must be an alternative to what has been taken away.

However, views differed on what arrangements could be put in place to ensure that there continued to be independent reviews. As suggested above, many favoured using the local authority or agency's complaints processes, pointing out that independent review was now an integral part of the process, especially at stage three. This would have the advantage of coherence with other parts of public services – e.g. families making safeguarding complaints.

Other suggested approaches included:

- Reciprocal arrangement between service providers. Suitable for local authorities, but possibly not appropriate for another independent provider to hear case of a competitor.
- Review on a regional basis via panel from neighbouring local authority.
- Using the opportunity provided by central lists of panel members to help agencies review internally, perhaps with review by completely separate panel.
- Provision of independent mediation service to enable individuals to move on.
- Suitably qualified person reviewing and making recommendation to the agency decision maker.
- Set up an independent Advice and Mediation Service which is an additional resource for both foster parents and agencies. Preferably set up on a regional basis. Provide early and proactive intervention in negotiating successful resolution.

- Mediation service might be an alternative. Perhaps the Fostering Network could provide this, or independent panel members could be used as mediators.
- Robust independent support service for foster parents that can advocate and challenge on their behalf.

Other points made included:

- Inappropriate to replace with 'lighter touch' – this would still need background administration etc. so would save little and be less robust.
- The 26 week rule in care proceedings may be behind a decrease in the number of kinship care IRM cases, as difficult to convene a review in time.
- Any successor model should find a way of ensuring the views of care experienced children and young people are taken into account.
- If retaining the IRM, need to have mechanism for lesson learning and good practice to ensure consistency across providers.

Welsh Government response

The IRM covers adoption (and adoption disclosure) as well as fostering. The Welsh Government consulted on the regulation of adoption services and the IRM in respect of adoption in a separate exercise, which ran from 4 September to 27 November 2018. Once analysis of that consultation is complete we will respond to both consultations on the IRM at the same time, as part of the adoption summary report.

Decisions about the future of IRDs and the IRM are unlikely to be implemented by the April 2019 deadline for the new fostering regulations to come into force. We therefore intend to remake the provisions regarding IRDs, which essentially carry over the existing provisions in the 2003 Regulations, as included in the draft Regulations. Therefore, we will make arrangements to extend the existing contract for the IRM, with Children in Wales, for a further year (2019/20), and any appropriate changes which may be identified can be implemented from April 2020.

2.2 Additional questions

Question 16: Do the costs/benefits/risks referenced in this consultation document give a reasonable account of the level of impact of the draft Regulations? Are there any additional costs/benefits/risks that you feel have not been considered or identified?’

Summary of responses

Few respondents commented specifically on the potential costs, benefits and risks of the draft Regulations. Those that did drew attention to the following:

- cost implications for smaller providers of the Welsh language offer
- the impact on independent providers of moving from annual to six monthly quality of care reviews
- additional time and resources required for implementing a central list of fostering panel members (although this may be diluted if done on a regional basis)
- the invest to save potential of building assessment capacity and recruiting and retaining foster parents
- significant extra costs of the requirement to notify various people of changes to the statement of purpose.

Welsh Government response

These issues have been noted. Further commentary can be found, above, under the relevant Part of the Regulations. The known costs/benefits/risks will be expanded upon within the Regulatory Impact Assessment that will be published within the Explanatory Memorandum for the Regulations and code of practice when these are laid before the National Assembly for Wales.

Question 17: 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?

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?

Summary of responses

There were few responses to this question. Those who did respond were satisfied that the Regulations did not discriminate in any way groups with protected characteristics, and would either have a positive or neutral impact in this regard. We have noted the references to children's characteristics in the Regulations, and the need to take these into account. One respondent pointed out the need to be mindful of how we make information available to disabled children.

Welsh Government response

We are pleased that respondents consider the draft Regulations and statutory guidance / code of practice to have a positive or neutral impact on groups with protected characteristics. The regulations dealing with information (e.g. the statement of purpose and children's guide) make it clear that information must be provided in language and formats which are accessible to those who will be using it, and the guidance / code of practice reinforces this. Further details of the Welsh Government's approach can be found in the integrated impact assessment prepared to accompany the Regulations and guidance / code of practice. This will be published on the Welsh Government website in due course.

Question 18: 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) on treating the Welsh language no less favourably than English.

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

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.

Summary of responses

There were few responses to these questions. One respondent asked that the guidance set out the minimum Welsh language requirements for fostering services providers, although another was of the opinion that the Regulations and code of practice had set out the core standards that are applicable. There was some concern about proportionality, especially for smaller fostering providers, including the cost of producing information in Welsh. One respondent suggested that for smaller organisations with only a few members of staff, consideration should be given to their ability to access Welsh speakers rather than insist on this as a requirement. It was asked whether there was provision for Welsh speaking children to be placed with Welsh speaking foster parents. It was also suggested that more encouragement be given to translation facilities at fostering panels.

Welsh Government response

The Welsh language requirements in the Regulations and guidance / code of practice are not new and should not place additional burdens upon providers who will be expected to take a proportionate approach to their implementation. Further details of the Welsh Government's approach can be found in the integrated impact assessment prepared to accompany the Regulations and statutory guidance / code of practice. This will be published on the Welsh Government website in due course.

Annex A – List of respondents

No	Confidential Y / N		Organisation / On behalf of
1.	✓		
2.		✓	Individual
3.	✓		
4.		✓	AFA Cymru
5.		✓	Social Care Wales
6.		✓	Cwm Taf National Fostering Framework steering group
7.	✓		
8.		✓	NEWFOCAS (North East Wales Foster Care Services)
9.	✓		
10.		✓	Nationwide Association of Fostering Providers
11.		✓	Children's Commissioner for Wales
12.		✓	Children in Wales
13.		✓	Flintshire County Council
14.	✓		
15.		✓	WCVA
16.	✓		
17.		✓	Gwent Fostering Team Managers
18.		✓	Cardiff Third Sector Council
19.		✓	North Wales Regional Manager for the Implementation of the National Fostering Framework.
20.	✓		
21.	✓		
22.		✓	Fostering Solutions
23.	✓		
24.	✓		
25.	✓		
26.			The Fostering Network (Cymru/Wales)
27.	✓		