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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation – summary of responses

Amendments to The Adoption Agencies (Wales) Regulations 2005 - two-stage approval process for adopters

February 2020

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:

WG36071 - Regulations to introduce a two-stage approval process for adopters

The consultation was published on 3 October 2018 and closed on 9 January 2019. 8 responses were received from a range of stakeholder and interested parties.

Action Required

For information only.

Further information

Enquiries about this document should be directed to:

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Additional copies

This document can be accessed from the Welsh Government's website:
<https://beta.gov.wales/amendments-adoption-agencies-wales-regulations-2005>

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 Social Services and Well-Being (Wales) Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016. The overall aim has been to reform and consolidate social care law, in order to improve the well-being of people who need care and support and their carers.

As part of this programme of reform of social care law, the Welsh Government is taking the opportunity to modernise the process by which people who wish to adopt a child are assessed and approved as potential adopters.

1.2 The context for change

The National Adoption Service (NAS) was established with the purpose of improving adoption services across Wales. It has since pursued a comprehensive agenda of reform, and Welsh Government is supporting this programme of modernisation by legislating to move to a two-stage process for the assessment and approval of prospective adopters in Wales.

A similar system has been in place in England for some time and is considered to have been helpful in streamlining what can be a cumbersome process, particularly when it is immediately clear that a particular applicant cannot be successful due to a serious issue that must inevitably disqualify them from becoming an adopter. Our proposed change would mean that in such cases, there would no longer be a legal obligation to proceed to full panel consideration of a manifestly unsuitable application before it could be dismissed.

We are also using this legislative opportunity to shorten the maximum length of time that may elapse before an adopter's or a child's details must be placed on the Adoption Register for Wales. The new requirement would be for the details in question to be placed on the Register as soon as possible and within a maximum of one month, rather than the current three months. The reason for this change is to help to speed up the matching of children with adopters, to reduce the length of time during which children might wait for an adoptive family.

1.3 This consultation

The consultation, which ran from 3 October 2018 to 9 January 2019, sought views on proposals to

- establish a two-stage process for the assessment and approval of prospective adopters;
- enable 'authorised officers' to witness the consent of a parent or guardian to placement or adoption orders, where the parent or guardian lives outside of England and Wales;

- reduce to 1 month (instead of 3) the maximum period within which agencies must add to the Adoption Register for Wales all approved adopters' details and details of children to be placed for adoption.

8 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 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 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 2018 in Sophia Gardens, Cardiff and the second event was held on 8 November in Glyndwr University, Wrexham.

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 February 2020 in two separate statutory instruments. These are:

- The Adoption Agencies (Wales) (Amendment) Regulations 2020
- The Adoption Agencies (Wales) (Amendment) (No 2) Regulations 2020

Both these sets of regulations amend the Adoption Agencies (Wales) Regulations 2005, which make provision relating to the exercise by adoption agencies of their functions under the Adoption and Children Act 2002. The first set of new regulations primarily substitutes a new Part 4 in the 2005 regulations to provide for a new two-stage approval process for prospective adopters. They will be made using powers within the 2002 Act and will be subject to the negative procedure. Subject to the National Assembly for Wales' procedures, they will come into force in April 2020.

The second set of regulations place requirements on adoption agencies, when assessing the suitability of a couple to adopt a child, to have proper regard to the need for stability and

permanence in their relationship. They will be made using powers within the 2002 Act and will be subject to the affirmative procedure. If passed by the National Assembly for Wales they are scheduled to come into force in April 2020.

Practice Guidance is being prepared to assist in the implementation of these regulations and training for practitioners on the new requirements is taking place.

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.

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

Question 1: Is it right that we should introduce in Wales a two-stage process to replace the current system for assessment and approval of adopters?				
Agree	Tend to agree	Tend to disagree	Disagree	Not specified
4	2	1	0	1
50%	25%	13%	0%	13%

Summary of responses

The vast majority of respondents agree or tend to agree that it is right to introduce a two stage process to replace the current system for assessment and approval of adopters.

The general consensus is that the two stage process is a sensible approach which allows for earlier decision making, avoiding the use of unnecessary resources, provides clarity for prospective adopters early in the process and also avoids raising false expectations.

There is consensus that guidance is needed around what constitutes “not suitable/fit to adopt”, providing clarity for those making decisions and transparency for all concerned.

Welsh Government response

We welcome the support shown for the proposed introduction of the two-stage process. The practice guidance and training that are being made available should make the requirements and definitions clear for practitioners.

Requirements on adoption agencies under a two-stage process.

Question 2: Are the new requirements being placed on adoption agencies appropriate, workable and proportionate?				
Agree	Tend to agree	Tend to disagree	Disagree	Not specified
5	0	0	0	3
63%	0%	0%	0%	38%

Summary of responses

The majority of respondents agree that the new requirements are appropriate, workable and proportionate.

Although the majority agree with the suggested changes, concerns about the changes to timescales have been raised, with potential consequences being a risk of assessments being rushed in order to meet timelines.

A risk was flagged up as arising from some of the required local authority checks not being carried out until stage two. It was felt that this created the potential for possible child protection issues not being picked up until then.

It was suggested that all local authority checks should be carried out at stage one and that pre approval training for prospective adopters should also be held at this stage to allow for more informed choices.

Welsh Government response

We welcome respondents' positive response to the practicality of the proposed changes.

In terms of the specific concerns cited,

- Under these proposals, it is in fact intended that local authority checks will take place in stage 1 and not only in stage 2.
- Whilst adoption agencies in Wales are to be required to add to the Adoption Register the details of children whom the agency has been authorised to place for adoption within a new maximum timeframe of 1 month, it still remains open to those agencies to make a professional decision about the appropriate time at which to open that child's details up to access by various Register users. So, if further assessments of a medical condition were needed, for example, an agency could decide not to open up that record for potential matching by others at the point that one month had passed – so long as the details of the child had been entered onto the Register itself as required, within the month. There is also a specific exception to the requirement to

enter the child's details within a month where a match with particular prospective adopters is already being pursued.

- The timescale of one month for the entry of these details reflects the reality that it is not only good practice to do everything possible to obtain an early, good quality match, this is also the expectation of the Courts. There is a risk that IROs will look to alter the child's plan if there is undue delay and this could potentially lead to children losing the opportunity of finding stability and love with an adoptive family, and them remaining in care instead for the rest of their childhood.
- The regulations already stipulate that agencies must provide the prospective adopter with any information and any training materials relating to adopting a child available for use.

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

Question 3: Is it right that the maximum time allowed for referral of this information is shortened to within a month of the agency’s decision?				
Agree	Tend to agree	Tend to disagree	Disagree	Not specified
1	2	3	1	1
13%	25%	38%	13%	13%

Summary of responses

There is a divided view on the issue of the maximum period allowed for referral of a child’s or an adopter’s details to the Adoption Register.

Those that disagree or tend to disagree raise concerns about a reduced timescale adding increasing pressure on the time and resources of local authorities.

More specific concerns were raised around this with the preference being to leave children in their local consortium because of challenges arising from placing children out of area and the difficulty in accessing the right support services for them when this was the case. The cost implications arising from children being placed outside of local consortia were also raised, noting that changes in the timescale should be met with further resources being invested into local authorities.

Those that agree suggest that this change will reduce waiting times for children which can only be positive. The point was made that it will not prevent the approving authority from placing children within the region, but will reduce delay for children in other authorities.

Respondents asked that the point from which the period of 1 month will begin to be calculated should be altered. They requested that counting should start from the date on which the agency was authorised to place the child for adoption, rather than from the point at which a decision has been made that a child should be placed for adoption.

Welsh Government response

We plan to introduce this change in response to a request from the National Adoption Service, on the basis of their professional advice that it will reduce delay for children awaiting an adoptive placement.

At the time the stakeholder events and the written consultation took place, the new Adoption Register was bedding in and agencies were still developing their knowledge of its capabilities. The new Register is much more flexible and responsive than the previous technology could allow and as practitioners continue to develop their understanding of what it can do, we believe that they will see that they remain in control of issues such as when to release information about a particular child or sibling group for potential matching outside of the home

regional collaborative area. The primary driver in this will be how best to meet the needs of that particular child or group of siblings – so if there are particular issues with access to specialist support arrangements, a need for a Welsh-speaking adopter etc, the agency will still be able to factor these matters into their decision making and decide their relative priority within their planning for that child.

We agree that we should change the point from which the maximum period of a month should begin to be calculated, with regard to placing a child's details on the Register. We agree that it would be better to start counting from the date on which the agency was authorised to place the child for adoption, because this best reflects the period in which the agency is enabled to actively seek an adoptive placement. We will amend this requirement accordingly.

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

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

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
6	1	0	0	1
75%	13%	0%	0%	13%

Summary of responses

All respondents who indicated a view agreed that where a parent or guardian resides outside of England or Wales, broadening out the categories of people who can carry out this function is right, and that it would avoid delays and lower costs to enable this matter to be dealt with more flexibly.

A question was raised about whether this would be broadened for the whole of the UK and from where the costs for this change would be met.

Welsh Government response

We welcome the support of respondents for this change. Whilst it is unusual for consent to be sought in the circumstances envisaged, this alteration will allow the possibility of greater flexibility in how the service is delivered. Under the new arrangements, a British consular officer already in a foreign country (or someone else on the specified list) could obtain this consent on their behalf and CAFCASS Cymru or the agency would only need to reimburse that individual’s local costs.

A similar approach has already been introduced in the legislation governing arrangements for England. Whether a similar approach should be adopted in Northern Ireland or Scotland, or indeed how the regime operates in England, are questions for those nations!

2.2 Additional questions

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

Summary of responses

All agree that there seems to be no impact either in a negative or positive way on groups with protected characteristics.

The expectation of a full equality impact assessment was noted and that this would need to be kept under review.

Of those that responded there was consensus that there was no reason to believe that the proposals in the consultation would have any negative impact on groups with protected characteristics.

Stonewall Cymru provided a comprehensive response which suggested that a two tier system could potentially enable LGBT prospective adopters to be factored out at stage 1 due to bias. They made recommendations on how to combat decisions being affected by any homophobic, biphobic or transphobic bias:

- The Welsh Government should work with the National Adoption Service and voluntary agencies to ensure that all staff working in adoption agencies undertake training on tackling discrimination against LGBT people and providing inclusive services. This training should provide staff with practical examples of bias and discrimination which is relevant to their role.
- Guidance accompanying any changes should provide clear examples of acceptable and unacceptable reasons for an agency not to proceed an application to a full panel assessment.
- The Welsh Government should monitor applications for adoption at a national level broken down by equalities characteristics, including by gender, race, disability, religion, age, sexual orientation and trans status. Among other purposes, this can be used to identify if certain groups are disproportionately excluded at the initial stage. It should work with adoption agencies to ensure this data is collected consistently and appropriately, anonymised and kept separate from the assessment process. Where possible, this data should be made public.

Welsh Government response

We take very seriously any suggestion that there could be discrimination or bias in operation within the adoption system in Wales. No such issues or individual cases have otherwise been raised with us or with the National Adoption Service, but we undertake to

explore these issues with NAS and to request that they look into this matter to see if there is any concrete evidence from Wales that this problem is occurring here.

Practice guidance and training will make absolutely clear our expectations of what are acceptable reasons for ruling out a prospective adopter at Stage 1 and our zero tolerance of bias and discrimination.

Question 6: We would like to know your views on the effects that these proposals would have on the Welsh language, specifically on

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

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

The general consensus from respondents is that they do not see that the proposals will impact on the Welsh language.

It was suggested that the guidance to refer children to the register within one month could impact on children in terms of their identity and also where their language preferences and cultural heritage are not matched.

The potential issue of resources for translation was raised.

The need for Welsh speaking adoptive parents and Welsh speaking staff who can support the whole process was highlighted.

Welsh Government response

As previously described, some respondents were confused about the requirement to add details to the Register within a month, assuming incorrectly that this would mean that details of all children on the Register would have to be made available to all the other agencies on the Register for potential matches after a month.

Identity, language preferences and cultural heritage remain very important considerations for agencies to weigh in their decision making about what is in the best interests of a child.

We do not agree that the requirement to use Welsh on the Register, as appropriate, imposes a new cost burden, as Welsh language legislation has been in place for some years. Likewise, the need to recruit sufficient Welsh-speaking adoptive parents and staff will have been a long-standing and important aspect of agencies' recruitment strategies in these two areas.

Question 7: 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

Issues around the two stage process were highlighted again, concerns were raised around the impact these changes have had in England, and the potential impact on resources for local authorities here in Wales. The suggestion was again made that there is a need for guidance around what constitutes a prospective adopter being considered as not suitable at stage 1 of the assessment process.

The needs of kinship adopters were raised in terms of whether there need to be any changes to ensure that children who are permanently removed from parents are able, as far as is reasonably possible, to remain within their birth family networks.

Welsh Government response

We are not aware of any specific concerns about the operation of the two-stage process in England. Indeed it is our understanding that it is working well.

Practice guidance and training will be provided to give practitioners more detail about the grounds on which a prospective adopter might be deemed unsuitable and ruled out at stage 1.

We are not clear about what exactly is being alluded to with the term “kinship adopters” – this is not found in law in Wales. Special Guardianship is the route by which birth family members might legally be able to take over the parenting of a child in their extended family who might otherwise be adopted. It is a valued and successful form of permanence for children in Wales.

The wording of the Regulations has also been amended in relation to situations where a prospective adopter notifies the agency that they wish to continue the assessment process more than six months from the date on which the agency notified the prospective adopter that they may be suitable to adopt. The purpose of the amendment is to make clear that the pre-assessment process will have to be repeated in relation to the prospective adopter to the extent that the adoption agency deems necessary.

A further minor change we have made on considering the consultation outcomes is to increase the time limit for a prospective adopter who has been notified by the adoption agency that they were not suitable to adopt a child to make representations to the agency or apply to the Welsh Ministers for a review of the decision by an independent review panel. The limit has been increased from 20 days from the date on which the prospective adopter was notified to 40 days. .

Annex A – List of respondents

No	Confidential Y / N	Organisation/On behalf of
1.	✓	Flintshire County Council
2.	✓	NWAS and regions
3.	✓	Social Care Wales
4.	✓	National Adoption Service for Wales
5.	✓	Public Health Wales
6.	✓	Stonewall Cymru
7.	✓	Rhondda Cynon Taff CBC
8.	✓	