



SPRING 2019 Edition of the AFA Cymru Legal Bulletin

Welcome to an early spring issue of the newsletter where we provide information on the law relating to permanency planning and placements in Wales.

Once again, the newsletter is mainly focussed on the new regulatory framework, in both adoption and fostering, most of which is coming into force at the end of this month, on 29 April.

FOSTERING

The complete set of these regulations are set out in the February newsletter.

The CoramBAAF Form F and accompanying guidance, in English, will be sent to all providers with licences before Easter. The Welsh version will be available in time for implementation.

The Form F and accompanying documents, including detailed guidance, have been amended following a consultation exercise we undertook at the beginning of the year. Many thanks to those who attended the meetings and contributed so generously.

There is still work to be done – many practitioners are thinking of the implications of the two stage process for kinship fostering assessments and we hope to provide some good practice pointers in the future.

ADOPTION

The February newsletter was incomplete for the adoption regulatory framework. Below is an updated table.

For LA adoption services

For VAA's / ASA's

STATUTE UNDER WHICH REGULATIONS ARE ISSUED

S9 ACA 2002

S29 RISCA 2016

REGULATIONS

The Local Authority

The Regulated Adoption Services

Adoption Services (Wales)

(Service Providers and Responsible

Regulations 2018

Individuals) (Wales)

Regulations 2019

GUIDANCE

Code of Practice

Statutory Guidance

WHAT IS BEING REPLACED / REVOKED?

The LA Adoption Service

The Adoption Agencies

(Wales) Regulations 2007

(Miscellaneous Amendments

Regulations 2003 (as amended

In 2005)

ADOPTION SUPPORT REGULATIONS

The Adoption Support Services

The Adoption Support Services

(Local Authorities) (Wales)

(Wales) Regulations 2019, issued

Regulations 2005 remain in force

under ACA 2002, replace the

Adoption Support Agencies

(Wales) Regulations 2005

AGENCIES REGULATIONS

For both local authority adoption agencies and voluntary adoption agencies, the Adoption Agencies (Wales) Regulations 2005 are being amended by the Adoption Agencies (Wales) (Amendments) Regulations 2019. These regulations are due to come into force on 1 July. AFA is in the process of amending the Coram BAAF PAR and accompanying documents in readiness for July

RECENT CASE LAW

POST ADOPTION CONTACT

B (A Child: Post – Adoption Contact) [2019] EWCA Civ 29

This is the first case to look at the new post adoption contact provisions brought in with the Children and Families Act 2014. The court looked at all the previous case law on post adoption contact (when it was s8 contact) and considered whether the new provisions make a difference to the established principle that it is 'extremely unusual' for a post adoption contact order to be made against the adopters' wishes.

The lawyers representing the birth parents argued that, now there was a 'bespoke' statutory regime for post adoption contact, this old principle no longer applies.

The Court of Appeal (including the President) held:

- The court must consider the matter of contact before making an adoption order
- 'but the court must be plain that, as the laws stands, whilst there may be justification in considering some forms of direct contact, the ultimate decision as to what contact is to take place is for the adopters and that it will be 'extremely unusual' for the court to impose a contrary arrangement against the wishes of adopters.'
- The difference between a s8 application and s51A is that a s8 application is decided upon the basis of the Children Act welfare checklist and a s51A application is decided upon the basis of the Adoption and Children Act welfare checklist (ie the focus is on the child's welfare throughout their life)

- Any development or change in practice, based on research, is not linked to the change in legal provisions (ie s51A of itself has not brought about changes in thinking about adoption contact).

We need to look at this judgment in the context of the evolving nature of contact in adoption. The Court of Appeal was not prepared to order contact, against the wishes of adoptive parents. The work needs to be done with all those involved in adoption, including adoptive parents, to explore the benefits of contact, with birth family, if it is in the child's best interests. However, this needs to be voluntarily entered into and flexible enough to meet developing needs.

NEW GUIDANCE

Children in Wales, supported by Welsh Government, has developed a range of new resources for care experienced children and young people across Wales, and for the professionals who support them.

The topics relate to young people's rights under Part 6 of the SSWBA and the UNCRC.

The guides are available at www.childreninwales.org.uk/resources/looked-after-children.

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