



Llywodraeth Cymru  
Welsh Government

**Number WG:42163**

Welsh Government

Consultation – Summary of response

Adoption and Fostering (Specified Complaints) (Miscellaneous  
Amendments and Revocations) (Wales Regulation 2020

February 2020

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

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## Overview

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

**WG40703** - Regulations were introduced to:

- increase public confidence in the transparency of the approvals process for prospective foster parents and adopters,
- to introduce an independent element to the review process, and

The consultation was published on 7 September 2020 and closed on 2<sup>nd</sup> November 2020.

14 responses were received from a range of stakeholder and interested parties.

### Action Required

For information only.

### Further information

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## Section 1

### 1.1 Introduction

Independent Reviews of Determinations (IRDs) for adoption were first introduced in 2006, following implementation of the Adoption and Children Act 2002. In 2010 they were extended to fostering. The current review process is governed by the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010. These regulations require the Welsh Ministers, on receipt of an application for review, to constitute a panel, and set out the review panel's membership and functions, and the timetable to be followed.

The IRM was set up in 2010 to manage the process by which prospective or approved adopters, and prospective or existing foster carers, can seek a review of a 'qualifying determination' made by either their adoption or fostering services provider, whether an independent agency or a local authority.

The IRM has three functions in relation to **adoption**:

- to consider a recommendation made under the Adoption Agencies (Wales) Regulations 2005 that the applicant is not suitable to adopt a child;
- to consider a recommendation made under the Adoption Agencies (Wales) Regulations 2005 that the applicant is no longer suitable to adopt a child;
- to consider a recommendation made under the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005.

The IRM has three functions in relation to **fostering**:

- to review a proposal under the the Fostering Panels (Establishment and Functions) (Wales) Regulations 2018 (the 2018 Regulations) not to approve an applicant as suitable to act as a foster parent
- to review a proposal under the 2018 Regulations to revise the terms of approval of an existing foster parent
- to review a proposal under the 2018 Regulations that the foster parent is no longer suitable to act as a foster parent.
- The IRM can also consider adoption **disclosure applications** Under the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005.

A qualifying determination in relation to disclosure can be:

- a decision not to proceed with an application for disclosure of protected information, for whatever reason;
- a decision not to disclose protected information to the applicant, even though the person the information concerned has agreed to its disclosure;
- a decision to disclose information where the person the information concerns has expressed a view that they do not want the information disclosed (here the subject of the information is the applicant).

## 1.2 The context for change

IRDs were introduced for the following reasons:

- to increase public confidence in the transparency of the approvals process for prospective foster parents and adopters,
- to introduce an independent element to the review process, and
- to encourage more people to consider fostering and adoption.

Views have been sought on the future of independent reviews of determinations (IRDs) and the Independent Review Mechanism (IRM) as part of two consultations including:

- The draft Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 which ran between 24 May to 16 August 2018; and
- The draft Adoption Services (Service Providers and Responsible Individuals) and Local Authority Adoption Services (Wales) Regulations 2019 which ran between 4 September 2018 and 27 November 2018.

The findings from both consultations were very similar and there was some support to look at alternative processes to replace the IRM function.

It was felt that it is an expensive and bureaucratic service to run in relation to the limited number of applications received and reviews undertaken each year. Many issues are being addressed earlier in the assessment/decision making process and more and more people are utilising fostering service providers' or adoption agencies' complaints procedures if issues arise and this has contributed to the lower numbers of applications being presented to the IRM.

## 1.3 This consultation

The consultation, which ran from 7<sup>th</sup> September to 2<sup>nd</sup> November 2020 sought views on the Adoption and Fostering (Specified Complaints) (Miscellaneous Amendments and Revocations) (Wales) Regulations 2020.

These regulations would revoke the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010. This would mean that the entitlement to an independent review would be removed and prospective or existing foster parents or adopters who wish to challenge a qualifying determination (including adoption disclosure applications) would need to rely on the fostering provider's or adoption agency's complaints procedures to do this. The Adoption and Fostering (Specified Complaints) (Miscellaneous Amendments and Revocations) (Wales) Regulations 2020 would make changes to the fostering and adoption Regulations to ensure that such complaints could be heard, and to introduce an independent element to the complaints process.

Adoption and fostering services providers are required to maintain complaints procedures under the following regulations:

- The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019

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

None of these regulations currently require that service providers include any element of independence in their complaints procedures (although we are mindful that in practice many service providers already do so). The current provisions also do not permit a prospective foster parent whose application has been refused to make a complaint to the fostering services provider.

In replacing the IRM with the ability to complain to the service provider, the Adoption and Fostering (Specified Complaints) (Miscellaneous Amendments and Revocations) (Wales) Regulations 2020 would enable the complaints procedures to act as an alternative process to the existing IRM. These Regulations would:

- require a service provider to ensure that their complaints procedure includes provision to consider qualifying determinations;
- specify that the complaints procedure requires the appointment of an independent person to work with the provider and the complainant to investigate and review the qualifying determination;
- require that the independent investigator has relevant knowledge and experience to consider the specified complaint;
- permit a prospective foster parent whose application has been refused to make a specified complaint to the fostering services provider;
- require that the complaints procedure contains provision that a person who makes a specified complaint must be informed about the progress of the investigation of their complaint and that at its conclusion must be provided with a response in writing which summarises the nature and substance of the complaint, the conclusions and any action to be taken as a result of the investigation.

**14** responses were received to the consultation. 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.

This document provides a summary of the responses received through the consultation.

## Section 2

### 2.1 Summary of responses received and Welsh Government response

#### Summary of responses

#### **Question 1: What challenges do you see in bringing the review function for IRDs under the agencies' complaints procedures (including adoption disclosure applications)?**

The vast majority of respondents felt that it was important to maintain the independence and transparency of the IRM process and that the proposed Regulatory changes **do not** provide these vital aspects. Responses highlighted that it is imperative that the level of independence the independent investigator will have is established and made clear to those seeking a review of a qualifying determination. It was also suggested that having a single person review the decision, rather than a panel, may make applicants feel disillusioned about their complaint being taken seriously.

It was felt that through the current IRM function, the panel members offered a valuable role in understanding the complexity of the sectors and were able to exercise professional judgement as a collective body.

It was emphasised that some smaller agencies may not have the capacity in relation to time or resources, to deal with reviews of qualifying determinations internally.

Feedback indicated that the Regulations in their current format lack detail on the level of authority the complaints process will have on the qualifying determination. It was suggested that this needs to be made clear in the Regulations to enable effective management of the applicants' expectations. It was also felt that there would need to be a clear distinction made between complaints in relation to service delivery of the agency and applications to review qualifying determinations as these reviews cannot be considered the same as a complaint and therefore a separate transparent process would be needed.

There was general consensus that the Regulations lacked clarity on how the investigations should be conducted. This is likely to result in inconsistencies between local authorities and independent/voluntary providers across Wales. It was felt that an important aspect that was missing is the recognition that applicants need to know their rights to appeal a qualifying determination, the process that will follow and how long each stage of this process will take.

Feedback suggested that the Regulations need to provide provision which ensures the independent investigator can access medical advice, if they so request, during the course of their investigation. It was also identified that there needs to be recognition that the investigator may need to access further expertise to support the investigation which would incur additional costs.

If applications to the IRM are not common, concern was raised that then an agency may take some time to appoint an independent investigator. In some circumstances it was felt that this delay could impact on children's rights, such as if a person had applied to be a family and friends carer and a decision not to approve was being referred to the IRM.

Responses highlighted the importance of the Regulations taking into account the fact that this process also has to be fit for purpose for post commencement access to information cases if and when they start to come through. It was highlighted that these applications may not be common, and this could result in an agency/provider taking some time to appoint an independent investigator with the necessary skills to undertake such reviews.

### **For any challenges please state how they could be overcome?**

It was suggested that there could be the creation of a central database of independent professionals (legal, health, social care), practitioners, adopters, kinship carers, foster carers, former IRM Cymru panel members, etc. who would be willing to become involved in the new process which could offer some consistency. This would ensure suitably qualified and knowledgeable people with a high degree of knowledge and expertise in fostering and adoption could be readily accessed to support this function.

It was proposed that the independent investigator should, having completed the investigation, refer back to the fostering/adoption agency panel and Agency Decision Maker for a fresh recommendation and decision in all cases. It was felt that this will ensure that the Agency Decision Maker makes the final decision (as currently with the IRM) and does not make the independent investigator's decision an 'appeal' of the decision. Feedback suggested that if this provision is not included then there is no purpose to the Regulations as it does not provide a separate system for qualifying determinations to that of an ordinary complaints procedure. This would also provide applicants with the confidence that the application for review is being independently considered.

It was suggested that to aid the fostering sector, a national register of foster carers could be introduced which would make final decisions on a foster carer's continued suitability to remain on or be added to a national register. All qualifying determination decisions regarding someone's suitability to continue to be approved would be referred to the registration body by fostering service providers, and that body would make the final decision.

It was felt that the need to access a complaints process could be reduced by addressing issues earlier in the decision-making process to prevent the need of a qualifying determination. This early identification of issues could be achieved through accessing advice and mediation support to work with agencies and foster (including prospective) carers and prospective adopters. The Fostering Network is currently piloting this concept in Wales via the Fostering Communities programme and the outcomes of this pilot could be taken into consideration in supporting this process in the future.

There was a consensus that there needs to be good practice guidance in line with the Regulations which will make clear what the joint independent investigator/provider complaints procedure conclusion and recommendations can amount to. There also needs to be clear direction on the process to be followed such as an all Wales procedure which includes timescales and clarity that the new review process is completely separate from agencies' ordinary complaints procedure, which has an independent element added in Stage 2. This new process should have an independent element, in the form of the independent investigator, right from the start. The process needs to be accessible to all, well publicised and visible and committed to continuous improvement of service for the benefit of all users.



It was suggested that costs of utilising agencies complaints procedures would be an issue and the option of transferring resources to local authority budgets should be considered to support the process and commissioning of suitable independent practitioners and services to investigate effectively. It was proposed that, if needed, agencies could develop a spot purchase arrangement with an organisation who would be able to undertake review investigations.

**1. If you are a fostering or adoption service provider, how do you envisage the independent investigation element of the process working within your organisation?**

It was suggested that to ensure that there is sufficient independence in the process, there would need to be either an officer suitably qualified but outside the fostering or adoption agency who will engage in investigations; an alternative would be to secure this provision as a commissioned service.

The general consensus was that the independent investigator would need to have the appropriate skills, experience and qualifications to manage the investigation. It was felt however that this may present some challenges as there may be insufficient people within Wales with the relevant experience and knowledge to undertake an investigation of this complexity. It was suggested that a system whereby all investigators are offered the same fee should be considered.

An option that was presented including encouraging agencies to either develop reciprocal arrangements for providing independent investigators or use independent investigators they already use for the independent element of their ordinary complaints procedures. If independent investigators are in need of up to date information and advice on particular policy and practice then they have the option of accessing an independent consultant although there would be additional costs associated with this.

**2. Do you think this change will be more cost effective and less bureaucratic than the current IRM function? Please give reasons.**

There was a mixed response, with some respondents agreeing that the new process may reduce bureaucracy, be more cost efficient and would help streamline processes with those in existence, to reduce complexity for service users. Others disagreed and confirmed that having looking at the mechanics of operating the function through the agencies complaints procedures, the option would enhance costs as well as providing more complexity and less consistency.

There was however a majority acceptance that the IRM is a costly and bureaucratic system for the level of qualifying determinations presented to it.

It was suggested that a reciprocal arrangement between local authorities in the region or between agencies could reduce costs significantly however questions were raised on how this could work in practice. There were also questions raised on how this agreement could work for independent fostering agencies as there are commercial sensitivities, time and cost aspects to be considered; some smaller agencies would not be able to support this function. It was therefore felt that this arrangement would not be feasible for the independent fostering sector

It was also suggested that to reduce the cost and promote consistency across local authorities there could be a regional service level agreement with an independent investigator who would investigate as required across the region with the relevant corporate complaints department.

There was consensus that the independent investigator referring back to the Panel/Agency Decision Maker would be less bureaucratic as these individuals would already be familiar with the case and this would mirror the function of the IRM.

**3. Will this new procedure offer consistency across providers? If no, what could be done to ensure consistency?**

Overall it was felt that the new procedure would not offer a consistent approach across Wales and would result in numerous different processes being adopted by agencies across the whole country. It was raised that an all Wales policy and protocol to support the process would offer some consistency in the approach. The introduction of either statutory guidance or a good practice guide to accompany the changes, including clarity about what constitutes a complaint would go some way to provide elements of consistency however it was felt that this would be open to different interpretation by agencies.

It was also felt that the Regulations need to reflect the true independency needed for the investigator such as not being recruited from another team within the same agency/provider.

To support the fostering sector, it was proposed that a central register of foster carers introduced in Wales would ensure quality assurance; a national standard within the foster care workforce as a level of training would be required to get onto the register, in addition to continued training to remain on the approved foster carer list; therefore providing consistency across providers.

**4. As a service user do you feel the proposed changes continue to offer you a transparent and independent process to review decisions taken by fostering and adoption panels?**

It was strongly felt that the Regulations in their current format do not offer an independent process to review decisions. It was recommended that the independent investigator function would need to be sufficiently independent of the agency/provider and this needs to be laid out in the Regulations and/or associated guidance. There was also concern over the level of specialist knowledge that the investigator would have to support the review function.

**5. Do you have any comments on whether the proposed changes will affect decisions made in relation to adoption disclosure applications (where an adoption agency is proposing that protected information from adoption records will be disclosed or withheld, contrary to the views expressed by the person the information is about)?**

It was generally felt that as there has been no such applications to date, the proposed changes would have minimal impact on this type of work. It was suggested that there is no reason a robust assessment of such applications could not be made by the agency/provider involved or the independent investigator.

It was suggested however that the occurrence of these applications could change in the future and clear guidance would therefore be needed.

**6. We would like to know your views on the effects that the proposals would have on the Welsh language, specifically on opportunities for people to use Welsh and 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?**

It was recognised that the Welsh language should be promoted at all times and the independent investigator, must offer Welsh as an option for investigating and concluding the specified complaint as the complainant desires.

The general consensus was that as all agencies/providers comply with Welsh language standards, this would not have a positive, nor negative impact. There is no reason therefore to believe that the Welsh language would be treated less favourably.

For local authorities, it was suggested that it may be more cost effective to get Welsh Language support with the new system as they are geared up to offer this and funded centrally to do so

It was highlighted that due to the nature of the issues under discussion, translation services may not be appropriate in such circumstances. Concern was therefore raised that recruiting Welsh speakers with the required knowledge and expertise is likely to prove difficult for agencies/providers to fulfil. There is therefore a risk that quality will be compromised.

- 7. Please also explain how you believe the proposals could be formulated or changed so as to have 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**
  - **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**

This would be addressed by including clear statements about the use of the Welsh language in the Regulations, any supporting guidance and associated publicity of the Regulatory changes.

Several respondents confirmed that agencies/providers would follow their own Welsh language and Equal opportunity provision; it would therefore be their responsibility to ensure that the service can be delivered bilingually and promoted to ensure that citizens feel confident to be able to access services in the Welsh language.

**8. Do you have any further comments on the proposed requirements set out in the Adoption and Fostering (Specified Complaints) (Miscellaneous Amendments and Revocations) (Wales) Regulations 2020?**

The need to maintain the independence, transparency and consistency of the process was raised and there were strong concerns that the Regulations take away a truly independent and consistent process which is valued by the sector. It was reiterated that the level of

independence of the investigator will need to be made clear to applicants requesting a review.

It was suggested that there needs to be a national protocol to support the changes to ensure consistency throughout Wales.

Feedback highlighted that the current providers of the IRM have a strong track record in children's rights. Any independent investigator should have a commitment to, and experience of, children's rights. It was felt that this issue can be addressed through guidance.

## **2.2 Welsh Government Response and the Way Forward**

Welsh Government has considered the responses outlined from the consultation and would like to convey its appreciation to all respondents for taking the time to provide the valuable feedback which will assist in progressing the route by which qualifying determinations will be reviewed from 1<sup>st</sup> April 2021.

The feedback clearly highlights the apprehensions that both the adoption and fostering sectors feel about bringing the review of qualifying determinations function within agencies' complaints procedures.

It is evident that the sectors have welcomed the transparency, independence and expertise offered through the IRM function which is directed through the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010.

It has done this by providing a thorough review of the proposed decision and a recommendation with reasons to the Agency Decision Maker. This has been an important quality assurance exercise for applicants and Fostering Service Provider /Adoption Agency alike. Applicants have also valued it as it has provided the opportunity to have their case independently considered and to bring to the Review Panel's attention any evidence that they consider was not properly considered by the Fostering Service Provider/Adoption Agency.

For agencies it has underwritten their responsibility to foster carers and adopters to operate within the framework of adoption and fostering Regulations. In addition to making a recommendation either agreeing or disagreeing with the proposed decision, the Review Panel has also provided feedback for the Fostering Service Provider Adoption Agency on its policy, practice and procedure and any learning the review feels it would be relevant for them to consider from the case.

The Welsh Government's aim is to increase the number of foster carers and adopters in Wales to support our looked after children population. We encourage people from a variety of backgrounds to consider fostering or adoption, and also to encourage more Welsh-speaking placements. It is therefore imperative that there is integrity and transparency in the system to encourage prospective foster carers and adopters to come forward and that they feel confident that no-one is excluded without full consideration and review.

The consultation has raised several areas of concern with regard to introducing the Adoption and Fostering (Specified Complaints) (Miscellaneous Amendments and Revocations) (Wales) Regulations 2020. Key issues that were raised with the proposed

approach included lack of independency, transparency, and consistency. It was also highlighted that the anticipated cost savings may not be attained and it may be difficult to acquire the specialist knowledge needed to support a review. It was felt that the proposed approach would also be burdensome for the independent sector in terms of cost and time and it would therefore present more difficulties for these agencies to set up a robust system of review.

Although the Regulations could be changed to take into consideration some of the suggestions received through the consultation, the Welsh Government feels that this would not alleviate all concerns that have been expressed. Our adopters and fosters carers in Wales are extremely valued and provide a vital role in providing loving and stable homes for some of the most vulnerable children in our society. A qualifying determination can be life-changing decision and our intention is that individuals should therefore have the right to access a process which has the appropriate levels of independence and consistency and is valued, to review the decision and to enable their voice to be truly heard.

We are aware that the IRM receives relatively low levels of applications and this could be linked to more robust assessments and better decision making, or better established complaints procedures which gives applicants an alternative route for having their concerns heard.

It is essential that we reflect on the success of the IRM and the value that it brings to the integrity of both the adoption and fostering sectors. It is therefore important that we introduce a system which builds on the success of the IRM, which aims to reduce complexity, strengthens integration and improves consistency within the sectors, whilst maintaining the respected functions that have proved to be valuable over the years. In doing so we must be mindful that we need to future proof the process to ensure we can minimise the effects of any future challenges.

In response to the consultation responses, Welsh Government will:

- **Retain** the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010, with a view that the IRM function will continue to operate as a standalone service managed by a separate entity.
- **Not bring into force from 1<sup>st</sup> April, the draft** Adoption and Fostering (Specified Complaints) (Miscellaneous Amendments and Revocations) (Wales) Regulations 2020
- **Re-procure** the contract for the Independent Review Mechanism, building in future proofing to enable it to effectively respond to challenges and changing environments. This in turn will ensure that Wales continues to have a viable, consistent and independent review mechanism for qualifying determinations.

## Annex A – List of respondents

No	Confidential Y / N		Organisation/On behalf of
1.	✓		Anonymous
2.		✓	Foster Talk Ltd
3.		✓	Public Health Wales
4.		✓	The Fostering Network
5.		✓	National Fostering Framework, Gwent
6.		✓	National Adoption Service for Wales
7.		✓	S Hall, Clapham England
8.		✓	Ynys Mon County Council
9.		✓	Powys County Council
10.	✓		Anonymous
11.	✓		Anonymous
12.		✓	Public Service Ombudsman
13.		✓	Children's Commissioner for Wales
14.		✓	Flintshire County Council