

Explanatory Memorandum to the code of practice on adoption services relating to The Local Authority Adoption Services (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Health and Social Services Department and is laid before the National Assembly for Wales in conjunction with the above code of practice in accordance with Standing Order 27.14

Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the code of practice on adoption services relating to The Local Authority Adoption Services (Wales) Regulations 2019. I am satisfied that the benefits justify the likely costs.

Julie Morgan

Deputy Minister for Health and Social Services

20 February 2019

Part 1 – OVERVIEW

1. Description

In 2011 the Welsh Government published the White Paper *Sustainable Social Services: A Framework for Action*, which set out an ambitious plan to create a new integrated and person-centred approach to social services provision in Wales. To achieve this new approach, in the last assembly term the Welsh Government made two pieces of primary legislation: the Social Services and Well-being (Wales) Act 2014 ('the 2014 Act') and the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act').

The 2014 Act provides the legal framework for improving the well-being of people who need care and support, and carers who need support. It also enables the Welsh Ministers to put in place regulations, publish guidance and issue codes of practice.

In relation to local authorities, the Adoption and Children Act 2002 ('the 2002 Act') provides the legal framework for domestic and inter-country adoptions in Wales and includes a duty on local authorities to maintain an adoption service and to provide adoption support services. Section 9 of the 2002 Act enables the Welsh Ministers to put in place regulations in relation to local authorities.

This Explanatory Memorandum relates to the *Code of Practice for Local Authority Adoption Services* ('the Code of Practice'), which will come into effect on 29 April 2019. The Code of Practice relates to The Local Authority Adoption Services (Wales) Regulations 2019 ('the Regulations'), and gives guidance to local authorities on how to implement the requirements in the Regulations.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

Section 146 of the 2014 Act lays down the procedure to be followed before issuing and approving this code of practice. This draft code of practice was subject to consultation as required by section 146, and will now be laid before the National Assembly for 40 days, after which time, if no resolutions are made not to approve the draft, Welsh Ministers must issue the code.

There are no other matters of special interest to the Constitutional and Legislative Affairs Committee.

3. Legislative background

The powers enabling the making of this code are contained in sections 145 and 146 of the 2014 Act. Section 145 permits the Welsh Ministers to issue, and from time to time revise, one or more codes on the exercise of social

services functions. Section 146 lays down the procedure to be followed when issuing or revising a code under section 145.

This code relates to The Local Authority Adoption Services (Wales) Regulations 2019. The powers enabling these Regulations to be made are contained within section 9 of the Adoption and Children Act 2002. These Regulations will be laid under the negative procedure in February 2019.

These Regulations apply to local authority adoption services. This means the discharge by a local authority of the functions under the 2002 Act, of making or participating in arrangements for the adoption of children or the provision of adoption support services as defined in section 2(6) of the 2002 Act and set out in The Adoption Support Services (Local Authorities) (Wales) Regulations 2005.

4. Purpose and intended effect of the Code of Practice

The purpose of the code is to give guidance to local authorities on how local authority service providers and managers may comply with the Regulations. These requirements are contained within Parts 2 to 13 of the Regulations. The regulations seek to ensure that local authority adoption services providers provide services to the required standards so that the well-being and safety of children being placed for adoption is promoted and maintained; and the needs of individuals in receipt of are met consistently across all providers of adoption services in Wales.

Local authority service providers and managers will be responsible for deciding how the requirements within the Regulations will be met, taking into account the needs of individuals using the service and the statement of purpose for the service. Care Inspectorate Wales will use this code of practice to inform decisions about the extent to which local authority service providers and managers are meeting the requirements set out in the Regulations, and as a basis for their inspections of local authority adoption services.

The Regulations and this code of practice replace existing requirements on local authority adoption services in The Local Authority Adoption Service (Wales) Regulations 2007 and the associated National Minimum Standards.

Subject to the negative procedure, the Regulations come into force on 29 April 2019 and this code of practice will also come into effect at the same time.

5. Consultation

Section 146(1) of the Act states that before issuing or revising a code under section 145, Welsh Ministers must consult on a draft code. A 12-week public consultation ran from 4 September to 27 November 2018, seeking views on

draft regulations covering regulated and local authority adoption services providers. This was accompanied by draft statutory guidance for regulated service providers and a draft code of practice for local authority providers. The consultation received 9 formal responses (including one composite response, co-ordinated by the National Adoption Service).

Prior to consultation, the draft Regulations, statutory guidance and code were developed and tested with the assistance of a stakeholder technical group which met several times in autumn/winter 2017-18.

Following the consultation, the code was reviewed and amendments were made, where appropriate, to take into account the views of respondents. A consultation summary report together with a list of respondents will be published on the Welsh Government website:

<https://beta.gov.wales/new-regulatory-framework-adoption-services>

6. Regulatory Impact Assessment (RIA)

The code is not subordinate legislation made by statutory instrument and for that reason a RIA is not required under section 4.2 of the Welsh Ministers Regulatory Impact Assessment Code.

However, consideration has nonetheless been given to whether the impact of the code is in any case sufficient to warrant completion of an RIA. Given that this code does not impose additional requirements on local authority adoption services providers and managers, but rather illustrates how they can meet the requirements set out in the Regulations, it has been decided that its impact is not such as to warrant completion of an RIA.

An Explanatory Memorandum and fully scoped Regulatory Impact Assessment to support the Regulations has been completed and will be found, once laid alongside the Regulations, here:

<http://www.assembly.wales/en/bus-home/Pages/Plenary.aspx?assembly=5&category=Laid%20Document>