



Llywodraeth Cynulliad Cymru
Welsh Assembly Government



Consultation on:

- **the introduction of an Independent Review of Determinations for Fostering; and**
- **amendments to the existing arrangements for the Independent Review of Determinations for Adoption**
- **Amendments to the Fostering Services (Wales) Regulations 2003**

August 2009

PLANT A PHOBL IFANC - GWEITHREDU'R HAWLIAU
CHILDREN AND YOUNG PEOPLE - RIGHTS TO ACTION



- Title: **Consultation on:**
- **the introduction of an Independent Review of Determinations for Fostering;**
 - **amendments to the existing arrangements for the Independent Review of Determinations for Adoption; and**
 - **Amendments to the Fostering Services (Wales) Regulations 2003**
- Audience: Local authority and independent fostering providers, prospective and current foster carers and local authority and independent adoption agencies.
- Issued: August 2009
- Overview: This consultation seeks views on proposals to:
- Introduce an independent review mechanism (IRM) relating to the approval of foster carers in Wales.
 - Introduce a fee to fostering service providers and adoption agencies for each application for an independent review.
 - Amend the constitution and membership of IRD panels for adoption suitability and disclosure determinations.
 - Extend the timescale by which prospective adopters on receipt of a notification about their suitability to adopt may submit representations to the agency or apply for an independent review of the determination
 - Introduce a requirement for a review to be undertaken by a fostering panel where no placement has been made by a fostering service provider within 2 years of a foster carer's approval.
 - Amend the Fostering Services (Wales) Regulations 2003 in relation to the constitution and tenure of fostering panels and the power to seek information and assistance and legal and medical advice.
- Action required: Responses are invited on the issues raised in the consultation document.
- The consultation period ends on 30 September 2009. The Welsh Assembly Government intends to publish the responses to this document. Normally the name and part of the address of its author are published along with the response as this gives credibility to the consultation exercise. If you do not wish to be identified as the author of your response, please state this expressly in writing to us.
- Further information: Enquiries about this consultation should be directed to:
Debra Jenkins or Jacqui Moyle Children's Health and Social Services Directorate
Telephone: 029 20823 668/3101
Fax: 029 2082 3142
Email: **Debra.Jenkins@wales.gsi.gov.uk**

This document can be accessed from the Welsh Assembly Government website at <http://new.wales.gov.uk/topics/childreynongpeople/childrenfirst/?lang=en>



Executive Summary

Section one of this consultation seeks views on proposals for the introduction of an independent review mechanism (IRM) relating to the approval of foster carers in Wales together with proposals to amend the Fostering Services (Wales) Regulations 2003 (“the Fostering Regulations”). Section two seeks views on amendments to the existing arrangements for the IRM for Adoption.

Section One

1. Introduction of an Independent Review of Determination for Fostering and Miscellaneous amendments to the Fostering Regulations

1.1 The proposals for an Independent Review Mechanism (IRM) for fostering are part of a wider package of measures by the Welsh Assembly Government to improve training, support and approval for foster carers and encourage more people to come forward to foster. It will bring fostering in line with adoption, where there has been an IRM since December 2005.

1.2 The IRM for fostering is a key part of the Children and Young Persons Act 2008, which aims to strengthen the statutory framework around the care system to enable children and young people to receive high quality care and support. Implementing the 2008 Act is one of the key deliverables of Fulfilled Lives, Supportive Communities, our overarching strategy for social services in Wales.

1.3 Currently prospective or existing foster carers may only challenge the fostering service provider’s decision that they are unsuitable to foster by submitting written representations to the fostering service provider (a local authority or independent fostering agency), either at the initial approval stage or later if the approval is subsequently withdrawn.

1.4 The IRM for fostering will be available to all foster carers who are being assessed, or have been approved, as a foster carer by a local authority or an independent fostering agency. It will give them the option of having their case reviewed by an independent panel where their fostering service provider proposes to turn down their application to be a foster carer, or to revoke or amend the terms of their existing approval.

1.5 Regulations introducing the IRD for fostering will be made under the Children and Young Persons Act 2008, and consequential amendments will be made to the Fostering Regulations and the Adoption Agencies (Wales) Regulations 2005.

2. Outsourcing the operation of the IRD for fostering to an independent organisation

2.1 Provisions in the Children and Young Persons Act 2008 permit Welsh Ministers to arrange for an organisation to discharge the IRD functions on their behalf. We propose to outsource the operation of the IRD for fostering to an independent organisation. The Welsh Assembly Government is in the process of tendering for this contract.

3. Charges to be made to fostering service providers

3.1 Although not a matter for the proposed regulations, we propose to impose a duty on the fostering service provider to make a payment to Welsh Ministers to contribute to the cost of a review. It is intended that in practice a standard fixed sum will be payable, as is currently the case for reviews by the IRM for both adoption and fostering in England. However, it is proposed that Welsh Ministers will retain the ability to determine charges in light of the particular facts of a case and as a consequence the draft regulations at the end of this document [regulation 23] do not specify a set fee. Rather it is proposed that Welsh Minister can determine what costs are reasonable to charge. It is likely that the contribution will be similar to that currently made in respect of the adoption IRM in England, which is £2,227 per review. The Welsh Assembly Government will meet the remaining costs of Reviews. We do not expect the costs to fostering agencies to be high. Providers will only contribute to the costs of reviews of qualifying determinations that they themselves have made.

4. The Proposals - How the IRM for Fostering will work?

4.1 To ensure that children are placed with suitable foster carers, the fostering service provider is required to recruit and assess the suitability of applicants to act as a foster carer; the fostering service provider also decides which approved foster carer is suitable to meet the needs of a particular child.

4.2 Fostering panels established by the fostering service provider are responsible for making recommendations to the fostering service provider's decision-maker on:

- the suitability of a prospective foster carer to be approved;
- where the panel considers a prospective foster carer as suitable to be approved the terms on which the approval is to be given; and
- whether a person who is currently approved as a prospective foster carer remains suitable to act as such, and whether or not the terms of their approval remain appropriate.

4.3 Where the fostering service provider proposes not to approve the applicant as suitable to be a prospective foster carer, or where they propose to remove approval from an existing prospective foster carer or change the terms of their approval, the fostering service provider must notify the person of this fact in writing. This will become a "qualifying determination" for the purposes of an independent review.

4.4 Currently, persons seeking approval as foster carers and existing foster carers have two options in response to a fostering services provider's proposal not to approve them as a foster carer, or to terminate or amend the terms of their approval. They may either accept the proposal or they can submit written representations to the provider within 28 calendar days of the date of the provider's letter. If they choose the latter the provider is required to refer the case back to their fostering panel for a review of that proposal.

4.5 With the introduction of the IRD fostering it is proposed that the fostering service provider's letter will also have to advise the person of a third option - that they may apply directly to Welsh Ministers for a review of the 'qualifying determination' by an independent review panel. This application will also have to be made in writing within 28 calendar days of the date of the provider's letter.

4.6 If the individual chooses this third option, the independent review panel will review all the information that was provided to the original fostering panel and make a fresh recommendation about the suitability of the individual to be approved or to remain approved and/or about the terms of the approval as the case may be. When the independent review panel has made its recommendation the fostering service provider will be required to take this into account along with their fostering panel's original recommendation when making their final decision about approval or terms of the approval.

4.7 If the fostering service provider does not receive any representations and the foster carer does not apply to Welsh Ministers within 28 days, the decision may then be taken in relation to the foster carer's suitability and/or terms of approval.

4.8 When a prospective or current foster carer applies to Welsh Ministers to have the qualifying determination reviewed by the independent review panel, the provider will receive a notification from the Welsh Ministers of this. The fostering service provider will then have a duty to provide Welsh Ministers with all of the documents and information which were passed to the original panel within 10 working days of the notification. Currently, if submissions are made to the fostering service provider, the provider would make the papers available to their own panel.

4.9 Following an application to the independent review of determination mechanism, Welsh Ministers will constitute a panel that will meet to review the qualifying determination. They will receive a letter from the Welsh Ministers informing them that they may, if they wish, provide the panel with further details of the grounds of their application. They may do this in writing up to two weeks before the review meeting and/or orally at the review meeting. The fostering provider may also send representatives, who would generally be the assessing social worker and their line manager. It is intended that the panel will operate in a similar way to current fostering panels, where the panel can put questions to the applicant and to the representatives of the service provider. The independent review panel will make a recommendation, not a decision, on whether the applicant is suitable to be an adopter/foster carer and the terms of the approval. The recommendation, the reasons for it and whether or not it was a unanimous decision will then be immediately recorded and signed by the chair. A copy of this document will be sent to the applicant and the service provider.

4.10 As at present, it will be for the fostering service provider to make the final decision whether or not a person should be approved as a foster carer and as to the terms of the approval. However, the fostering service provider will have to take the independent review panel's recommendation into account, as well as that of its own panel, when making the decision.

4.11 The fostering service provider will be required to send notification to the foster carer, with a copy sent to the Welsh Ministers of the decision:

- that the applicant is not suitable to be a foster carer;
- that the foster parent continues to be suitable, and that the terms of the approval continue to be appropriate; or
- that the approval is terminated from a specified date, and the reasons for the termination; or
- as to the revised terms of approval, and the reasons for the revision.

4.12 **Constitution of the independent review panel for fostering**

It is proposed that 5 persons will sit on a review panel, including a Chair. This will include two social workers with at least three years' post-qualifying experience in child care social work, including direct experience of fostering work and three other members. There will be a central list maintained by the Welsh Ministers (or by an organisation on its behalf) from which panel members will be drawn.

The chair will have the skills and experience necessary for chairing a panel. Where reasonably practicable at least one of the other members will be, or within the previous two years will have been, a local authority foster carer. The Panel may include a registered medical practitioner if deemed necessary. A panel must be advised by a social worker with the appropriate skills, qualifications and experience. The panel may, where it considers it appropriate, be advised by a legal advisor and any other person with relevant expertise in the determination being considered.

4.13 It is proposed that the Regulations will allow for Welsh Ministers to pay panel members a fee.

4.14 A person will be disqualified from sitting as a panel member on an independent review panel in a number of circumstances where a conflict of interest could be perceived. These are set out in draft regulation [11] and include if:

- the person is a member of the fostering panel of the organisation that made the qualifying determination;
- where the organisation which made the qualifying determination is a local authority, the person is, or has been within the period of one year prior to the date on which the qualifying determination was made employed by that authority in their children and family social services, or a member of that authority; and
- where the organisation which made the qualifying determination is not a local authority, the person has been within the period of one year prior to the date on which the qualifying determination was made, an employee, director or a trustee of that agency.

5. Consequential and other amendments to the Fostering Services (Wales) Regulations 2003

5.1 We propose to make amendments the Fostering Services (Wales) Regulations 2003 consequential on the introduction of an IRM for fostering and in relation to the constitution of fostering panels, the tenure of panel members and the power of fostering panels to seek information and assistance and legal or medical advice.

Membership of the fostering panel

5.2 We propose to address a conflict in the regulations by removing the requirement, where the registered provider is an individual, for that individual to sit on the fostering panel. Instead, the panel member must be that individual, or an employee of the fostering agency who is concerned with the management of the agency, or if this is not reasonably practicable a person (who need not be an employee of the agency) who has experience in the provision of a fostering service. This will enable a representative of the agency to sit on the panel, as is the case for other types of fostering service provider, but to provide some flexibility as to who this person should be.

Limits on the length of office of fostering panel members

5.3 We propose to extend the maximum period of office of fostering panel members from two consecutive terms of up to three years, to three terms of up to three years, whether served consecutively or not. The maximum period of office may include periods served before the Regulations come into force, and should not exceed a total of 9 years.

Provision for fostering panels to request information and assistance

5.4 We propose to give express powers to fostering panels to request any relevant information or assistance they consider necessary from fostering service providers. Providers will be required to provide this information and assistance, unless it is not reasonable practicable to do so. We also wish to introduce an amendment to state expressly that fostering panels may seek legal advice or medical advice if they consider it necessary in relation to a particular case.

5.5 We propose to introduce a requirement for a review to be undertaken by the foster panel of a fostering service provider where a placement with an approved foster carer has yet to be made within two years of the foster carer's approval.

Section Two

6. Amendments to the existing arrangements for the Independent Review Mechanism for Adoption

6.1 There has been an independent Review of Determinations for Adoption in Wales since December 2005. Where an adoption agency considers that the prospective adopter is not suitable to adopt a child or no longer suitable, the

prospective adopter has the choice of either making representations to the agency or applying to Welsh Ministers for an independent review of his/her case. Individuals also have a right of independent review in relation to disclosure determinations. In Wales currently the IRM for Adoption is operated by the Welsh Assembly Government.

Charges to Adoption Agencies

6.2 We propose to introduce a charge to the adoption service provider to contribute to the cost of a review. To date adoption agencies have not been charged for reviews. It is intended that a standard fixed sum will be payable as is currently the cases for reviews by the IRM for both adoption and fostering in England. However it is proposed that Welsh Ministers will retain the ability to determine charges in light of the particular facts of a case and will see that the draft regulations at (regulation 23) do not specify a set fee. Rather it is proposed that Welsh Ministers can determine what costs are reasonable to charge. It is likely that the contribution will be similar to that currently made in respect to the adoption IRM in England, which is £2,227 per review. We do not expect the cost of reviews to be high. Only three IRMs have taken place since the IRM for adoption came into operation. Providers will only contribute to the costs of reviews of qualifying determinations that they themselves have made.

Proposed amendment to the timescale in which a representation can be made

6.3 Currently, a person seeking a review of a decision relating to adoption has 20 working days, to make a representation, beginning on the date on which the notification was sent. In England the timescale within which a representation can be made in relation to adoption is 40 working days.

6.4 We would be grateful for your views on whether or not the timescale for applying to Welsh Ministers for an independent review of an adoption qualifying determination should be extended from 20 working days to 40 working days or whether any other time limit should be imposed. The arguments in favour of extending the time limit is that it gives the prospective adopter time to reflect on the decision whether to make a representation or not. The alternative view is that extending the time limit may introduce delay into the adoption process and may cause difficulties in on-going court proceedings. Section 1(3) of the Adoption and Children Act 2002 states that “the court or adoption agency must at all times bear in mind that, in general, any delay in coming to the decision is likely to prejudice the child’s welfare”. Consultees are asked to reflect on this in considering whether an extension to the time limit for requesting an independent review is desirable.

Constitution of panels

6.5 Currently IRD for Adoption suitability determinations and disclosure determinations must include “Social workers within the meaning of Part IV Care Standards Act 2000” who have at least **five** years post-qualifying experience in adoption and family placement work. We propose to reduce this requirement to 3 years post qualifying experience including direct experience of adoption work and consultees are asked to comment on this proposed change.

Membership of panel to review an adoption suitability determination

6.6 Currently the maximum number of people who may be appointed to a panel is five and the panel must be advised by a social worker; a registering medical practitioner with relevant experience in adoption work and may be advised by a legal advisor with knowledge and experience of adoption legislation and any other person who the panel considers has relevant expertise in relation to the determination being considered

6.7 We propose to prescribe that there must always be five people appointed to the Panel to include at least:

- (a) two social workers who have at least three years' post-qualifying experience in adoption and family placement work.
- (b) one registered medical practitioner; and
- (c) two other persons who are considered by Welsh Ministers to be suitable as members of a panel, including, where reasonably practicable, persons with personal experience of adoption.

The proceedings of the panel will be invalidated unless the 5 panel members are present.

6.8 It is proposed that the registered medical practitioner is a member of the IRD panel which replicates the role of the registered medical practitioner on adoption agency panels. A panel convened to consider an adoption suitability determination will continue to be advised by an experienced social worker and may be advised by a legal advisor with knowledge and experience of adoption legislation and any other person who the panel considers has relevant expertise in relation to the determination being considered.

Membership of a panel to review a disclosure determination

6.9 Currently the maximum number of people who may be appointed to a panel is five and the panel must be advised by a social worker; a registering medical practitioner with relevant experience in adoption work and may be advised by a legal advisor with knowledge and experience of adoption legislation and any other person who the panel considers has relevant expertise in relation to the determination being considered.

6.10 We propose that there should always be five people on a panel to review a disclosure determination to include:

- (a) two social workers who have at least three years' post qualifying experience in adoption and family placement work; and
- (b) three other persons who are considered by Welsh Ministers to be suitable as members of a panel, including, where reasonably practicable, persons with personal experience of adoption.

6.11 A panel must be advised by a social worker with the appropriate skills, qualifications and experience. The panel may, where it considers it appropriate, be advised by a legal advisor and any other person with relevant expertise in the determination being considered.

The proceedings of the panel will be invalidated unless all five members are present.

Disqualification of panel members

6.12 Where the adoption agency which made the qualifying determination is a local authority we propose to reduce the period from two years to one year the time in which a person employed by the local authority in their child and family social services or a member of that authority may not be appointed to a panel.

6.13 Similarly we propose to reduce the period from two years to one year in which a person who is an employee or a trustee of an organisation that made the qualifying determination, may not be appointed to a panel.

Functions of panel constituted to review a suitability determination

6.14 We propose to include a provision in the regulations that where the prospective adopter's report is not in accordance with regulation 26(4) of the Adoption Agencies (Wales) Regulations 2005 the panel may make a recommendation to the adoption agency that made the adoption suitability determination that it should prepare a prospective adopter's report in accordance with that regulation containing all the required information.

Powers to adjourn

6.15 We propose to include in regulations a provision that gives the panel the power to adjourn the case of all determinations where the panel consider they have not received enough information to make a recommendation.

Duty to provide information and assistance

6.16 We propose to include in regulations a provision that the adoption agency which made the qualifying determination must provide, as far as is reasonably practicable, any information or assistance requested by the panel.

Records

7. We propose to reduce the time from 5 years to 1 year in which the written record of the panel's review of a qualifying determination, including the reasons for its recommendation and whether the recommendation was unanimous or that of a majority, is retained.

How to respond

Consultation responses can be completed online at: <http://wales.gov.uk/consultations/childrenyoungpeople/;jsessionid=V9s0J4Bfi21qZThf8738wQntJyTxvwwzv14YGCLZ75CmrMC0b3h5!2101391267?lang=en> by emailing (Robert.Hobbs@wales.gsi.gov.uk) or by downloading a response form which should be completed and sent to:

Debra Jenkins Children's Health & Social Services Directorate,
Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ by
30 September 2009.

Plans for making results public

Responses to the consultation will be taken into account in the re-drafting on regulations for the independent review of determination (adoption and fostering). These will be available in January 2010.

2009 No. (W.)

SOCIAL CARE, WALES

CHILDREN AND YOUNG PERSONS, WALES

**The Independent Review of Determinations (Adoption and Fostering)
(Wales) Regulations 2009**

Made 2009

Laid before the National Assembly for Wales 2009

Coming into force 2009

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The Welsh Ministers in exercise of the powers conferred by sections 9, 12 and 145(5) of the Adoption and Children Act 2002⁽¹⁾ and sections 23(2) and (9) and 104(4) of, and paragraph 12A of Schedule 2 to, the Children Act 1989 makes the following Regulations —

⁽¹⁾ 2002 c.38. Section 12 was amended by section 57 of the Children Act 2004 (c.31).

PART 1 GENERAL

Title, commencement and application

1.—(1) The title of these Regulations is the Independent Review of Determinations (Adoption and Fostering)(Wales) Regulations 2010.

(2) They come into force on 1 January 2010.

(3) These Regulations apply to Wales.

Interpretation

2. In these Regulations —

“the 1989 Act” means the Children Act 1989;

“the 2002 Act” means the Adoption and Children Act 2002;

“the Agencies Regulations” means the Adoption Agencies (Wales) Regulations 2005⁽¹⁾;

“adoption panel” means a panel constituted in accordance with regulation 3 of the Agencies Regulations;

“adoption suitability determination” means a qualifying determination described in regulation 3(a)⁽²⁾;

“applicant” means —

(a) in the case of an adoption suitability determination, a prospective adopter;

(b) in the case of a disclosure determination, a relevant person within the meaning of regulation 13A(7) of the Disclosure Regulations;

(c) in the case of a fostering determination, a person to whom notice has been given for the purposes of regulation 28(6)(a) of the Fostering Regulations;

“the central list” is to be construed in accordance with regulation 4;

“disclosure determination” means a qualifying determination described in regulation 13A(1) of the Disclosure Regulations⁽²⁾;

“the Disclosure Regulations” means the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005⁽³⁾;

“foster parent” has a meaning given in regulation 2(1) of the Fostering Regulations;

“fostering determination” means a qualifying determination of a description prescribed in regulation 4;

“fostering panel” means a panel constituted in accordance with regulation 24 of the Fostering Regulations;

“fostering service provider” has a meaning given in regulation 2(1) of the Fostering Regulations;

“the Fostering Regulations” means the Fostering Services (Wales) Regulations 2003⁽⁴⁾;

“the Independent Review Regulations 2006” means the Independent Review of Determinations (Adoption) (Wales) Regulations 2006⁽⁵⁾;

“organisation” means an adoption agency or a fostering service provider as the case may be;

⁽¹⁾ S.I. 2005/1313.

⁽²⁾ Regulation 13A (1) of the Disclosure Regulations specifies the following determinations by the appropriate adoption agency in relation to an application under section 61 of the Act (a) not to proceed with an application from any person for the disclosure of protected information; (b) to disclose information to an applicant when that person has withheld consent to the disclosure of the information; and (c) not to disclose information about a person to the applicant where that person has given consent to the disclosure of information.

⁽³⁾ S.I. 2005/2689.

⁽⁴⁾ SI 237/2003.

⁽⁵⁾ 2006/3100 (w.284).

“panel” means a panel constituted in accordance with regulation 4(1);

“prospective adopter’s report” means a report prepared in accordance with regulation 26 of the Agencies Regulations;

“qualifying determination” means a determination described in regulations 3 and 4;

“review meeting” means a meeting convened in accordance with regulation [**] for the purposes of reviewing a qualifying determination;

“social worker” means a person who is registered as a social worker in a register maintained by the General Social Care Council or the Care Council for Wales under section 56 of the Care Standards Act 2000⁽¹⁾ or in a corresponding register maintained under the law of Scotland or Northern Ireland; and

Qualifying determination for the purposes of section 12(2) of the 2002 Act

3. For the purposes of section 12(2) of the 2002 Act, a qualifying determination is —

- (a) a determination that has been made by an adoption agency in accordance with the Agencies Regulations as follows:
 - (i) Where under regulation 28(4) of the Agencies Regulations the agency do not propose to approve a prospective adopter as suitable to be an adoptive parent.
 - (ii) Where the agency consider that a prospective adopter is no longer suitable to be an adoptive parent following a review under regulation 30 of the Agencies Regulations.
- (b) A determination described in regulation 13A(1) of the Disclosure Regulations.

Qualifying determination – prescribed description for the purposes of paragraph 12A(2)(b) of Schedule 2 to the 1989 Act

4. For the purposes of paragraph 12A(2)(b) of Schedule 2 to the 1989 Act the following descriptions of determinations are prescribed —

- (a) a determination (other than a determination made pursuant to regulation 27(6) of the Fostering Regulations) that the fostering service provider proposes not to approve a person as suitable to act as a foster parent, in accordance with regulation 28(6) of the Fostering Regulations and
- (b) a determination (other than a determination made pursuant to regulation 27(6) of the Fostering Regulations) that the fostering service provider proposes to terminate, or to revise the terms of, the approval of a person as suitable to act as a foster parent, in accordance with regulation 29(7) of the Fostering Regulations, where notice of the determination is given on or after 1st January 2010.

PART 2

PANELS

Constitution of panels

5.—(1) The Welsh Ministers must, on receipt of an application made by an applicant in accordance with regulation 18 constitute a panel in accordance with regulation 6, 7 or 8, as the case may be, for the purpose of reviewing the qualifying determination.

(2) The members of the panel must be drawn from a list of persons (in these Regulations referred to as “the central list”), kept by the Welsh Ministers who are considered by the Welsh Ministers to be suitable, by virtue of their skills, qualifications or experience to be members of a panel.

(3) The members of the central list must include—

- (a) social workers within the meaning of Part IV Care Standards Act 2000 who have at least three years post-qualifying experience in adoption and family placement work;

⁽¹⁾ Care Standards Act 2000 Ch 14.

- (b) social workers who have at least three years' post-qualifying experience in child care social work including direct experience of fostering work
- (c) registered medical practitioners and
- (d) other persons who are considered by the Welsh Ministers to be suitable as members including, where reasonably practicable, persons with personal experience of adoption and persons who are, or within the previous two years have been, a local authority foster parent.

Membership of a panel to review an adoption suitability determination

6.—(1) Where the qualifying determination being reviewed is an adoption suitability determination, the number of people who must be appointed to a panel is five and the panel must include at least —

- (a) Two persons falling within regulation 5(3)(a);
- (b) One person falling within regulation 5(3)(c); and
- (c) Two other persons from the central list including where reasonably practicable at least one person with personal experience of adoption.

Membership of a panel to review a disclosure determination

7.—(1) Where the qualifying determination being reviewed is a disclosure determination, the number of people who must be appointed to a panel is five and the panel must include at least —

- (a) Two persons falling within regulation 5(3)(a); and
- (b) Three persons from the central list.

Membership of a panel to review a fostering determination

8.—(1) Where the qualifying determination to be reviewed is a fostering determination, the number of people who must be appointed to a panel is five and the panel must include at least —

- (a) Two persons falling within regulation 5(3)(b);
- (b) Three other persons from the central list including where reasonably practicable at least one person who is, or within the previous two years has been, a local authority foster parent.

Panel advisers

9.—(1) A panel must be advised by a social worker within the meaning of Part IV of the Care Standards Act with appropriate qualifications, skills and experience;

(2) A panel may, where the panel considers it appropriate, be advised by —

- (a) A legal advisor with knowledge and expertise in adoption and fostering legislation;
- (b) A registered medical practitioner with relevant expertise in adoption or fostering work, whichever is appropriate to the qualifying determination being considered;
- (c) Any other person who the panel considers has relevant expertise in relation to the determination being considered.

(3) The panel advisers referred to in (1) and (2) (b) above must be members of the central list.

Appointment of a panel chair

10. The Welsh Ministers must appoint to chair a panel a person who has the skills and experience necessary for chairing a panel.

Disqualification of panel members

11.—(1) A person (“P”) must not be appointed to a panel if —

- (a) P is a member of the adoption panel or fostering panel of the organisation which made the qualifying determination;
- (b) where the organisation which made the qualifying determination is a local authority, P is, or has been within the period of one year prior to the date on which the qualifying determination was made —
 - (i) employed by that authority in their children and family social services, or
 - (ii) is a member of that authority;
- (c) where the organisation which made the qualifying determination is not a local authority, P is, or has been within the period of one year prior to the date on which the qualifying determination was made, an employee or a trustee of that organisation;
- (d) that person is related to a person falling within sub-paragraph (a), (b) or (c);
- (e) the organisation which made the qualifying determination has placed a child for adoption with P or placed a child with P as a local authority foster parent;
- (f) where P was adopted or fostered as a child, the organisation which made the qualifying determination was the organisation which arranged P’s adoption or fostering; or
- (g) P knows the applicant in a personal or professional capacity.

(2) In this regulation —

- (a) “employed” includes employed whether or not for payment and whether under a contract of service or a contract for services or as a volunteer; and
- (b) P is related to another person (“A”) if P is —
 - (i) a member of the household of, or married to or the civil partner of, A;
 - (ii) the son, daughter, mother, father, sister or brother of A; or
 - (iii) the son, daughter, mother, father, sister or brother of the person to whom A is married or with whom B has formed a civil partnership.

Functions of panel constituted to review an adoption suitability determination

12.—(1) This regulation applies where the qualifying determination being reviewed is an adoption suitability determination.

(2) A panel constituted in accordance with regulation 6 must review the adoption suitability determination and —

- (a) where paragraph (3) applies, make to the adoption agency that made the adoption suitability determination a recommendation as to whether or not the applicant is suitable to adopt a child; or
- (b) where paragraph (4) applies, make to the adoption agency that made the adoption suitability determination a recommendation that —
 - (i) it should prepare a prospective adopter’s report in accordance with regulation 26(4) of the Agencies Regulations to include all of the information required by that regulation; or
 - (ii) the applicant is not suitable to adopt a child.

(3) This paragraph applies where the prospective adopter’s report included all of the information required by regulation 26 of the Agencies Regulations.

(4) This paragraph applies where the prospective adopter’s report, in accordance with regulation 26(7), did not include all of the information required by regulation 26 of the Agencies Regulations.

(5) In considering what recommendation to make, the panel —

- (a) must consider and take into account all of the information passed to it in accordance with regulation 29 of the Agencies Regulations;

- (b) may request the adoption agency to obtain any other relevant information which the panel considers necessary or to provide such other assistance as the panel may request; and
- (c) may obtain such advice from the advisers referred to in regulation 9 as it considers necessary in relation to the case.

(6) Where the panel makes a recommendation that the applicant is suitable to adopt a child, the panel may consider and give advice to the adoption agency about the number of children the applicant may be suitable to adopt, their age range, sex, likely needs and background.

Functions of panel constituted to review a disclosure determination

13.—(1) This regulation applies where the qualifying determination being reviewed is a disclosure determination.

(2) A panel constituted in accordance with regulation 7 must review the disclosure determination and make to the adoption agency that made the disclosure determination a recommendation as to whether or not the agency should proceed with its original determination.

(3) In considering what recommendation to make, the panel —

- (a) must consider and take into account all of the information passed to it in accordance with regulation 13A of the Disclosure Regulations;
- (b) may request the adoption agency to obtain any other relevant information which the panel considers necessary or to provide such other assistance as the panel may request; and
- (c) may obtain such advice from the advisers referred to in regulation 9 as it considers necessary in relation to the case;
- (d) must consider the welfare of any adopted person and if the person is an adopted child, that child's welfare must be paramount. In the case of any other child the panel must have particular regard to their welfare.

Functions of a panel constituted to review a fostering determination

14.—(1) This regulation applies where the qualifying determination being reviewed is a fostering determination.

(2) A panel constituted in accordance with regulation 8 must review the fostering determination and make to the fostering service provider that made the fostering determination —

- (a) A recommendation as to whether or not the applicant is suitable to act as a foster parent; or
- (b) Where the qualifying determination relates to the terms of the approval of the applicant as suitable to act as a foster parent, a recommendation to the fostering service provider as to those terms.

(3) In considering what recommendation to make, the panel —

- (a) must consider and take into account all of the information passed to it in accordance with regulation 29A of the Fostering Regulations;
- (b) may request the fostering service provider to obtain any other relevant information which the panel consider necessary or to provide such other assistance as the panel may request; and
- (c) may obtain such advice from the advisers referred to in regulation 9 as it considers necessary in relation to the case.

(4) Where the panel makes a recommendation that the applicant is suitable to act as a foster parent, the panel may also make a recommendation to the fostering service provider as to the terms of any approval.

Power to Adjourn Panels

15.—(1) The panel can adjourn the panel hearing in the following circumstances—

- (a) The panel considers that it has insufficient information to enable it to make a recommendation to the relevant organisation in accordance with regulations 12(2), 13(2) and 14(2); and
- (b) The panel wishes to request further information.

(2) The panel must be reconvened as soon as reasonably practicable when the information referred to in (1)(b) is available but in any event, no later than XX days from date of the adjourned panel hearing.

Administration of Panels

16. The panel must be administered by the Welsh Ministers, who must make suitable provision for clerking arrangements to the panel.

Fees of panel members

17. The Welsh Ministers may pay to any member of a panel such fees as the Welsh Ministers consider to be reasonable.

Records

18. The Welsh Ministers must ensure that a written record of a panel's review of a qualifying determination, including the reasons for its recommendation and whether the recommendation was unanimous or that of a majority, is retained —

- (a) for a period of 5 years from the date on which the recommendation is made; and
- (b) in conditions of appropriate security.

PART 3 PROCEDURE

Application for review of qualifying determination

19.—(1) An application to the Welsh Ministers for a review of a qualifying determination must be made by the applicant in writing and include the grounds of the application.

(2) In the case of a suitability determination only, a prospective adopter may within 40 working days beginning with the date on which a notification was sent by the adoption agency of the qualifying determination in relation to him or her, make a request to the Welsh Ministers for a panel to be constituted to review that determination.

Appointment of panel and conduct of review

20. Upon receipt of an application which has been made in accordance with regulation 15, the Welsh Ministers must —

- (a) Within 5 working days notify the adoption agency which made the qualifying determination that the application has been made by sending to the agency a copy of the application;
- (b) Within 5 working days send a written acknowledgment of the application to the applicant and notify the applicant of the steps taken under sub-paragraph (a);
- (c) Within 25 working days appoint a panel in accordance with regulation 4 and fix a date, time and venue for the panel to meet for the purpose of a review meeting;
- (d) After taking the steps prescribed in sub-paragraph (c), and no less than 5 working days before the date fixed for review, inform in writing the applicant and the adoption agency which made the qualifying determination of —
 - (i) the appointment of the panel; and
 - (ii) the date, time and venue of the review meeting;

(2) The date fixed for the review will be no later than 3 months of the receipt of the application by the Welsh Ministers.

(3) The Welsh Ministers must ensure that the panel receives all relevant papers relating to the review as soon as possible but no less than 5 working days before the date fixed for the review.

Duty to provide information and assistance

21. The organisation which made the qualifying determination must provide, as far as is reasonably practicable, any information or assistance requested by the panel under regulation 12, 13 or 14, as the case may be.

Recommendation of panel

22.—(1) Where the panel's recommendation is not unanimous the recommendation must be that of the majority.

(2) The recommendation may be made and announced at the end of the review or reserved.

(3) The recommendation and the reasons for it and whether it was unanimous or that of a majority must be recorded without delay in a document signed and dated by the chair.

(4) The Welsh Ministers must without delay and in any event no later than 10 working days after the date on which the recommendation is made send a copy of the recommendation and the reasons for it to the applicant and to the adoption agency which made the qualifying determination.

Duty to pay costs in connection with a review

23. The organisation which made the qualifying determination must pay to the Welsh Ministers such costs in connection with the review of that qualifying determination as the Welsh Ministers consider reasonable.

PART 4

AMENDMENTS TO FOSTERING REGULATIONS

Amendment of regulation 24 of the Fostering Regulations – establishment of fostering panel

24.—(1) Regulation 24 of the Fostering Regulations is amended as follows:

(2) In paragraph (3)(b)(i) after ‘that individual’ insert “or an employee of the agency who is concerned in the management of the agency or, where that is not reasonably practicable, another person (who need not be an employee of the agency) who has experience in the provision of a fostering service”.

(3) For paragraph (6) substitute —

“(6) Subject to paragraphs (6A) and (6B) a fostering panel member —

(a) may hold office for a term not exceeding three years, and

(b) may not hold office as a member of the fostering panel of the same fostering service provider for more than three terms without an intervening period”.

(4) After paragraph (6) insert —

“(6A) Where —

(a) a member of the fostering panel holds office as a member of that fostering panel pursuant to paragraph 3(b)(i) and is in a second consecutive term of office as a member of that fostering panel, and

(b) that term of office is due to expire on or after 31st December 2009, that member may continue to hold office as a member of that fostering panel for a further period not exceeding 12 months”.

(5) After paragraph (6A) insert —

“(6B) Where the term of office of a panel member has been extended by a further period under paragraph (6A) and the panel member is appointed for a third term of office without an intervening period, that term of office may not exceed a period of three years less a period equal to the further period by which the second term was extended.

“(6C) For the purposes of paragraphs (6) and (6B), an “intervening period” means an unbroken period of at least three years during all of which time the individual in question was not a member of the fostering panel.”

Amendment of regulation 26 of the Fostering Regulations – functions of fostering panel

25. In regulation 26 of the Fostering Regulations, insert after paragraph (1) —

“(1A) In considering what recommendation to make under paragraph (1), the fostering panel —

- (a) must consider and take into account all of the information passed to it in accordance with regulation 27, 28 or 29 as the case may be;
- (b) may request the fostering service provider to obtain any other relevant information which the fostering panel considers necessary or to provide such other assistance as the fostering panel may request; and
- (c) may obtain such legal advice or medical advice it considers necessary in relation to the case.

“(1B) The fostering service provider must obtain such information as the fostering panel considers necessary and send that information to the panel, and provide such other assistance as the fostering panel may request, so far as is reasonably practicable.”

Substitution of regulations 28 and 29 of the Fostering Regulations – approval of foster parents

26. For regulations 28 and 29 of the FSR, substitute —

“Approval of foster parents

28.—(1) A fostering service provider shall not approve a person who has been approved as a foster parent by another fostering service provider and whose approval has not been terminated.

(2) A fostering service provider must not approve a person as a foster parent unless —

- (a) it has completed its assessment of the person’s suitability; and
- (b) its fostering panel has considered the application

(3) A fostering service provider shall, in deciding whether to approve a person as a foster parent and as to the terms of any approval, take into account the recommendation of its fostering panel.

(4) No member of its fostering panel must take part in any decision made by a fostering service provider under paragraph (3).

(5) If a fostering service provider decides to approve a person as a foster parent it must —

- (a) give the person notice in writing specifying the terms of the approval, for example, whether it is in respect of a particular named child or children, or number and age range of children, or of placements of any particular kind, or in any particular circumstances, and
- (b) enter into a written agreement with the person covering the matters specified in Schedule 5 (in these Regulations referred to as the ‘foster care agreement’.)

(6) If a fostering service provider considers that a person is not suitable to act as a foster parent it must, subject to paragraph (7) —

- (a) give the person written notice that it proposes not to approve the person as suitable to act as a foster parent (a “determination”), together with its reasons and a copy of the fostering panel’s recommendation, and
- (b) advise the person that within 28 days of the date of the notice the person may —
 - (i) submit any written representations that the person wishes to make to the fostering service provider, or
 - (ii) apply to the Welsh Ministers for a review by an independent review panel of the determination.

(7) Paragraph (6)(b)(ii) does not apply in a case where the fostering service provider considers in accordance with regulation 27(6) that the person is not suitable to act as a foster parent.

(8) If within the period referred to in paragraph (6)(b) —

- (a) the fostering service provider does not receive any representations, and
- (b) the person does not apply to the Welsh Ministers for a review by an independent review panel of the determination.

the fostering service provider may proceed to make its decision.

(9) If within the period referred to in paragraph (6)(b) the fostering service provider receives any written representations, it must —

- (a) refer the case to the fostering panel for further consideration; and
- (b) make its decision, taking into account any fresh recommendation made by the fostering panel.

(10) If within the period referred to in paragraph (6)(b) the person applies to the Welsh Ministers for a review by an independent review panel of the determination, the fostering service provider must make its decision taking into account the recommendation of the fostering panel and the recommendation of the independent review panel.

(11) As soon as practicable after making the decision referred to in paragraph (8), (9)(b) or (10) (as the case may be), the fostering service provider must notify the prospective foster parent in writing and —

- (a) if the decision is to approve the person as a foster parent, comply with paragraph (5) in relation to the person; or
- (b) if the decision is not to approve the person, provide written reasons for its decision.

(12) In a case where an independent review panel has made a recommendation, the fostering service provider must send to the Welsh Ministers a copy of the notification referred to in paragraph (11).

Reviews and terminations of approval

27.—(1) The fostering service provider must review the approval of each foster parent in accordance with this regulation.

(2) A review shall take place not more than a year after approval and thereafter whenever the fostering service provider considers it necessary, but at intervals of not more than a year.

(3) This paragraph applies when no child has been placed with the foster parent in the two year period since the foster parent's approval.

(4) When undertaking a review, the fostering service provider must —

- (a) make such enquiries and obtain such information as it considers necessary in order to review whether the foster parent continues to be suitable to act as a foster parent and the foster parent's household continues to be suitable;
- (b) where (3) above applies, consider why no child has yet been placed with the foster parents;
- (c) seek and take into account the views of —
 - (i) the foster parent;
 - (ii) (subject to the child's age and understanding) any child placed with the foster parent, and
 - (iii) any responsible authority which has within the preceding year placed a child with a foster parent.

(5) At the conclusion of the review the fostering service provider must prepare a written report setting out whether —

- (a) the foster parent continues to be suitable to act as a foster parent and the foster parent's household continues to be suitable; and

(b) the terms of the foster parent's approval continue to be appropriate.

(6) The fostering service provider must on the occasion of the first review under this regulation and in the circumstances described in paragraph (3) of this regulation and may on any subsequent review, refer its report to the fostering panel for consideration.

(7) If the fostering service provider decides, taking into account any recommendation made by the fostering panel, that the foster parent and the foster parent's household continue to be suitable and that the terms of the foster parent's approval continue to be appropriate, it must give written notice to the foster parent of its decision.

(8) If taking into account any recommendation made by the fostering panel, the fostering service provider is no longer satisfied that the foster parent and the foster parent's household continue to be suitable, or that the terms of the approval are appropriate, it must (subject to paragraph (9)) —

(a) give written notice to the foster parent that it proposes to terminate, or (as the case may be) revise the terms of, the foster parent's approval (a "determination"), together with its reasons and a copy of any recommendation made by the fostering panel, and

(b) advise the foster parent that within 28 days of the date of the notice the foster parent may —

(i) submit any written representations that the foster parent wishes to make to the fostering service provider, or

(ii) apply to Welsh Ministers for a review by an independent review panel of the determination.

(9) Paragraph (8)(b)(ii) does not apply to a case where, in accordance with regulation 27(6) the fostering service provider is no longer satisfied that the foster parent and the foster parent's household continue to be suitable, or that the terms of the approval are appropriate.

(10) If within the period referred to in paragraph (8)(b) —

(a) the fostering service provider does not receive any representations, and

(b) the foster parent does not apply to Welsh Ministers for a review by an independent review panel of the determination the fostering service provider may proceed to make its decision.

(11) If within the period referred to in paragraph (8)(b) the fostering service provider receives any written representations, it must —

(a) refer the case to the fostering panel for its consideration; and

(b) make its decision, taking into account any recommendation made by the fostering panel.

(12) If the foster parent applies within the period referred to in paragraph (8)(b) to the Welsh Ministers for a review by an independent review panel of the determination, the fostering service provider must make its decision taking into account any recommendations made by its fostering panel and the recommendation of the independent review panel.

(13) As soon as practicable after making the decision referred to in paragraph (10), (11)(b) or (12), the fostering service provider shall give written notice to the foster parent stating (as the case may be) —

(a) that the foster parent and the foster parent's household continue to be suitable, and that the terms of the approval continue to be appropriate.

(b) that the foster parent's approval is terminated from a specified date, and the reasons for the termination; or

(c) the revised terms of the approval and the reasons for the revision.

(14) A foster parent may give notice in writing to the fostering service provider at any time that the foster parent no longer wishes to act as a foster parent, whereupon the foster parent's approval is terminated with effect from 28 days from the date on which the notice is received by the fostering service provider.

(15) A copy of any notice given under this regulation shall be sent to the responsible authority for any child placed with the foster parent (unless the responsible authority is also the fostering service provider), and the area authority.

(16) In a case where an independent review panel has made a recommendation, the fostering service provider shall send to the Welsh Ministers a copy of the notification referred to in paragraph (13)."

Amendment to the Fostering Regulations – duty to send information to Welsh Ministers

28. After regulation 29 of the Fostering Regulations, insert —

“Information to be sent to the independent review panel

29A.—(1) This regulation applies where the fostering service provider receives notification from Welsh Ministers that a person has applied for a review by an independent review panel of a determination.

(2) The fostering service provider must, within 10 working days of receipt of the notification referred to in paragraph (1), send to the Welsh Ministers the documents and information specified in paragraph (3).

(3) The following documents and information are specified for the purposes of paragraph (2) —

- (a) a copy of any report prepared, and of any other documents referred to the fostering panel, for the purposes of regulation 27, 28, or 29 as the case may be;
- (b) any relevant information in relation to the person which was obtained by the fostering service provider after the date on which the report was prepared or the documents referred to the fostering panel; and
- (c) a copy of the notice and of any other documents sent in accordance with regulation 28(6)(a) or 29(7)(a).”.

PART 5

MISCELLANEOUS

Cases in progress under the Independent Review Regulations 2006 on the appointed day

29.—(1) In relation to any application by a prospective adopter for a review of a qualifying determination made before the appointed day, any action or decision taken before the appointed day under a provision of the Independent Review Regulations 2006 must, on or after the appointed day, be treated as if it were an action or decision under the corresponding provision of these Regulations.

(2) In this regulation “appointed day” means [*insert date*].

Revocation

30. The Independent Review of Determinations (Adoption) (Wales) Regulations 2006 are hereby revoked.