



Llywodraeth Cymru
Welsh Government

IMPACT ASSESSMENT

Adoption Agencies (Wales) Regulations 2020: children's rights impact assessment

To enable stage 1 and 2 of the adoption assessment and approval process to run at the same time, during COVID-19.

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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

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- 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) (Amendment) Regulations 2020 make provision for the assessment and approval of prospective adopters by adoption agencies as part of a new two-stage process for that assessment and approval. The regulations set out the process for assessing the suitability of people to adopt a child and the suitability of children to be adopted within a specific timeframe. The Adoption Agencies (Wales) (Amendment) Regulations 2020, came into force on 1 April this year.

Due to the COVID-19 pandemic, concern was raised by adoption stakeholders on the ability to comply with some of the requirements outlined in the new two stage adoption process that was introduced by the new Regulations.

Although the adoption sector had swiftly transformed processes and the way it works to ensure services can continue to be delivered during these unprecedented times, (this included utilising remote technology to ensure adoption support continues to be available and functions such as adoption decision panels continue to operate) there was still a difficulty around completing some of the necessary assessment checks agencies are required to undertake (such as DBS and medical assessments) within the timescales specified by these regulations.

Within the new 2 stage process, all of the basic statutory checks to ascertain 'eligibility' to be assessed as an adopter would be undertaken in stage one of the new process and the formal assessment of 'suitability' (which is undertaken during stage two) can only commence when these are completed and are satisfactory.

These stage one checks include:

- the medical assessment through GPs which is then reviewed and commented on by medical advisors
- DBS checks by the Police
- safeguarding and other necessary checks by local authorities
- employer (and other) references

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The flexibility will enable stage 1 and stage 2 of the assessment process to run concurrently. This means that information that must currently be collected during stage 1 of the approval process can be collected during stage 2.

Legislative background

The Adoption Agencies (Wales) (Amendment) Regulations 2020

The Adoption Agencies (Wales) (Amendment) Regulations 2020 (“the Amendment Regulations”) in the main amend the Adoption Agencies (Wales) Regulations 2005 (“the 2005 Regulations”) by substituting a new Part 4 (Duties of Adoption Agencies in Respect of a Prospective Adopter). Part 4 makes provision for the assessment and approval of prospective adopters by adoption agencies and is amended to introduce a new two-stage process for that assessment and approval.

Under these Regulations, The new Part 4 (Duties of Adoption Agencies in Respect of a Prospective Adopter) provides the following:

- provision for the assessment and approval of prospective adopters by adoption agencies by introducing a new time-limited two-stage process for that assessment and approval, which can be extended in certain circumstances. In Stage One (the pre-assessment process, which is limited to two months) all prescribed checks, including criminal record and health checks, are conducted. In Stage Two (the assessment decision, which is limited to four months) the adoption agency reaches a decision about the suitability of the prospective adopter
- introduces a fast-track process to allow certain previous adopters or foster parents to proceed straight to the Stage Two assessment process

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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 adoptive families during care proceedings means that children have to live longer 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 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

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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.

Proposal

The flexible arrangements to run Stage 1 and Stage 2 processes concurrently, will help ease some of the pressures adoption agencies are experiencing in gathering information and undertaking the necessary checks to approve prospective adopters within the timeframes specified within the Regulations without fear of incurring any infractions as a result.

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Providing agencies with some level of flexibility during the COVID-19 crisis will allow some services to continue to progress what they can, and will therefore allow agencies to progress cases quicker once the crisis is over.

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

Any delays in processing and approval of a prospective adopter's applications can have an adverse effect on the children and young people who are currently in the care system and waiting to be adopted.

For a looked after child who goes on to be adopted the average time between them entering care and moving in with their adoptive family is around one year. Any delay in finding a suitable adoptive family for a child (especially in the case of those children who have been identified as hard or difficult to place) can cause lasting harm. These are policy issues that the Welsh Government is addressing by working with adoption agencies such as the National Adoption Service for Wales to support initiatives which target specific adopters to take on difficult adoption placements and to support them in the recruitment/approval of prospective adopters throughout the pandemic.

By having flexibility within the two stage assessment and approval system for prospective adopters, this will enable agencies to continue to progress prospective adopters throughout the COVID-19 outbreak effectively.

The flexible concurrent arrangements between the two stages, will also allow for the continuation of an efficient system, especially when a prospective adopter is matched with a child once approval has been achieved. Thus allowing adoption agencies to reduce any potential delays such as children remaining within the care system longer than needed.

How will the proposal affect different groups of children (e.g. children who have experienced adverse childhood experiences (ACEs), children living in poverty, children

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with a disability, children living in Welsh speaking households and children in Welsh medium education etc?)

The primary aim of adoption services is to provide stable placements for looked after children, so that their needs for adoption services can be met and their personal well-being outcomes achieved.

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 continue 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 Association for Adoption and Fostering Cymru (AfA Cymru) and the

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National Adoption Service in Wales submitted a paper which outlined the current situation due to the pandemic and provided data associated the number of prospective adopters that would be affected if the adoption process stopped along with data to support the number of children waiting to be placed with adoptive families. This information confirmed that there would be an adverse impact on children in the care system if the adoption process stopped due to the inability to meet the requirements set out in the Regulations.

The easements will therefore have a positive effect as it will allow the adoption process to progress during the COVID-19 pandemic.

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 that the COVID-19 crisis has on adoption agencies being able to comply with all the requirements set out by the new two stage assessment outlined in the Adoption Agencies (Wales) (Amendment) Regulations 2020.

Due to the urgency of the situation consultation has taken place with adoption agencies and voluntary adoption services. The change in process will have no negative effects on the child; once a prospective adopter has been approved a child will be placed in the usual way.

This change enables the 'normal' services to continue so should not directly impact children and young people. Not allowing the flexibility of the arrangements between the two stage process, will however effect the supply of prospective adopters in the system, which will in turn prevent these vulnerable children from being placed in a supportive and caring family environment.

What other evidence would inform the assessment?

This process has been approved by DfE and is currently being rolled out in England.

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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.

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.)
- 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.

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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.

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

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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.

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.

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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 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.

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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 wellbeing 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).

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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.

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No conflicts with any UNCRC articles were identified.

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