

Autumn 2018 Edition of the AFA Cymru Legal Bulletin

Welcome to the autumn edition of our newsletter, where we look at the adoption regulations currently out for consultation from Welsh Government. They are due for implementation next April 2019.

There are two sets of these regulations, the first being the Adoption Services (Service Providers and Responsible Individuals) and Local Authority Adoption Services (Wales) Regulations 2019, which come with their own Statutory Guidance and Code of Practice.

The changes are in response to the implementation of the Regulation and Inspection of Social Care (Wales) Act 2016 (RISCA), which replaces the Care Standards Act 2000 in Wales. RISCA covers the regulation of what is termed 'regulated services', and an 'adoption service', whether it is the work of an adoption society (VAA), or an adoption support agency is a 'regulated service'. Local authority adoption services and adoption support services are regulated under the SSWbA 2014 but the regulations aim to bring consistency by putting both voluntary and local authority sectors in the same set of regulations. As there are different statutes setting out the respective duties of the LA and voluntary sectors, some of the regulations apply to only one sector (although you will see some are also shared).

The 2019 regulations will replace the LA Adoption Service (Wales) Regulations 2007 from the LA side and the Adoption Support Services (Wales) Regulations 2005 from the VAA/ASA side.

The Adoption Agencies (Wales) Regulations 2005 remain unchanged by these regulations (but see later for other amendments). Also, the Adoption Support Services (Local Authorities) (Wales) Regulations 2005 remain intact.

It takes a little time to work out what these regulations cover and where the Statutory Guidance and Code of Practice fit in.

In terms of the guidance, any guidance issued to local authorities has to be issued under the SSWbA 2014 and has to be set out in a Code of Practice (we are now used

to this form in LA work). However, the voluntary sector's guidance, for VAA's and ASA's, is issued under RISCA) 2016 and

is in the form of Statutory Guidance, not a Code of Practice. Again, both the Code of Practice and Statutory Guidance are contained in the same document and some applies to both LA's and to VAA's/ASA's. We therefore have the same wording amounting to a Code of Practice for LA's and Statutory Guidance for VAA's/ ASA's.

A table may help:

For LA adoption services

For VAA's / ASA's

STATUTE

S9 ACA 2002

S 29 RISCA 2016

S145 SSWb(W)A 2014

REGULATIONS

2019 Regulations

2019 Regulations

Parts 1,4,5,6,7,8,

Parts1,2,3,5,6,7,8,9

17,18

10,11,12,13,14,15,16

GUIDANCE

Code of Practice

Statutory Guidance

Chapters 2,3,5,6

Chapters 1,3,4

WHAT IS BEING REPLACED / REVOKED?

The LA Adoption Service

The Adoption Support

(Wales) Regulations 2007

Agencies (Wales)

Regulations 2005

The Adoption Agencies

(Miscellaneous

Amendments)

Regulations 2003

What do the regulations cover? They cover the duties both LA adoption service providers and VAA's / ASA' have in relation to setting up, running, monitoring and providing an adoption service; this is a very simplistic explanation for complex and rigorous regulations which, although written specifically for adoption services, have had to be drafted in such a way that creates consistency with other 'regulated services' that are quite different to adoption services. This is proving to be a challenge; for example, what amounts to the provision of 'care and support' when considering the sort of service owing to prospective adopters, pre-approval?

This consultation ends on the 29 November. The National Adoption Service policy sub group is meeting on the 23 October to consider a response to the draft regulations.

The second set of regulations are the Adoption Agencies (Wales) (Amendments) Regulations 2019 and Adoption Agencies (Wales) (Amendment) (Wales) (No.2) Regulations 2019. These regulations will amend the Adoption Agencies (Wales) Regulations 2005. Briefly they provide the following changes to our regulations:

- 1) A compulsory referral to the Adoption Register no later than one month after a should be placed for adoption decision has been made and where the adoption agency has not identified prospective adopters;
- 2) A list of people who can witness a parent's consent to placement for adoption or a future adoption order if that person resides outside England and Wales;
- 3) The main part of these changes involves the insertion of a new Part 4, bringing in a two-stage approval process (as is in place in England):
 - Stage 1 is the pre-assessment process where all the checks are undertaken. The AA has two months in which to undertake Stage 1 and decide whether to proceed to Stage 2. A delay is allowed only if the AA is satisfied there is 'good reason' or upon request of the applicants. If the AA decides not to proceed to Stage 2 this does not amount to a qualifying determination and the prospective adopters do not have recourse to the independent reviewing mechanism
 - Stage 2 is the assessment process. The AA has 4 months, from the date the applicants have notified them that they wish to proceed, to decide on suitability. A delay may only be considered if there are exceptional circumstances which mean the timescale cannot be met or if the prospective adopters request a delay

- Both stages of the process involve the compilation of detailed written plans;
- 4) The duty to prepare a written plan, post approval to include information to prospective adopters on the AA's duties in respect of placement and reviews;
- 5) The introduction of a fast track process for approved foster carers or for previous adopters (in England or Wales). Both stages 1 and 2 are to be completed within 4 months;
- 6) There is a specific reference to the provision of information to prospective adopters about contact with siblings, along with birth parents and other relatives;
- 7) Lastly the (No. 2) amendment adds in a requirement that is in separate regulations in England and consequently needs to be added to the Wales version of the two-stage process: an AA must 'in determining the suitability of a couple to adopt a child, to have proper regard to the need for stability and permanence in their relationship'.

These regulations are out for consultation until 9 January and are also being considered by the NAS policy sub group on the 23 October.

We promise to deal with matters other than adoption in our next newsletter – apologies to those practitioners working in other sectors.

Sarah Coldrick
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