

Draft Regulations laid before Senedd Cymru under section 187(2)(f) of the Regulation and Inspection of Social Care (Wales) Act 2016, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2020 No. (W.)

**SOCIAL CARE, ENGLAND
AND WALES**

**The Adoption and Fostering
(Specified Complaints)
(Miscellaneous Amendments and
Revocations) (Wales) Regulations
2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2 of these Regulations makes amendments to two sets of Regulations made under the Social Services and Well-being (Wales) Act 2014 that regulate the provision of adoption and fostering services provided by local authorities, and two sets of Regulations made under the Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”) that regulate the provision of adoption and fostering services provided by regulated service providers who are registered under the provisions of the 2016 Act.

The amendments insert new provision into the arrangements for the maintenance and operation of a complaints policy and procedure that local authorities and regulated service providers are required to make to include provision about arrangements to investigate and respond to specified complaints.

All providers of adoption and fostering services are required to ensure that the arrangements that they make for the consideration of complaints includes provision for dealing with specified complaints which must include the requirement for the appointment of an independent person to undertake a joint investigation and response to such a complaint.

Specified complaints relate to decisions made by service providers which determine:

(a) that a person is not suitable, or is no longer suitable, to be a foster parent (at all or on the same terms);

(b) that a person is not suitable, or is no longer suitable, to be an adoptive parent;

(c) the response to an application under section 61(4) of the Adoption and Children Act 2002 relating to the disclosure of protected information about adults.

These decisions align broadly with the decisions which constituted “qualifying determinations” for the purposes of the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010 (S.I. 2010/746 (W. 75)) (“the 2010 Regulations”). The 2010 Regulations are revoked by Part 3 and the Schedule (subject to the savings specified in regulation 6).

Part 4 makes amendments which are consequential upon the revocation of the 2010 Regulations.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

Draft Regulations laid before Senedd Cymru under section 187(2)(f) of the Regulation and Inspection of Social Care (Wales) Act 2016, for approval by resolution of Senedd Cymru.

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Made ***

Coming into force ***

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 9(1)(a), 10, 12, 140(7) and (8) and 142(5) of the Adoption and Children Act 2002⁽¹⁾, sections 87, 93(1), 94A and 196(2) of the Social Services and Well-being (Wales) Act 2014⁽²⁾, and sections 27(1) and 187(1) of the Regulation and Inspection of Social Care (Wales) Act 2016⁽³⁾ (“the 2016 Act”).

The Welsh Ministers have consulted such persons as they think appropriate, as required by section 27(4)(a) of the 2016 Act and published a statement about the

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- (1) 2002 c. 38 (“the 2002 Act”). *See* the definitions of “regulations”, “appropriate Minister”, and “the Assembly” in section 144(1) of the 2002 Act. The power conferred on the National Assembly for Wales to make regulations under the 2002 Act were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32). Section 12 of the 2002 Act was amended by section 57 of the Children Act 2004 (c. 31) and by section 34 of the Children and Young Persons Act 2008 (c. 23).
- (2) 2014 anaw 4. *See* section 197(1) for the definition of “regulations” and “specified”.
- (3) 2016 anaw 2. *See* section 189 for the definition of “prescribed”.

consultation as required by section 27(4)(b) of that Act. The Welsh Ministers have laid the statement before Senedd Cymru as required by section 27(5) of that Act.

A draft of these Regulations was laid before Senedd Cymru under section 187(2)(f) of the 2016 Act and has been approved by resolution of Senedd Cymru.

PART 1

Introduction

Title and commencement

1.—(1) The title of these Regulations is the Adoption and Fostering (Specified Complaints) (Miscellaneous Amendments and Revocations) (Wales) Regulations 2020.

(2) These Regulations come into force on [*insert date*].

PART 2

Specified complaints

Amendment of the Local Authority Fostering Services (Wales) Regulations 2018

2.—(1) The Local Authority Fostering Services (Wales) Regulations 2018⁽¹⁾ are amended as follows.

(2) In regulation 39 (complaints policy and procedures)—

(a) after paragraph (5) insert—

“(5A) The complaints policy must include procedures for considering specified complaints made to the local authority provider by persons to whom paragraph (5C) applies.

(5B) A complaint is a specified complaint if it relates to a decision (other than a decision made pursuant to regulation 7(11) of the 2018 Regulations) made by a local authority provider—

(a) in accordance with regulation 8(8) or (9)(b) of the 2018 Regulations (approval of foster parents) that the local authority provider does not consider a person to be suitable to act as a foster parent;

(1) S.I. 2018/1339 (W. 261).

(b) that, following a review undertaken by the local authority provider in accordance with regulation 9 of the 2018 Regulations (reviews and terminations of approval), the local authority provider has decided in accordance with paragraph (9) or (10) of that regulation to terminate, or to revise the terms of, the approval of a person as suitable to act as a foster parent.

(5C) A specified complaint may be made by—

- (a) in the case of a decision referred to in paragraph (5B)(a), the person who is seeking approval to act as a foster parent;
- (b) in the case of a decision referred to in paragraph (5B)(b), the foster parent.”;

(b) after paragraph (6) insert—

“(6A) The local authority provider must ensure that the arrangements made for dealing with specified complaints include arrangements for—

- (a) the appointment of a person who—
 - (i) is not directly or indirectly under the management of the local authority provider, and
 - (ii) has an appropriate level of knowledge, skills and experience to act as an independent investigator who must, together with the local authority provider, consider and provide a response to the complaint;
- (b) the local authority provider and the independent investigator to undertake a joint investigation of the complaint in a manner appropriate to resolve the complaint speedily and efficiently;
- (c) the person who makes a specified complaint to be kept informed, as far as it is reasonably practicable to do so, as to the progress of the investigation;
- (d) the person who makes a specified complaint to 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.”

Amendment of the Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019

3.—(1) The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019⁽¹⁾ are amended as follows.

(2) In regulation 42 (complaints policy and procedures)—

(a) after paragraph (5) insert—

“(5A) The complaints policy must include procedures for considering specified complaints made to the service provider by persons to whom paragraph (5C) applies.

(5B) A complaint is a specified complaint if it relates to a decision (other than a decision made pursuant to regulation 7(11) of the 2018 Regulations) made by a service provider—

(a) in accordance with regulation 8(8) or (9)(b) of the 2018 Regulations (approval of foster parents) that the service provider does not consider a person to be suitable to act as a foster parent;

(b) that, following a review undertaken by the service provider in accordance with regulation 9 of the 2018 Regulations (reviews and terminations of approval), the service provider has decided in accordance with paragraph (9) or (10) of that regulation to terminate, or to revise the terms of, the approval of a person as suitable to act as a foster parent.

(5C) A specified complaint may be made by—

(a) in the case of a decision referred to in paragraph (5B)(a), the person who is seeking approval to act as a foster parent;

(b) in the case of a decision referred to in paragraph (5B)(b), the foster parent.”;

(b) after paragraph (6) insert—

“(6A) The service provider must ensure that the arrangements made for dealing with specified complaints include arrangements for—

(a) the appointment of a person who—

(1) S.I. 2019/169 (W. 42).

- (i) is not directly or indirectly under the management of the service provider, and
 - (ii) has an appropriate level of knowledge, skills and experience
- to act as an independent investigator who must, together with the service provider, consider and provide a response to the complaint;
- (b) the service provider and the independent investigator to undertake a joint investigation of the complaint in a manner appropriate to resolve the complaint speedily and efficiently;
 - (c) the person who makes a specified complaint to be kept informed, as far as it is reasonably practicable to do so, as to the progress of the investigation;
 - (d) the person who makes a specified complaint to 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.”

Amendment of the Local Authority Adoption Services (Wales) Regulations 2019

4.—(1) The Local Authority Adoption Services (Wales) Regulations 2019(1) are amended as follows.

(2) In regulation 31 (complaints policy and procedure), after paragraph (2) insert—

“(2A) The arrangements made by a service provider in accordance with paragraph (2) must include arrangements to investigate and respond to specified complaints made by persons to whom paragraph (2C) applies.

(2B) A complaint is a specified complaint if it relates to a decision made by a service provider—

- (a) in accordance with regulation 30B(9) of the Adoption Agencies (Wales) Regulations 2005(2) (adoption agency decision and notification) that the service provider does not consider the prospective adopter is suitable to be an adoptive parent;
- (b) in accordance with regulation 30D(10) of the Adoption Agencies (Wales)

(1) S.I. 2019/291 (W. 69).

(2) S.I. 2005/1313 (W. 95).

Regulations 2005 (review and termination of approval), following a review undertaken in accordance with that regulation, that the service provider considers that a prospective adopter is no longer suitable to be an adoptive parent;

- (c) in accordance with section 61(4) of the Adoption and Children Act 2002⁽¹⁾ (disclosing protected information about adults)—
 - (i) not to proceed with an application from any person for disclosure of protected information (within the meaning of that Act),
 - (ii) to disclose information to an applicant about a person when that person has withheld consent to the disclosure of the information,
 - (iii) not to disclose information about a person to the applicant where that person has given consent to the disclosure of information.

(2C) A specified complaint may be made by—

- (a) in the case of a decision referred to in paragraph (2B)(a), the prospective adopter;
- (b) in the case of a decision referred to in paragraph (2B)(b), the prospective adopter;
- (c) in the case of a decision referred to in paragraph (2B)(c)(i) or (iii), the applicant;
- (d) in the case of a decision referred to in paragraph (2B)(c)(ii) or (iii), the person the protected information is about.

(2D) The service provider must ensure that the arrangements made for dealing with specified complaints include arrangements for—

- (a) the appointment of a person who—
 - (i) is not directly or indirectly under the management of the service provider, and
 - (ii) has an appropriate level of knowledge, skills and experience to act as an independent investigator who must, together with the service

(1) 2002 c. 38.

- provider, consider and provide a response to the complaint;
- (b) the service provider and the independent investigator to undertake a joint investigation of the complaint in a manner appropriate to resolve the complaint speedily and efficiently;
 - (c) the person who makes a specified complaint to be kept informed, as far as it is reasonably practicable to do so, as to the progress of the investigation;
 - (d) the person who makes a specified complaint to 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.”.

Amendment of the Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019

5.—(1) The Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019⁽¹⁾ are amended as follows.

(2) In regulation 33 (complaints policy and procedure), after paragraph (2) insert—

“(2A) The arrangements made by a service provider in accordance with paragraph (2) must include arrangements to investigate and respond to specified complaints made by persons to whom paragraph (2C) applies.

(2B) A complaint is a specified complaint if it relates to a decision made by a service provider—

- (a) in accordance with regulation 30B(9) of the Adoption Agencies (Wales) Regulations 2005⁽²⁾ (adoption agency decision and notification) that the service provider does not consider the prospective adopter is suitable to be an adoptive parent;
- (b) in accordance with regulation 30D(10) of the Adoption Agencies (Wales) Regulations 2005 (review and termination of approval), following a review undertaken in accordance with that regulation, that the service provider considers that a prospective

(1) S.I. 2019/762 (W. 145).

(2) S.I. 2005/1313 (W. 95).

adopter is no longer suitable to be an adoptive parent;

(c) in accordance with section 61(4) of the Adoption and Children Act 2002⁽¹⁾ (disclosing protected information about adults)—

(i) not to proceed with an application from any person for disclosure of protected information (within the meaning of that Act),

(ii) to disclose information to an applicant about a person when that person has withheld consent to the disclosure of the information,

(iii) not to disclose information about a person to the applicant where that person has given consent to the disclosure of information.

(2C) A specified complaint may be made by—

(a) in the case of a decision referred to in paragraph (2B)(a), the prospective adopter;

(b) in the case of a decision referred to in paragraph (2B)(b), the prospective adopter;

(c) in the case of a decision referred to in paragraph (2B)(c)(i) or (iii), the applicant;

(d) in the case of a decision referred to in paragraph (2B)(c)(ii) or (iii), the person the protected information is about.

(2D) The service provider must ensure that the arrangements made for dealing with specified complaints include arrangements for—

(a) the appointment of a person who—

(i) is not directly or indirectly under the management of the service provider, and

(ii) has an appropriate level of knowledge, skills and experience

to act as an independent investigator who must, together with the service provider, consider and provide a response to the complaint;

(b) the service provider and the independent investigator to undertake a

⁽¹⁾ 2002 c. 38.

joint investigation of the complaint in a manner appropriate to resolve the complaint speedily and efficiently;

- (c) the person who makes a specified complaint to be kept informed, as far as it is reasonably practicable to do so, as to the progress of the investigation;
- (d) the person who makes a specified complaint to 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.”

PART 3

Revocations and savings

Revocations and savings

6.—(1) Subject to paragraph (2), the Regulations specified in the first column of the table in the Schedule are revoked to the extent specified in relation to each in the third column of that table.

(2) The Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010⁽¹⁾ remain in force as they had effect **on 31 March 2021** for the purposes of—

- (a) undertaking or concluding a review of a qualifying determination in response to an application which was received by the Welsh Ministers in accordance with regulation 19 of the 2010 Regulations (application for review of qualifying determination) before **1 April 2021**;
- (b) making an application in accordance with regulation 19 of the 2010 Regulations for a review of a qualifying determination which was notified to the applicant before **1 April 2021**;
- (c) undertaking a review of a qualifying determination following receipt of an application by the Welsh Ministers in accordance with sub-paragraph (b).

(3) In this regulation—

“the 2010 Regulations” means the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010;

(1) S.I. 2010/746 (W. 75), amended by S.I. 2012/1479, 2016/211 (W. 84), 2017/52 (W. 23), 2019/237 (W. 56), 2019/976 (W. 167), 2019/1094 and 2020/163 (W. 31).

“applicant” and “qualifying determination” have the same meanings as in the 2010 Regulations.

PART 4

Consequential amendments

Amendment of the Adoption Agencies (Wales) Regulations 2005

7.—(1) The Adoption Agencies (Wales) Regulations 2005⁽¹⁾ are amended as follows.

(2) In regulation 2 (interpretation) omit the definitions of “independent review panel” and “qualifying determination”.

(3) In regulation 23(1) (prospective adopter’s case record) omit sub-paragraph (g).

(4) In regulation 29 (prospective adopter assessment plan), in paragraph (f) omit “or applying to the Welsh Ministers for a review under regulation 30B(5)(c)”.

(5) In regulation 30B (adoption agency decision and notification)—

(a) in paragraph (5)(a) omit “(“qualifying determination”);”;

(b) in paragraph (5)(c) for “may—” to the end substitute “may submit any representations the prospective adopter wishes to make to the agency.”;

(c) in paragraph (6) omit “or applied to the Welsh Ministers for a review by an independent review panel”;

(d) for paragraph (9) substitute—

“(9) The adoption agency must make a decision on the case but, if the case has been referred to the adoption panel under paragraph (7), the agency must make the decision only after taking into account the recommendations of the adoption panel under both paragraph (8) and regulation 30A.”;

(e) omit paragraph (11).

(6) Omit regulation 30C (information to be sent to the independent review panel).

(7) In regulation 30D (review and termination of approval), in paragraph (10) for “regulation 30B(2) to (11)” substitute “regulation 30B(2) to (10)”.

(8) In regulation 30E (duties of the adoption agency in a section 83 case) omit paragraph (d).

(1) S.I. 2005/1313 (W. 95), amended by S.I. 2020/163 (W. 31). There are other amendments not relevant to these Regulations.

Amendment of the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005

8.—(1) The Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005(1) are amended as follows.

(2) In regulation 8 (disclosure of section 56 information for the purposes of inquiries, inspection etc.) omit paragraph (f).

(3) Omit regulation 13A (independent review).

Amendment of the Local Authorities (Prescribed Fees) (Adoptions with a Foreign Element) (Wales) Regulations 2005

9.—(1) The Local Authorities (Prescribed Fees) (Adoptions with a Foreign Element) (Wales) Regulations 2005(2) are amended as follows.

(2) In regulation 3(5) (power to charge for facilities provided in connection with adoptions with a foreign element)—

(a) immediately following sub-paragraph (b)(i) insert “or”;

(b) immediately following sub-paragraph (b)(ii) omit “or”;

(c) omit sub-paragraph (b)(iii).

Amendment of the Fostering Panels (Establishment and Functions) (Wales) Regulations 2018

10.—(1) The Fostering Panels (Establishment and Functions) (Wales) Regulations 2018(3) are amended as follows.

(2) In regulation 7(4) (assessment of prospective foster parents) omit sub-paragraph (a).

(3) In regulation 8 (approval of foster parents)—

(a) in paragraph (6)(a) omit “(a determination)”;

(b) for paragraph (6)(b) substitute—

“(b) advise the person that within 28 days of the date of the notice the person may submit any written representations that the person wishes to make to the fostering services provider.”;

(c) omit paragraph (7);

(d) for paragraph (8) substitute—

(1) S.I. 2005/2689 (W. 189). Regulation 13A was inserted by S.I. 2006/3100 (W. 284). There are other amendments not relevant to these Regulations.

(2) S.I. 2005/3114 (W. 234), amended by S.I. 2020/163 (W. 31).

(3) S.I. 2018/1333 (W. 260).

“(8) If, within the period referred to in paragraph (6)(b), the fostering services provider does not receive any representations the fostering services provider may proceed to make its decision.”;

- (e) omit paragraph (10);
- (f) in paragraph (11) for “(8), (9)(b) or (10)” substitute “(8) or (9)(b)”;
- (g) omit paragraph (12).

(4) In regulation 9 (reviews and terminations of approval)—

- (a) in paragraph (7)(a) omit “(a “determination”),”;
- (b) for paragraph (7)(b) substitute—

“(b) advise the foster parent that within 28 days of the date of the notice the foster parent may submit any written representations that the foster parent wishes to make to the fostering services provider.”;

- (c) omit paragraph (8);
- (d) for paragraph (9) substitute—

“(9) If, within the period referred to in paragraph (7)(b), the fostering service provider does not receive any representations the fostering services provider may proceed to make its decision.”;

- (e) omit paragraph (11);
- (f) in paragraph (12) for “(9), (10)(b) or (11)” substitute “(9) or (10)(b)”;
- (g) omit paragraph (15).

(5) Omit regulation 10 (information to be sent to the independent review panel).

Name

Deputy Minister for Health and Social Services, under authority of the Minister for Health and Social Services, one of the Welsh Ministers

Date

SCHEDULE Regulation 6

Regulations revoked

<i>Regulations revoked</i>	<i>Reference</i>	<i>Extent of revocation</i>
The Independent Review of	S.I. 2010/746 (W. 75)	The whole Regulations

Determinations (Adoption and Fostering) (Wales) Regulations 2010		
The Health and Social Care Act 2012 (Consequential Provision – Social Workers) Order 2012	S.I. 2012/1479	Paragraph 87 of Part 2 of the Schedule (consequential amendments and other provision)
The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) (Secondary Legislation) Regulations 2016	S.I. 2016/211 (W. 84)	Paragraph 116 of Part 1 of Schedule 3 (amendments to secondary legislation referencing primary legislation repealed by the 2014 Act)
The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2017	S.I. 2017/52 (W. 23)	Paragraph 21 of Schedule 1 (amendments consequential upon the Regulation and Inspection of Social Care (Wales) Act 2016)
The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2019	S.I. 2019/237 (W. 56)	Paragraph 17 of Schedule 1 (amendments consequential upon the commencement of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016)
The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential and Miscellaneous Amendments) Regulations	S.I. 2019/976 (W. 167)	Regulation 3 (Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010)

2019 The Children and Social Work Act 2017 (Consequential Amendments) (Social Workers) Regulations 2019	S.I. 2019/1094	Paragraph 23 of Schedule 3 (amendments consequential on the transfer of functions in relation to social workers)
2019 The Adoption Agencies (Wales) (Amendment) Regulations 2020	S.I. 2020/163 (W. 31)	Paragraph 3 of Schedule 1 (consequential amendments to other regulations)
