

Explanatory Memorandum to:

The Fostering Panels (Establishment and Functions) (Wales) Regulations 2018

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 subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of:

- The Fostering Panels (Establishment and Functions) (Wales) Regulations 2018

I am satisfied that the benefits justify the likely costs.

Huw Irranca-Davies

Minister for Children, Older People and Social Care

11 December 2018

PART 1

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. Part 6 of the Act sets out social services functions in relation to looked after and accommodated children, including those who are placed in foster care. It also enables the Welsh Ministers to put in place regulations and issue codes of practice.

The 2016 Act reforms the regulation and inspection regime for social care in Wales, and provides the statutory framework for the regulation and inspection of social care services and the social care workforce.

This Explanatory Memorandum relates to *The Fostering Panels (Establishment and Functions) (Wales) Regulations 2018*, which will come into force on 29 April 2019. These Regulations impose requirements on independent and local authority fostering services providers.

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

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

3. Legislative background

The powers enabling *The Fostering Panels (Establishment and Functions) (Wales) Regulations 2018* to be made are contained in sections 87, 93 and 94A of the 2014 Act.

Regulations made under section 87 of the 2014 Act may make further provision about children looked after by local authorities, including regulations providing for the approval of local authority foster parents by local authority fostering services providers or other specified persons (section 93(1)(a)). Section 94A of the 2014 Act provides that regulations may make provision about the exercise by local authorities of functions relating to looked after and accommodated children.

Fostering services providers which are regulated as under section 2(1)(e) of the 2016 Act (i.e. independent fostering services providers) will also be covered by these

Regulations, as such providers are expressly specified as persons able to approve local authority foster parents for the purposes of section 93(1)(a) of the 2016 Act.

These Regulations will be laid under the negative procedure.

4. Purpose and intended effect of the legislation

The purpose of these Regulations is to impose requirements on fostering services providers (both local authorities and independent providers) in relation to the establishment and functions of fostering panels. They are intended to replace and update the requirements in Part IV of *The Fostering Services (Wales) Regulations 2003* ('the 2003 Regulations').

The Regulations broadly replicate the 2003 Regulations, but introduce two significant changes:

- the establishment of a central list of people who are considered suitable to sit on a fostering panel, and from which fostering panel members may be drawn
- the introduction of a two-stage process for the assessment of prospective foster parents.

5. Consultation

A 12 week public consultation ran from 24 May to 16 August 2018, seeking views on draft Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019.

27 responses were received to the consultation. The following change was made to the relevant part of the draft Regulations as a result of the consultation:

- The requirement that a provider requests a written reference in respect of a prospective foster parent who has been an approved foster parent with another provider within the preceding 12 months was changed so that a reference should be sought if that person has been an approved foster parent within the past three years.

A summary of the responses, together with the Welsh Government's analysis and conclusions, can be found at: <https://beta.gov.wales/fostering-services-regulations>.

PART 2 – REGULATORY IMPACT ASSESSMENT

We have identified two main options:

- **Option 1:** retain the status quo – i.e. retain Part IV of the Fostering Services (Wales) Regulations 2003 ('the 2003 Regulations'), and apply them to fostering services regulated under the 2016 Act as well as local authorities.
- **Option 2:** draw up a new set of regulations to replace Part IV of the 2003 Regulations. This would allow us to update the provisions and introduce improvements as part of a comprehensive overhaul of the 2003 Regulations occasioned by the 2016 Act.

Preferred option: Option 2 is the preferred option.

Background: Option 2

The 2003 Regulations provided a common framework for fostering services provided by local authorities and independent providers. They imposed standards in relation to the management and conduct of fostering services, approval of fostering parents, and other miscellaneous provisions. They were made under the Children Act 1989 and the Care Standards Act 2000.

The provisions around placements of looked after children in Part V of the 2003 Regulations were replaced by the Care Planning, Placement and Case Review (Wales) Regulations 2015, made under the 2014 Act.

The Welsh Government established a Fostering Technical Group in autumn 2017 to consider the shape of the proposed new regulations on regulated fostering services. The Technical Group was invited to also consider whether similar requirements should be placed upon local authority fostering services, which are not a regulated service under the 2016 Act. Following consideration of representations made by the Technical Group, Ministers decided to draw up and consult upon a set of new regulations setting out the requirements upon independent and local authority fostering providers, taking a consistent approach so far as was possible.

The provisions in Parts I, II and III of the 2003 Regulations, concerning the management and conduct of fostering services, are therefore being replaced by new regulations which will come into force on 29 April 2019. The new regulations relating to independent fostering services, which are a 'regulated service' under section 2 of the 2016 Act, will be made under that Act. The regulations relating to local authority fostering services are being made under the 2014 Act. These new regulations were drawn up and consulted upon as part of Phase 3 of implementation under the 2016 Act.

This leaves only Parts IV (fostering panels) and VI (visits by local authorities to children placed by voluntary organisations) of the 2003 Regulations extant. Ministers decided to draw up and consult upon new provisions to replace Part IV. Re-making the provisions around fostering panels would give an opportunity for updating and

improving the processes involved. Ministers have also consulted upon repealing Part VI on the grounds that these provisions are obsolete. This is Option 2.

Fostering panels – establishment and functions

The new regulations broadly replicate the provisions in the 2003 Regulations with respect to:

- how foster panels are constituted
- functions of fostering panels
- fostering panel meetings
- approval of foster parents
- reviews and terminations of approval
- information to be sent to independent review panels
- case records relating to foster parents and others
- maintaining a list of foster parents
- retention and confidentiality of records

The Regulations will make significant changes in the following two areas:

- *establishment of a central list*

Under the new regulations, providers would be required to maintain a list of people considered by them to be suitable to be members of a fostering panel. This would be known as the central list. The list must include one or more social worker(s) with at least three years' relevant post-qualifying experience, and one or more persons who have acted as a foster parent (provided they are not, or ever have been, a foster parent for the fostering provider maintaining the list). The regulations will provide for resignation or removal from the list, and will also specify the term of office. Each term will be for a period not exceeding three years. A person may be appointed for a maximum of three consecutive terms, but must then have a break for at least three years ('an intervening period') before they can be considered for reappointment.

Apart from the actual requirement to set up a central list, the requirements mirror those already in place for fostering panel members under the 2003 Regulations – i.e. the requirement to include social workers and people who have been foster parents, the terms of office and the need for an intervening period after nine consecutive years.

Benefits

The benefits of having a central list are that providers will have a pool of people they have already recruited and trained, that they can call upon to form panels. This gives them more flexibility over constituting panels, and a better mix and match of potential members.

The requirement for each local authority to create a central list does not preclude two or more local authorities creating a common central list, and the requirements about membership of panels also do not prevent local authorities creating regional panels

in future, so the regulations will allow for more regional working under the National Fostering Framework for Wales.

Costs

There may be some initial and ongoing costs for providers in setting up and maintaining a central list, but these are likely to be minimal, as this is a largely an administrative exercise which would be carried out alongside the existing requirement to establish fostering panels. Any additional costs are likely to be outweighed by the benefits of having a central pool of people to draw upon to serve on fostering panels. Indeed, if central lists are well maintained and used flexibly, they are likely to reduce the cost burden on providers of setting up individual panels.

Risks

No risks have been identified.

- *two stage assessment process*

The Regulations would introduce a two-stage process for assessing the suitability of prospective foster parents. This largely replicates the process set out in the 2003 regulations, except that providers would be able to notify prospective foster parents at an early stage in the process if they are considered to be unsuitable. This would save providers both time and costs, as prospective foster parents who are deemed to be unsuitable at the initial stage of the assessment process would not be subject to any further assessment under the remainder of the process.

Therefore, the provider would firstly have to obtain basic information about the person as is currently required under the 2003 Regulations. However, if the provider decides that the person is not suitable to be a foster parent in the light of any or all of this information, the provider must notify that person of that decision, with the reasons for that decision, within 10 working days of all the information being obtained.

Where the provider does not notify the person that they are unsuitable at that stage, the provider would have to obtain the additional information set out in the Regulations and any other information considered relevant, as is currently required under the 2003 Regulations. The provider would then need to consider whether the person is suitable to be a foster parent, and whether the person's household is suitable for any child, and then prepare a written report on the person. The report would contain the provider's assessment of the person's suitability, and any terms of approval. The person must be given a copy of the report, and the opportunity to send any observations within 10 working days. The person would also be notified that the case is to be referred to a fostering panel.

The restrictions on who can be considered as a prospective foster parent under these Regulations would be the same as in the 2003 Regulations. The approval, review and termination processes would also remain the same. The Regulations would also retain the current provisions for determinations (i.e. written notice that a person is not suitable to be a foster parent) to be reviewed by an independent review

panel. Independent reviews of determinations only apply to written notices issued at the end of Stage 2 of the assessment process – i.e. those who receive notification that they are not suitable to be a foster parent after stage 1 will not be eligible to have this decision reviewed by an independent panel.

Benefits

The key benefit of having a two-stage process is that those who are clearly not suitable to be foster parents can be eliminated at an earlier stage. The two stage process has already been successfully introduced in England. It also saves unsuitable applicants from having to go to full panel, investing time and emotional energy in a process which will inevitably lead to a negative result for them.

Costs

There will be cost-savings for providers who will not have to go through the full panel process with those who are not suitable.

Risks

The potential risk is that some prospective foster parents who are turned down during the early stage may feel that they have not had an opportunity to fully put forward their case. However, such people will still be able to use the provider's complaints procedure to raise any concerns they may have. All providers will be required to have complaints procedures in place under the Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 and the Local Authority Fostering Service (Wales) Regulations 2018. The focus, however, must always be on the children who need foster care, and if this process is operated fairly by providers, it will identify unsuitable applicants early on so that more resources can be used to identify and work with those who are suitable to foster.

Post implementation review

Officials will use established stakeholder networks in the fostering sector to seek information on the operation of these regulations and will take this in consideration when planning any future review of or revision to the statutory framework around fostering.

The Act contains provisions to allow Welsh Ministers to monitor functions carried out by local authorities and other bodies. The Welsh Ministers may require these bodies to report on their duties in implementing these regulations.