

Number: WG35862



Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Adoption Services

Implementing a new regulatory framework

Date of issue: 4 September 2018

Action required: Responses by 27 November 2018

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

Mae'r ddogfen yma hefyd ar gael yn Gymraeg

This document is also available in Welsh

Overview This consultation seeks your views on a new set of adoption services regulations - the draft Adoption Services (Service Providers and Responsible Individuals) and Local Authority Adoption Services (Wales) Regulations 2019 - to replace elements of three current sets of regulations: The Voluntary Adoption Agencies and Adoption Agencies (Miscellaneous Amendments) Regulations 2003; The Adoption Support Agencies (Wales) Regulations 2005; and The Local Authority Adoption Services (Wales) Regulations 2007.

It also asks for views on draft statutory guidance and a code of practice to accompany these new regulations. The new adoption services regulations will come into force in April 2019.

Finally, the consultation invites views on options for the future of independent reviews of determinations for adoption.

How to respond You can respond to this consultation by completing and returning, by midnight on the closing date, the consultation response form at the back of this document. The response should be sent to:

Legislation Implementation Branch
Social Services Directorate
Welsh Government
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

Alternatively the consultation response form is available on our website (<http://wales.gov.uk/consultations/?lang=en>) and can be returned to us, by midnight on the closing date, via e-mail to: RISCAct2016@gov.wales

Further information and related documents **Large print, Braille and alternative language versions of this document are available on request.**

Consultation: Fostering services regulations (24 May to 16 August 2018)
<https://beta.gov.wales/fostering-services-regulations>

The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 – these apply to service providers and responsible individuals of care home, secure accommodation, residential family centre and domiciliary support services
http://www.legislation.gov.uk/wsi/2017/1264/pdfs/wsi_20171264_mi.pdf

Statutory Guidance for service providers and responsible individuals on meeting service standard regulations (February 2018) – this applies to service providers and responsible individuals of care home, secure accommodation, residential family centre and domiciliary support services
<https://gov.wales/docs/dhss/publications/180201statutory-guidanceen.pdf>

Consultation Summary Report: Phase 2 Implementation of the Regulation and Inspection of Social Care (Wales) Act 2016
<https://beta.gov.wales/sites/default/files/consultations/2018-02/171122responses-serviceen.pdf>

Well-being Statement for People Who Need Care and Support and Carers Who Need Support
www.wales.gov.uk/topics/health/publications/socialcare/strategies/statement/?lang=en

**Contact
details**

For further information:

Address: Legislation Implementation Branch
Social Services and Integration Directorate
Crown Buildings
Cathays Park
CARDIFF
CF10 3NQ

email: RISCAct2016@gov.wales

telephone: 0300 0604400

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 holds 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/>

Foreword

In 2011 the Welsh Government published the white paper *Sustainable Social Services: A Framework for Action*. This set out an ambitious plan to create a new integrated and person-centred approach to social services provision in Wales. To achieve this new approach, in the last assembly term, we made two pieces of primary legislation: the Social Services and Well-being (Wales) Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016.

Through implementation of the 2016 Act we are establishing a new system of regulation and inspection of service providers which upholds the rights of Welsh citizens to dignified, safe and appropriate care and support. This new system of regulation will be more robust and enable Care Inspectorate Wales, as the service regulator, to maintain an overview of the whole service an organisation is providing.

Ensuring consistency in the requirements placed on providers and responsible individuals of all regulated services is one of my main policy objectives in implementing the 2016 Act. However, I also recognise that each service has its own characteristics. Therefore, where appropriate the requirements are tailored to ensure the best fit with how services are delivered in practice, without compromising the overall standards expected.

The draft Adoption Services (Service Providers and Responsible Individuals) and Local Authority Adoption Services (Wales) Regulations 2019, accompanying statutory guidance (for regulated adoption services) and a code of practice (in respect of local authority adoption services) set out and explain the service standards that will be required from April 2019.

In doing so, and in so far as possible, I propose to apply the same regulatory requirements to what we currently know as 'adoption societies' (within the meaning of the Adoption and Children Act 2002), adoption support agencies and local authority adoption services. This is because some of their key activities fall within the meaning of care and support, under the 2016 Act.

I recognise that these new regulations will place additional requirements on local authority adoption services. However, as with fostering services, we consider that the same level of regulation should apply to local authority adoption services as to regulated adoption services (including adoption societies and adoption support agencies), to ensure consistency between all types of adoption service provider.

I would like to thank you for taking the time to read this consultation document, for considering the draft regulations and guidance/code and would invite you to respond as appropriate. I look forward to hearing your views.

Huw Irranca-Davies AM
Minister for Children, Older People and Social Care

1. Introduction

The past four years have seen the creation of a new legal framework for social services in Wales, with the passing of two landmark pieces of legislation. The overall aim has been to reform and consolidate social care law, in order to improve the well-being of people who need care and support and their carers.

The Social Services and Well-being (Wales) Act 2014¹ ('the 2014 Act'), which came into force on 6 April 2016, establishes a new framework that brings together and modernises the law in relation to most local authority social services in Wales. However, we recognise that adoption processes are primarily governed by The Adoption Act 1976² and The Adoption and Children Act 2002³ ('the 2002 Act').

The Regulation and Inspection of Social Care (Wales) Act 2016⁴ ('the 2016 Act'), which received Royal Assent on 18 January 2016, sets the new statutory framework for the regulation and inspection of social care services and also reforms the regulation of the social care workforce in Wales. It replaces relevant systems, regulations and National Minimum Standards previously put in place under the Care Standards Act 2000⁵.

The 2016 Act is being implemented in three overlapping phases:

- **Phase 1 (2016/17)** included regulations relating to the new system of workforce regulation required by the Act. These came into force on 3 April 2017. Alongside these, Social Care Wales developed the rules and procedures which govern the process of workforce registration and regulation.
- **Phase 2 (2017/18)** saw new systems for registration of regulated services put in place and operated by Care Inspectorate Wales from April 2018. This phase also included regulations and statutory guidance relating to the requirements and standards expected of service providers and responsible individuals of care homes (including children's homes), secure accommodation for children, residential family centres and domiciliary support services. These came into force on 2 April 2018.

Links to all of the phase 1 and phase 2 regulations and statutory guidance can be accessed via the SCW Information and Learning Hub:
<https://socialcare.wales/hub/riscact-regulations>

- **Phase 3 (2018/19)** is the current phase and includes development of regulations and statutory guidance relating to the requirements and standards expected of service providers and responsible individuals of adoption services, fostering services, adult placement services and advocacy services. It is intended that these will come into force in April 2019.

This consultation forms part of Phase 3 of implementation.

¹ http://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw_20140004_en.pdf

² <http://www.legislation.gov.uk/ukpga/1976/36>

³ <http://www.legislation.gov.uk/ukpga/2002/38/contents>

⁴ http://www.legislation.gov.uk/anaw/2016/2/pdfs/anaw_20160002_en.pdf

⁵ http://www.legislation.gov.uk/ukpga/2000/14/pdfs/ukpga_20000014_en.pdf

This reform of social care law in Wales is being supported by wider policy initiatives, including the Welsh Government's 'Improving Outcomes for Children' programme. This programme is overseen by a Ministerial Advisory Group of key stakeholders from local government, academia and the third sector and includes the National Adoption Service. It focuses on three key themes: reducing the numbers of children entering care; improving outcomes for children in care (including stable placements and permanency planning); and supporting care leavers to adulthood and independence.

2. This consultation

This consultation runs from 4 September 2018 and closes at midnight on 27 November 2018.

There are three elements to this consultation, on which your views are sought:

- (i) The draft Adoption Services (Service Providers and Responsible Individuals) and Local Authority Adoption Services (Wales) Regulations 2019 which, in summary:
 - place new requirements on **regulated adoption service providers and responsible individuals in relation to those services** under sections 27 and 28 of the 2016 Act

A 'regulated adoption service provider', under the 2016 Act, means an 'adoption society' or an 'adoption support agency' within the meaning of the 2002 Act
 - place similar requirements, where applicable, upon **local authority adoption service providers and their managers**, under section 9 of the 2002 Act
- (ii) Draft statutory guidance for regulated adoption service providers and responsible individuals, under the 2016 Act and code of practice for local authority adoption service providers and their managers, under the 2014 Act, to complement these regulations and further clarify how the regulatory requirements can be met.
- (iii) Options for the future of independent reviews of determinations for adoption.

Options for the future of independent reviews of determinations for fostering were addressed within the recent consultation on Fostering services⁶.

Your consultation responses will help inform our consideration of the final Regulations, statutory guidance and code of practice. Our intention is to analyse the responses over the winter and consider whether any changes may be required before laying the

⁶ <https://beta.gov.wales/fostering-services-regulations>. The consultation ran between 24 May and 16 August 2018.

Regulations and code of practice before the National Assembly for Wales in spring 2019. It is intended that the Adoption Services (Service Providers and Responsible Individuals) and Local Authority Adoption Services (Wales) Regulations 2019 will come into force in April 2019, with the statutory guidance and code of practice being issued around the same time.

3. The need for regulatory change

A great deal has been achieved by the regulators (Care Inspectorate Wales and Social Care Wales⁷), and the wider social care sector, in pursuing the ambitions set out in the Care Standards Act 2000. This framework provided a baseline of standards, both for care and support services and for the workforce delivering them, and has undoubtedly improved public protection. It has also delivered much greater consistency, protection from abuse and exploitation, and greater exposure of sub-standard practices. Collectively, we have succeeded in raising performance and continue to use regulation and inspection to identify and eliminate poor standards.

However, since that time, we recognise that many things have changed within and around the sector, and have identified both the need to avoid our regulatory arrangements becoming out of date and the need to support the provision of sustainable services.

Our reform of the regulatory system, driven primarily through the 2016 Act, rests on five key principles:

- responsiveness to the reforms introduced by the 2014 Act
- ensuring citizens are at the heart of care and support
- developing a coherent and consistent Welsh approach
- tackling provider failure
- responsiveness to new models of service and any emerging concerns over the quality of care and support services.

Some of the proposals in this consultation have a significant part to play in serving and advancing this reform.

The new regulatory framework under the 2016 Act

Under section 27 of the 2016 Act, the Welsh Ministers may by regulations impose requirements upon a service provider in relation to a regulated service. Under section 28, they may impose requirements on a responsible individual for a regulated service.

These 'regulated services' include adoption services, which are defined in Schedule 1 of the 2016 Act as:

⁷ Care Inspectorate Wales was (until January 2018) the Care and Social Services Inspectorate Wales. Social Care Wales was (until April 2016) the Care Council for Wales.

“a service provided in Wales by:

- a) an adoption society within the meaning of the Adoption and Children Act 2002 (c.38) which is a voluntary organisation within the meaning of that Act, or
- b) an adoption support agency within the meaning given by section 8 of that Act”.

Under section 29 of the 2016 Act the Welsh Ministers must publish statutory guidance about how providers of a regulated service may comply with requirements imposed by regulations under section 27, including how the providers may meet any standards for provision of a regulated service specified by such regulations; and about how responsible individuals for a regulated service may comply with the requirements under section 28. This statutory guidance will apply only to regulated adoption service providers and responsible individuals (and not local authority adoption services).

Regulations and statutory guidance made under the 2016 Act will replace requirements previously put in place under the Care Standards Act 2000 and its associated National Minimum Standards.

Regulation of local authority adoption services

Even though regulation of local authority adoption services is not provided for within the 2016 Act (they remain under the Adoption and Children Act 2002), it our policy objective to apply the same set of standards (monitoring and control) across local authority and regulated adoption services in Wales. Therefore new regulations are required to achieve this.

There will necessarily be some significant differences here. For example, the role of a local authority adoption services manager will be very different to – and exercised at a different level from – that of the responsible individual in a regulated adoption service.

Under section 145 of the 2014 Act, the Welsh Ministers may issue codes of practice for local authorities on the exercise of their social services functions. A draft code of practice, combined with statutory guidance for regulated adoption services under the 2016, is included for consultation here.

Approach to regulation

The approach taken in developing the draft Regulations has been to ensure that the requirements are:

- **Proportionate**: the requirements should relate to matters within the control of the regulated adoption service provider, or their responsible individual, or the local authority adoption service provider or their service manager; and which will lead to an improvement in quality and practice.
- **Reasonably consistent** across all regulated services under the 2016 Act: this is not to say that ‘one size fits all’, but that the same high standards should be applied across all services. The requirements are, therefore, necessarily high-level, with the detail about how the requirements may be complied with set out in statutory guidance. So far as possible, equivalent requirements will also be applied to local authority adoption services, supplemented by a code of practice.

- **Focused on outcomes for people:** the intention is for the requirements to best enable services to support people to achieve *what matters to them*, in line with the principles of the 2014 Act.

4. The proposals

(i) The draft Adoption Services (Service Providers and Responsible Individuals) and Local Authority Adoption Services (Wales) Regulations 2019

For a comprehensive summary of what these draft Regulations do please read their explanatory note on pages 1 to 5. This detail is not replicated within this consultation document.

We propose that the existing three sets of composite adoption regulations⁸ made under the Adoption Act 1976 and Adoption and Children Act 2002, which provide the core of the regulatory and inspection framework for adoption services in Wales, be remade within one new set of Regulations.

It is proposed that these new regulations:

- Replace, under the 2016 Act and in relation to Wales only, the Voluntary Adoption Agencies and Adoption Agencies (Miscellaneous Amendments) Regulations 2003. The 2003 Regulations place requirements on the person carrying on or managing a voluntary adoption agency (i.e. an adoption society), make provision about fitness of the manager and branch manager and impose general requirements in relation to the conduct of the voluntary adoption agency. They will continue to apply, in England only.
- Replace, under the 2016 Act, the Adoption Support Agencies (Wales) Regulations 2005. These Regulations make provision about the person carrying on and managing an adoption support agency including provision about the fitness requirements and general requirements in relation to the proper conduct of an agency.

We recognise that Part 3 of the 2005 Regulations concerns the handling by adoption support services of applications for assistance for the adopted person (or their relative) to obtain information relating to the adoption or to facilitate contact between an adopted person and their birth relative(s), which does not fall within the scope of the 2016 Act. However, we believe that the similar provisions contained within the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) (Wales) Regulations 2005 should suffice to preserve

⁸ The Voluntary Adoption Agencies and Adoption Agencies (Miscellaneous Amendments) Regulations 2003 http://www.legislation.gov.uk/ukxi/2003/367/pdfs/ukxi_20030367_en.pdf
 The Adoption Support Agencies (Wales) Regulations 2005
http://www.legislation.gov.uk/wsi/2005/1514/pdfs/wsi_20051514_mi.pdf
 The Local Authority Adoption Services (Wales) Regulations 2007
http://www.legislation.gov.uk/wsi/2007/1357/pdfs/wsi_20071357_mi.pdf

the intention of these provisions. Therefore we do not propose to remake Part 3 of the 2005 Regulations, under the 2016 Act.

- Use the regulation making power within section 9 of the 2002 Act to make similar provision for local authority adoption services, thereby replacing the Local Authority Adoption Service (Wales) Regulations 2007. The 2007 Regulations provide a regulatory framework for local authority adoption services in Wales and include provision about persons managing the service, about the conduct of the service, staffing and fitness of workers, the suitability of premises, complaints and record keeping, and for reviewing the quality of service.

(ii) Draft Statutory Guidance and Code of Practice

The draft statutory guidance and code of practice have been combined into the same document, as many of the requirements apply to both regulated adoption service providers and local authority adoption service providers (these are contained within Parts 5 to 8 of the draft Regulations).

The statutory guidance, required by section 29 of the 2016 Act, sets out how regulated adoption service providers may comply with the requirements imposed by regulations made under section 27 of the 2016 Act. It also sets out how responsible individuals for those services may comply with the requirements placed on them by regulations made under section 28 of the 2016 Act.

The code of practice, to be made under section 145 of the 2014 Act, sets out how local authority adoption service providers and their managers may comply with the requirements imposed by regulations made section 9 of under the 2002 Act.

It is our intention that, wherever possible, the draft statutory guidance and code of practice will align with each other in supplementing the draft Regulations.

(iii) Future of the independent review mechanism

Independent reviews of determinations (IRDs) for adoption were first introduced in 2006, following implementation of the Adoption and Children Act 2002⁹. In 2010 they were extended to fostering. The review process is governed by the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010¹⁰. 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 Independent Review Mechanism (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 their adoption or fostering services provider, whether an independent agency or a local authority. Qualifying

⁹ http://www.legislation.gov.uk/ukpga/2002/38/pdfs/ukpga_20020038_en.pdf

¹⁰ http://www.legislation.gov.uk/wsi/2010/746/pdfs/wsi_20100746_mi.pdf

determinations are made by adoption agencies¹¹ where the agency is proposing not to approve an individual as a prospective adopter, or to terminate or change the individual's terms of approval.

The IRM has three functions in relation to adoption:

- to consider a recommendation made under the 2005 Regulations that the applicant is not suitable to adopt a child
- to consider a recommendation made under the 2005 Regulations 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 review process is carried out by a review panel which is completely independent of the adoption agency concerned. The function of the independent review panel is to consider each case anew and to make a recommendation to the adoption agency. This is not an appeals process, and the review panel cannot overturn the adoption agency's qualifying determination. The final decision remains with the adoption agency decision maker.

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. '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 concerned has expressed a view that they do not want the information disclosed (here the subject of the information is the applicant).

Independent Review Mechanism

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

¹¹ An adoption agency may be a local authority or a registered adoption society (section 2(1) of the Adoption and Children Act 2002).

qualifying determinations, the application process and what IRM panels do. It also contains the IRM's annual reports.

The case for change

The Welsh Government hosted two workshops with key stakeholders in June 2016, in South and North Wales, to discuss the future of the IRD and any changes which might be needed to the regulations and guidance. The IRD process was also discussed at a joint meeting of the Fostering and Adoption Technical Groups which helped us prepare this consultation. The Welsh Government is grateful to those who took part in those initial discussions, which have helped inform this consultation.

IRDs were introduced to:

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

In the case of adoption, the IRM promotes the rights of children through providing suitable adoptive parents for children who will never be able to live with their birth family. Adoption provides a stable family environment for children 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 adoption, and also to encourage more Welsh-speaking prospective adopters. By providing an independent review mechanism when a prospective 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.

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. We know, from feedback from applicants, panel members 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 adoption agencies and practitioners.

However, feedback received suggested that the IRM is an expensive 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. From 2010-11 to 2014-15, eight applications a year proceeded to review. In 2015-16 this reduced to five, and in 2016-17 there were six reviews. In 2017-18, ten applications were received and six proceeded to review (with a seventh pending at the end of the financial year). The costs for the IRM fall into two parts: a fixed element to run the service, and a cost per review. Allowing for six reviews in 2017-18, the total cost of the service was around £58,000.

Concern was expressed about 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. Adoption agencies are expected to contribute to a proportion of the review costs – currently £3,403 per review.

Various reasons have been put forward for the decline in applications for review. It may be linked to more robust assessments and better decision making. It may be that new complaints procedures, with a built-in element of independence, have given potential applicants an alternative route for having their concerns heard. The IRM does not preclude people from using an adoption agency's 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. However, if changes are made to the IRM, then alternative provision will need to be made for any potential applications on these grounds.

Our proposals

The Welsh Government is seeking views on the future of independent reviews of determinations and the IRM. We would welcome your 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 approved adopters /prospective adopters who disagree with decisions about their terms of approval can make their views known.

Various suggestions were put forward during the initial workshops. These included:

- Retaining the current system of independent review panels, on the grounds that it works well and provides applicants with a way of ensuring that their views and concerns have been heard in an appropriate way. On this view, user satisfaction and the independence of the review process is more important than the cost.
- Investing in improvement to the way adoption agencies and local authorities handle applications from prospective adopters, and how they make and communicate decisions to approved adopters / prospective adoptive parents. Practice guidance for adoption agencies may help with this. In this scenario, the number of independent reviews would continue to reduce over time and the need for the IRM would diminish.
- Replacing the current panel system with a lighter touch approach perhaps involving just one independent reviewer. In this scenario, there might still be a central list of suitably qualified reviewers, who could be called upon to review a qualifying determination on an individual basis. Although this would reduce the actual cost of each review, there would still be a need for an organisation to consider applications, maintain the central list and undertake other administration.

- Setting up a system whereby another adoption agency or local authority undertook a review of a qualifying determination where requested. This review might be undertaken by the other provider's decision maker. This would incur less cost overall, but there would potentially be an additional burden on decision makers. It might also work better for local authorities than for adoption agencies, which are in competition with each other for prospective adopters, and might not wish to share data.
- Removing the entitlement to an independent review altogether, so that approved adopters and prospective adoptive parents who wished to challenge a qualifying determination would need to rely on the adoption agency or local authority's complaints and representations policy. The draft Regulations require both regulated adoption service providers and local authority adoption service providers to put in place a complaints policy and procedure. These requirements could potentially be strengthened to include a requirement for an independent element in cases where a complaint is made about a qualifying determination. Local authorities already have established complaints procedures which include an independent element if the complaint cannot be resolved at an early stage.

5. Significant regulatory changes

The explanatory note to the draft Adoption Services (Service Providers and Responsible Individuals) and Local Authority Adoption Services (Wales) Regulations 2019 describes what each of their constituent Parts do, so this detail is not replicated here.

There are, however, some aspects of these draft Regulations which we would particularly like to draw to your attention:

Part 2 – Exceptions

Draft Regulation 4 prescribes that the following services are not to be treated as an adoption service:

- the provision of a service in relation to adoption by a solicitor or barrister in the course of legal activity.
- the provision of services to enable groups of adoptive children, adoptive parents and birth parents or former guardians of an adoptive child to discuss matters relating to adoption.

These groups have been excepted as we consider that discussion forums and self-help groups exist to provide a platform for people affected by adoption to share their experiences and to advise and listen to their peers; and that the role of a facilitator is therefore to encourage and enable (through practical means) individuals to help themselves. We feel that those facilitators are not therefore directly providing adoption support services.

- the provision of respite care to an adoptive child or an adoptive parent by a registered care home service or domiciliary support service.
- the provision of respite care in relation to adoption consisting of registered child minding or day care.

We propose that providers of adoption support in the form of respite care (c and d) to adopted children should be registered and regulated in line with their primary business (e.g. as a provider of residential care to disabled children or as a child minder) rather than being caught additionally by the regime for regulated adoption services.

- the provision of adoption support services by a person (otherwise than in partnership with others) only under a contract for services with a regulated adoption service or a local authority adoption service.

We do not consider that individuals who employ no staff and who are working under contract with a regulated adoption service or a local authority adoption service to provide adoption support services need to be registered themselves. The agency itself will be subject to the regulatory regime and will therefore be responsible for ensuring that such individuals operate in accordance with the appropriate safety and quality standards. To require them to be regulated directly would, in our view, be disproportionate in terms of requirements on them and on the service regulator. This exception would also cover individual cross-border (England to Wales) providers as long as they are contracted to a registered adoption service or local authority adoption service in England. These individuals will also be registered with Ofsted.

These proposed exemptions mirror those in force in England under Regulation 4 of the Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005 (SI 2005/2720).

We would also welcome your views as to whether it would be appropriate to include a further exception: for the provision of adoption services where these are provided incidentally to the main purpose of the service provider. This might include a provider who is registered in England but finds that they need to carry out some incidental activity in Wales. An example of this might be that a therapist is providing help to a child placed in England, and as part of the intervention, wants to visit and speak to the child's sibling who lives in Wales. This activity could be considered as merely incidental to adoption services provided in England.

A question is asked within the consultation response form, at the back of this document, as to whether these exemptions are appropriate and whether any further exemptions should be considered (and why).

Part 14 – Offences

The regulations in Part 14 (offences) will be made using powers within sections 45 and 46 of the 2016 Act.

Regulation 63(1) sets out which requirements, if not complied with by the regulated adoption service provider, will be treated as an offence. In addition, where a regulated

adoption service provider fails to comply with certain other specified requirements, regulation 63(3) provides that this is an offence if the failure to comply results in the child being exposed to avoidable harm or significant risk of such harm or suffering a loss of money or property as a result of theft, misuse or misappropriation.

The regulations seek to level the playing field in terms of the application of offences to non-local authority service providers. Whilst some offences were specified in the 2005 Regulations (in relation to adoption support agencies), this was not the case for voluntary adoption agencies in the 2003 Regulations. We are therefore creating new offences in relation to voluntary adoption agencies, to enable a coherent enforcement regime. These provisions are not replicated for local authority adoption service providers as there is already a regime in place for monitoring and inspection of local authority children's services.

Regulation 64 sets out which requirements, if not complied with by the responsible individual, will be treated as an offence.

It is worth highlighting that, although failure to comply with a particular requirement in the draft Regulations may not be an offence, failure by a regulated adoption service provider to comply with any of the requirements placed upon them within Parts 3, 5, 6, 7 and 8 of the Regulations could be grounds for cancellation of their registration, under section 15 of the 2016 Act. A responsible individual's failure to comply with any of the requirements contained within Parts 9 to 13 could be grounds for the cancellation of the designation of the responsible individual, under section 22 of the 2016 Act.

Penalty notices

Whilst the draft Regulations set out which breaches of the requirements by regulated adoption service providers and responsible individuals are to be treated as offences, they do not make provision for penalty notices to apply. During phase 2 of implementation, the Regulated Services (Penalty Notices) (Wales) Regulations 2017¹² established a penalty notice system, whereby Care Inspectorate Wales may issue a penalty to providers and responsible individuals of regulated services instead of bringing proceedings for certain offences.

Our policy intention is to extend this to phase 3 services, therefore enabling the same penalty notice system to apply to equivalent offences for regulated adoption service providers and responsible individuals. This is clearly illustrated within the table at Annex A (separate document) and your views are sought on this within the consultation response form at the end of this document.

Other requirements on the local authority adoption service providers

Additional requirements brought over from the 2007 Regulations into Part 18 of the draft Regulations include the requirement to open a child's case record; the services to be provided to birth parents; requirements on the service provider regarding the recruitment, preparation and approval of, and information for, adopters; and support during disruption or likely disruption.

¹² The Regulated Services (Penalty Notices) (Wales) Regulations 2017
http://www.legislation.gov.uk/wsi/2017/1292/pdfs/wsi_20171292_mi.pdf

Consultation Response Form

Your name:	
Organisation (if applicable):	
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 place a tick in the box:

PART 2: Regulated adoption service – prescribed services and exceptions			
Are ‘adoption support services’ as prescribed within regulation 3(1) clear and appropriate? Please explain your answer within the box below.			
Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
Are the proposed exceptions within regulation 4(1) appropriate? If you think there are further exemptions which should be made – such as for provision of adoption services that are purely incidental to the main purpose of the service provider (see page 12) – please explain these within the box below.			
Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>

PART 3: General requirements on adoption service providers – regulated adoption services

Are the requirements in this part of the draft Regulations right for *regulated adoption service providers*? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
-----------------------------------	---	--	--------------------------------------

Does the draft statutory guidance adequately support *regulated adoption service providers* in how they may comply with the requirements in this part?

If you think there is anything missing or unnecessary, please explain within the box below.

Part 4: General requirements on adoption service providers – local authority adoption services

Are the requirements in this part of the draft Regulations right for *local authority adoption service providers*? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
-----------------------------------	---	--	--------------------------------------

Does the draft code of practice adequately support *local authority adoption service providers* in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

--

PART 5: General requirements on adoption service providers – regulated adoption service providers and local authority adoption service providers

Are the requirements in this part of the draft Regulations right for *regulated adoption service providers*? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
-----------------------------------	---	--	--------------------------------------

--

Does the draft statutory guidance adequately support *regulated adoption service providers* in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

--

Are the requirements in this part of the draft Regulations right for *local authority adoption service providers*? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
-----------------------------------	---	--	--------------------------------------

Does the draft code of practice adequately support *local authority adoption service providers* in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

PART 6: Policies, procedures and other standards – regulated adoption service providers and local authority adoption service providers

Are the requirements in this part of the draft Regulations right for *regulated adoption service providers*? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
-----------------------------------	---	--	--------------------------------------

Does the draft statutory guidance adequately support *regulated adoption service providers* in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

--

Are the requirements in this part of the draft Regulations right for *local authority adoption service providers*? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
-----------------------------------	---	--	--------------------------------------

--

Does the draft code of practice adequately support *local authority adoption service providers* in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

--

PART 7: Premises, facilities and equipment - regulated adoption service providers and local authority adoption service providers

Are the requirements in this part of the draft Regulations right for *regulated adoption service providers*? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
-----------------------------------	---	--	--------------------------------------

Does the draft statutory guidance adequately support *regulated adoption service providers* in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

Are the requirements in this part of the draft Regulations right for *local authority adoption service providers*? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
-----------------------------------	---	--	--------------------------------------

Does the draft code of practice adequately support *local authority adoption service providers* in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

--

PART 8: Staffing - regulated adoption service providers and local authority adoption service providers

Are the requirements in this part of the draft Regulations right for *regulated adoption service providers*? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
-----------------------------------	---	--	--------------------------------------

--

Does the draft statutory guidance adequately support *regulated adoption service providers* in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

--

Are the requirements in this part of the draft Regulations right for *local authority adoption service providers*? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
-----------------------------------	---	--	--------------------------------------

Does the draft code of practice adequately support *local authority adoption service providers* in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

PART 9: Requirements on responsible individuals for ensuring effective management of the service

Are the requirements in this part of the draft Regulations right for *responsible individuals*? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
-----------------------------------	---	--	--------------------------------------

Does the draft statutory guidance adequately support *responsible individuals* in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

PART 10: Requirements on responsible individuals for ensuring effective oversight of the service

Are the requirements in this part of the draft Regulations right for *responsible individuals*? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
-----------------------------------	---	--	--------------------------------------

Does the draft statutory guidance adequately support *responsible individuals* in how they may comply with the requirements in this part?
If you think there is anything missing or unnecessary, please explain within the box below.

--

PART 11: Requirements on responsible individuals for ensuring compliance of the service

Are the requirements in this part of the draft Regulations right for *responsible individuals*? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
-----------------------------------	---	--	--------------------------------------

Does the draft statutory guidance adequately support *responsible individuals* in how they may comply with the requirements in this part?
If you think there is anything missing or unnecessary, please explain within the box below.

--

PART 12: Requirements on responsible individuals for monitoring, reviewing and improving the quality of the regulated service

Are the requirements in this part of the draft Regulations right for *responsible individuals*? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
-----------------------------------	---	--	--------------------------------------

Does the draft statutory guidance adequately support *responsible individuals* in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

PART 13: Other requirements on responsible individuals

Are the requirements in this part of the draft Regulations right for *responsible individuals*? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
-----------------------------------	---	--	--------------------------------------

Does the draft statutory guidance adequately support *responsible individuals* in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

PART 14: Offences

Is the approach taken in relation to offences within the draft Regulations (regulation 63 in relation to regulated adoption service providers and regulation 64 in respect of responsible individuals) sufficient and proportionate? If not, please explain below.

Penalty Notices (These are not provided for within the draft Regulations)

Is the approach in relation to penalty notices, as illustrated at Annex A, sufficient and proportionate? Are the levels of penalty appropriate? If not, please explain below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
-----------------------------------	---	--	--------------------------------------

PART 15: Service providers who are liquidated etc. or who have died

Are the requirements placed on appointed persons and personal representatives reasonable? If not, please explain below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
-----------------------------------	---	--	--------------------------------------

PART 16: Regulations under section 21(5) of the Act – Designation of responsible individual by the Welsh Ministers

Are the circumstances in which responsible individuals may be designated by the Welsh Ministers, rather than the service provider, sufficient and appropriate? If not, please explain below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
-----------------------------------	---	--	--------------------------------------

PART 17: Requirements on the local authority adoption service manager

Are the requirements in this part of the draft Regulations right for *local authority adoption service managers*? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
-----------------------------------	---	--	--------------------------------------

Does the draft code of practice adequately support *local authority adoption service managers* in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

PART 18: Other requirements on the local authority adoption service provider

Are the requirements in this part of the draft Regulations right for *local authority adoption service managers*? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
-----------------------------------	---	--	--------------------------------------

Does the draft code of practice adequately support *local authority adoption service managers* in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

INDEPENDENT REVIEW MECHANISM

We would welcome your views on the future of independent reviews of determinations (IRDs) and the Independent Review Mechanism (IRM). In giving your views, please consider the following questions:

- a) Is there a continuing need for independent reviews of determination for adoption?
- b) Would there be any disadvantages to removing the requirement for an independent review of determinations for adoption?
- c) Should we retain the current arrangements for independent reviews supported by an IRM? Please give reasons for your answer.
- d) Are there new or alternative arrangements which could be put in place for reviewing qualifying determinations for adoption? If so, what could those arrangements be?
- e) What alternative arrangements could be put in place for adoption disclosure applications?
- f) If you want to propose new or alternative arrangements, please be as specific as you can about how those arrangements might work in practice, and explain how any proposals would demonstrate transparency and independence, and promote adoption.

Please comment:

Other Questions

The Welsh Government is interested in understanding whether the proposals in this consultation document will have an impact on groups with protected characteristics. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation.

Do you think that the proposals in this consultation will have any positive impacts on groups with protected characteristics? If so, which and why/why not?

Please explain:

Do you think that the proposals in this consultation will have any negative impacts on groups with protected characteristics? If so, which and why/why not?

Please explain:

We would like to know your views on the effects that these proposals would have on the Welsh language, specifically on

- i) opportunities for people to use Welsh and
- ii) 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?

Please explain:

Please also explain how you believe the proposed policy could be formulated or changed so as to have:

- i) 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
- ii) 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.

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to tell us about them