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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation – summary of response

Adoption Services Regulations

Implementing a new regulatory framework

March 2019

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 the consultation:

WG35862 - Phase 3 implementation of the Regulation and Inspection of Social Care (Wales) Act 2016 – Adoption Services.

The consultation was published on 4 September 2018 and closed on 27 November 2018. 9 responses were received from a range of stakeholder and interested parties.

Action Required

For information only.

Further information

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This document can be accessed from the Welsh Government's website:
<https://beta.gov.wales/new-regulatory-framework-adoption-services>

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

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Section 1

1.1 Introduction

Reforming the statutory framework

The past five years have seen the creation of a new, consolidated 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 ('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 of these 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.

When it comes to adoption, processes are primarily governed by The Adoption Act 1976⁴ and, particularly, The Adoption and Children Act 2002⁵ ('the 2002 Act') which also provides a number of regulation-making powers.

Implementing the 2016 Act

This 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 Hub⁶:

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 <http://www.legislation.gov.uk/ukpga/1976/36>

⁵ <http://www.legislation.gov.uk/ukpga/2002/38/contents>

- **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.

1.2 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 Wales⁷), 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 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 adoption services

Unlike the regulation and inspection of voluntary adoption agencies and adoption support agencies – now collectively referred to as ‘regulated adoption services’ – the regulation of local authority adoption services is not provided for within the 2016 Act. They remain under the 2002 Act. However, it is our policy objective – in so far as possible - to apply the same set of standards for monitoring and control across local authority and regulated adoption services in Wales.

There will necessarily be some significant differences here with the role of a local authority adoption services manager being very different to – and exercised at a different level from – that of the responsible individual in a regulated adoption service.

⁶ <https://socialcare.wales/hub/riscact-regulations>

⁷ 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.

Regulations and statutory guidance made under the 2016 Act will replace requirements previously set out, in respect of voluntary adoption agencies and adoption support agencies, under the Care Standards Act 2000 and its associated National Minimum Standards.

Similarly, Regulations made under the 2002 Act and a code of practice made under the 2014 Act will replace requirements placed on local authority adoption services providers by The Local Authority Adoption Services (Wales) Regulations 2007 ('the 2007 Regulations') and the relevant National Minimum Standards under the Care Standards Act 2000.

Improving Outcomes for Children

This reform of the regulation and inspection of adoption services in Wales 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 includes the National Adoption Service. It focuses on three key themes: reducing the numbers of children entering care; improving outcomes for children in care (including stable placements and permanency planning); and supporting care leavers to adulthood and independence.

1.3 This consultation

The consultation, which ran from 4 September to 27 November 2018, sought views on:

- Placing new requirements on regulated adoption service providers and responsible individuals in relation to those services under sections 27 and 28 of the 2016 Act
- Placing similar requirements, where applicable, upon local authority adoption service providers and their managers, under section 9 of the 2002 Act.

It also invited views on:

- Draft statutory guidance for regulated adoption service providers and responsible individuals in meeting service standards, under section 29 of the 2016 Act
- A draft code of practice for local authority adoption services, under section 145 of the 2014 Act.
- Options for the future of independent reviews of determinations for adoption.

9 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. There was one composite response submitted by the National Adoption Service for Wales on behalf of the service itself; adoption managers from the five regional collaboratives; St. David's Children's Society; Barnardo's Cymru and Adoption UK. All responses have been considered equally in terms of the comments received. A list of respondents is 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 legislative framework 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 6 November in Sophia Gardens, Cardiff and the second event was held on 8 November in Glyndwr University, Wrexham, with approximately thirty attendees overall, representing a range of stakeholders.

1.5 Next steps

In February 2019, following procedural advice from Welsh Government Legal Services, the Welsh Ministers laid the draft Regulations before the National Assembly for Wales in three separate statutory instruments. These are:

- The Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019⁸
- The Local Authority Adoption Services (Wales) Regulations 2019⁹
- The Adoption Support Services (Wales) Regulations 2019¹⁰.

The regulations placing requirements on voluntary adoption agencies and adoption support agencies (which are 'regulated adoption services' under the 2016 Act) are subject to the affirmative procedure. If passed by the National Assembly in March 2019 they will come into force on 29 April 2019. The regulations placing requirements on local authority adoption services, and those which list adoption support services, were made using powers within the 2002 Act, and are subject to the negative procedure. They are also scheduled to come into force on 29 April 2019.

A draft of the code of practice in respect of local authority adoption services¹¹, to be issued under the 2014 Act, was also laid before the National Assembly in February 2019. There is no procedure required in respect of the statutory guidance for regulated adoption services providers and their responsible individuals, under section 29 of the 2016 Act, which will be finalised and published in March 2019. Both the code of practice and the statutory guidance will come into effect at the same time as the regulations, on 29 April 2019.

⁸ <http://www.assembly.wales/laid%20documents/sub-ld12200/sub-ld12200-e.pdf>

⁹ <http://www.assembly.wales/laid%20documents/sub-ld12190/sub-ld12190-e.pdf>

¹⁰ <http://www.assembly.wales/laid%20documents/sub-ld12186/sub-ld12186-e.pdf>

¹¹ <http://www.assembly.wales/laid%20documents/sub-ld12212/sub-ld12212-e.pdf>

Section 2

2.1 Summary of responses received and Welsh Government response

Note: Due to rounding some of the percentages they may not add up to 100% overall.

PART 2: Regulated adoption service – prescribed services and exceptions

Question 1: Are ‘adoption support services’ as prescribed within regulation 3(1) clear and appropriate?				
Agree	Tend to agree	Tend to disagree	Disagree	Not specified
3	1	0	0	5
33%	11%	0%	0%	56%

Summary of responses

One respondent wished to see an additional item added to the list of adoption services at Regulation 3(1): “counselling for birth parents” commissioned by the adoption service. With regard to the exceptions at Regulation 4, everyone expressing a view agreed with the exceptions as drafted. There was one request for greater clarity in the drafting in terms of the exception for self help groups having general discussions; and a request to make clear that valuable peer support services should still be provided, even though they are not to be regulated.

One respondent was in support of an additional exception for the provision of adoption services incidentally to a provider’s main business.

Welsh Government response

The Adoption and Children Act 2002 provides in section 2(6) that “adoption support services” means (a) counselling, advice and information, and (b) any other services prescribed by regulations, in relation to adoption. The regulations therefore do not need to specify counselling (including counselling for birth parents) as it is already specified in the Act.

With regard to peer support services, CIW’s registration guidance¹² sets out which types of services must be regulated. For these purposes, the statutory guidance will define adoption services - using the definitions taken from the Act - and will also detail those providers exempt from the definition, within Annex A. CIW will use the regulations themselves as the basis for determining whether a particular adoption service is excepted or not. It will not provide additional interpretation of what is excepted in the regulations with regard to peer

¹² <https://careinspectorate.wales/sites/default/files/2019-02/190215-risca-guide-en.pdf>

support and what is not, because this decision should rest on interpretation of the wording of the regulations themselves.

Similarly, it is not appropriate legally for us to use statutory guidance to place legal obligations on providers with which they must comply; this guidance sets the service standards by which CIW regulates. We would not therefore be able to include in guidance a requirement that peer support must continue to be provided, but we would look to support this as currently, through our grant expenditure and through our broader policy messages about support for people involved in adoption.

Only one respondent supported the potential additional exception for the provision of adoption services incidentally to a provider's main business. The exception did not find support at either consultation event (although not many independent providers attended). The respondent who supported the exception did not provide a rationale or supporting evidence and so we do not believe there is a strong enough case, or sufficient support, to add in this exception.

PART 3: General requirements on adoption service providers – regulated adoption services

Question 2: Are the requirements in this part of the draft Regulations right for regulated adoption service providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
2	2	0	0	5
40%	22%	0%	0%	56%

Summary of responses

Concerns were raised by a group of respondents about the “suitability of the service” provisions in Regulation 7. In their view, all the activities provided by Voluntary Adoption Agencies (VAAs) currently would be caught by this requirement and they provided a list of various functions which VAAs exercise in the course of arranging an adoption which they felt illustrated that this would constitute a very significant new administrative burden if the ‘suitability’ exercise would need to be undertaken before each function could be carried out.

Similar concerns were raised by a group of respondents with regard to the term “care and support” (which is also defined at Regulation 2(2)(d)). They felt that this term did not fit well with the process of dealing with adoption-related enquiries, providing counselling and assessing people who might wish to become adopters; and they felt that a duty to provide care and support could only commence at the point that a prospective adopter is matched with a child or children. They felt that the emphasis of service provision should be on the children within the adoption process and that there was a danger of drawing adoption agencies away from this central task if onerous and unnecessary duties towards adults were imposed on these agencies. Similarly, they expressed concerns that a duty to provide care and support is being proposed prior to the local authority’s assessment having taken place and a decision to provide the service having been made.

In a linked point, the same group considered that the term “personal outcomes” (at 7(1) and 7(4)b) was not suitable as a description of the purpose of providing adoption services, given the range of types of individuals from whom these outcomes would arise. They observed that no individual adult has the “right” to adopt and achieve their personal outcomes in becoming adoptive parents, for instance.

With regard to Regulation 8, respondents considered that it was positive to retain a requirement to seek the views of children and young people; and to hear and act on the voice of children who have been adopted as part of service review and improvement. One respondent suggested that the guidance and code could require arrangements to be based on the Welsh Government National Participation Standards for Children and Young People. They emphasised that providing children with relevant feedback is an essential part of these standards, not limited to instances where their views have triggered a change to the service or the statement of purpose. It was proposed that there should be monitoring, as part of the inspection process, of the extent to which the voices of those who had been adopted (both children and those now grown to adulthood) had been heard and acted on in shaping the

adoption services offered. In this way, there would be more learning taking place in the system.

In addition, there was a request for guidance to cover how “skills, knowledge and competence” should be demonstrated and would be monitored by CIW. There was also a suggestion that “usually” should be deleted from the wording in the statutory guidance relating to regulation 9 (notifications), on the basis that it is current practice for notifications to be made within 24 hours of the event occurring.

In relation to Regulation 10 (compliance with code of practice), one respondent proposed that adoption services should have a duty to ensure that their staff know and abide by the Code of Professional Practice for Social Care Workers, not just adhere to the Employers’ Code. They wanted to see this reflected in the guidance.

Welsh Government response

With regard to considering “suitability of the service” in relation to the adoption process, we consider that there is in fact one point of entry to the adoption process for an individual – whether as a potential adopter, a child or a birth parent – and the rest of the process flows on from that point. Whilst individuals may not proceed to the end of the process in certain cases, there is not a re-entry point during the process which would require an additional judgement about suitability of service (other than where adoption support services might be sought some time later on in the adoption). VAAs would therefore only need to make a decision at that single entry point, not multiple times for each element of the adoption process. We view this point of entry to be the formal commencement of adoption service(s) to an individual, ie initial visits and counselling. We do not see initial enquiries or responding to such contact as constituting the provision of a service in this context. We have made this clear in the revised statutory guidance.

Stakeholders have demonstrated some confusion about the meaning of the term ‘care and support’ in the draft regulations, despite it being a core definition used in regulations for many of the service types. This is perhaps particularly the case because none of the adoption services that will be caught by the new regulatory regime will have a ‘care’ component; but also because stakeholders have become familiar with the term ‘care and support’ in the context of the 2014 Act, where there are duties to assess and meet needs for care and support (providing certain criteria are met). However, the Adoption and Children Act 2002 is the main piece of primary legislation governing adoption services and, whilst there is a duty to assess, there is not in the same way a duty to meet needs. The difference between the 2014 and 2002 Acts’ duties in this area is an issue that we recognise that some stakeholders very much wish us to address, but we will need to do so through primary legislation and a suitable vehicle for this has not yet become available.

It is also important to note that these regulations are concerned with the regime for regulation and inspection and not with entitlements to services. These regulations also do impose additional duties to provide support beyond that which is already imposed under current legislation. Responding to this feedback, we have revisited the definition used to describe the type of services that are to be caught. In order to show more clearly

that we are not referring here to care and support in the sense used by the 2014 Act, we have determined to replace “care and support” with “support” throughout the regulations.

With regard to the term “personal outcomes”, we have concluded that it would be preferable to refer to a need for support (ie for an adoption service). This will avoid the difficulties around whether, for instance, a birth parent has “personal outcomes” to be met which cannot be fulfilled through the provision of (specifically) adoption services; and about how a child’s and an adult’s personal outcomes could be balanced when they might, in fact, be in conflict.

A need for support can be linked to the types of support that we already have in law and which stakeholders are familiar with. A VAA, for instance, would therefore not be required to provide any “support” beyond that already required of them by the Adoption Agencies (Wales) Regulations 2005 in the course of arranging adoptions or (after adoptions are arranged) by the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005.

We agree that the Welsh Government National Participation Standards for Children and Young People would be an appropriate basis for these requirements and we intend to refer to them in the guidance, as we have done in relation to fostering services.

We do not consider that guidance should cover how “skills, knowledge and competence” should be demonstrated and would be monitored by CIW. It is for the service provider to demonstrate this to CIW, showing how they know that the people considering the outcome of any review have the necessary skills, knowledge and competence to do so. We have decided not to omit “usually” from the statutory guidance as suggested because, as is the case with other phase 3 services, it may not always be possible to make a notification within 24 hours of the incident, even if normal practice is to do so.

In relation to the comment on Regulation 10, the statutory guidance on Regulation 40 (fitness of staff) covers the point raised: “Service providers ensure staff comply with the requirements of their professional codes of practice”. Furthermore, the position should also be clearer following the separation out of the local authority regulations from the regulated services regulations, which addresses the issue that this was previously not found within the Staffing section of the composite regulations. It should now be more apparent.

PART 4: General requirements on adoption service providers – local authority adoption services

Question 3: Are the requirements in this part of the draft Regulations right for local authority adoption service providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
2	2	0	0	5
22%	22%	0%	0%	56%

Summary of responses

One respondent made a point here, and elsewhere in their response, to the effect that individual local authorities and their regions need to be clear at what level their respective responsibilities lie under their these regulations.

A group of respondents considered that the requirements in relation to monitoring and improvement at Regulation 18 and the duties with regard to the quality of care review (Regulation 74) overlap significantly.

This group also wished to see Regulation 74 aligned with the statistics provided by the regional adoption managers for the Performance Management framework for NAS. They felt that this would improve the usefulness of the data produced and would help to keep to a minimum the level of resources required to undertake this exercise.

Welsh Government response

We agree that it will be important for regions and for individual local authorities to consider carefully their respective roles and responsibilities. There is no particular template for how Welsh Government would expect this to be carried out, beyond the requirements of the regulations and code.

We do not consider that the provisions of Regulations 18 and 74 overlap. The former is concerned with the systems and processes for gathering audit and quality monitoring material whilst the latter concerns the development of the quality of care (now 'quality of service') review report. Likewise, Regulation 18 places responsibility on the local authority¹³ whilst Regulation 74 sets out the manager's¹⁴, responsibility. This approach is consistent with that applied to the other service areas under the 2016 Act.

¹³ Or provider, in the case of a regulated service

¹⁴ Responsible individual, in the case of a regulated service

PART 5: General requirements on adoption service providers – regulated adoption service providers and local authority adoption service providers

Question 4i: Are the requirements in this part of the draft Regulations right for regulated adoption service providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
3	1	0	0	5
33%	11%	0%	0%	56%

Question 4ii: Are the requirements in this part of the draft Regulations right for local authority adoption service providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
2	1	1	0	5
22%	11%	11%	0%	56%

Summary of responses

One respondent commented that it was clearer what the role of the responsible individual would be in relation to a regulated service. One respondent noted, in relation to local authority services, that Regulation 25 (Service Agreements) should be more closely tailored to local authority adoption services. Regulation 31 (Records) generated comments from two respondents. In essence, these suggested that in view of increasing longevity, increased interest in adopted persons enquiring about their past and the desire for consistency between VAAs and ASAs, where an adoption order has been made the retention period for records on children should be 100 years. It was also felt that where no adoption order was made, 15 years for adults was unnecessarily long and disproportionate where only initial enquires were made. A sliding scale from 18 months to 5 years was suggested.

Welsh Government response

We welcome the view that the role of the responsible individual is clearer. Now that the draft regulations have been split into separate sets covering regulated adoption service providers and local authority adoption service providers, we believe that the requirements on local authorities are more clearly outlined and, together with the clarification we have given in relation to Regulation 7 regarding 'suitability of the service', should address the concern about Regulation 25 (Service Agreements). We agree in principle with the comments relating to retention periods for records and have made appropriate changes reflecting these in the regulations as laid before the National Assembly for Wales.

PART 6: Policies, procedures and other standards – regulated adoption service providers and local authority adoption service providers

Questions 5i and 5ii: Are the requirements in this part of the draft Regulations right for [regulated and local authority] adoption service providers?¹⁵

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
2 ¹⁶	2	0	0	5
22%	22%	0%	0%	56%

Summary of responses

One respondent noted that the expectations surrounding monitoring and improvement of local authority services were clearer. In relation to Regulation 32 (Requirements to provide the service in accordance with policies and procedures) points were noted around the need for the policies and procedures in each service to incorporate the relevant regional framework and agreements and for adoption collaboratives to review their policies for consistency, which the respondent welcomed.

In relation to Regulation 33 (Safeguarding policies and procedures), suggestions were made that specific regulations from the Local Authority Adoption Service (Wales) Regulations 2007¹⁷ should be transposed into the draft Regulations. These concerned telephone checking of references, frequency of Disclosure and Barring Service checks and storage of accusations made against a person.

In relation to Regulation 34 (Complaints policy and procedure), one respondent suggested that specific regulations from the Adoption Support Agencies (Wales) Regulations 2005 should be transposed into the draft Regulations. These concerned enabling children to make a complaint, ensuring that no person was subject to reprisal for making a complaint, ensuring that no person the subject of a complaint takes part in its consideration, and that there should be a written procedure for considering complaints.

Welsh Government response

We welcome the view expressed that the provisions relating to local authority adoption services are clear. As noted above, we agree that it will be important for regions and for individual local authorities to consider carefully their respective roles and responsibilities. There is no particular template for how Welsh Government would expect this to be carried out, beyond the requirements of the regulations and code.

¹⁵ The responses for this question in relation to regulated services and local authority services were largely identical and so have been aggregated for the purposes of this table.

¹⁶ One respondent left the box unticked in relation to the question on suitability of the regulations in this Part for local authority adoption services; however the context would suggest that the intention was to agree.

¹⁷ Incorrectly cited in the response as 'ASA(W) Regs 2007'

In relation to safeguarding, we consider that it would not be appropriate to set out detailed safeguarding requirements in this legislation, when it should properly be in specific safeguarding legislation and referred to here; instead the draft Regulations make clear that comprehensive policies and up-to-date procedures should be in place and must be acted on immediately.

In relation to complaints, we note that the provisions referred to in the response were from an earlier version of the Adoption Support Agencies (Wales) Regulations 2005. Nevertheless, the statutory Guidance notes that providers should have an accessible complaints policy which explains how individuals can be supported to make a complaint and secures that Individuals do not suffer discrimination, disadvantage, or the withdrawal or reduction of a service as a result of making representations or complaints. We consider that this is an appropriate and proportionate way of dealing with this matter.

PART 7: Premises - regulated adoption service providers and local authority adoption service providers

Question 6: Are the requirements in this part of the draft Regulations right for regulated adoption service providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
3	1	0	0	5
33%	11%	0%	0%	56%

Question 6: Are the requirements in this part of the draft Regulations right for local authority adoption service providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
2	2	0	0	5
22%	22%	0%	0%	56%

Summary of responses

There was limited response in relation to this Part. What responses there were focused on facilities and equipment. One respondent requested clarification on requirements for record storage. In the consultation events there was a suggestion that the provisions around equipment be omitted as not relevant to adoption services.

Welsh Government response

We agree, on reflection, that the provisions in the consultation draft of the Regulations in relation to facilities and equipment are not relevant to adoption services and have omitted them from the version as laid before the National Assembly.

PART 8: Staffing - regulated adoption service providers and local authority adoption service providers

Question 7i: Are the requirements in this part of the draft Regulations right for regulated adoption service providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
3	1	0	0	5
33%	11%	0%	0%	56%

Question 7ii: Are the requirements in this part of the draft Regulations right for local authority adoption service providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
1	2	0	0	6
11%	22%	0%	0%	67%

Summary of responses

There were a range of detailed comments made in relation to the provisions in this Part. One respondent noted that each regional collaborative would need to ensure that there was consistency across each local authority member’s human resources practices in complying with the requirements. Other respondents suggested including a requirement for all relevant staff to register with the Disclosure and Barring Service’s update service, queried provision in the draft statutory guidance/code of practice regarding supervision of volunteers, use of group supervision, and frequency of supervision, and also raised the question of the applicability of disciplinary processes to volunteers.

Welsh Government response

It would be for regional collaboratives to determine how much consistency they wish to work towards in complying with the requirements, with regard to the good practice set out in the code of practice accompanying the regulations.

In relation to the other points made, the requirements reflect the current processes/ requirements for the Disclosure and Barring Service. It would not be appropriate to use these regulations to enforce one route to certification with the Disclosure and Barring Service over another.

The statutory guidance and code of practice have been amended to require supervision at least quarterly (rather than monthly as before) and to refer to the use of group supervision where appropriate. Finally, the statutory guidance and code of practice have been expanded to provide guidance in relation to actions providers could take in response to questions around a volunteer’s fitness to practice, with potential action including:

- providing additional training and supervision
- termination of the volunteer arrangements; and
- referral to the Disclosure and Barring Service or police, where appropriate.

PART 9: Requirements on responsible individuals for ensuring effective management of the service

Question 8: Are the requirements in this part of the draft Regulations right for responsible individuals?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
3	1	0	0	5
33%	11%	0%	0%	56%

Summary of responses

One respondent suggested that the expectations surrounding the quality of care report, review of complaints and wider remit in consultation with stakeholders were clearer than previously. However, a request was made for more explicit recommendations regarding visits, including developing a template covering the areas to be monitored, to provide the basis for consistent practice across adoption collaboratives.

Welsh Government response

We consider that the responsibilities of the Responsible Individual in relation to visits are set out clearly in the regulations and statutory guidance. We consider that it is important for the Responsible Individual to consider and make an individual determination of what needs to be covered during their visit, based on their specific understanding of the needs of the service. The requirement regarding visits only applies to regulated adoption services.

PART 10: Requirements on responsible individuals for ensuring effective oversight of the service

Question 9: Are the requirements in this part of the draft Regulations right for responsible individuals?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
2	2	0	0	5
22%	22%	0%	0%	56%

Summary of responses

No comments were made in relation to this Part.

Welsh Government response

None.

PART 11: Requirements on responsible individuals for ensuring compliance of the service

Question 10: Are the requirements in this part of the draft Regulations right for responsible individuals?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
2	2	0	0	5
22%	22%	0%	0%	56%

Summary of responses

No comments were made in relation to this Part.

Welsh Government response

None.

PART 12: Requirements on responsible individuals for monitoring, reviewing and improving the quality of the regulated service

Question 11: Are the requirements in this part of the draft Regulations right for responsible individuals?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
3	1	0	0	5
33%	11%	0%	0%	56%

Summary of responses

Responses focused on the requirements around quality of care reviews (now termed ‘quality of service reviews’ in the regulations). Respondents suggested that six months was too short a period over which to carry out a review of quality and that to require such reviews twice annually would be an unhelpful diversion of resource. There was a request for templates for the completion of such reviews to provide consistency in the way in which information was collated and shared.

Welsh Government response

We acknowledge the concerns that were expressed emphatically during consultation. However, we believe that it is important and reasonable to require adoption services, like other services under the Regulation and Inspection of Social Care Act, to review the quality of their services every six months in a proportionate way and making best use of existing sources of data, as part of an ongoing cycle of quality assurance. Providers should consider how the existing quality assurance processes they have in place can be used to inform the quality of service review report.

Care Inspectorate Wales will produce practice guidance covering these reviews, including a template, to assist providers to use the quality of care review report to assess the effectiveness and performance of their service and consider where improvements can be made.

We have re-titled this regulation “Quality of service review”, to reflect our replacement of the “care and support” definition with a definition based on “support”.

PART 13: Other requirements on responsible individuals

Question 12: Are the requirements in this part of the draft Regulations right for responsible individuals?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
2	2	0	0	5
22%	22%	0%	0%	56%

Summary of responses

No comments were made in relation to this Part.

Welsh Government response

None.

PART 14: Offences

Question 13: Is the approach taken in relation to offences within the draft Regulations (regulation 63 in relation to regulated adoption service providers and regulation 64 in respect of responsible individuals) sufficient and proportionate?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
0	0	0	0	9
0%	0%	0%	0%	100%

Summary of responses

One respondent suggested that the approach was not proportionate to the aim of ensuring good governance, and questioned the application of prison sentences in the case of non-compliance. Another respondent questioned whether there should be more focus on working in partnership with providers around their improvement plans rather than on imposing penalties.

Welsh Government response

The 2016 Act (section 51(1)) sets out the sliding scale of penalties where a person is found guilty of an offence. This ranges from a fine to imprisonment for up to 2 years. The 2016 Act (section 52) also gives a power to Care Inspectorate Wales (CIW) to give a penalty notice (to pay a specified fine) instead of bringing a prosecution, which it may do for certain straightforward offences. If the fine is not paid, CIW may then pursue a prosecution.

Care Inspectorate Wales' *Securing improvement and enforcement policy*¹⁸ explains the proportionate approach to improvement and enforcement that is in operation. Enforcement procedures 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.

No prosecution has brought against an adoption service to date.

¹⁸ <https://careinspectorate.wales/sites/default/files/2018-06/180601-securing-improvement-enforcement-policy-en.pdf>

Penalty Notices (These are not provided for within the draft Regulations)

Question 14: 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
1	1	1	0	6
11%	11%	11%	0%	67%

Summary of responses,

See under question 13 above.

Welsh Government response

See under question 13 above.

PART 15: Regulations under section 21(5) – Designation of Responsible Individual by Welsh Ministers

Question 15: Are the requirements placed on appointed persons and personal representatives reasonable?				
Agree	Tend to agree	Tend to disagree	Disagree	Not specified
2	1	0	0	6
22%	11%	0%	0%	67%

Summary of responses

No comments were made in relation to this Part.

Welsh Government response

None.

PART 16: Regulations under section 21(5) of the Act – Designation of responsible individual by the Welsh Ministers

Question 16: Are the circumstances in which responsible individuals may be designated by the Welsh Ministers, rather than the service provider, sufficient and appropriate?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
2	1	0	0	6
22%	11%	0%	0%	67%

Summary of responses

No comments were made in relation to this Part.

Welsh Government response

None.

PART 17: Requirements on the local authority adoption service manager

Question 17: Are the requirements in this part of the draft Regulations right for local authority adoption service managers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
2	1	0	0	6
22%	11%	0%	0%	67%

Summary of responses

One respondent commented that more duties were being placed on the LA service manager, with more accountability and associated consequences, and made the suggestion that each regional collaborative should appoint a specific service manager to oversee adoption services. They queried whether the Service Manager was the designated officer for Regional Services or whether each local authority would have a service Manager responsible for the LA element of the provision in that region.

Welsh Government response

The Regulations require that each service provider must appoint one of its officers to be responsible for the management of the service. The appointment of a regional service manager to oversee adoption services, in addition to local authorities' own service managers, would be a matter for the regional collaboratives.

PART 18: Other requirements on the local authority adoption service Provider

Question 18: Are the requirements in this part of the draft Regulations right for local authority adoption service managers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
2	1	0	0	6
22%	11%	0%	0%	67%

Summary of responses

One respondent suggested, in relation to Regulation 77 (Requirement to open a child’s case record) that reference should be made to the new (proposed) two stage assessment process.

Welsh Government response

It would not be appropriate to make reference in law to a prospective piece of legislation that has not yet been enacted. In any event, since the consultation, it has been noted that Regulations 77 and 78 (birth parents) already in essence exist in the Adoption Agencies (Wales) Regulations 2005 (which apply to local authorities). These regulations are not being replaced under the Regulation and Inspection of Social Care Act. We are therefore no longer including Regulations 77 and 78 in the Local Authority Adoption Services (Wales) Regulations 2019.

Independent Review Mechanism

Question 19: 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:

- a) Is there a continuing need for independent reviews of determination for adoption?
- b) Would there be any disadvantages to removing the requirement for an independent review of determinations for adoption?
- c) Should we retain the current arrangements for independent reviews supported by an IRM? Please give reasons for your answer.
- d) Are there new or alternative arrangements which could be put in place for reviewing qualifying determinations for adoption? If so, what could those arrangements be?
- e) What alternative arrangements could be put in place for adoption disclosure applications?
- f) 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 and independence, and promote adoption.

Summary of responses

There were six responses to this question, expressing a range of views. One respondent thought it essential for IRDs to continue. Of those open to reform, one favoured a lighter touch option involving just one independent reviewer whilst another, noting that the current system was expensive and rarely used, suggested that independence could be provided by another adoption agency. A third thought there was no evidence to suggest that the IRM process had a beneficial or long-term effect, and suggested that local authorities could use the complaints process. Finally, there was an observation from one respondent that the lack of an independent review option might deter some prospective adopters from applying, and a suggestion that this should be explored further with agencies and adopters.

Welsh Government response

The Welsh Government is still considering the outcome of this part of the consultation and will bring forward separate amending legislation, if appropriate, in due course.

2.2 Additional questions

Question 20: 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?

Summary of responses

Few respondents addressed this question. Of those who gave a response, one did not identify any particular positive impacts and no negative impacts. Another welcomed the positive impact on children's rights (in particular *the right to be involved in decisions that affect them* (United Nations Convention on the Rights of the Child Article 12) and *the right to information which can inform their views* (UNCRC Article 13)) through requiring information to be provided in a suitable format, taking into account the needs, age and level of understanding of the person for whom the service is intended. The respondent also made some suggestions on matters of detail to be included in the regulations which would reinforce children's rights. Another considered that many of the requirements would make a positive difference to the lives of children and young people who had been adopted but stressed the importance of reflecting a child rights perspective within the guidance supporting implementation of the requirements. A fourth respondent queried the framing of the question.

Welsh Government response

We welcome the views of respondents that the draft Regulations will not have a negative impact on groups with protected characteristics, and the positive impacts identified in relation to children's rights. The Welsh Government is satisfied that the Regulations will not have a negative impact on groups with protected characteristics. The Welsh Government response in relation to additional matters of detail can be found under the relevant part/question above. The framing of the question on protected characteristics is common across all Welsh Government consultations, however the comments have been noted for future consideration.

Question 21: 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

No comments were made in relation to this question. Some respondents made specific observations in relation to burdens. These are dealt with under the relevant part/question above.

Welsh Government response

None. The Welsh Government response to specific issues raised in relation to burdens can be found under the relevant part/question above.

Question 22: 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

One response was received to this question. The respondent suggested that there should be greater emphasis of the importance of the Welsh language throughout the process from assessment to matching and placements, with a view to ensuring that every child could receive a full service through the medium of Welsh (if their first or preferred language). The response also suggested that support should be given to those who wished to acquire the language. The guidance given in *Mwy na geiriau.../More than just words...* around the active offer was proposed as a starting point.

Welsh Government response

The Welsh Government is satisfied that the Regulations will not have a negative impact on the Welsh language and there is scope for them to be beneficial, particularly for individuals whose first language is Welsh.

The Regulations are intended to support *Mwy na geiriau.../More than just words...*, the Strategic Framework for Welsh Language Services in Health, Social Services and Social Care 2016-2019. The strategy is built on the values that all individuals should be treated with dignity and respect and should receive accurate assessments and appropriate support.

We have incorporated these principles into the Regulations, mainly under the requirement for providers to take reasonable steps to meet the language needs of. In relation to the Welsh language, this means that service providers deliver or work towards actively offering a service in the Welsh language to individuals whose first language is Welsh. In relation to information for individuals, there is a requirement for the guide to the service to be in an appropriate language, style, presentation and format, having regard to the statement of purpose for the service (. The requirements in the Regulations also support one of the core principles in the 2014 Act, to enable people to have a stronger voice in, and greater control over, the provision of services to them.

Question 23: 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

Summary of responses

Few answers were received to this question. One respondent made some observations in relation to the operational aspects of Adoption Panels. Another raised the question of adoption support and the way in which this relates to a child's care and support plan required under Part 6 of the Social Services and Well-being (Wales) Act 2014 and any subsequent care and support plan under Part 4 of that Act.

Welsh Government response

As the respondent noted, the draft Adoption Agencies (Wales) (Amendment) Regulations 2019, are subject to a separate consultation process. Comments in relation to the operational aspects of Adoption Panels have been referred across for consideration as part of this process.

Regulations in relation to regulation and inspection are not a vehicle for clarifying the relationship between adoption support and care and support. However, the Welsh Government is keeping the comments made under consideration.

Annex A – List of respondents

No	Confidential Y / N	Organisation/On behalf of
1.	✓	Home for Good
2.	✓	Social Care Wales
3.	✓	Monmouthshire County Council
4.	✓	Children's Commissioner for Wales
5.	✓	Children in Wales
6.	✓	Public Health Wales
7.	✓	National Adoption Service for Wales
8.	✓	Voices from Care Cymru
9.	✓	North Wales Adoption Service