



Llywodraeth Cymru
Welsh Government

IMPACT ASSESSMENT

Virtual medical assessments – prospective adopters: children’s rights impact assessment

The introduction of a virtual medical assessment process for prospective adopters, during COVID-19.

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Contents

Introduction

Background

Legislative background

Explain how the proposal is likely to impact on children's rights

Articles

Introduction

All completed Children's Rights Impact Assessments must be emailed to CRIA@gov.wales.

Describe and explain the impact of the proposal on children and young people

- how will the proposal affect the lives of children, positively and negatively?
- how will the proposal affect different groups of children (e.g. children who have experienced adverse childhood experiences (ACEs), children living in poverty, children with a disability, children living in Welsh speaking households and children in Welsh medium education etc.?)
- what evidence have you used to inform your assessment, including evidence from children or their representatives?
- how have you consulted with children and young people? If you haven't, please explain why
- what other evidence would inform the assessment

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Background

The Adoption Agencies (Wales) Regulations 2005 (in regulation 26(a)) include a requirement that an adoption agency must obtain a written report from a registered medical practitioner about the health of the prospective adopter following a full medical examination. During the COVID-19 crisis officials are aware that the NHS has significantly reduced the ability to provide these health assessments for prospective adopters as priorities have been refocussed towards dealing with the emergency situation.

The adoption sector has swiftly transformed processes and the way it works to ensure services can continue to be delivered during these unprecedented times. This includes utilising remote technology to ensure adoption support continues to be available and functions such as adoption decision panels continue to operate.

The inability for prospective adopters to access a full examination from a medical practitioner however has resulted in a 'bottleneck' in the system which is preventing the adoption process from progressing and enabling children to be moved on to their adoptive families.

The proposal therefore is to introduce a virtual medical assessment process whereby if a face to face consultation cannot be undertaken, then the GPs have the opportunity to follow the virtual assessment route.

It is proposed that this new arrangement is put in place on a temporary basis to address the issue whilst face to face assessments are unable to be undertaken during COVID-19. This will be reviewed periodically and the sector will be advised when they should revert back to the 'usual' process of assessment.

It is intended that putting these temporary measures in place will reduce further delays for children being placed with their adoptive families.

Legislative background

Adoption Agencies (Wales) Regulations 2005

With adoptive families during care proceedings means that children have to live longer The Adoption Agencies (Wales) Regulations 2005 makes provision for the assessment and approval of prospective adopters.

The powers enabling these Regulations to be made are contained in a number of sections within the Adoption and Children Act 2002. They are as follows:

- section 9(1)(a) which allows regulations to make provision for any purpose relating to the exercise by local authorities or voluntary adoption agencies of their functions in relation to adoption
- section 11(2) allows regulations under section 9 to prescribe the fees which may be charged by local authorities in respect of the provision of prescribed facilities of the Adoption Service where the conditions in subsection (3) are met
- section 12 allows regulations under section 9 to establish a procedure under which any person in respect of whom a qualifying determination has been made by an adoption agency may apply to an independent panel for a review of that determination
- section 45(1) of the 2002 Act allows regulations under section 9 to make provision as to the matters to be taken into account by an adoption agency in determining, or making any report in respect of, the suitability of any persons to adopt a child. Subsection (2) provides that, in particular, the regulations may make provision for the purpose of securing that, in determining the suitability of a couple to adopt a child, proper regard is had to the need for stability and permanence in their relationship. This power, which is subject to the affirmative procedure, is used to make the Adoption Agencies (Wales) (Amendment) (No. 2) Regulations 2020 to require adoption agencies to have proper regard to the need for stability and permanence in a couple's relationship when assessing the couple's suitability to adopt
- section 54 allows regulations under section 9 to require adoption agencies in prescribed circumstances to disclose in accordance with the regulations

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prescribed information to prospective adopters

- section 83(4) and (5) allows regulations to require a person intending to bring, or to cause another to bring, a child into the United Kingdom in certain circumstances and conditions to be assessed and approved as suitable to adopt by an adoption agency

Social Services Well-being (Wales) Act 2014

The power in section 174(7) of the Social Services Well-being (Wales) Act 2014 is also used. Section 174 requires local authorities to establish a representations procedure for considering representations (including complaints) from certain persons and subsection (7) allows regulations to make further provision about that procedure.

Regulation and Inspection of Social Care (Wales) Act 2016

Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') provides the statutory framework for the regulation and inspection of social care services and the regulation of the social care workforce in Wales. It enables Welsh Ministers to prescribe through regulations, the requirements to be placed on service providers and responsible individuals (RIs) of 'regulated services' which by virtue of section 2 (1) (d) and schedule 1 paragraph 4, include voluntary adoption agencies and adoption support agencies not run by local authorities.

Impact of delayed decision making and placement

Delayed placement with uncertainty and experience further insecurity throughout the process as they will remain within the fostering system.

Children who have been abused and neglected often need specialist interventions to address the consequences of the abuse and neglect, as well as the consequences of separation from their birth family. One consequence of delayed decision making is that as children grow older they are likely to benefit

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less from these interventions, or to require longer and more specialist interventions.

For children who are placed for adoption, delays can have an adverse effect on their chances of being adopted. The chances of being adopted reduce by nearly a half for every year of delay (Selwyn et al, 2006) and age at joining a new family is the variable that has the most impact on adoption outcomes. Children's emotional and behavioural well-being also affect the likelihood of them being adopted; the fewer emotional and behavioural difficulties they have the more likely they are to be adopted.

The damage that is done to a child's development through early mistreatment or neglect can be exacerbated further by frequent moves between temporary care placements. Research has shown that instability in care often leads to a downward spiral: worsening emotional and behavioural difficulties, further instability, poor educational results, unemployment and a lifetime of poverty. These emotional and behavioural difficulties can increase the chance of adoptive placement breaking down. Barnardo's underline this point by stating that stability needs to be seen as a safeguarding issue. The importance of timeliness in decision-making and placement with an adoptive family, and of respecting the child's need for stability and permanence, especially in the very early years of a child's life are important factors to maintain during the crisis.

It is therefore imperative that delays in placing a child with adoptive parents are minimised as much as possible during the COVID-19 crisis. The National Adoption Service in Wales along with adoption agencies in Wales have worked hard over the past several years to minimise the time it takes to place a child with its adoptive family. It is important that we do not lose this momentum during the pandemic as these children are some of the most vulnerable children in Wales whose have complicated needs. Providing permanence and stability will enable them to flourish and have the same life chances as any other child, enabling them to live rich and fulfilled lives.

The current pressure also has an adverse impact on the wider placement system and in particular foster care capacity. If children cannot move on to their permanent families then they are not freeing up foster care placements for other vulnerable children who are entering the care system. This will result in a

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negative supply of placement places.

There is also the risk of the ongoing need to increase the recruitment of prospective adopters, if the issue is not resolved then there will be a reduction in adopters' available in Wales post COVID-19.

Proposal

The introduction of a virtual medical assessment process in Wales during the COVID-19 crisis, where face to face examinations are unable to take place will go some way in supporting the adoption process as it will ensure prospective adopters can access medical assessments and move on to decision panel, thus allowing the adoption process to progress. The introduction of the process will enable prospective adopters to be approved, this in turn will enable children to move through the system and be placed in permanent homes in an efficient and timely manner which is in the best interests of the child as there will be a range of adopters available to enable the matching process to take place.

How will the proposal affect the lives of children, positively and negatively?

The proposal will provide a positive effect on children in Wales. Currently the approval of prospective adopters is on hold due to the inability for face to face medical assessments for prospected adopters to be undertaken. This in turn will prevent children in the care systems who are awaiting placements with permanent families to progress.

The introduction of the virtual medical assessment for prospective adopters where a face to face examination is not possible will allow the adoption process in Wales to progress, thus enabling children to continue to be placed with permanent families.

This proposal offers no negative effect for the child. All safeguarding measures are in place which compare to that of the 'usual' face to face examination pre COVID-19.

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There is always the risk that a health concern comes to light after the GP report and Medical Adviser opinion; this risk is also present during the face to face consultations in place pre COVID-19. When this happens, further information is sought and investigations/referrals are carried out and the situation is reappraised. An important part of the assessment of adopters is honesty and it is expected that if there are any changes to circumstances (including health), the adoptive applicant will bring this to the attention of the assessing social worker or agency. This is at any point pre or post approval.

There are numerous checks and balances in the system that guard against this and the virtual assessment proposal mirrors these checks. For example:

- if there is any doubt or uncertainty the GP is able to recommend that a full examination is needed
- the GP report is reviewed by the Medical Advisor who will not recommend approval if there is any doubt
- the medical advisor can contact the GP before making a recommendation if needed and/or ask for more information including reports from specialist consultants

The adoption assessment process is robust and has numerous other 'breaks' in it as outlined below:

- the adoption service on receipt of the medical advisor recommendation can seek further information and has the option to raise questions if there is any concern that a medical examination must happen before the application can proceed to decision panel
- other elements of the assessment can enable information to surface that indicates potential medical issues not identified thus allowing for it to be explored and further medical advice obtained
- at decision panel there is a further potential 'brake' if the panel has doubts/concerns as they can ask for more information i.e. an examination
- likewise again another potential 'brake' if Agency Decision Maker has doubts/concerns

How will the proposal affect different groups of children

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(e.g. children who have experienced adverse childhood experiences (ACEs), children living in poverty, children with a disability, children living in Welsh speaking households and children in Welsh medium education etc?)

Adoption has changed in the last 30 years, in the past, most adopted children were relinquished by their birth parents as infants. Now, a majority of children who go on to be adopted are removed from their birth families because they have experienced trauma within their birth families; a high percentage of adopted children have suffered adverse childhood experiences (ACEs) such as abuse and neglect. For many children this begins in the womb, with exposure to alcohol, other substances and domestic abuse. Some adopted children may also be at increased genetic risk for developmental difficulties (such as ADHD or autism spectrum conditions) and mental health difficulties. There is also a high number of children who have experienced living within poverty conditions.

The option of adoption is available for all children if it is deemed to be the best decision for the child to experience stability. Adoptive placements are approved on the best interests of the child and which meet their individual needs, therefore adoption agencies must take into consideration the child's race, religion and culture during the matching process. There would be the need to respect the need for a Welsh speaking child to be placed with a Welsh speaking family if this was indeed deemed to be in the child's best interest.

The proposal will therefore support all the children as it enables the adoption process to recommence during the COVID-19 crisis thus allowing children to be matched and placed with their permanent families.

What evidence have you used to inform your assessment, including evidence from children or their representatives?

The National Adoption Service submitted the proposal to the Welsh Government as the inability to undertake face to face medical examinations has provided a

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'bottleneck' in the ability to progress approval of prospective adopters and placement of children with adoptive families.

The National Adoption Service has provided statistics from the Head of Children's Services in all the Regional Collaboratives in Wales which highlights that currently there are circa 152 assessments in the system with 82 of these currently unable to progress to approval due to the absence of a medical assessment. These individuals are due to progress to decision panel in July and August pending the completion of the medical assessments. The remainder of this 152 will likely to be affected over the coming months.

How have you consulted with children and young people? If you haven't, please explain why

Children and young people have not been consulted. This issue is associated with the effects of the COVID-19 crisis and inability for face to face medical assessments for prospective adopters to take place. The National Adoption Service has been working alongside Public Health Wales, CoramBAAF in England and AFA Cymru in Wales to provide an alternative process to enable the adoption process to continue whilst ensuring all the necessary safeguards are in place. Due to the urgency of the situation consultation has taken place with regional and voluntary adoption services, and Welsh General Practitioners Committee (GPCW) and Royal College of GPs in Wales (RCGP). The change in process will have no effects on the child; once an adopter has been approved a child will be placed in the usual way. There is therefore no need to consult with children and young people as this process is allowing the 'normal' service to continue for them. Not introducing the new process will however prolong the adoption process for these vulnerable children as approval of prospective adopters will be at a standstill.

What other evidence would inform the assessment?

This process has been approved by DfE and is currently being rolled out in England. The Adoption Agencies (Wales) Regulations 2005 provide the scope

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for this temporary change to be introduced.

Explain how the proposal is likely to impact on children's rights

This section requires an assessment, using informed judgement, of the likely impact of the proposal on children's UNCRC rights. It is vital you avoid the assumption that the intended outcomes identified above are the same as the predicted impact on children's rights.

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You will need to carefully consider how the intended outcomes relate to children's rights and what impact they will have. There may be predicted impacts which are not intended outcomes from the proposal.

You should:

- identify which UNCRC articles are most relevant to the proposal
- explain if, and if so – how the proposal maximises, supports or promotes children's UNCRC rights, making connections between the outcomes identified at question 1 and the rights you have identified
- remember that promoting children's rights includes: increasing children's access to their rights, or to services and/or resources that give access to rights, or enabling children to participate and take advantage of their rights. You should explain how the proposal achieves these objectives, if at all. Explain any negative impact on children's rights arising from the proposal, including any reduction in resources available to support policies or programmes
- when considering each of the above ensure you take account of how the proposal will impact on the rights of different groups of children (e.g. children living in poverty, children with disability etc.)

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- refer to any information or evidence that has informed your assessment, including from children or their representatives

The care planning and placement arrangements for a looked after child are set out in the Care Planning, Placement and Case Review (Wales) Regulations 2015 and the Part 6 Code of Practice on Looked After and Accommodated Children. The Fostering Services Regulations provide the legislative framework for the way in which local authority, third sector and private sector fostering services providers meet the needs of children placed with their foster carers.

Articles

This Proposal gives due regard to duties under the United Nations Convention on the Rights of the Child (UNCRC) predominantly:

Article 1 – everyone under the age of 18 has all the rights in the convention; and

Article 2 – the Convention applies to every child whatever their ethnicity, gender, religion, abilities, whatever they think or say, no matter what type of family they come from

The flexible amendments to the Regulations apply to all local authorities in Wales and voluntary adoption agencies when exercising their functions in respect of looked after and accommodated children. They determine how the local authorities assess and approve prospective adopters and equally how they ensure they meet the matched children's care and support needs, which includes having due consideration about the child's heritage, ethnicity, religion and their preferred language.

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Article 3 – all organisations concerned with children should work towards what is best for each child

The flexible arrangements around the two stage assessment and approval process for prospective adopters will enable local authorities to progress the adoption process. This will act in the best interests of the child as it will enable a supply of prospective adopters to be readily available for some of the most vulnerable children in our society to be matched and placed with. This will ensure their fundamental needs are met and that they are offered the same life chances as other children.

Article 4 – governments should make these rights available to children

The flexible arrangements around the two stage assessment and approval process for prospective adopters will enable a supply of adopters to be readily available. This will create a consistent right for every child in Wales to have the opportunity to be placed with an adoptive family which will enable the child to experience the same support and life chances as any other child.

Article 6 - all children have the right of life. Governments should ensure that children survive and develop healthily

The flexible arrangements around the two stage assessment and approval process for prospective adopters will enable a consistent supply of adopters to be available. This will provide the opportunity for a child with a placement order to be placed with an adoptive family which will provide them with all the support and care needed to reach their personal well-being outcomes. The local authority will provide all the support needed by the child and adoptive family to ensure the placement is successful and to enable the child to continue to flourish.

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Article 8 (protection and preservation of identity)

The child or young person is supported by their adoptive parents to maintain family ties, including personal relations and direct contact with their birth parents and siblings (subject to any restrictions imposed by the courts).

Article 12 (respect for the views of the child)

The child or young person is able to freely express their views at every stage, and is supported in making their views known. The child or young person's views are given due weight when decisions are made.

Article 13 (freedom of expression)

The child or young person receives appropriate information about the adoptive placement, suitable to their age and level of understanding, and support in understanding this information.

Article 19 – governments should ensure that children are properly cared for, and protect them from violence, abuse and neglect by their parents or anyone else who looks after them

The flexible arrangements around the two stage assessment and approval process for prospective adopters support Article 19 as it enables a child to be placed with an adoptive family. The process is regulated to ensure all children are protected from violence abuse and harm. Local authorities provide all the necessary support to safeguard the child as the placement progresses.

Article 20 – children who cannot be looked after by their own family must be looked after properly, by people who

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respect their religion, culture and language

When local authorities are considering making arrangements for an adoption placement they must consider the child's race, religion and culture. The Adoption Order must take into account any help the child will need to maintain these links.

Article 21 – when children are adopted the first concern must be what is best for them

The same rules apply whether the children are adopted in the country where they were born or taken to live in another country.

The legal framework for adoption remains the Adoption and Children Act 2002. It requires that a local authority is to provide an adoption service, including an intercountry adoption service within its area and to ensure there is a consistent delivery of high quality adoption services across Wales.

Article 23 – children who have any kind of disability should have special care and support so that they can lead full and independent lives

When exercising social services functions in relation to disabled people who need care and support, local authorities must ensure that their emotional and physical well-being needs are met at all times.

Article 24 (health and health services)

Children in adoptive placements have their health and development needs met.

Article 28 – every child has the right to an education

Primary education must be free. Secondary education must be available to every child. Discipline in schools must respect children's human dignity. Wealthy countries must help poorer countries achieve this.

Article 29 – education should develop each child's personality and talents to the full

It should encourage children to respect their parents, and their own and other cultures.

Local authorities must ensure that a significant range of services are provided to all children and young people (which includes looked after, accommodated and adopted children).

Article 33 – the Government should provide ways of protecting children from dangerous drugs

Article 34 – governments must protect children from sexual abuse and exploitation

Article 36 – governments must protect children from all other forms of exploitation that might harm them

The overall purpose of the Regulations is to safeguard and promote the well-being of children who have been adopted and to enable them to achieve recovery and healing from past harm. The placement of children for adoption aims to promote personal well-being outcomes, which includes protection for abuse and neglect.

Placement with a stable and supportive adoptive family, is fundamental to the supporting a vulnerable child who requires care and support to aid their development and support their well-being outcomes. The child's voice is central to the assessment, planning and review process and local authorities/agencies must ensure that they are given some choice about the services which support them once an adoption order/placement has been granted, ensuring they are able to influence the quality and direction of the support they receive.

The key positive impacts of this proposal include, children will be matched more quickly with suitable adoptive families than the current delays caused by COVID-19, and therefore reducing the time they spend within the care system.

Changes to the assessment and approval process for prospective adopters will also improve the information and support provided to prospective adopters, children, young people and their families about the care and support of services that will be provided to them. As well as giving them a genuine voice in over, the care, adoption process and support they receive (via reviews) from the service provider.

No conflicts with any UNCRC articles were identified.

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