

REGULATORY APPRAISAL

CHILDREN AND YOUNG PERSONS, WALES

SOCIAL CARE, WALES

THE LOCAL AUTHORITY (NON-AGENCY ADOPTIONS) (WALES) REGULATIONS 2005

Purpose and intended effect of the measure

1. Where a child is living with carers, step-parents or with one of his/her parents and the parent's partner, but has not been placed for adoption by an adoption agency, the carers, step-parent or the partner of the child's parent may apply to adopt the child providing they fulfil certain requirements of the Adoption and Children Act 2002. Such adoptions are known as non-agency adoptions.
2. An adoption order may not be made unless the prospective adopters have notified the 'appropriate local authority' of their intention to adopt the child that is living with them. The Act requires the local authority to arrange for an investigation of the proposed adoption and undertake enhanced Criminal Records Bureau checks of the proposed adopter and any other member of their household age 18 years and over and to then submit a report to the court, who will decide whether to make an adoption order.
3. The Regulations also cover circumstances where the applicants are normally domiciled in Wales but are living overseas when they wish to apply for an adoption order. This will cover for example the case of proposed adopters who are members of the armed forces or the diplomatic services posted overseas. The Regulations provide that in such a case the authority to which they have to give notice of their intention to adopt, is the local authority in whose area the proposed adopters had last lived together when living in Wales. If the proposed adopters had not lived together in Wales, then they can choose which will be the appropriate local authority from the two local authorities for the areas in which the proposed adopters had their last homes in Wales. The Regulations require that as part of the investigation into all non-agency cases, the local authority obtain enhanced criminal record certificates for the prospective adopters and any other members of their household aged 18 or over.
4. These Regulations do not impose any new obligations upon local authorities. Similar duties were placed upon local authorities under the Adoption Act 1976 and the Adoption Agencies Regulations 1983.

Risk Assessment

5. An adoption order may not be made unless the prospective adopters have notified the 'appropriate local authority' of their intention to adopt the child that is living with them. The Act then requires the local authority to arrange for an investigation of the proposed adoption and to submit a report to the court, which will decide whether to make an adoption order.
6. These Regulations will bring step parent adoptions more in line with other

adoptions, and provide a more stringent approach to checking and assessing the proposed adopters and all other members of their household aged 18 and over.

Options

Option 1: Do Nothing

7. This could leave children at risk. Without these Regulations there will be no provisions to cover the handling of adoptions by those normally resident in Wales, but currently living overseas and no requirement for criminal record checks to be undertaken.

Option 2: Make the Legislation

8. Bring forward the Regulations under the Adoption and Children Act 2002 as drafted, in order that non-agency adoptions are handled in line with other adoptions within the legal framework and to ensure that adequate safeguards are provided.

Business sectors affected

9. The Regulations will affect 22 local authorities, who will be responsible for undertaking an investigation of the proposed adoption and submit a report to the court. Local authorities will also be responsible for undertaking criminal record checks in respect of the proposed adopter(s) and other members of their household.

Benefits

10. These Regulations are the only effective way of delivering the provisions in respect of non-agency adoptions in the 2002 Act.

11. They will ensure that adequate criminal record checks are made in respect of prospective adopters and their households in non-agency cases.

Costs

12. There are no additional financial implications for the Assembly associated with these Regulations. There will be no additional financial implications for local authorities as these Regulations place no new functions on local authorities. Local authorities may charge fees for the work that they undertake in non-agency cases but generally they do not do so. There are no financial implications for the National Health Service or other statutory bodies.

Consultation

With Stakeholders

13. The Welsh Assembly Government has consulted with other key government interests, including the Department for Education and Skills in its development of the Regulations. A package of Regulations was also issued for public consultation for eight weeks between 19 April 2005 and 13 June 2005. (A list of consultees is attached at Annex 1.) The consultation document comprised of a set of Regulations and guidance.

14. In total 15 written responses were received. A summary of consultation responses is attached at Annex 2. Overall, the majority of respondents felt the level of detail provided by the Regulations and guidance was about right.
15. Following analysis of all responses received from the consultation, the points raised were covered by amending the Regulations and accompanying guidance.

With Subject Committee

16. These Regulations were notified to the Health and Social Services Committee, via the list of forthcoming legislation on 24 November 2004, (HSS(2)-14-04(p.2a), Item No: HSS54(04)) and has remained ever since. They were not identified for detailed scrutiny.

Summary

17. These Regulations will bring non-agency cases adoptions more in line with other adoptions, and provide a more stringent approach to checking and assessing the proposed adopters and all other members of their household aged 18 and over. An adoption order cannot be made unless the prospective adopters have notified the 'appropriate local authority' of their intention to adopt the child that is living with them. The Act then requires the local authority to arrange for an investigation of the proposed adoption and to submit a report to the court, which will decide whether to make an adoption order.
18. Regulation 3 prescribes the appropriate local authority for the purposes of section 44 (notice of intention to adopt) where the proposed adopters are living overseas when they wish to apply for an adoption order. This will cover for example members of the armed forces or the diplomatic services posted overseas. The prescribed local authority is the local authority which the proposed adopters nominate, being the local authority for the area in which the last home in Wales of one of the adopters was situated.
19. Local authorities that may be asked to provide services will be able to charge reasonable fees to cover their costs.

Annex 1

Consultation document sent to:

22 Local Authorities
22 Local Health Boards
NHS Trusts
Childrens Commissioner
Chief Officer of Voluntary Adoption Agencies, Wales
British Association for Adoption and Fostering
After Adoption
St. David's Society
Voices from Care
CAFCASS
Welsh Local Government Association
ADSS
Designated Doctors and Nurses for child protection

Respondents in Writing

Bridgend CBC
Torfaent CBC 2 responses
Flintshire CC
Neath Port Talbot CBC
Merthyr Tydfil CBC
Conwy
Newport CC
Monmouth CC
Pembroke CC
Rhondda Cynon Taff
Cardiff & Vale NHS Trust
Child Protection Service NPHS for Wales
North Glamorgan NHS Trust
Powys Local Health Board

Annex 2

1. All fifteen respondents felt that the level of detail provided by the Regulations was 'about right', but when asked if there were any additional issues to be covered and where, detailed certain areas that needed to be clarified:-
 - Regulation 3: With regard to those living overseas, if one proposed adopter last lived in Wales and one in England presumably they can nominate which local authority to notify.
 - Regulation 3: Many forces couples are only resident in an area in Wales for a short time before being posted abroad. Is there a minimum residency period that should be considered.
 - Regulation 3: The medical adviser to the panel where the child is placed should be notified so they can arrange to administer any medical needs the child may have.
 - Regulation 4: One local authority respondent felt that anybody in the household should be the subject of a CRB check and asked if all children from the age of criminal responsibility should be checked.
 - Regulation 4: It was felt that further guidance might be given regarding how to obtain an accurate CRB check if living abroad and there was a need to obtain more information for example from the armed forces/country of residence.
2. All fifteen respondents agreed that the Regulations were easy to understand. However, one local authority felt that clarity was needed in relation to police checks. Is a police check carried out on both applicants if one applicant is the birth parent? (Explanatory note in Regulations).

Response

3. The Regulations were favourably received by all of the respondents, whilst their comments will be covered by amending or expanding the guidance to accompany the Regulations.