

**Explanatory Memorandum to** The Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 and 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 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 Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 and
- The Local Authority Adoption Services (Wales) Regulations 2019.

I am satisfied that the benefits justify the likely costs.

Julie Morgan AM  
**Deputy Minister for Health and Social Services**  
19 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.

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. 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 Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 and The Local Authority Adoption Services (Wales) Regulations 2019 (referred to collectively in this Explanatory Memorandum as the "2019 Regulations"), which it is proposed will come into force on 29 April 2019. These regulations impose requirements on regulated adoption services providers and local authority adoption service providers, respectively.

### **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 Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019

The powers enabling these Regulations to be made are contained in a number of sections within the 2016 Act. They are, as follows:

- Section 21(5) - the circumstances in which the Welsh Ministers (instead of service providers) may designate a responsible individual
- Section 27 – Regulations about regulated services
- Section 28 – Regulations about responsible individuals
- Section 30 – Regulations about service providers who are liquidated etc.
- Section 31 – Regulations about service providers who have died
- Section 45 – Regulations which provide for offences in the event of failure by a service provider to comply with specified requirements in regulations under section 27
- Section 46 – Regulations which provide for offences in the event of failure by a responsible individual to comply with specified requirements in regulations under section 28

These Regulations will be laid under the affirmative procedure.

These Regulations apply to regulated adoption services. A “regulated adoption service” means an adoption service which is regulated under the 2016 Act. This is defined within Schedule 1 of the 2016 Act as:

“a service provided in Wales by:

- a) an adoption society within the meaning of the Adoption and Children Act 2002 (c.38) which is a voluntary organisation within the meaning of that Act, or
- b) an adoption support agency within the meaning given by section 8 of that Act”.

### *Statutory Guidance*

Statutory guidance has been developed to accompany the Regulations (as required under section 29 of the 2016 Act). The guidance, which was published for consultation at the same time as the Regulations, has been revised and will be published in draft on the Welsh Government website in February 2019, to aid scrutiny of these Regulations. The statutory guidance will then be finalised and published in April 2019.

### 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.

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.

### *Code of Practice*

A code of practice to accompany the Regulations, under section 145 of the 2014 Act, has been revised following consultation and it is proposed that this will be laid before the National Assembly in February 2019.

#### **4. Purpose & intended effect of the legislation**

The purpose of both sets of Regulations is to ensure that regulated adoption services providers and local authority adoption services providers provide services to the required standards to ensure that the well-being and safety of children being placed for adoption is promoted and maintained; and the needs of individuals in receipt of support are met consistently across all providers of adoption services in Wales.

#### **5. Consultation**

A 12-week consultation ran between 4 September and 27 November 2018, with 9 responses received in total (including one composite response, co-ordinated by the National Adoption Service). All responses have been analysed and considered by officials, who have taken into account feedback received at the consultation events (held on 6 November in Cardiff and 8 November in Wrexham) and through wider engagement with the sector. Prior to consultation, the draft Regulations were developed and tested with the assistance of a stakeholder technical group which met several times in autumn/winter 2017-18.

The following is a list of the key changes made to the draft regulations following the consultation and stakeholder events:

- Use of the term 'support' instead of the original term 'care and support' to describe those activities which must be regulated and delivered in compliance with the regulations., reflecting the fact that none of the adoption services that will be caught by the new regulatory regime will have a 'care' component.
- Use of the word 'assistance' in place of 'support' when 'support' is used in the general sense – for example in 'such support as necessary to enable the individual to understand the information', which will become 'such assistance as necessary...'
- Clarification on the extent of the exception regarding individuals who are working alone (ie not as part of a partnership or other group) and providing adoption support services under contract to an adoption service.
- Amending 'quality of care review' to 'quality of service review' in order to align the terminology with that already used by adoption services.
- Harmonizing the retention periods for adoption records at 100 years for records relating to the child and the child's adopter where an adoption order is made and for records where adoption support services are provided; otherwise requiring records in relation to adults to be kept for 3 years and 15 years in relation to children.
- Refining regulations around the suitability of the service to take account of other changes to terminology and language throughout the regulations.
- Changes to address other minor clarification and consistency issues throughout the regulations.

- Additionally there was a call from stakeholders for further detail to support the regulations which officials have addressed through expanding on statutory guidance.

Section 27(4) of the Regulation and Inspection of Social Care Act (RISCA) provides that “Before making regulations under this section the Welsh Ministers must—(a) consult any persons they think appropriate, and (b) publish a statement about the consultation.” To discharge this requirement, a summary of the responses, together with a list of respondents will be published on the Welsh Government website:

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

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **REGULATED ADOPTION SERVICES**

In respect of regulated adoption services providers, we have identified two main options:

**Option 1:** as far as possible, replicate in regulations the requirements placed on voluntary adoption agencies and adoption support agencies (regulated adoption service providers) under the Voluntary Adoption Agencies and Adoption Agencies (Miscellaneous Amendments) Regulations 2003 (“the 2003 Regulations”), the Adoption Support Agencies (Wales) Regulations 2005 (“the 2005 Regulations”) and the relevant National Minimum Standards under the Care Standards Act 2000. This is the ‘Do Minimum’ option and represents the baseline against which the additional costs and benefits of the alternative option are assessed.

**Option 2:** harmonise, as far as possible, the requirements on regulated adoption services providers with those placed on other services regulated under the 2016 Act, with bespoke and/or additional requirements as necessary.

**Preferred option:** Option 2 is the preferred option.

Under Option 2, requirements on regulated adoption services providers would, so far as practicable, be consistent across all regulated services, in line with the policy intent of the 2016 Act.

The 2016 Act made some fundamental changes to the way care and support services are regulated, inspected and delivered; it is therefore difficult to compare and contrast the regulations made under the 2000 Act and the proposed regulations under the 2016 Act. With regard to regulation, the intention of the 2016 Act was to create a consistent set of requirements that would apply across all regulated services, rather than each type of service having its own set of regulations and National Minimum Standards (NMS). The benefit of this approach is that it moves away from focusing on minimum standards to an emphasis on achieving continual improvement.

The National Minimum Standards (NMS) for Adoption Support Agencies and Voluntary Adoption Agencies will, therefore, no longer apply. Instead, statutory guidance has been developed alongside the regulations to give further detail to regulated service providers about how they may comply with the requirements set out in the regulations. This guidance has been developed by Welsh Government and the cost has already been met.

Under phase 2 of implementation of the 2016 Act, requirements were placed upon providers of care home services (including care homes for children), domiciliary support services, residential family centre services and secure accommodation services. The key regulations were the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 (‘the 2017 Regulations’). Under this option, the 2017 Regulations provide the model for the regulations being made under Phase 3 for fostering, adoption, adult placement and advocacy services, with bespoke changes made to each of the Phase 3 regulations as required to fit the particular characteristics of each service.

*A significant difference between the 2017 Regulations and the approach to regulating regulated adoption services proposed in this option is that regulated adoption services providers do not provide 'care and support' to individuals, unlike those services covered by the 2017 Regulations. None of the regulated adoption services that will be caught by the new regulatory regime will have a 'care' component. The 2014 Act contains duties to assess and meet needs for care and support. However, the Adoption and Children Act 2002 only contains a duty to assess, not to meet the care need. These new regulations do not seek to add to the duties on adoption services to provide 'care and support'. Instead, they use the term 'support', to describe those activities which must be regulated and delivered in compliance with the regulations.*

## **LOCAL AUTHORITY ADOPTION SERVICE PROVIDERS**

In respect of local authority adoption service providers, we have identified two options:

**Option 1:** as far as possible, replicate in regulations made under Section 9 of the Adoption and Children Act 2002 the requirements placed on local authority adoption services providers under The Local Authority Adoption Service (Wales) Regulations 2007 ('the 2007 Regulations') and the relevant National Minimum Standards under the Care Standards Act 2000. This is the 'Do Minimum' option and represents the baseline against which the additional costs and benefits of the alternative option are assessed.

**Option 2:** place a new set of requirements on local authority adoption service providers in regulations made under Section 9 of the Adoption and Children Act 2002 which follow, so far as practicable and appropriate, the requirements being placed on voluntary adoption agencies and adoption support agencies (regulated adoption services providers) under the 2016 Act.

The requirements placed upon responsible individuals of regulated services under section 28 of the 2016 Act will not be relevant for local authority providers, as these are not a regulated service under the 2016 Act. Instead, regulations proposed under this option would place a requirement upon local authority providers to appoint an adoption services manager, setting out the requirements of that role.

**Preferred Option:** Option 2 is the preferred option.

The rationale for this is that it would not be desirable for local authority adoption services to have a different regulatory framework to that for adoption services provided by voluntary adoption agencies and adoption support agencies (regulated adoption services), given that the outcomes all sectors are seeking to achieve relating to adoption are the same and that the nature of adoption itself is the same. It is the same children that are being placed by local authorities, whether with their own adoption services or via the regulated sector. Also, some of the improvements which the 2016 Act sought to drive in relation to regulated services, with their associated benefits, are also pertinent to local authority adoption services, and we want to ensure that any new requirements upon local authority providers are equally robust.

It is, however, accepted that there will be some important differences between the regulatory regime for regulated adoption services and local authorities. The main

difference is that it would be inappropriate to try to replicate the responsible individual (RI) role within local authorities, given the different accountability structures within local authorities. Instead we would propose to place a requirement upon local authority providers to appoint an adoption services manager.

**Costs:** The role of adoption services manager already exists and therefore the requirement does not carry any additional costs.

## **Requirements on service providers**

### Requirements on services providers – general

These requirements will be placed on both regulated adoption services providers and local authority adoption services providers.

For regulated adoption services providers, the general requirements would include those relating to the statement of purpose, monitoring and improvement, the responsible individual, financial sustainability, policies and procedures, and the duty of candour.

For local authority providers, the general requirements would replicate those above, with the exception of those requirements relating to the responsible individual and financial sustainability, due to the different accountability structures within local authorities.

The main differences from the 2003 Regulations, 2005 Regulations and 2007 Regulations are:

- **STATEMENT OF PURPOSE**

These requirements will be placed upon regulated adoption service providers and local authority adoption services providers.

Providers would be required to provide the service in accordance with the statement of purpose, keep the statement under review and revise it where appropriate.

Under the 2003 Regulations, providers and managers have to provide a copy of the statement of purpose to the Welsh Ministers, and make it available on request for inspection by:

- a) Any person working for the purposes of the agency;
- b) Children who may be adopted, their parents and guardians;
- c) Persons wishing to adopt a child;
- d) Adopted persons, their parents, natural parents and former guardians;
- e) Any local authority

They must also notify the Welsh Ministers of any revision within 28 days.

Under the 2005 Regulations providers and managers have to provide a copy of the statement of purpose to the Welsh Ministers, and make it available on request for inspection by:



- a) Any person working for the purposes of the agency;
- b) Any person receiving adoption support services or acting on behalf of a child receiving such services from the agency;
- c) Any person making enquiries about receiving adoption support services from the agency on his or her own or a child's behalf;
- d) Any local authority.

They must also notify the Welsh Ministers of any revision within 28 days.

Under the 2007 Regulations each local authority must provide a copy of the statement of purpose to the Welsh Ministers and make it available on request for inspection by:

- a) children who may be adopted, their parents and guardians;
- b) persons wishing to adopt a child;
- c) adopted persons, their parents, natural parents and former guardians;
- d) persons who are seeking an assessment of their needs for the provision of adoption support services by the authority;
- e) every person working for the purposes of the adoption service.

They must also notify the Welsh Ministers of any revision within 28 days.

Both sets of new regulations would impose a requirement on providers to notify individuals of any revision to be made to their statements of purpose at least 28 days before it is to take effect.

In the Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019, which apply to adoption services (both adoption societies and adoption support agencies), "individuals" is defined as:

- (a) in the case of an adoption society in the course of arranging an adoption or after an adoption has been arranged—
  - (i) a child who may be adopted, their parent or guardian;
  - (ii) a person wishing to adopt a child, or
  - (iii) an adopted person, their parent, birth parent or former guardian,

who is receiving support of the type which an adoption society is required to provide in accordance with the Adoption Agencies (Wales) Regulations 2005 or the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005;

- (b) in the case of an adoption support agency, or an adoption society in the course of providing adoption support services, any person who is receiving adoption support services.

In the Local Authority Adoption Services (Wales) Regulations 2019, "individuals" is defined as:

- (a) a child who may be adopted, their parent or guardian,
- (b) a person wishing to adopt a child, or

(c) an adopted person, their parent, birth parent or former guardian,

who is receiving support of the type which a local authority adoption service is required to provide in accordance with the Adoption Agencies (Wales) Regulations 2005 or the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005, or

(d) any person receiving adoption support services;

In both sets of regulations, the provider must notify the service regulator, individuals and any representatives of any revision to the statement of purpose at least 28 days before it is to take effect, but if it necessary to revise the statement of purpose immediately these persons must be notified without delay.

**Costs:** The requirement to notify in advance of making revisions to the statement of purpose should have no additional cost for providers.

**Risks:** No risks have been identified.

- RESPONSIBLE INDIVIDUAL

These requirements will be placed upon regulated adoption services providers only.

Requirements relating to the responsible individual (RI) would include the need for the RI to be supported and appropriately trained, action to take when the RI fails to meet requirements placed upon them by the regulations, and what to do when the RI is unable to fulfil their duties. There would also be similar requirements on providers who are individuals and therefore also act as RI.

The role of the RI across the services regulated under the 2016 Act is much greater and attracts a higher level of accountability as compared to the equivalent role in the 2003 Regulations and the 2005 Regulations. Discussion of this role and its regulatory implications can be found below.

- LOCAL AUTHORITY MANAGER

These requirements will be placed upon local authority services providers only.

The existing requirement for a local authority to appoint one of its officers to manage the adoption service will remain. The manager would need to meet the general requirements set out in relation to fitness of staff at the service, and the local authority provider must ensure that the manager is supported to carry out their duties effectively, and undertakes appropriate training. The local authority provider must also take such action as is necessary in the event that the manager has not complied with a requirement, and put suitable arrangements in place when the manager is absent. Discussion of this role and its regulatory implications can be found below.

- POLICIES AND PROCEDURES

These requirements will be placed upon both regulated adoption services providers and Local Authority adoption services providers.

Providers will need to have policies and procedures in place covering:

- safeguarding
- supporting and developing staff
- staff discipline
- complaints
- whistleblowing

In addition, Regulated Adoption Services providers will have to have a policy and procedures in relation to commencement of the service.

The 2003 Regulations, the 2005 Regulations and the 2007 Regulations do not have a dedicated regulation on policies and procedures but do have regulations on Complaints, Staffing, Staff disciplinary procedure, and Arrangements for the protection of children, whilst the applicable National Minimum Standards include provision relating to whistleblowing.

**Costs:** There should be no significant additional costs in drawing up and implementing this list of policies and procedures as providers should already have policies and procedures in place in relation to these areas.

The Regulatory Impact Assessment for the Regulation and Inspection of Social Care (Wales) Bill estimated that it would take providers 4 working days (assuming the working week is 37 hours) to complete the annual return. The annual return, a requirement under Section 10 of the 2016 Act, contains a similar level of information as might be expected in a more complex policy or procedure, such as safeguarding. Other policies or procedures are likely to be simpler. It is therefore estimated that the requirements above will entail a cost of up to £392 per policy for each setting (variable depending on the salary of the person producing the policy/procedure). The actual additional cost for an individual provider will depend on the provider and the policies and procedures they currently have in place. Additional commentary on key policies is provided under the relevant sections below.

**Risks/Benefits:** There are no identified risks. Benefits include improved accountability at senior level within the service and better support for staff through access to a more comprehensive range of policies.

- DUTY OF CANDOUR

These requirements would be placed upon regulated adoption services providers and local authority providers.

The duty of candour would require providers to act in an open and transparent way with individuals and representatives of those individuals. This is a new requirement.

**Costs:** There should be no additional costs associated with this duty. Providers should already be acting in an open and transparent way with those to whom they provide services.

**Risks:** No risks have been identified.

Requirements on regulated adoption services providers as to the steps to be taken before agreeing to provide support - Suitability of the service

These requirements will be placed upon regulated adoption services providers only.

The provider must only decide to provide support after assessing whether the service is suitable to meet the individual's needs.

Requirements on service providers as to the information to be provided to individuals on commencement of the provision of support - Information about the service

These requirements will be placed upon regulated adoption services providers and local authority providers.

The requirements would require the providers to prepare a written guide to the service in a language and format suitable for any individual who is receiving support. It will need to be reviewed at least annually and updated as necessary.

The guide will include a summary of relevant policies and procedures, as well as information on how to make complaints and raise concerns. The provider will also have to ensure that the guide contains information about the availability of advocacy services.

These requirements go beyond the 2003 Regulations, the 2005 Regulations and the 2007 Regulations, which require the registered person or the local authority to prepare a guide for children but not for other individuals.

**Costs:** There may be some minimal additional costs for providers in adapting the children's guide for all individuals. However, some regulated adoption services providers already provide an information pack for adults, even though there is no regulatory requirement for them to do so.

**Risks/Benefits:** No risks have been identified. The benefit would be to improve accessibility of information for any individual who is receiving support.

Requirements on service providers as to the standard of support to be provided

The following requirements would be placed upon regulated adoption services providers and local authority providers:

- Standards of support to be provided

Providers would be required to ensure that support is provided in a way that maintains, protects and promotes the safety and well-being of individuals.

- Information for individuals

There would be requirements regarding the information individuals need in order to make or participate in assessments, plans and day to day decisions about the way support is provided to them and on how they are helped to meet their needs for support.

This is a new requirement, in line with the principle underpinning the 2014 Act and the 2016 Act that the new legislation will promote greater choice and control by children and adults who are receiving 'support' as defined within the regulations.

- Language and communication

Providers must take reasonable steps to meet the language and communication needs of an individual. Providers would be required to take reasonable steps to meet the language needs of the individual, and to ensure that individuals are provided with access to the communication aids and equipment they need in order to communicate with others.

This is a new requirement on the face of the regulations, although the importance of taking into account the language needs of children was already referred to in the National Minimum Standards (NMS 2 on Matching). The communication aids and equipment may be provided by the NHS, social services or via other means. There is no expectation that they will be provided by the adoption service: the duty is to ensure that the child is able to access these.

- Respect and sensitivity

The service provider must ensure that individuals are treated with respect and sensitivity which includes respecting the individual's privacy and dignity; respecting their rights to confidentiality; promoting their autonomy and independence; and having regard to any relevant protected characteristics (as defined in the Equality Act 2010).

**Costs:** There will be no additional costs to providers in implementing these requirements; the new requirements in relation to information for individuals and language and communications relate to new ways of doing things which are more inclusive of the individual, rather than new products/processes (and, in the case of language and communications, reinforce what is already in the National Minimum Standards).

**Risks/Benefits:** No risks have been identified.

The purpose of these requirements (and therefore benefit) is to mitigate the risk of placement breakdown and to ensure that an individual's needs for support are met.

Requirements on service providers – safeguarding

These requirements will be placed upon regulated adoption services providers and local authority providers.

The 2019 Regulations would require adoption service providers to put arrangements in place to ensure individuals are safe and protected from abuse, neglect and improper treatment. This includes what a provider must do when an allegation is made or evidence

comes to light. In keeping with the approach taken in the 2016 Act, the new regulations will be more explicit about the overarching requirements – e.g. to put arrangements in place, and to ensure that safeguarding policies and procedures are operated effectively. The regulations and guidance will reflect current best practice around safeguarding.

The 2003 Regulations, 2005 Regulations and 2007 Regulations specifically mention ‘Arrangements for the protection of children’ which include the preparation and implementation of a written policy and set out the procedure to be followed in the event of any allegation of abuse or neglect.

**Costs:** There may be some small costs to adapt policies to ensure that all individuals, not just children, are safeguarded

**Risks/Benefits:** No risks have been identified. Putting these requirements in place will benefit individual using the service, through embodying best practice around safeguarding.

### Requirements on service providers – staffing

These requirements will be placed upon regulated adoption services providers and local authority providers.

The 2019 Regulations strengthen and expand upon the 2003 Regulations, 2005 Regulations and 2007 Regulations by requiring the service provider to ensure that a sufficient number of staff (including those working as volunteers) are suitably trained (core and specialised) and skilled, as well as qualified, competent and experienced. The service provider must ensure that from 1 April 2022 all managers are supported to maintain their registration as social care managers with Social Care Wales.

The requirements in the 2003 Regulations, 2005 Regulations and 2007 Regulations with respect to staffing will be maintained. These cover the fitness of staff, support and development of staff, and the need for a disciplinary procedure. The new regulations will place a greater emphasis on staff having regard to individuals’ needs for support and assisting individuals to meet their needs for support in line with the ethos of the 2014 Act and the 2016 Act.

The 2019 Regulations will reflect the new Disclosure and Barring Service arrangements, including allowing for the use of the update service.

There will be a new requirement to ensure that all employees and volunteers are provided with information about the service and are made aware of any codes of practice about the standards of conduct required of social workers published by Social Care Wales under the 2016 Act.

In addition, regulated adoption service providers will be required to adhere to the code of practice on the standards of conduct and practice expected of person employing social care workers, also under the 2016 Act.

**Costs:** No additional costs have been identified; the new/strengthened elements of the

requirements relate to new ways of doing things which are more inclusive of the individual, rather than to new products/processes. Likewise the requirements to provide information/make employees and volunteers aware and adhere to the code of practice on the standards of conduct and practice expected of person employing social care workers should have minimal implications for providers, as reflecting existing good practice.

**Risks:** No risks have been identified.

#### Requirements on service providers – premises.

These requirements will be placed upon regulated adoption services providers and local authority providers.

The requirements in the 2003 Regulations, 2005 Regulations and 2007 Regulations with respect to premises (secure storage of records) will be retained. These apply to the premises from which the adoption service is operated. The new regulations also place requirements on providers with respect to premises used for the supervision of staff. These requirements are currently covered in the NMS (Standard 29 Premises).

**Costs:** No additional costs have been identified.

**Risks:** No risks have been identified.

#### Requirements on service providers – other requirements

The following miscellaneous requirements will be placed upon regulated adoption service providers and local authority providers.

- RECORDS

The 2019 Regulations require records to be kept securely. These records refer to individuals, charges for the provision of adoption support and additional services, complaints (and action taken), and all persons working at the service.

Where an adoption order has been made, records must be retained for 100 years if they relate to the adopted child or the child's adopter (from the date of the adoption order) and for 100 years where adoption support services are provided to an individual (from the date of the last entry). Where no adoption order has been made, records relating to adults (which include staff) must be retained for three years from the date of last entry and records relating to children must be kept for fifteen years from the date of last entry.

Service providers must make individuals aware that they can have access to their records.

- CONFLICTS OF INTEREST

There would be a requirement to have effective arrangements in place to identify, record

and manage potential conflicts of interest.

- COMPLAINTS

Providers would be required to have in place a policy and procedures for dealing with complaints. These largely replicate existing requirements.

- WHISTLEBLOWING

Providers would be required to put effective whistleblowing policies and procedures in place. This is a new requirement in regulations, reflecting the development of whistleblowing policy and practice since the 2003 Regulations, 2005 Regulations and 2007 Regulations were drawn up.

In addition, there will also be requirements placed upon regulated adoption services providers in respect of:

- NOTIFICATIONS

The notification requirements for local authorities would remain the same as in the 2007 Regulations. For regulated adoption services providers, the notification requirements would broadly be the same as in the 2003 Regulations and 2005 Regulations with the following main additions:

- in the case of a service provided by an adoption society, the provider must notify the placing authority of:
  - the death of a child placed for adoption by the service.
  - any serious accident or injury sustained by a child placed for adoption by the service.
  - any serious complaint about a prospective adopter approved by the service where a child is placed for adoption with that prospective adopter by another service.
  - the instigation and outcome of any child protection enquiry involving a child placed for adoption by the service.
- Where the service is provided by an adoption support agency or an adoption society which provides adoption support services, the provider must notify the placing authority of:
  - the death of a child in the course of receiving adoption support services from the service;
  - any serious accident or injury sustained by a child in the course of receiving adoption support services from the service;
  - the instigation and outcome of any child protection enquiry involving a child receiving adoption support services from the service.
- in the case of a service provided by an adoption society or adoption support agency, the provider must notify the police of any incident of child sexual or criminal exploitation or suspected child sexual or criminal exploitation;

**Costs:** No additional costs have been identified in respect of any of the above



requirements. The changes simply update and tighten up procedures in the light of existing good practice.

**Risks:** No risks have been identified. All the changes to the existing regulations reflect good practice and are designed to mitigate risks.

## **Requirements on responsible individuals**

In the 2003 Regulations and 2005 Regulations where the provider is an organisation, the 'responsible individual' is defined as 'an individual... who is a director, manager, secretary or other officer of the organisation and is responsible for supervising the management of the agency'. Under the current system the responsible individual must be of integrity and good character; be physically and mentally fit to carry on the agency; must provide proof of identity and documentary evidence of any relevant qualification; and must provide an appropriate criminal record certificate.

These requirements will be placed upon regulated adoption services providers.

Section 21 of the 2016 Act expands on the requirements as to who is eligible to be a responsible individual (RI).

The new requirements would place greater responsibility on the RI within the service.

The key additions to the RI role are set out below:

### Visits

There would be a requirement on the RI to visit the premises from which the service is provided, and meet with members of staff and individuals or any representatives of individuals for whom a service is being provided. Visits must be at least every three months.

### Oversight of adequacy of resources

The RI would be required to report to the service provider, on a quarterly basis, on the adequacy of the resources available to provide the service in accordance with the requirements in the regulations. This requirement does not apply where the service provider is an individual.

### Other reports to the service provider

The RI would also be required to report on any concerns about or significant changes to the management or provision of the service, or any concerns that the service is not being provided in accordance with the statement of purpose. This requirement does not apply where the service provider is an individual.

### Engagement with individuals and others

The RI would have responsibility for ensuring suitable arrangements are in place for

obtaining the views on the quality of service provided and how this can be improved. Views must be sought from individuals (the guidance sets out that this is a sample of individuals using the service); any representatives of those individuals; any local authority or local authority in England which has arranged for the provision of adoption support by the service; and staff employed at the service.

### Compliance

The RI would be responsible for ensuring that there are systems in place to record incidents and complaints, for the keeping of records, and that the policies and procedures are kept up to date. The RI would also have to prepare the statement of compliance to be included in the annual return under section 10(2)(b) of the 2016 Act. When preparing the statement the RI must have regard to the assessment of the standard of support which is contained in a report prepared in accordance with regulation 49(4).

### Quality of service review

The RI would have to ensure suitable arrangements are in place for monitoring, reviewing and improving the quality of the service at least every six months.

### Notifications

The RI would also be required to make the following notifications:

- the appointment of a manager;
- the expected absence of the appointed manager for 28 days or more, 7 days prior to the commencement of the absence;
- the unexpected absence of the appointed manager, no later than 7 days after the commencement of the absence;
- the unexpected absence of the appointed manager for 28 days or more where no prior notification has been given, immediately on the expiry of 28 days following the commencement of the absence;
- return from absence of the appointed manager;
- interim arrangements where the manager is absent for longer than 28 days;
- someone other than the appointed manager is proposing to manage or is managing the service; and
- the appointed manager ceases, or proposes to cease, managing the service;

### Duty of candour

The RI must act in an open and transparent way with individuals; and any representatives of those individuals.

Placing greater responsibilities on the RI will support the policy intention of ensuring accountability for service quality and compliance is held at the most appropriate level within an organisation. By placing specific duties on the RI, the regulator can ensure that the provider takes an active interest in the services provided. Whilst managers and service providers will retain accountability for their own role, the statutory role of RI ensures that a clear chain of accountability is established, which includes the corporate

responsibility of the board, the responsible individual and the service manager.

**Costs:** It is not anticipated that there will be significantly greater costs to providers in placing these requirements upon RIs. Many RIs are already very involved in their services and many will be undertaking the duties set out under this option already.

There are, however, some additional requirements which may result in some additional costs. These are:

### Visits

Using the ONS data from the Annual Survey of Hours and Earnings, which states that the gross hourly earnings for managers and directors in Social Services in 2017 was £19.29, it is estimated that, assuming RIs spend most of their working day (8 hours) at a service during their visit, this would give a total cost, including on-costs, of £201 per visit. It is required that visits should take place at least every 3 months which would mean an annual cost of around £804 for each of the services.

### Quarterly reporting on the adequacy of resources

To comply with this requirement, the responsible individual should have systems and processes in place that provide information about the service and any areas that may need closer observation/consideration and/or improvement.

Service providers should already have governance systems in place to monitor the running of the service. This requirement ensures the responsible individual takes greater ownership of the governance of the service and is proactive in reporting concerns to the service provider (this would not apply if the service provider is an individual). There may be a small increase in staff time to undertake this more formal monitoring; however the cost should be negligible as there should already be systems in place.

### Quality of service review every 6 months

It is existing practice for providers to frequently undertake reports on the management and outcomes of the services of the adoption agency. This duty would be placed on the responsible individual with the intention that it should be a responsive and on-going process rather than a one-off annual requirement.

The responsible individual must put suitable arrangements in place to establish and maintain a system for monitoring and improving the quality of the service. To complete this quality review the RI must take into account:

- the outcome of engagement with individuals, any representatives of individuals and staff employed by the service
- aggregated data on notifications, safeguarding matters, whistleblowing concerns and complaints
- any action taken in relation to complaints
- the outcome of any audit of the accuracy and completeness of records.

Where this requirement corresponds to the date on which the service provider's annual

return is due, much of the information from the quality of service review can be used to complete the relevant section of the annual return in order to avoid unnecessary duplication.

Costs to service providers in submitting the quality of service review report are anticipated to be comparable to the preparation of the annual return. There may be some additional initial costs in moving to six monthly reports, but the quality of service review process should become embedded in the ongoing quality assurance process the provider has in place.

The Regulatory Impact Assessment for the Regulation and Inspection of Social Care (Wales) Bill estimated that it would take providers 4 working days (assuming the working week is 37 hours) to complete an annual return. The annual return, a requirement under Section 10 of the 2016 Act, contains a similar level of information to the quality of service review but as the quality of service review draws from existing monitoring information this should not take as long to complete. A reasonable estimation for this would be more like 2 working days, therefore incurring a cost of around £196 for each service, every six months. As providers are currently required to undertake similar reviews on an annual basis, the additional cost (of moving to six-monthly) should only be £196 per annum. However, this figure will vary depending on the salary of the person undertaking the review and may vary according to the size of the provider.

**Risks:** Consideration was given to the risks regarding the increased RI role during Phase 2 of implementation of the 2016 Act. The same considerations are relevant to the new requirement with respect to the RIs of adoption services, as a common approach is being taken to RIs across all regulated services under the 2016 Act.

The relevant section from the RIA on the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 reads as follows:

*The impact of the duties on RIs will, therefore, vary depending on the organisational model. During the consultation we became aware of risks regarding the duties as they relate to registered charities and RIs of larger organisations.*

*We were advised that, because trustees of charities (unincorporated bodies) are unpaid volunteers, they may not necessarily be willing, suitable or have the relevant expertise and understanding of the care and support service to take on the responsibility of the RI role. We were also advised that the option of paid officers/senior managers within the charity (which is where they suggest that the RI role should be placed) joining the board is not possible.*

*Larger organisations providing a number of regulated services in Wales have also identified challenges with the requirement for the RI to be a director. Their concerns focus on the duties being placed on RIs – including the requirement to visit the service – and the extent to which these duties can be delegated. They advised that the directors of larger organisations are too removed from the service and the provision of care and support services and may not be suitably experienced or qualified to carry out the*

*duties of the RI effectively. Similarly, they advised that the number of services these organisations provide would make it impossible for the directors to carry out this role. Furthermore, they suggested that this may deter future investment in Wales. There is therefore a risk here in terms of the RI role being carried out properly, consistent with the policy intent.*

*This risk will be mitigated by applying a wide interpretation to the term 'or similar officer' so that this could include the Chief Executive or a very senior level employee. This would provide a pragmatic solution for both charities and larger organisations without overly compromising the policy intent. The RIs would still be designated as part of the registration of the service and therefore the service regulator will have the opportunity to test their suitability for this role. The regulator would ensure a consistency of approach and an appropriate level of seniority within the organisation by applying the following criteria:*

- authority to hire and fire managers and any other staff working in care services;*
- authority to set pay rates for all staff working directly within the care services;*
- authority to decide on investment decisions for the care services;*
- oversight of the health and safety within the relevant care services;*
- accountability for determining assurance arrangements and setting any benchmarks.*

*The proposed approach set out in this advice, coupled with the amendments to the RI duties as set out in the draft regulations, is intended to provide a workable solution without compromising the policy intent.*

This will ensure that the application and interpretation of section 21 of the 2016 Act by the service regulator is consistent, equitable across different types of organisations and consistent with the policy intent.

**Risks/Benefits:** No risks have been identified. The benefits of the requirements will be around securing better oversight of, and therefore greater accountability for, quality of service at senior level within the provider organisation, so driving service improvement.

### **Requirements on local authority managers**

The following requirements will be placed upon local authority providers in respect of local authority managers:

- oversight of adequacy of resources
- other reports to the local authority provider
- engagement with individuals and others
- duty to ensure there are systems in place to record complaints
- duty to ensure there are systems in place for keeping of records
- duty to ensure policies and procedures are up to date
- quality of service review

- support for raising concerns

These requirements are the same as those placed upon the responsible individual (RI) of a regulated service provider. Local authority managers will already be undertaking most of these duties.

Consideration of **costs** and **risks/benefits** is as under Responsible Individuals above.

## **Offences**

These requirements will be placed upon regulated adoption services providers.

Section 45 of the 2016 Act is a regulation-making power which allows the Welsh Ministers to provide that it is an offence for a service provider to fail to comply with a specified provision of the regulations made under section 27 of the 2016 Act (duties on service providers). Section 46 is a regulation-making power which allows the Welsh Ministers to provide that it is an offence for a responsible individual to fail to comply with a specified provision made under section 28 (duties on responsible individuals). Breaches of these requirements can be dealt with via a criminal prosecution.

The offences under sections 45 and 46 are intended to ensure that there is a proportionate approach to the creation of offences to enable CIW to take criminal action when it is appropriate to do so – both when a breach is sufficiently serious and when there is enough evidence to meet the threshold to commence legal proceedings.

During Phase 1 of implementation of the 2016 Act, consideration was given as to whether to specify that breach of all the requirements in regulations under section 27 and 28 should be categorised as offences. This would have broadly replicated the approach taken under the Care Standards Act 2000. It was decided that, for regulated services under the 2016 Act, the regulations would specify that breach of only the key requirements in regulations made under section 27 and 28 would be offences.

The regulations would therefore specify which requirements made under section 27 and 28 would give rise to offences if breached.

The benefits, costs and risks associated with this option were set out in the RIA for the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017<sup>1</sup>.

## **Service providers who are liquidated**

These requirements will apply to independent service providers.

Section 30(1) of the 2016 Act contains a power for Welsh Ministers to place requirements upon an appointed person. Section 30(2) states that an 'appointed person' means a person appointed as:

- (a) a receiver or administrative receiver of the property of a service provider who

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<sup>1</sup> <http://www.assembly.wales/laid%20documents/sub-ld11277-em/sub-ld11277-em-e.pdf>

- is a body corporate or a partnership;
- (b) a liquidator, provisional liquidator or administrator of a service provider who is a body corporate or a partnership;
- (c) a trustee in bankruptcy of a service provider who is an individual or a partnership.

The regulations would require an appointed person to give the Welsh Ministers notice, without delay, of when liquidators have been appointed and the reasons for it; and to inform the Welsh Ministers within 28 days of the appointment, of their intentions regarding the future operation of the service.

These are in line with the requirements already placed upon care homes, domiciliary care providers and other services regulated under the 2016 Act. An analysis of the benefits, costs and risks of this option are set out in the RIA for the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 (See previous footnote).

### **Death of service provider who is an individual**

These requirements apply to Regulated Adoption Services providers who are individuals.

Section 31 of the 2016 Act gives the Welsh Ministers the power to make regulations placing requirements on a personal representative of an individual service provider who has died to notify the Welsh Ministers of the provider's death.

The regulations would also state that, where a service provider who is an individual has died, the personal representatives of the individual must, without delay, give written notification of the death to the Welsh Ministers, and within 28 days of the death, notify the Welsh Ministers of their intentions regarding the future operation of the service.

The regulation would also state that the personal representatives of the individual may act in the capacity of the service provider for a period not exceeding 28 days or for such longer period (not exceeding one year) as the Welsh Ministers may agree.

These provisions are in line with the requirements already placed in relation to individual providers of care homes, domiciliary care providers and other services regulated under the 2016 Act. An analysis of the benefits, costs and risks of this option are set out in the RIA for the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 (see footnote on previous page).

## Competition Assessment

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	Yes
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of firms?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector categorised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore we do not consider it necessary to undertake a detailed competition assessment for these Regulations since they will not affect the business sector in any significant way.

### Post implementation review

As set out in the RIA for the 2016 Act the Welsh Government has two clear aims for the regulation and inspection of social care, the Act and, as such, these regulations. They are to:

- secure the well-being of citizens
- improve the quality of social care.

The 2016 Act also makes provision for a number of key reporting mechanisms which will offer a set of clear evidence to inform the post implementation review and establish how successful the Act has been in achieving both of these aims. The reporting mechanisms include:

- annual returns from service providers
- annual reports from local authorities and the review of those reports as undertaken in the Annual Review of Performance and Evaluation of Performance by the service regulator
- the annual report from the Welsh Ministers in their role as the service regulator
- the annual report of the workforce regulator.



CIW will monitor the implementation of these Regulations following their coming-into-force date of 29 April 2019.