

The Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020

This Explanatory Memorandum has been prepared by the Health and Social Services Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020

Julie Morgan
Deputy Minister for Health and Social Services

07 October 2020

PART 1

1. Description

The Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020 (“the Regulations”) amend:

- The Adoption Agencies (Wales) Regulations 2005; and
- The Care Planning, Placement and Case Review (Wales) Regulations 2015

The Regulations make amendments which are intended to assist the children’s social care sector to manage the effects of the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) (“the coronavirus pandemic”) in Wales. The changes prioritise the needs of children, relaxing some administrative and procedural obligations to support delivery of children’s services but maintaining appropriate safeguards in such extraordinary circumstances and they come into force on 1 November 2020.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

A consultation exercise was undertaken over a four week period which commenced on the 27 July and ended on 24 August 2020. Details concerning this period of engagement are at section 5 below.

Due to the urgency of the situation associated with COVID-19 pandemic, temporary easements were approved in relation to some administrative and procedural obligations associated with the prospective adopter assessment and approval process.

The instrument will give these easements legislative effect for a specified period and will provide additional flexibility for local authorities, providers and services to meet statutory duties whilst maintaining appropriate safeguards. These are low risk changes to ease administrative and procedural duties and are required to ensure stability of children’s social care during the outbreak.

Welsh Government has shared proposed changes to be made by the Regulations widely with the children’s social care sector via key stakeholders to consult and give notice that changes are coming into force.

The Regulations will come into force on 1 November 2020 to ensure that vulnerable children are appropriately safeguarded during the COVID-19 pandemic. The Regulations will cease to have effect on the 31st March 2021. This date can be brought forward if the situation improves.

3 Legislative background

The Regulations are made under the powers conferred upon the Welsh Ministers by sections 9(1)(a), 140(7) and (8) and 142(5) of the Adoption and Children Act 2002 and sections 87 and 196(2) of the Social Services and Well-being (Wales) Act 2014.

These Regulations will follow the negative procedure.

4. Purpose & intended effect of the legislation

The Regulations make amendments to two sets of Regulations to relax and amend requirements imposed under them.

4.1 Adoption Agencies (Wales) Regulations 2005 (S.I. 2005/1313 (W. 95) (“the 2005 Regulations”)

The 2005 Regulations set out the process for assessing the suitability of people to adopt a child and the suitability of children to be adopted. Regulations 3 to 8 of the Regulations make amendments to the 2005 Regulations; the changes made are as follows:

- Amendments to the approval process for prospective adopters to 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 may be collected during stage 2.
- Relaxation of the timescale during which certain actions must be undertaken. Timescales for stage one and stage two of the process from 2 months (stage 1) and 4 months (stage 2) remain in place but agencies are only required to meet the timescales where reasonably practicable.
- The 6 month limit on the length of time a prospective adopter may leave between stage 1 and stage 2 remains in place but adopters are only required to adhere to the time limit where it is reasonably practicable.

4.2 Care Planning, Placement and Case Review (Wales) Regulations 2015 (S.I. 2015/1818 (W. 261) (“the 2015 Regulations”)

The 2015 Regulations make provision about a local authority’s obligations in respect of the planning, placement and review of the care and support provided to a child who is looked after by that authority in accordance with Part 6 of the Social Services and Well-being (Wales) Act 2014.

Regulation 8 of the Regulations amends the 2015 Regulations to extend the period (from 16 to 24 weeks) during which a person related to or otherwise connected with a child may receive temporary approval to act as a local authority foster parent for that child.

4.3 Expiry

Subject to regulations 9 and 10, the amendments made by the Regulations cease to have effect on 31 March 2021.

4.4 Savings: suitability assessments

Regulation 10 of the Regulations contains a saving provision so that in any case where, on 31 March 2021, an adoption agency is in the process of assessing the suitability of a prospective adopter in accordance with Part 4 of the 2005 Regulations, that assessment must continue as if the amendments made by the Regulations remain in force.

5. **Consultation**

A four week consultation was published on the Welsh Government's website between 27th July and 24th August 2020. Separate emails which included the consultation's web link were also shared separately with key stakeholders across the children's social care sector including:

- Directors of Social Services
- Heads Of Children Services
- Public Health Wales
- National Adoption Service
- Lead Heads of Adoption Regions
- Children's Commissioner for Wales
- WLGA
- Adoption UK Cymru
- The Fostering Network
- Adoption and Fostering Association Cymru
- St David's Children's Society
- Children's Commissioning Consortium in Wales (4C's)
- Care Inspectorate Wales
- Children in Wales

The consultation will be published on the Welsh Government's website in due course and can be accessed via <https://gov.wales/adoption-and-fostering-wales-miscellaneous-amendments-coronavirus-regulations-2020>

6. **Regulatory Impact Assessment**

The need for the Regulations has been identified as part of the contingency planning for issues that may arise from the spread of Covid-19. Due to the limited time available to prepare the proposed Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020 and the changes

made are temporary (less than 6 months duration), a Regulatory Impact Assessment has not been produced.

Whilst local authorities are responsible for the children’s social care system the proposed changes are not anticipated to result in any extensive additional costs or significant changes to working practices.

The needs of businesses in the social care sector at this time have been considered in the preparation of the Regulations; the amendments will reduce or eliminate burdens on agencies and are intended to support children’s social care services to meet their statutory obligations more flexibly during the pandemic.

Specific impact tests

Welsh Language

There are no positive or adverse impact implications on the Welsh Language.

Children’s Rights

No conflict with UNCRC has been identified and there are no negative impacts on children and young people; the majority of provisions impact wholly or mainly on services for adults. A Children’s Rights Impact Assessment (CRIA) was produced at the time the temporary easement to the Adoption Agencies (Wales) Regulations 2005 was approved at the start of the pandemic.

Privacy

There are no impact implications on privacy matters.

Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No

Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector categorised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.