

REGULATORY APPRAISAL

SOCIAL CARE, WALES

CHILDREN AND YOUNG PERSONS, WALES

THE ADOPTION SUPPORT AGENCIES (WALES) REGULATIONS 2005

Background

1. Over the last few years, some concerns have been expressed by practitioners in the adoption field and people affected by adoption about the practice of unregulated adoption support providers. The concerns focused on areas such as the skills and qualifications of staff, some areas of the practice of providers (such as the methods of counselling and therapeutic services being used) and the lack of peer review. The Welsh Assembly Government is also aware through reports from adopted people of inappropriate attempts by unregulated providers to put birth families in contact with adopted people against the adopted person's wishes. People affected by adoption are currently faced with inconsistency in terms of the quality of service provision they can expect from the independent sector across Wales due to lack of regulation.
2. Section 8 of the 2002 Act amends the Care Standards Act 2000 (the 2000 Act) to make new provision for the registration of Adoption Support Agencies (ASAs) by the Welsh Assembly.
3. At present, adoption support services are provided by local authorities and voluntary adoption agencies (VAAs), as well as independent providers who are not subject to any form of inspection or regulation despite the sensitive nature of the adoption-related services. This new provision will require independent adoption support providers to register as ASAs and comply with Regulations and meet nationally agreed minimum standards to ensure that services are provided to a high standard and by those who are experienced in supporting people affected by adoption.
4. There will be national minimum standards for ASAs to accompany the regulations. These will assist the Assembly (the regulatory authority) in deciding whether an ASA is complying with the Regulations. They will also be useful to providers and staff in assessing their own services, provide a basis for the induction and training of staff, be used by service users as a guide to what they should expect an ASA to provide and do, and provide guidance on what is required when setting up an ASA. Those involved in the provision of adoption support services will be encouraged to make full use of these standards in these ways.
5. VAAs and local authorities are exempt from registering as ASAs even though they provide adoption support services. This means that at

present, although their adoption work is currently regulated and inspected, their adoption support services are not. However, the Assembly Government is keen to ensure that there is a level playing field amongst different providers of adoption support services. It is the intention, therefore, that when the Regulations and standards governing the regulation of VAAs and local authorities are revised in light of the 2002 Act, they incorporate elements of the Regulations and standards for ASAs in order to raise the standard of adoption support provision across the board.

Purpose and intended effect

6. These Regulations seek to implement that part of the Adoption and Children Act 2002, which makes new provision to regulate independent adoption support providers to ensure that services are provided to a high standard and by those suitably qualified and experienced to meet adoption-related needs. It is also the objective that in addition to local authorities and VAAs, others wishing to provide birth records counselling to adopted adults will be able to register as ASAs for this specific purpose. ASAs will also have a role to play in facilitating contact between adopted adults and their birth relatives.
7. Regulation of the currently unregulated independent adoption support service sector will seek to stop unsuitable or unqualified providers from offering services to those affected by adoption, in addition to driving up standards in overall service provision.
8. Organisations (profit and non-profit making) providing adoption support services as their business or profession will be required to apply for registration as ASAs to the National Assembly for Wales (the Assembly). Some of the main providers of adoption support services such as local authorities and VAAs are exempt from registering as they are already regulated through other means. However, it is the intention that in the future all providers of adoption support services will have to meet similar standards to ensure a coherent and fair system for both service users and providers.
9. A risk is that, without regulation of this sector, those affected by adoption will continue to access support services without any assurances as to the quality of those services or whether those providing the services are qualified or experienced to do so. Access to appropriate adoption support services is often vital in ensuring the continuance of an adoptive placement and inappropriate support services delivered by those without relevant expertise can contribute to the disruption of an adoptive relationship.
10. Another risk of not implementing this provision in full via these Regulations is that those affected by adoption will go unsupported, thus leading to a decrease in the number of adoptive placements that are successful. A break down in an adoptive placement will mean a lack of stability and

permanence for the child and could result in the child returning to local authority care.

Options

Option 1: Do nothing

11. Service users will continue to be able to access adoption support services without any assurance as to the quality of the service that they can expect to receive and would not therefore meet the objective. Those accessing support services may be particularly vulnerable and for example an adoptive placement may be close to breaking down. It is vital therefore that service users receive a sensitive, quality service to support them in making an adoptive placement a success and avoiding a return to local authority care for a child.
12. There would also be a great deal of concern if a provision in the Adoption and Children Act 2002 were to remain on the statute books but not be implemented. Indeed, not implementing this provision of the 2002 Act would have even greater implications since other provisions, in particular those related to access to information about a person's adoption, could not be implemented, as the chief providers of new services - ASAs - would be removed from the sector.

Option 2: Set up a voluntary registration scheme for independent providers of adoption support services rather than implement the provision in the 2002 Act.

13. The establishment of a voluntary registration scheme was considered when drawing up the provisions of the Adoption and Children Bill, however it was rejected in favour of a compulsory registration scheme. A voluntary scheme would achieve the objective if all providers were willing to register, however the risk is that it would not create a real incentive for unregulated and poor providers to register since refusing to register would not be an offence. Poor providers would not therefore be removed from the service sector and service users would still be able to get services from unregistered providers thus creating a two-tier level of support provision.
14. As for Option 1, implementing this option would mean that the provisions in the 2002 Act on access to information could not be fully implemented, since registered ASAs, the main providers of the new scheme, would not have been created.

Option 3: Make the legislation

15. This option would implement the provisions in the 2002 Act to make Regulations and national minimum standards to regulate all independent providers of adoption support services.

Benefits

16. The 2000 Act established a new, independent regulatory body charged with the task of improving standards in social care provision by both statutory and independent providers. The regulatory authorities are currently responsible for the regulation of various social care

establishments, including children's homes, care homes and VAAs, and as such provide consistency in the standard of social care provision.

17. The 2002 Act amends the 2000 Act to allow for the regulation of ASAs using the well-recognised framework of regulations and national minimum standards, which is used to regulate other social care providers. This framework is clear and understandable for agencies and will provide users with the assurance that a particular ASA has been approved to provide a particular service and that it meets the nationally agreed standards.

Costs

18. There will be costs to the Assembly in registering and inspecting ASAs, but these costs will be recovered through fees. It is the intention that any costs associated with registration will be passed onto purchasers of ASA's services via higher charges. Generally speaking in most cases it will be local authorities that will pay these increased costs as the main purchasers of services from ASAs.
19. In some cases, those affected by adoption may seek support services themselves and therefore have to pay for the service direct. The cost obviously depends on the service accessed and could range from a few pounds for written material to thousands of pounds for intensive therapeutic services. However, the new national framework for adoption support services places a duty on local authorities to complete an assessment of need for adoption support services. This means that in the majority of cases where adoptive families are seeking services, they will be able to approach their local authority for an assessment of their needs through the new framework. Where the local authority decides that services are to be provided it will be the local authority that will fund the provision of those services.

Small Firms' Impact test

20. In drawing up these Regulations the Welsh Assembly Government has consulted with representatives of various small businesses who may be affected by the proposals.
21. Some impact on small firms has been identified, but this is not thought to be significant. There are also concerns that in some cases regulation will act as a disincentive to practitioners continuing or starting to provide adoption support services.
22. After discussions with representatives of small firms in this sector, we believed that any impact is negated by the benefits that these proposals will have. Small businesses in this sector broadly welcome the proposals as a way of providers gaining recognition for the valuable work that they do.
23. Under the Regulations, many small businesses working under contract to local authorities will not be required to register as they will be classed as "employees" of the local authority and will thus be covered by the

regulations and national minimum standards.

Enforcements and Sanctions

24. Independent providers of adoption support services will be required to register with a regulatory authority as an ASA and comply with these Regulations. When these Regulations come into force, ASAs will be required to register with the Welsh Assembly.
25. The Registration Authority has a number of enforcement mechanisms it could implement if the Regulations are found to be breached. These enforcement actions range from issuing a written notification requiring certain action by the ASA, imposing conditions on the registration of the ASA to ensure its compliance, cancellation of the registration or pursuing a criminal prosecution which could result in a fine (not exceeding level 5 on the standard scale, £5,000) or criminal conviction.

Consultation

With Stakeholders

26. The Adoption Support Agency Regulations were originally drafted with DfES and issued for consultation as joint regulations. The Regulations were also issued for full public consultation in Wales, for three months from 14 May 2004 to 13 August 2004. A list of consultees is attached at Annex 1. 10 written responses were received. Events were held in North and South Wales at which 77 people attended from Local Authorities, Health Services and the Voluntary Sector. The summary of the responses and the respondents is attached at Annex 2.
27. The majority of respondents agreed that adoption support services providers should be registered as an adoption support agency. However, there was concern that small businesses and individuals would be over regulated.
28. Welsh respondents had expressed the view that if agencies were incorporated this would give protection to service users and the provider.
29. In accepting these views, the Welsh Assembly Government could not persuade the Department for Education and Skills in England to agree to a change in the proposed joint Regulations. The Minister for Health and Social Services. Therefore, agreed that the Welsh Assembly Government would respond to the Welsh consultation by developing Wales only Regulations that would:
 - ensure Adoption Support Agencies would have to be incorporated bodies to register; and
 - enable small businesses to provide services to local authorities under contract without having to register separately.

With Subject Committee

30. These Regulations were notified as joint legislation to the Health and Social Services Committee via the list of forthcoming legislation on 14 January 2004 (HSS(2)-01-04 (p.4a) item no. HSS 09 (04)). The entry was updated on 13 April 2005 (HSS(2)-05-05(p.2a) item no. HSS 09 (04)) to reflect the fact that they are to be made under Standing Order 24, but were not identified for detailed scrutiny.

Summary and Recommendation

31. The Welsh Assembly Government has indicated its intention to bring forward these Regulations to implement that part of the 2002 Act to regulate independent providers of adoption support services.

32. These Regulations will meet the objectives and give the best guarantee of protecting adoption support services users and driving up standards in services provision. The Regulations will implement a system for ASAs which is consistent with the regulation of other social care establishments. During the drawing up of these proposals, regulation of this sector has been broadly welcomed.

Annex 1

Consultations

The Chief Executive
The Director of Social Services
The Director of Education
The Head of Children's Services
The Adoption Manager
Local Authorities, Wales

The Chief Executive, Local Health Boards, Wales
The Chief Executive, NHS Trusts, Wales

The Chief Officer of Voluntary Adoption Agencies, Wales
The Children's Commissioner for Wales
The Secretary, Welsh Local Government Association
The Secretary, ADSS in Wales
The Chief Executive, Children in Wales
The Chief Executive, Voices from Care
The Director, CAF/CASS Cymru
Designated Doctors and Nurses

Annex 2

CONSULTATION PROCESS ON DRAFT ADOPTION SUPPORT AGENCIES REGULATIONS 2004 AND NATIONAL MINIMUM STANDARDS

1. In May 2004 the consultation document 'The Draft Adoption Support Agencies Regulations 2004 and National Minimum Standards' was launched by the National Assembly for Wales.
2. 'The Draft Adoption Support Agencies ' document was widely distributed to interested parties inviting comments on the proposed regulations by the end of August 2004. Some 11 written replies were received and this was in addition to two consultation events held in North and South Wales where a 77 people attended representing Local Authorities, Health Services and the Voluntary Sector.

General Responses

3. The responses were received either as a written reply or through the consultation events as follows.

RESPONDENT	WRITTEN	EVENT
Local Authority	8	59
Health Services	3	6
Voluntary Adoption Agency	0	6
User Group	0	0
Miscellaneous	0	6
TOTAL	11	77

4. The consultation events provided a discussion forum indicating broad agreements across the sectors; this was reflected in the written responses. All who took part in this consultation welcomed the consultation and the proposals. However there was concern that the adoption processes should be child centred and consistent over England and Wales. This would be seen to be fair and equitable for not only the process but also the financial and resource pressures.
5. The main findings of the consultation, which are summarised below, have been noted and the final regulations and guidance for Adoption Support Agencies will reflect this.

Adoption support Agencies

6. **Question 1:** Is the list of adoption support services which require registration as an Adoption Support Agency right? If no detail the

provisions for which adoption support services should require registration as an Adoption Support Agency.

7. The majority of respondents agreed that the list of adoption support services which require registration as an adoption support agency was right, but the minority who disagreed were concerned about small businesses and individual practises being over regulated and forced out of market. Also that the list was too prescriptive, needed flexibility and should not limit services available.
8. **Question 2:** Should we provide any specific exemptions from registration?
9. When asked should we provide any specific exemptions from registration, 50% indicated yes. Concerns were expressed about the position of individuals providing therapeutic services to children but whose primary function is not adoption, such as play therapists, also professionals offering an independent service which might be bought as a 'one off', such as independent social workers.
10. Clarity is needed about who is exempt, and the status of voluntary workers (e.g. experienced adopters who are mentors).
11. **Question 3:** We intend that the Regulations and standards should be service user centred and proportionate, achievable and affordable over time. Have we achieved these aims?
12. The majority agreed that the aims had been met, but the minority who disagreed said that this has cost implications for independent social workers and the available resources need to be clarified. There is also a need to regulate services not the organisations and focus on the needs of users. Respondents stated it is difficult to predict demand from service users and therefore affordability of the service is open to question.

The Regulations

13. **Question 4:** Are the draft Regulations clear and understandable? Please identify particular regulations and give details of how they should be clarified.
14. The majority agreed that the draft regulations were clear and understandable but the minority that disagreed raised the questions of which bodies have to be regulated? It was commented that these regulations seek to provide 'a one size fits all' approach in what is potentially a diverse market.

The Standards

15. **Question 5:** Are the standards clear and helpful? Please identify the particular standards and detail how they should be clarified.
16. The majority of people agreed that the standards are clear and helpful. The minority that disagreed were asked to identify the particular standards which were 3, 10 11 and 15. Respondents said that counselling needs to be defined and an audit of these skills undertaken. Risk assessment of service users may need to be undertaken and also services should be diversity aware to reflect user population.
17. **Question 6:** Do the Regulations and standards fit together to give a complete picture?
18. The majority said yes.

Small Adoption Support Agency

19. **Question 7:** Do you agree with the proposed definition of a Small Adoption Support Agency? Do you have alternative suggestions?
20. The majority agreed with the proposed definition of a small adoption support agency as outlined in the proposals section, but the minority that disagreed were concerned about how to function as a small agency and provide services. Also how is the agency size defined, is it by people in post or staff numbers if all vacancies filled.
21. **Question 8:** Do you agree with the proposed frequency of inspections as outlined? If no how frequently should Adoption Support Agencies be inspected?
22. The majority of the respondents agreed with the proposed frequency of inspections as outlined in the proposals section, but the minority that disagreed said that there is a need for extra monitoring if problems are detected or agency changes its trading configuration. A probationary year for new agencies was suggested.
23. **Question 9:** Do you agree with the proposed transitional arrangements set out in the Proposals section? If no please give details.
24. The majority agreed, but the minority who did not raised the issue that registration could limit services.

Managers

25. **Question 10:** Do you agree with the proposed levels of qualification and experience for the manager in standard 5? If no please detail and suggest alternatives.
26. The majority said yes, but the minority who said no said that there could be consideration of a health professional being a manager. Dip social worker or equivalent essential. Respondents requested that the management qualifications that match the NVQ level 4 competencies be specified. Also the funding and availability of NVQ courses could present difficulties for smaller adoption support agencies.
27. Some respondents thought it essential that managers had specific adoption practice experience.
28. **Question 11:** Do the standards appropriately cover individual practitioners as well as larger adoption support agencies? If no please detail?
29. The respondents mostly agreed that the standards cover individual practitioners as well as larger adoption support agencies but there were issues raised that monitoring the standards would be difficult. Would practitioner be audited? Regulations that are meant to protect children and vulnerable adults, need to tie in independent workers / consultants. Some were not clear how standards would operate in relation to individual practitioners and thought that it was written more for an organisation. Also it was stated in one of the responses that it was confusing and needs to be re – written.
30. **Question 12:** Is the approach taken to volunteer's right? Please detail and suggest improvements.
31. The majority felt the approach to volunteers is correct, but enhanced checks should be carried out on them. Concern was expressed about how safeguards will be monitored. Professionalisation was welcomed although as stated, the use of adoptive parents / adults as a resource should not be constrained by over regulation. It was felt that work undertaken by volunteers needed to be specified and the areas they work in should be limited, eg no intermediary work.
32. **Question 13:** Are the levels of knowledge and skills required by professionally qualified staff reasonable (Standard 11)? If no please detail and suggest alternatives.
33. Most of the respondents agreed with this but said just because a professional is registered with a professional body this doesn't mean they

are necessarily up to date, and professionally qualified staff need to be experienced and have training in relevant area.

34. One respondent felt standard 11.2 is vague, and queried who would enforce 11.3 which concerns a shortfall in staffing levels and another stated the wording of 11.6 appears to exclude social workers as counsellors – was this meant?
35. **Question 14:** Should adoption support agencies be required to inform potential service users that they may be entitled to an assessment of their needs for adoption support services from a local authority? Provide reasons.
36. All of the respondents agreed but commented that broad advertising should be undertaken, rather than left to individual agencies. A 'tiered' approach could be adopted according to the complexity of need and services provided. Service users should be advised of all services and all facts such as potential delays. Respondents felt there are potentially huge implications for assessment and service provision.
37. **Question 15:** For how long should adoption support agencies be required to keep their case records? Give reasons for answer.
38. There were a variety of time spans suggested by respondents from 20 years to 100 years. Several commented that there should be consistency across regulations, so the time scale should be the same as stated in Adoption Agency Regulations. It was suggested that the adoption support services records should be incorporated into the adoption file when the service is concluded. Concern was expressed about what happens to records when adoption support agencies cease to exist.
39. **Question 16:** Comments on individual standards would be welcome
40. In relation to standard 9 most agreed with this but commented that two issues need to be clearer. That any complaints which involve the abuse of children must not be dealt with using complaint procedure and also it needs to make clear that children have the right to make a complaint themselves.
41. Standard 15, which sets standards for an individual practitioner to be a registered provider sets no qualification requirements.
42. Impact of the Regulations
43. **Question 17:** Do you agree with the assessment made on the likely impact of the Regulations in the partial RIA?
44. The majority agreed with the assessment made on the likely impact of the Regulations in the Partial RIA but the minority that disagreed were concerned that this is yet another cost to be passed on to Local

Authorities. The assessment does not address the likely impact on health services. Existence and higher profile of adoption support agencies plus higher charges due to cost of regulations will lead to increased demand on local authorities and increased costs. The additional funding from W.A.G. is not felt to be sufficient to absorb this impact over time. Respondents stated that they hoped that bureaucratising of adoption support services will not deter innovative approaches and services being developed – to the benefit of service users.

Benefits of the Regulations

45. **Question 18:** Do you agree with the assessment of the benefits of the Regulations as outlined in the partial RIA?
46. The majority agreed with this but some said that it was too positive and some said they had no view. The issues raised were that individual practitioners might only be able to comply with the regulations. It was suggested an 'umbrella' organisation is set up with whom they can register, therefore lowering costs. Also clear case for researching the take up and effectiveness of an adoption support service to assist with the quantifying of demand.

Conclusions

47. The written responses highlighted concerns about small businesses, individual practitioners and volunteers working in this field. Worries were expressed about over regulation and the resource implications.
48. The general feed back taken from discussions at the consultation events reflected the need for further guidance and definitions as to who and what is covered by these regulations, and how they are affected. It may be that guidance will have to be expanded to cover the queries and include a range of examples as part of the definitions.

LIST OF CONTRIBUTORS TO WRITTEN CONSULTATION

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