

Number: WG40703.



Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

**Consultation on the proposed Adoption and Fostering
(Specified Complaints) (Miscellaneous Amendments and
Revocations) (Wales) Regulations 2020**

Date of issue: 7th September 2020
Action required: Responses by 2nd November 2020

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

Overview

The Welsh Government is seeking views on the draft Adoption and Fostering (Specified Complaints) (Miscellaneous Amendments and Revocations) (Wales) Regulations 2020

Further information and related documents

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

Contact details

For further information or queries regarding this consultation, please email:
PlantSynDerbynGofal@llyw.cymru

General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

e-mail:

Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113

Website: <https://ico.org.uk/>

What is this consultation about?

This consultation seeks views on the proposed changes that will be introduced by the Adoption and Fostering (Specified Complaints) (Miscellaneous Amendments and Revocations) (Wales) Regulations 2020. These Regulations will bring about changes to the Independent Review Mechanism (IRM) for qualifying determinations.

The Welsh Government is inviting responses to the consultation questions, which will help shape the final process that will replace the IRM and which will feed into the finalisation of the requirements set out within the Adoption and Fostering (Specified Complaints) (Miscellaneous Amendments and Revocations) (Wales) Regulations 2020.

This consultation will run between 7th September and 2nd November 2020.

A response form is provided at the end of this document.

1. Introduction

The IRM manages the process by which prospective or approved adopters, and prospective or approved foster parents, can seek a review of a 'qualifying determination' made by an adoption or fostering provider. This includes local authorities and independent providers.

Qualifying determinations are made where an agency is proposing not to approve an individual as a foster parent or prospective adopter, or to terminate or, in the case of a foster parent, make a change to the individual's terms of approval. The IRM can also consider adoption disclosure applications, where an agency proposes that protected information from adoption records will be disclosed or withheld, contrary to the views expressed by the person the information is about.

To inform the decision making process we have held several engagement events across Wales to seek views on the current mechanism for qualifying determinations and have undertaken two separate consultations (for adoption and fostering) to seek more detailed feedback. Further details associated with these consultations can be found in section 6.

2. Background

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 review process is carried out by a review panel which is completely independent of the fostering services provider or adoption agency concerned. The function of the independent review panel is to consider each case anew and to make a recommendation to the fostering services provider or adoption agency. This is not an appeals process, and the review panel **cannot** overturn the fostering agency or adoption agency's qualifying determination. The final decision remains with the fostering services provider or adoption agency decision maker.

The IRM promotes the rights of children through providing suitable foster parents or adoptive parents for children. Adoption provides a stable family environment to some of the most vulnerable children in our society, and fostering provides stable placements for children and young people who otherwise would be at risk of exclusion, poverty and reduced life chances. Welsh Government policy is to encourage people from a variety of backgrounds to consider fostering or adoption, and also to encourage more Welsh-speaking placements. By providing an independent review mechanism when a prospective carer's or adopter's terms of approval are changed or terminated or the individual's application is turned down, the IRM helps ensure that nobody is excluded without due consideration and review.

3. Adoption disclosure

Under the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005, the IRM can also consider 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. The regime established by these Regulations applies only in relation to adoptions which took place on or after 30 December 2005. In relation to persons adopted before that day, the Adoption Agencies Regulations 1983 (S.I.1983/1964) continue to have effect (through savings provisions).

'Protected information' is defined as information kept by an adoption agency, which is about an adopted person, and which includes identifying information. 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).

If an adopted adult who was adopted on or after December 30th 2005 or a birth relative of someone adopted on or after December 30th 2005 has been given a qualifying determination by the adoption agency in relation to the request for disclosure of information, with which they do not agree, they can apply to the IRM for a review of the adoption agency's qualifying determination

A review will be conducted by a review panel which is independent of the adoption agency. The review panel will make a fresh recommendation to the agency as to whether or not the agency should proceed with its original determination. It cannot overturn the adoption agency's determination because the IRM is not an appeals process

4. Current Contracting Arrangements

From 1 April 2010, the Welsh Government outsourced the IRM to preserve operational independence. The IRM is currently managed by Children in Wales, under contract to the Welsh Government. Further details about the IRM may be found at <http://irm.cymru/>. This site is written for applicants and agencies, and explains the different types of qualifying determinations, the application process and what IRM panels do. It also contains the IRM's annual reports.

5. The case 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.

Since 2010 the IRM has been contracted out and subject to a competitive tendering process which has included careful consideration of the overall cost and value for money of running the service in line with the Regulations.

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.

We requested views on whether, in the longer term, there is a need to retain a system of independent reviews or whether there are alternative mechanisms which could be put in place to ensure that foster parents / prospective foster parents who disagree with decisions about their terms of approval can make their views known.

The findings from both consultations were very similar and there was majority support for replacing the IRM with an alternative system of redress.

Welsh Government recognises through feedback from applicants, panel members and fostering and adoption agencies that the IRM is valued for its independence and its role in providing quality assurance of decisions taken by fostering and adoption panels. Applicants particularly value the transparency of the review process and the feeling that they and their concerns have been properly heard. The findings and recommendations from IRM panels also contribute to learning and good practice for fostering and adoption agencies and practitioners.

Feedback received however, has suggested that the IRM is an expensive and bureaucratic service to run in relation to the limited number of applications received and reviews undertaken each year. As the IRM is demand-led, the actual number of applications and reviews varies from year to year.

The table below indicates the limited number of applications and reviews undertaken between 1st April 2010 and 31st March 2020.

	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20
Applications	11	11	12	12	13	5	8	12	8	12
Review Panels	8	8	8	8	8	5	6	9	5	8

The costs for the IRM fall into two parts: a fixed element to run the service, and a cost per review. As an example - allowing for eight reviews in 2019-20, the total cost of the service was around £27,776 (this is in addition to the annual fixed service element of £44,348).

The main concern among fostering services providers and adoption agencies was value for money, and whether cases were coming for review unnecessarily – i.e. that this was an expensive way of dealing with issues that could be addressed earlier in the assessment / decision-making process. Fostering service providers and adoption agencies are expected to contribute to a proportion of the review costs – currently £2,403 per review.

Various reasons have been put forward for the continuing low numbers of applications for review including:

- linkages to more robust assessments and better decision making,
- some new complaints procedures now include a voluntary built-in element of independence, which are providing potential applicants with an alternative route for having their concerns heard.

The IRM does not preclude people from using the fostering service providers' or adoption agencies' complaints procedures, and feedback from IRM panels suggests that their main value is that applicants feel listened to and that their concerns are heard. There have, to date, been no applications to the IRM in respect of adoption disclosure. The proposed Adoption and Fostering (Specified Complaints) (Miscellaneous Amendments and Revocations) (Wales) Regulations 2020 include provision for adoption disclosure requests.

6. What changes are we proposing?

The Welsh Government is seeking views on the proposed change to the current IRM function that will come into force through the Adoption and Fostering (Specified Complaints) (Miscellaneous Amendments and Revocations) (Wales) Regulations 2020

This change will require the revocation of the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010. This will mean that the entitlement to an independent review will be removed and prospective or existing foster parents or adopters who wish to challenge a qualifying determination (including adoption disclosure applications) will 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 will make changes to the fostering and adoption Regulations to ensure that such complaints can be heard, and to guarantee 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 will ensure that the complaints procedures are robust enough to act as an alternative to the existing IRM. These Regulations will:

- require a service provider to ensure that their complaints procedure includes provision to consider complaints about specified decisions (specified complaints) which broadly equate to the decisions that currently constitute 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 resolve the specified complaint;
- 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.

Consultation Questions, return form:

Name:			
Organisation (if applicable):			
Your address:			
email / telephone number:			
Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here	Yes:	No:	

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

For any challenges please state how they could be overcome?

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

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

--

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

Yes:
No:

5. **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?**

--

6. **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)?**

--

7. **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?

- 8. 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**

- 9. 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?**

NEXT STEPS

The data from your response will be used to inform the policy direction for the Adoption and Fostering (Specified Complaints) (Miscellaneous Amendments and Revocations) (Wales) Regulations 2020.