

Date: Wednesday 14th January 2004

Venue: Committee Room 3, National Assembly for Wales

Title: Adoption Support Services (Local Authorities) (Wales) Regulations 2004

Purpose

At its meeting on 8th October 2003 the Health and Social Services Committee identified the draft Adoption Support Services (Local Authorities) (Wales) Regulations for consideration. The regulations are scheduled to be considered and agreed at plenary on 23rd March 2004. The draft regulations are attached at Annex 1.

Standing orders 9 and 22 allow subject committee to advise on proposed primary, secondary and European legislation affecting Wales.

Summary

The regulations present a national framework for adoption support services, to improve the consistency in the provision of these services across Wales.

Background

Section 3 of the Adoption and Children Act 2002 requires local authorities to maintain an adoption service within their area. This is to include the provision of adoption support services which must include counselling, advice and information and any other services prescribed by regulations (s.2(6)).

Paragraph 3 of Schedule 4 to the Act introduces transitional provisions for the provision of adoption support services under the Adoption Act 1976 in advance of the full implementation of the 2002 Act.

The adoption support provisions are to be implemented in two phases. These draft regulations cover the first phase of adoption support services that are intended to be brought into force during 2004. The key elements of the Phase 1 adoption support framework are:

- Counselling, advice and information;
- Financial support replacing local authority adoption allowances;

- Self-help groups for adoptive families;
- Support for contact arrangements between adopted children and their birth relatives;
- Services to meet the therapeutic needs of adopted children;
- Services to prevent adoption breakdown;
- Provision of an adoption support services adviser.

This sets a base for the adoption support services that local authorities must plan for. A phased approach to the introduction of services will ensure that those local authorities currently providing a limited range of support services are able to move forward at a reasonable pace before being required to implement the full adoption support framework from 2005. The introduction of Phase 1 will not prevent local authorities that are in a position to do so from providing a greater range of services at an earlier date if they wish to.

Support services under Phase 1 will be targeted on meeting the needs of adoptive families created when children are adopted from care. They cover both new adoptions and existing adoptions where the adopted child is less than 18 years old. This will not prevent authorities from providing these services to all adoptive families during Phase 1 if they wish.

Recognising the value to many children adopted from care of maintaining some form of contact with their birth relatives, the Regulations also provide for assistance to support those arrangements.

The Regulations focus on the needs of approved adopters from the matching stage onwards, or in the case of non-agency adoptions, those who have given notice (under section 22(1) of the 1976 Act) of their intention to apply to adopt a child.

The Regulations make no changes in respect of adoptions involving step-parents. Those involved in step-parent adoptions will continue to be covered by the services provided under section 1 of the 1976 Act.

The Adoption Agencies Regulations 1983 remain in force as amended. Regulation 7 sets out an adoption agency's duties in respect of a child and his parents or guardian and Regulation 8 sets out an adoption agency's duties in respect of a prospective adopter. This includes the provision of a counselling service, explaining the legal implications of adoption and providing them with written information about this.

The Regulations

The main provisions of the Regulations are summarised below:

Regulation 1 states when the regulations will come into force, and that they are applicable to Wales.

Regulation 2 defines terms which appear throughout the regulations,

Regulation 3 specifies the adoption support services that local authorities must make arrangements to

provide for the groups of potential service users. The services that local authorities are required to arrange are:

- Financial support under Regulation 10 (Regulation 3(1)(a))
- Support groups for adoptive parents and adoptive children (Regulation 3(1)(b))
- Support for contact arrangements between adoptive children and their birth relatives or with other people with whom they share significant relationships (Regulation 3(1)(c) (i) (ii))
- Therapeutic services (Regulation 3(1)(d))
- Services to ensure the success of the adoptive placement or adoption, such as training or respite care (Regulation 3(1)(e))
- Counselling, advice and information (S2(6) of the 2002 Act)

Regulation 4 requires each local authority to nominate a single point of contact –the adoption support services adviser – who will signpost people affected by adoption to appropriate services, giving advice and information about how they can access these services. The adviser will have a broad role to ensure that suitable intra and inter agency arrangements are in place between social services, education, local health trusts, other local authorities and voluntary adoption agencies where they are involved.

Regulation 5 provides that an assessment of needs for adoption support services must be provided in the following circumstances:

- An up to date assessment of the child’s needs should be in place to inform the report that goes to the adoption panel when considering whether adoption is in the best interests of a looked after child. The likely need for adoption support services will be identified from the child’s needs
- An assessment must be carried out when considering a match between a prospective adopter and a particular looked after child. The existing assessment of the child’s needs will inform this.
- A review of adoption support arrangements when the placement for adoption of a looked after child is reviewed within the first 4 weeks of placement
- At the request of persons prescribed in the regulations.

Regulation 5 also requires a local authority considering placing a child with adoptive parents in the area of another local authority to consult that authority about both placement and the assessment.

When carrying out an assessment of a looked after child under Regulation 5, information from the Assessment Framework and Looking After Children System and any other relevant sources should be used to consider what kinds of adoption support services will be needed.

Regulation 6 sets out the procedure for assessment and the considerations that a local authority must have regard to. The regulation also provides that the local authority must, where it considers it appropriate, conduct an interview and prepare a written report. If, for example, the request is simply for information that is immediately available and can be responded to over the telephone, then an interview will not be necessary. The child should always be seen when a core assessment is undertaken.

Regulation 7 provides that, once a person has had their needs for adoption support services assessed and the local authority has informed that person of their decision about the provision of those services the local authority will prepare a plan of the adoption support services to be provided, except where the services are to be provided on a single occasion.

Regulation 8 states that where a local authority provides, or has provided in the previous twelve months, adoption support services if it comes to the attention of the local authority that there has been a change in the circumstances of the adoption support service user, those services must be reviewed.

Regulation 8 provides that the services should also be reviewed if it comes to the attention of the local authority that there has been a change in the circumstances of the adoption support service user. The review should take place within 4 weeks of the change of circumstances coming to the attention of the local authority.

Regulation 9 is intended to enable adoptive families to obtain the support that they need, wherever they live. Where children are placed for adoption across local authority boundaries, or where adoptive families subsequently move across local authority boundaries, the placing authority should be responsible for funding:

- adoption support services other than financial support, and
- ongoing financial support that the placing authority has decided to provide after the making of the adoption order for three years from the date of placement.

In any case the local authority will only be responsible for the funding of services that it has decided to provide.

Where the placing authority has decided prior to the making of the adoption order to provide ongoing financial support, that local authority should continue to be responsible for the payment of that support until it is terminated in accordance with Regulation 13. This applies also to adoption allowances currently in payment under the 1991 Regulations.

Regulation 9 also states where a local authority is considering adoption for a child but the child is not placed, or has placed a child for adoption, and another local authority provides any adoption support services in relation to a child, that authority may recover from the placing authority expenses if providing adoption support services where:

- the placing authority has decided to provide services
- and they are provided according to a plan prepared by the placing authority.

Recovery will not apply in respect of financial support (which remains the responsibility of the placing authority) or in respect of the provision of advice information or the provision of an adoption support

services advisor

Regulation 10 sets out the circumstances in which financial support may be paid and states that financial support may be provided to adoptive parents where one or more of the following circumstances exists:

- to ensure that the adoptive parents can look after the child (Regulation 10(2)(a)-(c))
- where the child has established a strong and important relationship with the carers before the adoption order is made (Regulation 10(2)(d))
- to enable siblings and other children to be placed together (Regulation 10(2)(e))
- to meet the special needs of the child (Regulation 10(2)(f))
- to facilitate the placement of "harder to place" children (Regulation 10(2)(g))
- to ensure that the adoptive parents can look after the child

Regulation 10(2)(a) and (b) provide for financial support to be considered in the circumstances where a decision has been made in accordance with Regulation 11(1) of the Adoption Agency Regulations 1983 that a prospective adopter would be a suitable adoptive parent for a particular child.

Regulation 10(2)(c) provides for financial support to be considered where a child has been adopted.

Regulation 10(2)(d) provides for financial support to be considered where the child has established a strong and important relationship with the adopters who may, for example, be current foster carers, a relative or a friend.

Regulation 10(2)(e) provides for payment of financial support where it is in the child's best interests to be placed for adoption with siblings; or in order to join siblings in an adoptive placement; or where a child may have shared a home with an unrelated child with whom he has developed close ties.

Regulation 10(2)(f) applies where the child is identified as having an illness, disability, emotional or behavioural difficulties or suffering from the continuing consequences of past abuse or neglect (or a combination of these conditions), and as a result of the condition the child requires a special degree of care which necessitates extra expenditure.

Regulation 10(2)(g) applies where, at the time when the decision is made that adoption is in a child's best interests, the age, sex or ethnic origin of the child mean it is likely to be difficult to find prospective adopters able to meet the child's needs. To facilitate a prompt placement for the child, the local authority may agree in principle to the provision of financial support.

Regulation 10(3) sets out conditions relating to changes of circumstance and annual review. These conditions must be agreed by the adopters before financial support is provided. The adopters should be notified of these conditions as part of the written notification about financial support required under Regulation 10.

Regulation 10(3)(b) specifies that the adopters should agree to complete and supply to the local authority an annual statement of their financial circumstances and the child's financial circumstances, including financial needs.

Regulation 11 sets out the factors governing the amount of the financial support. In determining the amount of financial support payable the local authority must take into account-

- any recommendation made by the adoption panel
- the financial resources available to the adoptive parents
- the amount required by the adoptive parents
- the financial needs and resources of the child
- expenditure for the purposes of facilitating the placement of the child

Regulation 12 sets out the procedure to be followed in determining whether financial support should be paid. The local authority must:

- supply information to the adoptive parents about financial support
- give notice to the parents of their proposed decision whether financial support should be paid, the proposed amount and any conditions which may be imposed

Regulation 13 sets out the information about financial support which the local authority must provide to the adopters where it has decided to provide financial support. The information to be included is as follows:

- the method by which the financial support has been determined;
- the amount of financial support to be paid to the adopters;
- the date on which the first or, where applicable, only payment will be made;
- the frequency of payments and the period of payment, where appropriate;
- any conditions attached to the financial support, and the
- consequences of failing to meet those conditions;
- the arrangements and procedure for review, variation and termination of the financial support;
- the responsibilities of the local authority under Regulation 14 with regard to arrangements for review, variation and termination of the financial support; and
- the responsibilities of the adopters with regard to their agreement under paragraph (3) of regulation 3 to notify the agency of changes in their circumstances or those of the child.

Regulation 14 requires that, where ongoing financial support is provided, the local authority must review the provision of financial support annually, after receiving a statement from the adopters giving information about their financial circumstances, the child's needs and resources, their address, and whether the child still has his home with them.

This regulation also provides for circumstances in which the local authority shall terminate the allowance. These circumstances, which are similar to those in the 1991 Regulations, are as follows:

- where the child ceases to have a home with the adopters. This applies where the child's departure from the adoptive home is considered to be permanent. It does not apply to periods of temporary absence away from the adoptive home, for example, in connection with education, respite care or hospitalisation;
- where the child ceases full-time education or training and commences employment;
- where the child qualifies for income support or jobseeker's allowance in his own right;
- where the child reaches the age of 18, unless he continues in full-time education or training, when it may continue until the end of the course of education or training he is then undertaking.

Regulation 15 requires adoption agencies to provide access to its case records and the indexes to them and disclose such information in its possession as follows:

- To those holding an inquiry under [section 81] [section8] of the Children Act, for the purposes of such an inquiry
- The Welsh Assembly Government
- The registration authority
- Subject to the provisions of sections 29(7) and 32(3) of the Local Government Act 1974 (investigations and disclosure), to a Local Commissioner, appointed under section 23 of that Act (Commissioners for Local Administration), for the purposes of any investigation conducted in accordance with Part III of that Act
- To any person appointed by the adoption agency for the purposes of the consideration by the agency of any representations (including complaints)
- To the persons and authorities referred to in Regulation 11 (adoption agency decisions and recommendations) and Regulation 12 (placement for adoption) of the 1983 Regulations
- To CAFCASS for the purposes of the discharge of its duties
- To a court having power to make an order under the Adoption Act 1976

Regulation 16 amends the Adoption Allowance Regulations 1991 so that they no longer apply to local authorities, but remain in existence in respect of approved adoption agencies.

Regulation 16(2) provides that any allowance that is payable by a local authority under the Adoption Allowance Regulations 1991 immediately before these Regulations come into effect shall be treated as financial support payable under these Regulations.

Financial Implications

Any additional costs that local authorities are likely to incur as a result of these Regulations are intended to be met from within the Children First budget. The Budget for 2002-03 provided funding of £16.3m (against funding of £12.7m in 2001-02), increasing to £25.2 m in 2003-04, and this includes additional

funding to take forward implementation of the Adoption and Children Act 2002.

We will review the financial impact of the regulations when developing regulations for Phase 2 of the adoption support services later in 2004.

Cross Cutting Themes

The Regulations have been subject to a period of extensive consultation with local authorities, voluntary agencies, adoptive parents, adopted people, and CAFCASS, amongst others.

The regulations will address inequalities that exist within current service provision and ensure all children for whom adoption is being considered will have the opportunity to be properly supported throughout the adoption process and have the chance to be part of a supportive loving family.

Action for Subject Committee

The committee is invited to consider the draft regulations.

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