

SL(5)630 – The Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020

Background and Purpose

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

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

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.

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.

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

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following four points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

The Explanatory Memorandum states in relation to 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."

The Children's Rights Impact Assessment referred to above appears not to be available publicly and, whilst the Welsh Government's comments above are noted, it is not possible to identify therefore whether the assessment established fully that there is no interference with the rights of children and young people under the Convention. It would be desirable that the assessment is published as soon as practicable.

Further, both to meet the obligations imposed by section 1 of the Rights of Children and Young Persons (Wales) Measure 2011, and because the revised process has been running informally since the temporary easement, it would be appropriate to conduct and publish a further assessment specific to these Regulations to establish that the relevant rights remain unaffected.

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

Section 5 of the Explanatory Memorandum sets out the details of the four week consultation on these Regulations that was undertaken between 27 July and 24 August 2020. However, it is noted that the consultation results have not yet been published and, as such, it is unclear



how those results, if available, were considered when developing the policy underlying these Regulations. The Committee would welcome clarification on this point and suggests the results should be published as soon as practicable.

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

The amendment to the 2015 Regulations serves to increase the maximum time, from 16 to 24 weeks, a child can be placed with a relative or connected person for foster care under a temporary approval. It is not clear whether the Children’s Rights Impact Assessment referred to in point 1. above considered the increased risk posed to a child of being in an extended period of foster care in such a situation. It is noted the consultation (see point 2. above) references the increased time limit but does not otherwise address the issue of risk. As the results of the consultation are not currently available, it is not possible to assess whether any relevant responses were considered when developing the Regulations. The Committee notes however, the safeguards contained in regulation 26(2) of the 2015 Regulations. The consultation results should be published as soon as practicable.

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

There has been no regulatory impact assessment prepared in relation to these Regulations. However, the Welsh Government’s following explanation, set out in the Explanatory Memorandum, is noted:

“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.”

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is required to Merits points 1, 2 and 3 above.



Committee Consideration

The Committee considered the instrument at its meeting on 19 October 2020 and reports to the Senedd in line with the reporting points above.



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee