



## **Winter 2019 Edition of the AFA Cymru Legal Bulletin**

Welcome to the winter edition of our newsletter, where we provide an update on the new fostering and adoption regulations.

### **FOSTERING**

These three sets of regulations all come into force on 29 April.

### **BACKGROUND**

Those who were involved with the consultation over the new fostering regulations last summer will recall that there was one set of regulations:

#### **The Fostering Services (Fostering Service Providers and Responsible Individuals) (Wales) Regulations 2019,**

which covered the new regulatory and inspection framework for local authorities and independent fostering service providers. Part 14 also provided the new framework for a two stage assessment and the creation of a central list for panel.

These regulations were accompanied by a document that combined a code of practice for local authority fostering services and statutory guidance for independent fostering service providers.

These regulations need to be set aside, as they have now been split into three separate sets of regulations. However, they contain much the same material as the original draft.

### **FOR LOCAL AUTHORITIES:**

#### **1) The Local Authority Fostering Services (Wales) Regulations 2018, plus accompanying code of practice**

These regulations are issued under the SSWB(W)A 2014

They cover:

- General requirements for LA providers
- Requirements on LA providers as to the information to be provided to individuals on commencement of the provision of care and support
- Requirements on LA providers as to the standard of care and support to be provided
- Requirements on LA providers – safeguarding

- Requirements on LA providers to ensure access to health, education and other services
- Staffing
- Premises, facilities and equipment
- Other requirements on LA providers
- Support and oversight of foster parents
- Duties of LA managers

These regulations replace the **Fostering Services (Wales) Regulations 2003**

FOR INDEPENDENT FOSTERING SERVICE PROVIDERS:

**2) The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019  
plus accompanying statutory guidance**

These regulations are issued under The Regulation and Inspection of Social Care (Wales) Act 2016 (RISCA)

They cover:

- General requirements applicable to FSP's
- Steps to be taken before a child is placed
- Requirements in relation to the standard of care and support to be provided
- Safeguarding
- Access to health, education and other services
- Staffing (numbers / fitness / development / disciplinary procedure)
- Premises, facilities and equipment
- Record keeping
- Support and assistance to foster parents
- Effective management of the service
- Effective oversight of the service
- Duty of the Responsible Individual
- Monitoring and reviewing quality of service
- Whistleblowing policy compliance
- Offences
- Insolvency
- Powers of Welsh Ministers to appoint a Responsible Individual

These regulations replace the **Fostering Services (Wales) Regulations 2003**

FOR LOCAL AUTHORITIES AND INDEPENDENT FOSTERING SERVICE PROVIDERS

**3) The Fostering Panels (Establishment and Functions) (Wales) Regulations 2018  
(no code of practice planned)**

These regulations are issued under the SSWB(W)A 2014

They are largely a replication of Part 14 of the old draft regulations mentioned above.

They introduce:

- A central list of panel members / who must / may sit on a panel
- A two stage process for the assessment of foster carers
- The 'brief report' that can go to panel / decision maker before a full assessment has been completed

They replace the Fostering Services (Wales) Regulations 2003

These regulations will require a revised format of the Welsh Form F. AFA is working on that revision for CoramBAAF, alongside the accompanying guidance and a suite of forms to help agencies with the new two stage assessment process.

## **WORKSHOPS**

AFA is also holding workshops on the 25<sup>th</sup> March (Rhyl) and 1<sup>st</sup> April (Cardiff) to explore and prepare for the change in fostering panel composition and the two stage process. Anyone wishing to join these workshops, or commission training for their own organisation, should contact [info-afacymru@stdavidscs.org](mailto:info-afacymru@stdavidscs.org)

## **ADOPTION**

We reported on the new draft adoption regulations in the September newsletter. At that time, there was one set of regulations for VAA's, ASA's and LA adoption agencies, covering regulation and inspection:

**The Adoption Services (Service Providers and Responsible Individuals) and Local Authority Adoption Services (Wales) Regulations 2019, with combined statutory guidance for VAA's and ASA's and code of practice for LA adoption agencies.**

These regulations are now being separated into two:

### **1) Regulations for VAA's and ASA's, issued under RISCA, with statutory guidance**

These regulations (the title of which is not yet known), will cover:

- A definition of what constitutes an adoption support service
- General requirements (statement of purpose / arrangements for monitoring and improving / / notifications to Welsh Ministers)
- Designation of the Responsible Individual
- Overarching requirements as to safeguarding / care and support to be provided / provision of information / meeting needs of child / treating children with respect and sensitivity / record keeping
- Premises, facilities and equipment

- Staffing / numbers / fitness / support and development
- Requirements on Responsible Individual (duty to supervise / appoint a fit person to manage the service)
- Responsible Individual's requirements for ensuring effective oversight of the service
- Notification of incidents and complaints / keeping records
- Monitoring and reviewing the quality of service
- Offences
- Insolvency
- Welsh Ministers' powers to designate a Responsible Individual

These regulations will replace the Adoption Support Agencies (Wales) Regulations 2005 and the Adoption Agencies (Miscellaneous Amendments) Regulations 2003 and will come into force on **29 April**.

## **2) Regulations for LA adoption agencies, issued under SSWB(W)A, with a code of practice**

These regulations, the title of which is not yet known, will cover:

- A definition of what constitutes an adoption support service
- General requirements which apply to LA adoption services (statement of purpose / arrangements for monitoring and improvement)
- Overarching requirements as to safeguarding / care and support to be provided / provision of information / meeting needs of child / treating children with respect and sensitivity / record keeping
- Premises, facilities and equipment
- Staffing / numbers / fitness / support and development
- Duties of manager (oversight of adequacy of resources/ reports to the provider / complaints / policies and procedures / quality of care review)
- Setting up of child's case record / requirement to provide child's birth parents with services, including counselling / strategy for recruitment / information to prospective adopters

These regulations will replace the LA Adoption Service (Wales) Regulations 2007 and will come into force on **29 April**.

## **3) The Adoption Agencies (Wales) Amendments) Regulations 2019, issued under SSWB(W)A 2014 (no code of practice planned)**

These regulations amend (but do not replace) the Adoption Agencies (Wales) Regulations 2005

The consultation period for these regulations only ended on 9 January and so they will be coming into force later, on **1 July**.

Listed below are the main amendments (some have been referred to in the September newsletter but are replicated here for easy reference.

- 1) A compulsory referral to the Adoption Register no later than one month after a child should be placed for adoption decision has been made and where the adoption agency has not identified prospective adopters (*the NAS policy and practice sub group, suggested that this should be one month after authority to place is given (usually by way of a placement order)*);
- 2) A list of people who can witness a parent's consent to placement for adoption or a future adoption order if that person resides outside England and Wales;
- 3) The main part of these changes involves the insertion of a new Part 4, bringing in a two stage approval process (as is in place in England):
  - Stage 1 is the pre assessment process where all the checks are undertaken. The AA has two months in which to undertake Stage 1 and decide whether to proceed to Stage 2. A delay is allowed only if the AA is satisfied there is 'good reason' or upon request of the applicants. If the AA decides not to proceed to Stage 2 this does not amount to a qualifying determination and the prospective adopters do not have recourse to the independent reviewing mechanism
  - Stage 2 is the assessment process. The AA has 4 months, from the date the applicants have notified them that they wish to proceed, to decide on suitability. A delay may only be considered if there are exceptional circumstances which mean the timescale cannot be met or if the prospective adopters request a delay
  - Both stages of the process involve the compilation of detailed written plans;
- 4) The introduction of a 'brief report' allowing an incomplete assessment to go to panel / ADM
- 5) The duty to prepare a written plan, post approval to include information to prospective adopters on the AA's duties in respect of placement and reviews;
- 6) The introduction of a fast track process for approved foster carers or for previous adopters (in England or Wales). Both stages 1 and 2 are to be completed within 4 months.

These regulations will require a revised format of the Welsh Prospective Adopter's Report (PAR). AFA is working on that revision for CoramBAAF, alongside the accompanying guidance and a suite of forms to help agencies with the new two stage assessment process.

## **WORKSHOPS**

AFA is also holding workshops on 21<sup>st</sup> May in Rhyl and Cardiff to explore and prepare for the changes set out above in the amendment regulations and, in particular, to look in detail at the two stage process for assessment. Anyone wishing to join these workshops, or commission training for their own organisation, should contact [info-afacymru@stdavidscs.org](mailto:info-afacymru@stdavidscs.org)