

SL(5)296 – The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019

Background and Purpose

Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”) introduced a new system of regulation of care and support services in Wales, replacing the system established under the Care Standards Act 2000.

The 2016 Act also introduced a new concept of a “regulated service”. A “fostering service” is a regulated service, defined in the 2016 Act as meaning any service provided in Wales by a person other than a local authority which consists of or includes the placement of children with foster parents or exercising functions in connection with such a placement.

These Regulations impose requirements on service providers and responsible individuals in respect of fostering services. For example, the Regulations require service providers to ensure that fostering services are carried out with sufficient care, competence and skill and to take reasonable steps to ensure the service is financially stable.

Procedure

Affirmative.

Technical Scrutiny

Three points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

The Regulations refer to “prospective foster parent” in six places. However, it is unclear what is meant by “prospective foster parent” and who is captured by the term.

The lack of clarity is of particular concern given that the term “prospective parent” applies in relation to criminal offences. For example, it is a criminal offence if a service provider fails to give a guide about the service to, among others, any prospective foster parents (see regulation 12(2)(c)(ii)).

We repeat a concern we have raised previously that absolute clarity is required when creating criminal offences.

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

The Regulations require service providers to give various notifications. For example, service providers must notify the police of any “allegation that a child placed with foster parents has committed a serious offence” (see regulation 40(5) and paragraph 40 of Schedule 3). It is a criminal offence for a service provider to fail to do so.



However, it is unclear what amounts to an “allegation” and what “amounts to a “serious offence”.

Again, we repeat our concern that absolute clarity is required when creating criminal offences.

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

In the definition of “datganiad o ddiben” in the Welsh text, there is reference to “Reoliadau Cofrestru 2018”. However, the reference should be to “Reoliadau Cofrestru 2017”.

We note that, given the context, this error is unlikely to raise significant confusion in practice.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

1. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation – use of words “prospective foster parent”

Government response

The term “prospective foster parent” has been in use in legislation relating to the provision of fostering services without being specifically defined since 2003. To date, no concerns have been raised by providers or users of fostering services as to what is meant by those words.

The Fostering Services (Wales) Regulations 2003 (“the 2003 Regulations”) first used the words “prospective foster parent”, without providing a definition for that term. Providers and users of fostering services have not raised any queries as to what is meant by the words “prospective foster parent” under the 2003 Regulations, and it is therefore considered that they are content that these words have the plain English meaning, namely a person who proposes to become a foster parent in the future, but who has not yet been approved as such. The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 (“the 2019 Regulations”) continue to use the same terminology, on the basis that it is well-known and well-used within the sector, both in Wales and England.

The words “prospective foster parent” are also used in the context of criminal offences in the 2003 Regulations. Regulation 3 of the 2003 Regulations requires providers to make copies of the statement of purpose available to prospective foster parents, and a failure to do so is an offence under regulation 48. Providers have therefore been fulfilling this requirement for many years and have never queried what the nature and extent of their obligations are in these circumstances. Regulations 4(4)(d) and 12(2)(c)(ii) of the 2019 Regulations impose a similar requirement on providers, in that they require fostering service providers to give notice of any changes to the statement of purpose and a copy of the written guide to the service to prospective foster parents. Again, a failure to do so is an offence. Both local authority and independent fostering service providers engaged fully in the consultation taken in relation to these Regulations, and no concerns were raised by them that the obligations being placed on them in connection to prospective foster parents were in any way unclear.



The Local Authority Fostering Services (Wales) Regulations 2018 make reference to the words “prospective foster parents”, and also require fostering service providers to give notice of any changes to the statement of purpose and a copy of the written guide to the service to prospective foster parents.

The Fostering Panels (Establishment and Functions) (Wales) Regulations 2018 also refer to “prospective foster parents”.

2. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation – notification of any allegation that a child placed with foster parents has committed a serious offence (regulation 40(5) and paragraph 40 of Schedule 3)

Government response

This notification requirement has been in place since 2003, and to date, no concerns have been raised by providers as to the nature and extent of this obligation.

Paragraphs 27 and 40 of Schedule 3 to the 2019 Regulations require fostering service providers to notify the local authority which placed the foster child and police if there is any allegation that a child placed with foster parents has committed a serious offence. Identical notification obligations were first imposed under regulation 43 of and Schedule 8 to the 2003 Regulations, and this is therefore a requirement which has been undertaken by providers of fostering services for many years. Providers have never raised any queries as to what is meant by these words, and it is therefore considered that they are content that the plain English meaning applies here, namely any alleged offence which is important and deserving of attention.

Paragraphs 27 and 40 of Schedule 3 to these Regulations replicate the notification requirements imposed under regulation 60 of and paragraphs 29 and 39 of Schedule 3 to the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017. The 2017 Regulations have been in force since 2 April 2018, and no providers to date have raised any concerns that they are unclear as to the nature and extent of their obligations under paragraphs 29 and 39 of Schedule 3 of those Regulations.

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

In the definition of “datganiad o ddiben” in the Welsh text, there is reference to “Reoliadau Cofrestru 2018”. However, the reference should be to “Reoliadau Cofrestru 2017”.

Government response

We acknowledge this point and an amendment will be made at the next available

Legal Advisers

Constitutional and Legislative Affairs Committee

7 January 2019

