

WELSH ASSEMBLY GOVERNMENT REGULATORY IMPACT ASSESSMENT

Title of regulatory proposal

1. Regulations and national minimum standards for fostering services providers, local authorities and independent and voluntary fostering agencies.

Purpose and intended effect of proposal

2. *Issue:* there has long been concern that independent fostering agencies needed to be subject to a regime of registration and inspection, as there have been a number of cases of very poor practice. Registration and inspection were recommended by the 1996 report¹ by Tom Burgner into the regulation and inspection of social services, the 1997 Children's Safeguards Review² by Sir William Utting, and the 1998 report by the House of Commons Health Select Committee³ on looked after children. These reports confirmed the variable quality of the services provided by independent fostering agencies, and the need to regulate them in order to protect the safety and promote the welfare of children being provided with carers through them. It is this gap in regulation, with the associated threat to children looked after by local authorities, which has promoted Government action. A public commitment to bringing such agencies into the regulatory framework was therefore made in the 1999 "Building for the Future" White Paper⁴:

"Independent fostering agencies will be within the regulatory framework and they too will be regulated by the new Care Standards Commission for Wales".

The objectives of the proposals are:

- to implement National Assembly for Wales policy as set out in the 'Building for the Future' White Paper and Care Standards Act 2000;
- to standardise the services received by children and their families in fostering services throughout Wales;
- to ensure that the independent sector is brought within the regulatory framework;
- to ensure that appropriate standards are applied across the board;
- to provide a registration mechanism so that agencies which do not perform to the required standard(s) are not allowed to operate; and
- to improve the quality of care received by children in fostering services.

¹ Tom Burgner, *The Regulation and Inspection of Social Services*, Department of Health/Welsh Office, 1996

² Sir William Utting *People Like Us, The Report of the Review of the Safeguards for Children Living Away from Home*, DOH/Welsh Office, 1998

³ House of Commons Health Select Committee *Report on Children Looked After by Local Authorities*, 1998

⁴ Social Services *Building for the future* White Paper, Welsh Office, 1999

Introduction

3. The Care Standards Act received Royal Assent in July 2000. The main purpose of the Act is to reform the regulatory system for care services in England and Wales, to help ensure quality care services across the two countries. Care services range from care homes, children's homes, domiciliary care agencies, fostering agencies and voluntary adoption agencies through to private and voluntary healthcare services (including independent hospitals and clinics). In Wales the Act provides for the Assembly to undertake the regulatory function. This will be discharged through the Care Standards Inspectorate (CSIW).
4. For some services it will be a question of transferring regulation to the Inspectorate; for other services the Care Standards Act introduces registration and inspection for the first time. This is the case for fostering services providers.
5. As at 31 March 2001 there were 3,931 children looked after by local authorities in Wales; 2690 of them were cared for by 1892 foster carers. There are 22 local authority social services departments, whose functions include providing fostering services in respect of children looked after by the authority. The great majority of foster carers are provided directly by the local authority, but some are provided through independent fostering agencies. The number of these agencies grew during the 1990s and it is estimated that there are now up to 6 of them based in, and operating in, Wales. In addition to the fostering of children looked after by authorities, there are powers under s59 of the Children Act 1989 for voluntary organisations to place children with foster parents. Such organisations will also be regulated through the Inspectorate in the same way as independent fostering agencies. (Examples are Barnardo's and NCH Action for Children Cymru.)
6. Independent fostering agencies (IFAs) may provide foster care services under contractual arrangements with local authorities. These arrangements exist under the Foster Placement (Children) Regulations 1991 which are proposed to be repealed in their entirety and replaced by the proposed new regulations). IFAs find foster carers on behalf of the local authority, and then provide support for the placement and training for the foster carers whilst the child is placed with them under powers delegated by the local authority. The local authority retains responsibility for the child in the placement, provides supervision and reviews the continuation of the placement from the child's point of view.
7. Under the Care Standards Act, IFAs in Wales will be required to register with CSIW before they are allowed to operate. To do so, they will need to meet the requirements set out in the Act and the proposed new regulations, which are elaborated on in the national minimum standards. In addition, voluntary organisations providing fostering services in their own right, under s59 of the Children Act 1989, will be required to register with CSIW in the same way.
8. As well as the long overdue registration and inspection of independent agencies, the Care Standards Act includes an inspection requirement in respect of local authority fostering services. It was considered essential that there was a level playing field between the requirements for authority and independent and voluntary agency

services, particularly since evidence suggests that there are problems of varying quality in local authority fostering services as well as in independent agency services.

9. The White paper '*Building for the Future*' (see background at paragraph 2) explains the aims of the proposed new regulatory framework. One of the prime reasons for such a framework is that it will mean that a common set of regulations and national minimum standards will apply across the board. The proposed regulations and national minimum standards which are covered by this Regulatory Impact Assessment are part of the new national, consistent approach as they will apply in all settings, whether local authority, voluntary or independent, throughout Wales.
10. This regulatory impact assessment relates to the proposed Fostering Service (Wales) Regulations 2003.

Risk assessment

11. The regulatory proposals seek to bring independent fostering and voluntary fostering agencies and local authority fostering services within a regulatory framework and to apply consistent standards to all sectors.
12. The Welsh Assembly Government is strongly committed to bringing independent fostering agencies within the regulatory framework. This policy has been developing over time, as the independent sector has grown. Extending regulation to the independent sector has been recommended by many key reports (see paragraph 2 above).
13. In response to these and other reports the policy for Wales was set out in the White Paper of 1999¹. Following the passage of the Care Standards Bill through Parliament, the Welsh Assembly Government remained committed to bringing fostering services into a new regime of registration and inspection.
14. Thus the conclusions of the above-mentioned reports and pressure from other quarters resulted in the enactment of new legislation providing for regulation and inspection of fostering services. The Welsh Assembly Government is committed to taking action to ensure good quality services, and thereby promote better placements, for children and young people and to reduce the potential of abuse and harm to children in foster care. Introducing a new regime of registration and inspection for fostering providers is an important part of the Welsh Assembly Government's wider programme to improve services and outcomes for looked after children.

Options

15. Three options have been identified for taking the work forward:

Option (i) Do nothing and retain the present system

This would involve not commencing the sections of the Care Standards Act 2000 relevant to fostering services, in order to keep the current system. The commitments made and the importance of bringing the services into the planned new regime make this an impractical and undesirable option. Moreover, the strength of public support

for reform and for a proper system of registration and inspection – particularly within the independent sector – and of the Welsh Assembly Government’s commitment to improving the quality of care received by vulnerable children makes this unfeasible.

Option (ii) Introduce a system of voluntary or self-accreditation and licensing rather than registration.

While a lighter form of regulation may be appropriate for some service sectors, the Welsh Assembly Government believes that the self-accreditation of independent fostering agencies would not be adequate to ensure good standards across the board or protect the interests of vulnerable children. Although without doubt independent fostering agencies can perform to a good standard, regulation by the Welsh Assembly Government is a way of legitimising the service they provide. It will also ensure adherence to national standards as it is possible that not all are abiding by current good practice – as outlined in the National Standards for Foster Care and the Code of Practice for the recruitment, assessment, approval, training, management and support of foster carers, published in 1999.

The Children’s Safeguards Review and other reports have raised concerns about the implications for children’s welfare in these unregistered agencies. There is no reason why, with other agencies and establishments being registered and inspected by the Inspectorate with a national set of regulations and standards, fostering services should be treated differently in any way.

Option (iii) Introduce regulations and national minimum standards for local authority and independent fostering services.

Regulations and national minimum standards will enable CSIW to ensure that fostering services promote and safeguard the welfare of children and young people in foster care.

Without these necessary measures, some children will continue to be placed in unregistered and sometimes unsafe settings, where their needs are not appropriately met.

Issues of equity and fairness

16. The key objectives for introducing regulations and national minimum standards for fostering service providers are the advancement of child protection and the promotion of welfare. The independent sector is at present unregulated and this change is necessary to ensure adequate quality service provision. In future, all providers of fostering services will be adhering to the same requirements, which will create a level playing field across the sector and ensure the confidence of service users. The new regulations and standards by their nature promote equity and fairness.
17. The proposals to introduce the new regulations and standards have been in the public domain for some time, and there is general awareness and support for them. The regulations and standards are based very much on current regulatory requirements, were the subject of consultation, and take account of the National Foster Care Standards which were published in 1999. All that, together with the planned general

approach for social care establishments and agencies to be regulated by CSIW, ought to mean that there should be no surprises for providers.

Benefits of regulatory change

18. The new regulations and national minimum standards for fostering service providers will ensure that any fostering service or agency that places children – whether temporarily or in the longer term – will have met the necessary requirements and will be regularly inspected to ensure compliance with them. Registration and inspection will be required before any child can be placed through an agency in Wales entering the market and CSIW will be able to take action where there is any evidence of particular aspects of the service failing to reach the necessary standard(s).
19. The principal benefits to service providers will be that they will see a level playing field and a consistency of standards across sectors (independent, local authority and voluntary). The system will clearly state what is required, and by meeting the requirements, agencies will be seen to be providing a legitimate and properly regulated service. Local authority providers will be able to satisfy themselves that they are providing adequate services for their children and young people and will be given help in identifying areas where improvements are needed.
20. There will be benefits to service practitioners, who will be able to use the standards as a working tool for improving services. The standards also offer support for staff, and are intended to promote the acquisition of skills and qualifications for workers. This will hopefully have the effect of driving up the profile, quality and support for staff.
21. Children and young people in foster care and their families will benefit from the certainty that the services that are provided meet minimum requirements, and from the greater transparency and clarity about what can be expected from a fostering service provider. As a result, they should be safe and their welfare promoted, with better outcomes.

Costs

22. Of the options presented earlier on in this paper, Option (i) would have no immediate costs, but there could be long-term costs in terms of coping with problems associated with poor quality care. For Option (ii), it is difficult to assess the level of costs, as it would depend upon how effective the voluntary/self-accreditation scheme was. To be effective the costs would probably be similar to the costs of Option (iii) – see below.
23. A separate draft RIA on the costs associated with regulatory fees accompanied the consultation on proposed fees regulations. That set out the overall estimated costs of regulatory provision to the Assembly, the income likely to be generated from fees payable to CSIW and the proposed fee levels for different sectors, including fostering services. The following fees were proposed.
 - *Registration Fee*: £1,100. Independent and voluntary fostering agencies are not currently registered so they will need to pay registration fees. Each branch of an independent fostering agency will require separate registration with CSIW.

- *Registration of Manager Fee* - where a manager (who is not the owner or provider) of an independent fostering agency, or a service new to registration, needs to be registered, it is proposed that the fee be £300. This will be payable in addition to the registration fee.
- *Variation of conditions of registration* - £550 or, where no inspection involved, £50.
- *Annual Fee* - The Assembly Government proposes an annual fee of £1,000 for independent fostering agencies and local authority fostering services.

24. No adverse comments were received on the proposed levels of fees. Local authorities have been compensated for the additional costs of inspection through the general settlement made last year covering the transition to the Care Standards Act regime. In relation to costs of compliance with the regulations and standards, the great majority of the requirements in the proposed regulations and standards are already covered in regulatory requirements and in the National Foster Care Standards (1999). It is therefore expected that few fostering providers of adequate quality would have any difficulty in meeting the requirements

Impact on Small Businesses

25. Independent fostering agencies are not opposed to the introduction of regulatory arrangements and the related scheme of fees for registration and inspection. Inherently, they accept the need for regulation and the charges involved in the interests of improving services for vulnerable children.

Consultation and summary

26. There was a very thorough consultation in the lead-up to the development of the National Foster Care Standards (1999). The new standards are based on those. In addition, the Welsh Assembly Government consulted widely in 2001 on draft regulations and national minimum standards. A separate consultation was undertaken on proposed regulatory fees, including those for fostering services.

Monitoring and review

27. Implementation of the regulations and national minimum standards will be carried out by the CSIW, which will take any enforcement action and review compliance.

28. The Welsh Assembly Government intends to monitor the effectiveness of the regulations and the national minimum standards and to make any changes as necessary.

Summary

29. The Welsh Assembly Government has long been committed to introducing regulation for fostering agencies. In addition, in order to achieve a level playing field, the Welsh Assembly Government wishes to establish a regime which requires local authority

fostering service providers to meet the same standards. As part of implementation of the Care Standards Act 2000, draft regulations and national minimum standards have been produced setting out the requirements of fostering services providers. These regulations and standards were widely consulted on.

30. Following consultation, the Welsh Assembly Government have considered all the comments received, and decided to implement the regulation of fostering services providers as set out in the Care Standards Act 2000 in the form of the proposed regulations (which include provision for fees) and the related standards.

Children and Families Division
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