

SL(6)759 – The Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2026

Background and Purpose

The Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2026 (the “**2026 Regulations**”) revoke and replace the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010 (the “**2010 Regulations**”) to modernise and clarify the legal framework governing the Independent Review Mechanism (“**IRM**”) in Wales.

The IRM is the process by which a prospective or approved foster carer or a prospective adopter, can seek a review of a decision or ‘qualifying determination’ made by a fostering or adoption service. The current IRM process is set out in the 2010 Regulations which require the Welsh Ministers to establish a panel on receipt of an application for review of a determination.

The relevant determinations which may be reviewed are:

- where an adoption agency determines that a prospective adopter is not suitable to adopt a child, or is no longer suitable to adopt a child following a review;
- where an adoption agency makes a determination under the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005;
- where a fostering service provider determines that a person is not suitable to act as a foster parent or decides to terminate or revise the terms of a foster parent’s existing approval.

Procedure

Senedd annulment procedure.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following two points are identified for reporting under Standing Order 21.2 in respect of this instrument.

- 1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**



In regulation 2 ('interpretation'), in the definition of "adoption panel", it appears that the reference to regulation 3 of the Agencies Regulations should be a reference to regulation 4.

Whilst regulation 3 requires an adoption agency to maintain a list of persons who may be suitable to be members of an adoption panel, the actual requirement to constitute a panel is in regulation 4.

2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 3 sets out the definition of a 'qualifying determination' for the purposes of section 12(2) of the Adoption and Children Act 2002.

Regulation 3(a)(ii) provides that a determination made under regulation **30D(2)** of the Agencies Regulations is a qualifying determination. Regulation 30D(2) provides that a review must take place within a year after approval. However, we query whether it is logical to state that a 'determination' is made under this provision.

Whilst the term 'determination' is not used in regulation 30D, it seems that any determination at the conclusion of a review is made in the written report prepared under regulation 30D(6).

Merits Scrutiny

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

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 Explanatory Memorandum outlines the consultation undertaken on the 2026 Regulations. It states:

A 12-week consultation ran from 4 August 2025 to 27 October 2025 on the proposed changes to the 2010 Regulations. The consultation was drawn to the attention of a range of key stakeholders including local authorities, third sector organisations, independent fostering providers, third sector fostering providers, adoption agencies, the National Adoption Service and Foster Wales.

14 responses were received to the consultation. There was broad agreement to all of the proposals in the consultation. No amendments were considered necessary to the proposed changes.

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.

The Explanatory Memorandum notes that the 2026 Regulations will be subject to a Post Implementation Review. It states:



*A post implementation review will be conducted to assess whether the remade regulations are delivering their intended outcomes. This will include monitoring application volumes, panel decisions, and adherence to timelines, alongside stakeholder feedback and legal analysis. **An initial review will take place within 24 months, followed by ongoing annual monitoring and a full review within 3–5 years.** Findings will inform any necessary updates to ensure the regulations remain effective, fair, and aligned with policy objectives. (emphasis added)*

Welsh Government response

A Welsh Government response is required for the technical points only.

Legal Advisers

Legislation, Justice and Constitution Committee

17 February 2026

