
WELSH STATUTORY INSTRUMENTS

2010 No. 746 (W.75)

SOCIAL CARE, WALES

CHILDREN AND YOUNG PERSONS, WALES

The Independent Review of Determinations
(Adoption and Fostering) (Wales) Regulations 2010

<i>Made</i>	- - - -	<i>11 March 2010</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>12 March 2010</i>
<i>Coming into force</i>	- -	<i>2 April 2010</i>

The Welsh Ministers in exercise of the powers conferred by sections 9, 12 and 142(5) of the Adoption and Children Act 2002(1), sections 23(2) and (9) and 104(4) of, and paragraph 12A of Schedule 2 to, the Children Act 1989(2) and sections 22(1) and 118(1) and (5) to (7) of the Care Standards Act 2000(3) make the following Regulations —

PART 1
GENERAL

Title, commencement and application

- 1.—(1) The title of these Regulations is the Independent Review of Determinations (Adoption and Fostering)(Wales) Regulations 2010.
- (2) They come into force on 2 April 2010.
- (3) These Regulations apply to Wales.

Interpretation

2. In these Regulations —
- “the 1989 Act” (“*Deddf 1989*”) means the Children Act 1989;

(1) 2002 c. 38. Section 12 was amended by section 57 of the Children Act 2004 (c. 31) and by section 34 the Children and Young Persons Act 2008 (c. 23).

(2) 1989 c. 41. Section 8(3) of, and paragraph 2 of Schedule 2 to, the Children and young Person’s Act 2008 (c. 23) provide that Schedule 2 to the Children Act 1989 has effect as if paragraph 12A were inserted after paragraph 12.

(3) 2000 c. 14.

- “the 2002 Act” (“*Deddf 2002*”) means the Adoption and Children Act 2002;
- “the Agencies Regulations” (“*y Rheoliadau Asiantaethau*”) means the Adoption Agencies (Wales) Regulations 2005(4);
- “adoption panel” (“*panel mabwysiadu*”) means a panel constituted in accordance with regulation 3 of the Agencies Regulations;
- “adoption suitability determination” (“*penderfyniad ar addasrwydd i fabwysiadu*”) means a qualifying determination described in regulation 3(a);
- “applicant” (“*ceisydd*”) means —
- in the case of an adoption suitability determination, a prospective adopter;
 - in the case of a disclosure determination, a relevant person within the meaning of regulation 13A(7) of the Disclosure Regulations;
 - in the case of a fostering determination, a person to whom notice has been given for the purposes of regulation 28(6)(a) of the Fostering Regulations;
- “the central list” (“*y rhestr ganolog*”) is to be construed in accordance with regulation 5;
- “disclosure determination” (“*penderfyniad ar ddatgelu*”) means a qualifying determination described in regulation 13A(1) of the Disclosure Regulations(5);
- “the Disclosure Regulations” (“*y Rheoliadau Datgelu*”) means the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005(6);
- “foster parent” (“*rhiant maeth*”) has the meaning given in regulation 2(1) of the Fostering Regulations;
- “fostering determination” (“*penderfyniad ar faethu*”) means a qualifying determination of a description prescribed in regulation 4;
- “fostering panel” (“*panel maethu*”) means a panel constituted in accordance with regulation 24 of the Fostering Regulations;
- “fostering service provider” (“*darparwydd gwasanaeth maethu*”) has the meaning given in regulation 2(1) of the Fostering Regulations;
- “the Fostering Regulations” (“*y Rheoliadau Maethu*”) means the Fostering Services (Wales) Regulations 2003(7);
- “the Independent Review Regulations 2006” (“*Rheoliadau Adolygu Annibynnol 2006*”) means the Independent Review of Determinations (Adoption) (Wales) Regulations 2006(8);
- “organisation” (“*sefydliad*”) means an adoption agency or a fostering service provider as the case may be;
- “panel” (“*panel*”) means a panel constituted in accordance with regulation 6, 7 or 8 as the case may be;
- “prospective adopter’s report” (“*adroddiad darpar fabwysiadu*”) means a report prepared in accordance with regulation 26 of the Agencies Regulations;

(4) S.I.2005/1313 (W.95) as amended by S.I.2006/362 (W.48), S.I.2009/1891 and S.I.2009/2541 (W.205).

(5) Regulation 13A (1) of the Disclosure Regulations specifies the following determinations by the appropriate adoption agency in relation to an application under section 61 of the 2002 Act (a) not to proceed with an application from any person for the disclosure of protected information; (b) to disclose information to an applicant about a person when that person has withheld consent to the disclosure of the information; and (c) not to disclose information about a person to the applicant where that person has given consent to the disclosure of information.

(6) S.I. 2005/2689 (W.189) as amended by S.I.2006/3100 (W.284) and S.I. 2009/1892.

(7) S.I. 2003/237 (W.35) as amended by S.I. 2003/896 (W.116), S.I. 2004/1016 (W.113), S.I. 2005/3302 (W.256), S.I. 2006/878 (W.83), S.I. 2006/3251 (W.295) and S.I. 2009/2541 (W.205).

(8) 2006/3100 (W.284).

“qualifying determination” (“*penderfyniad cymhwysol*”) means a determination described in regulations 3 and 4;

“social worker” (“*gweithiwr cymdeithasol*”) means a person who is registered as a social worker in a register maintained by the General Social Care Council or the Care Council for Wales under section 56 of the Care Standards Act 2000 or in a corresponding register maintained under the law of Scotland or Northern Ireland; and

“working day” (“*diwrnod gwaith*”) means any day other than a Saturday, Sunday, Christmas day, Good Friday or a day which is a bank holiday with the meaning of the Banking and Financial Dealings Act 1971(9).

Qualifying determination — prescribed description for the purposes of section 12(2) of the 2002 Act

3. For the purposes of section 12(2) of the 2002 Act, a qualifying determination is —
- (a) a determination that has been made by an adoption agency in accordance with the Agencies Regulations as follows —
 - (i) where under regulation 28(4) of the Agencies Regulations the agency does not propose to approve a prospective adopter as suitable to be an adoptive parent;
 - (ii) where the agency considers that a prospective adopter is no longer suitable to be an adoptive parent following a review under regulation 30 of the Agencies Regulations;or
 - (b) a determination described in regulation 13A(1) of the Disclosure Regulations.

Qualifying determination — prescribed descriptions for the purposes of paragraph 12A(2) (b) of Schedule 2 to the 1989 Act

4. For the purposes of paragraph 12A(2)(b) of Schedule 2 to the 1989 Act the following descriptions of determinations are prescribed —
- (a) a determination (other than a determination made pursuant to regulation 27(6) of the Fostering Regulations) that the fostering service provider proposes not to approve a person as suitable to act as a foster parent in accordance with regulation 28(6) of the Fostering Regulations, and
 - (b) a determination (other than a determination made pursuant to regulation 27(6) of the Fostering Regulations) that the fostering service provider proposes to terminate, or to revise the terms of, the approval of a person as suitable to act as a foster parent in accordance with regulation 29(7) of the Fostering Regulations, where notice of the determination is given on or after 2 April 2010.

PART 2

PANELS

Constitution of panels

5.—(1) The Welsh Ministers must, on receipt of an application made by an applicant in accordance with regulation 19, constitute a panel in accordance with regulation 6, 7 or 8, as the case may be, for the purpose of reviewing the qualifying determination.

(9) 1971.c.80.

(2) The members of the panel must be drawn from a list of persons (in these Regulations referred to as “the central list”) kept by the Welsh Ministers, who are considered by the Welsh Ministers to be suitable, by virtue of their skills, qualifications or experience, to be members of a panel.

(3) The members of the central list must include —

- (a) social workers who have at least three years' post-qualifying experience in adoption and family placement work;
- (b) social workers who have at least three years' post-qualifying experience in child care social work including direct experience of fostering work;
- (c) registered medical practitioners, and
- (d) other persons who are considered by the Welsh Ministers to be suitable as members including, where reasonably practicable, persons with personal experience of adoption and persons who are, or within the previous two years have been, a local authority foster parent.

Membership of a panel to review an adoption suitability determination

6.—(1) Where the qualifying determination being reviewed is an adoption suitability determination, the number of people who must be appointed to a panel is five and the panel must include at least —

- (a) two persons falling within regulation 5(3)(a);
- (b) one person falling within regulation 5(3)(c); and
- (c) two other persons from the central list including, where reasonably practicable, at least one person with personal experience of adoption.

Membership of a panel to review a disclosure determination

7.—(1) Where the qualifying determination being reviewed is a disclosure determination, the number of people who must be appointed to a panel is five and the panel must include at least —

- (a) two persons falling within regulation 5(3)(a); and
- (b) three persons from the central list.

Membership of a panel to review a fostering determination

8.—(1) Where the qualifying determination to be reviewed is a fostering determination, the number of people who must be appointed to a panel is five and the panel must include at least —

- (a) two persons falling within regulation 5(3)(b); and
- (b) three other persons from the central list including, where reasonably practicable, at least one person who is, or within the previous two years has been, a local authority foster parent.

Panel advisers

9.—(1) A panel must be advised by a social worker with appropriate qualifications, skills and experience.

(2) A panel may, where the panel considers it appropriate, be advised by —

- (a) a legal adviser with knowledge and expertise in adoption and fostering legislation;
- (b) a registered medical practitioner with relevant expertise in adoption or fostering work, whichever is appropriate to the qualifying determination being considered;
- (c) any other person whom the panel considers has relevant expertise in relation to the determination being considered.

- (3) The panel advisers referred to in paragraphs (1) and (2) must be members of the central list.

Appointment of a panel chair

10. The Welsh Ministers must appoint to chair a panel a person who has the skills and experience necessary for chairing a panel.

Disqualification of panel members

11.—(1) A person (“P”) must not be appointed to a panel if —

- (a) P is a member of the adoption panel or fostering panel of the organisation which made the qualifying determination;
- (b) where the organisation which made the qualifying determination is a local authority, P is, or has been within the period of one year prior to the date on which the qualifying determination was made —
 - (i) employed by that authority in their children and family social services, or
 - (ii) a member of that authority;
- (c) where the organisation which made the qualifying determination is not a local authority, P is, or has been within the period of one year prior to the date on which the qualifying determination was made, an employee or a trustee of that organisation;
- (d) P is related to a person falling within sub-paragraph (a), (b) or (c);
- (e) the organisation which made the qualifying determination has placed a child for adoption with P or placed a child with P as a local authority foster parent;
- (f) where P was adopted or fostered as a child, the organisation which made the qualifying determination was the organisation which arranged P’s adoption or fostering; or
- (g) P knows the applicant in a personal or professional capacity.

(2) In this regulation —

- (a) “employed” (“*cyflogedig*”) includes employed whether or not for payment and whether under a contract of service or a contract for services or as a volunteer; and
- (b) P is related to another person (“A”) if P is —
 - (i) a member of the household of, or married to or the civil partner of, A;
 - (ii) the son, daughter, mother, father, sister or brother of A; or
 - (iii) the son, daughter, mother, father, sister or brother of the person to whom A is married or with whom A has formed a civil partnership.

Functions of panel constituted to review an adoption suitability determination

12.—(1) This regulation applies where the qualifying determination being reviewed is an adoption suitability determination.

(2) A panel constituted in accordance with regulation 6 must review the adoption suitability determination and —

- (a) where paragraph (3) applies, make to the adoption agency that made the adoption suitability determination a recommendation as to whether or not the applicant is suitable to adopt a child; or
- (b) where paragraph (4) applies, make to the adoption agency that made the adoption suitability determination a recommendation that —

- (i) it should prepare a prospective adopter's report in accordance with regulation 26(4) and, where applicable, regulation 26(5) of the Agencies Regulations to include all of the information required by that regulation; or
- (ii) the applicant is not suitable to adopt a child.

(3) This paragraph applies where the prospective adopter's report included all of the information required by regulation 26(4) and, where applicable, regulation 26(5) of the Agencies Regulations.

(4) This paragraph applies where the prospective adopter's report, in accordance with regulation 26(4) and, where applicable, regulation 26(5) of the Agencies Regulations, did not include all of the information required by regulation 26(4) or, where applicable, regulation 26(5) of the Agencies Regulations.

(5) In considering what recommendation to make, the panel —

- (a) must consider and take into account all of the information passed to it in accordance with regulation 29 of the Agencies Regulations;
- (b) may request the adoption agency to obtain any other relevant information which the panel considers necessary or to provide such other assistance as the panel may request; and
- (c) may obtain such advice from the advisers referred to in regulation 9 as it considers necessary in relation to the case.

(6) Where the panel makes a recommendation that the applicant is suitable to adopt a child, the panel may consider and give advice to the adoption agency about the number of children the applicant may be suitable to adopt, their age range, sex, likely needs and background.

Functions of panel constituted to review a disclosure determination

13.—(1) This regulation applies where the qualifying determination being reviewed is a disclosure determination.

(2) A panel constituted in accordance with regulation 7 must review the disclosure determination and make to the adoption agency that made the disclosure determination a recommendation as to whether or not the agency should proceed with its original determination.

(3) In considering what recommendation to make, the panel —

- (a) must consider and take into account all of the information passed to it in accordance with regulation 13A of the Disclosure Regulations;
- (b) may request the adoption agency to obtain any other relevant information which the panel considers necessary or to provide such other assistance as the panel may request;
- (c) may obtain such advice from the advisers referred to in regulation 9 as it considers necessary in relation to the case; and
- (d) must consider the welfare of any adopted person and if the person is an adopted child, that child's welfare must be paramount. In the case of any other child the panel must have particular regard to their welfare.

Functions of a panel constituted to review a fostering determination

14.—(1) This regulation applies where the qualifying determination being reviewed is a fostering determination.

(2) A panel constituted in accordance with regulation 8 must review the fostering determination and make to the fostering service provider that made the fostering determination —

- (a) a recommendation as to whether or not the applicant is suitable to act as a foster parent; or

- (b) where the qualifying determination relates to the terms of the approval of the applicant as suitable to act as a foster parent, a recommendation to the fostering service provider as to those terms.
- (3) In considering what recommendation to make, the panel —
 - (a) must consider and take into account all of the information passed to it in accordance with regulation 29A of the Fostering Regulations;
 - (b) may request the fostering service provider to obtain any other relevant information which the panel considers necessary or to provide such other assistance as the panel may request; and
 - (c) may obtain such advice from the advisers referred to in regulation 9 as it considers necessary in relation to the case.
- (4) Where the panel makes a recommendation that the applicant is suitable to act as a foster parent, the panel may also make a recommendation to the fostering service provider as to the terms of any approval.

Power to Adjourn Panels

- 15.**—(1) The panel can adjourn the panel hearing in the following circumstances —
- (a) the panel considers that it has insufficient information to enable it to make a recommendation to the relevant organisation in accordance with regulations 12(2), 13(2) and 14(2); and
 - (b) the panel wishes to request further information.
- (2) The panel must be reconvened as soon as reasonably practicable when the information referred to in paragraph (1)(b) is available, but in any event no later than 28 calendar days from the date of the adjourned panel hearing.

Administration of Panels

- 16.** The panel must be administered by the Welsh Ministers who must make suitable provision for clerking arrangements to the panel.

Fees of panel members

- 17.** The Welsh Ministers may pay to any member of a panel such fees as the Welsh Ministers consider to be reasonable.

Records

- 18.** The Welsh Ministers must ensure that a written record of a panel's review of a qualifying determination, including the reasons for its recommendation and whether the recommendation was unanimous or that of a majority, is retained —
- (a) for a period of 5 years from the date on which the recommendation is made; and
 - (b) in conditions of appropriate security.

PART 3

PROCEDURE

Application for review of qualifying determination

19.—(1) An application to the Welsh Ministers for a review of a qualifying determination must be made by the applicant in writing and include the grounds of the application.

(2) In the case of an adoption suitability determination only, a prospective adopter may within 40 working days beginning with the date on which a notification was sent by the adoption agency of the qualifying determination in relation to him or her, make a request to the Welsh Ministers for a panel to be constituted to review that determination.

Appointment of panel and conduct of review

20.—(1) Upon receipt of an application which has been made in accordance with regulation 19, the Welsh Ministers must —

- (a) within 5 working days notify the adoption agency which made the qualifying determination that the application has been made by sending to the agency a copy of the application;
- (b) within 5 working days send a written acknowledgment of the application to the applicant and notify the applicant of the steps taken under sub-paragraph (a);
- (c) within 25 working days appoint a panel in accordance with regulation 5 and fix a date, time and venue for the panel to meet for the purposes of reviewing the qualifying determination (“review meeting”);
- (d) after taking the steps prescribed in sub-paragraph (c), and no less than 5 working days before the date fixed for review, inform in writing the applicant and the adoption agency which made the qualifying determination of —
 - (i) the appointment of the panel; and
 - (ii) the date, time and venue of the review meeting.

(2) The date fixed for the review will be no later than 3 months of the receipt of the application by the Welsh Ministers.

(3) The Welsh Ministers must ensure that the panel receives all relevant papers relating to the review as soon as possible but no less than 5 working days before the date fixed for the review.

Duty to provide information and assistance

21. The organisation which made the qualifying determination must provide, as far as is reasonably practicable, any information or assistance requested by the panel under regulation 12, 13, 14 or 15, as the case may be.

Recommendation of panel

22.—(1) Where the panel’s recommendation is not unanimous the recommendation must be that of the majority.

(2) The recommendation may be made and announced at the end of the review or reserved.

(3) The recommendation and the reasons for it, and whether it was unanimous or that of a majority, must be recorded without delay in a document signed and dated by the chair.

(4) The Welsh Ministers must without delay, and in any event no later than 10 working days after the date on which the recommendation is made, send a copy of the recommendation and the reasons for it to the applicant and to the adoption agency which made the qualifying determination.

Duty to pay costs in connection with a review

23. The organisation which made the qualifying determination must pay to the Welsh Ministers such costs in connection with the review of that qualifying determination as the Welsh Ministers consider reasonable.

PART 4

AMENDMENTS TO FOSTERING REGULATIONS

Amendment of regulation 24 of the Fostering Regulations — establishment of fostering panel

24.—(1) Regulation 24 of the Fostering Regulations is amended as follows:

(2) In paragraph (3)(b)(i) after 'that individual' insert “or an employee of the agency who is concerned in the management of the agency or, where that is not reasonably practicable, another person (who need not be an employee of the agency) who has experience in the provision of a fostering service”.

(3) For paragraph (6) substitute —

“(6) Subject to paragraphs (6A) and (6B) a fostering panel member —

- (a) may hold office for a term not exceeding three years; and
- (b) may not hold office as a member of the fostering panel of the same fostering service provider for more than three terms without an intervening period”.

(4) After paragraph (6) insert —

“(6A) Where —

- (a) a member of the fostering panel holds office as a member of that fostering panel pursuant to paragraph 3(b)(i) and is in a second consecutive term of office as a member of that fostering panel; and
- (b) that term of office is due to expire on or after 2 April 2010, that member may continue to hold office as a member of that fostering panel for a further period not exceeding 12 months.”.

(5) After paragraph (6A) insert —

“(6B) Where the term of office of a panel member has been extended by a further period under paragraph (6A) and the panel member is appointed for a third term of office without an intervening period, that term of office may not exceed a period of three years less a period equal to the further period by which the second term was extended.

(6C) For the purposes of paragraphs (6) and (6B), an “intervening period” means an unbroken period of at least three years during all of which time the individual in question was not a member of the fostering panel.”.

Amendment of regulation 26 of the Fostering Regulations — functions of fostering panel

25. In regulation 26 of the Fostering Regulations, insert after paragraph (1) —

“(1A) In considering what recommendation to make under paragraph (1), the fostering panel —

- (a) must consider and take into account all of the information passed to it in accordance with regulation 27, 28 or 29 as the case may be;
- (b) may request the fostering service provider to obtain any other relevant information which the fostering panel considers necessary or to provide such other assistance as the fostering panel may request; and
- (c) may obtain such legal advice or medical advice it considers necessary in relation to the case.

(1B) The fostering service provider must obtain such information as the fostering panel considers necessary and send that information to the panel, and provide such other assistance as the fostering panel may request, so far as is reasonably practicable.”.

Substitution of regulations 28 and 29 of the Fostering Regulations — approval of foster parents

26. For regulations 28 and 29 of the Fostering Regulations, substitute —

“Approval of foster parents

28.—(1) A fostering service provider must not approve a person who has been approved as a foster parent by another fostering service provider and whose approval has not been terminated.

- (2) A fostering service provider must not approve a person as a foster parent unless —
 - (a) it has completed its assessment of the person’s suitability; and
 - (b) its fostering panel has considered the application.

(3) A fostering service provider must, in deciding whether to approve a person as a foster parent and as to the terms of any approval, take into account the recommendation of its fostering panel.

(4) No member of its fostering panel must take part in any decision made by a fostering service provider under paragraph (3).

- (5) If a fostering service provider decides to approve a person as a foster parent it must —
 - (a) give the person notice in writing specifying the terms of the approval, for example, whether it is in respect of a particular named child or children, or number and age range of children, or of placements of any particular kind, or in any particular circumstances; and
 - (b) enter into a written agreement with the person covering the matters specified in Schedule 5 (in these Regulations referred to as the “foster care agreement”).

(6) If a fostering service provider considers that a person is not suitable to act as a foster parent it must, subject to paragraph (7) —

- (a) give the person written notice that it proposes not to approve the person as suitable to act as a foster parent (a “determination”), together with its reasons and a copy of the fostering panel’s recommendation; and
- (b) advise the person that within 28 days of the date of the notice the person may —
 - (i) submit any written representations that the person wishes to make to the fostering service provider; or

(ii) apply to the Welsh Ministers for a review of the determination by an independent review panel.

(7) Paragraph (6)(b)(ii) does not apply in a case where the fostering service provider considers in accordance with regulation 27(6) that the person is not suitable to act as a foster parent.

(8) If within the period referred to in paragraph (6)(b) —

- (a) the fostering service provider does not receive any representations; and
- (b) the person does not apply to the Welsh Ministers for a review by an independent review panel of the determination,

the fostering service provider may proceed to make its decision.

(9) If within the period referred to in paragraph (6)(b) the fostering service provider receives any written representations, it must —

- (a) refer the case to the fostering panel for further consideration; and
- (b) make its decision, taking into account any fresh recommendation made by the fostering panel.

(10) If within the period referred to in paragraph (6)(b) the person applies to the Welsh Ministers for a review by an independent review panel of the determination, the fostering service provider must make its decision taking into account the recommendation of the fostering panel and the recommendation of the independent review panel.

(11) As soon as practicable after making the decision referred to in paragraph (8), (9) (b) or (10) as the case may be, the fostering service provider must notify the prospective foster parent in writing and —

- (a) if the decision is to approve the person as a foster parent, comply with paragraph (5) in relation to the person; or
- (b) if the decision is not to approve the person, provide written reasons for its decision.

(12) In a case where an independent review panel has made a recommendation, the fostering service provider must send to the Welsh Ministers a copy of the notification referred to in paragraph (11).

Reviews and terminations of approval

29.—(1) The fostering service provider must review the approval of each foster parent in accordance with this regulation.

(2) A review must take place not more than one year after approval and thereafter whenever the fostering service provider considers it necessary, but at intervals of not more than one year.

(3) When undertaking a review, the fostering service provider must —

- (a) make such enquiries and obtain such information as it considers necessary in order to review whether the foster parent continues to be suitable to act as a foster parent and the foster parent's household continues to be suitable;
- (b) seek and take into account the views of —
 - (i) the foster parent;
 - (ii) (subject to the child's age and understanding) any child placed with the foster parent; and

(iii) any responsible authority which has within the preceding year placed a child with the foster parent.

(4) At the conclusion of the review the fostering service provider must prepare a written report setting out whether —

(a) the foster parent continues to be suitable to act as a foster parent and the foster parent's household continues to be suitable; and

(b) the terms of the foster parent's approval continue to be appropriate.

(5) The fostering service provider must on the occasion of the first review under this regulation, and may on any subsequent review, refer its report to the fostering panel for consideration.

(6) If the fostering service provider decides, taking into account any recommendation made by the fostering panel, that the foster parent and the foster parent's household continue to be suitable and that the terms of the foster parent's approval continue to be appropriate, it must give written notice to the foster parent of its decision.

(7) If taking into account any recommendation made by the fostering panel, the fostering service provider is no longer satisfied that the foster parent and the foster parent's household continue to be suitable, or that the terms of the approval are appropriate, it must (subject to paragraph (9)) —

(a) give written notice to the foster parent that it proposes to terminate or, as the case may be revise the terms of the foster parent's approval (a "determination"), together with its reasons and a copy of any recommendation made by the fostering panel; and

(b) advise the foster parent that within 28 days of the date of the notice the foster parent may —

(i) submit any written representations that the foster parent wishes to make to the fostering service provider; or

(ii) apply to the Welsh Ministers for a review of the determination by an independent review panel.

(8) Paragraph (7)(b)(ii) does not apply to a case where, in accordance with regulation 27(6) the fostering service provider is no longer satisfied that the foster parent and the foster parent's household continue to be suitable, or that the terms of the approval are appropriate.

(9) If within the period referred to in paragraph (7)(b) —

(a) the fostering service provider does not receive any representations; and

(b) the foster parent does not apply to the Welsh Ministers for a review of the determination by an independent review panel;

the fostering service provider may proceed to make its decision.

(10) If within the period referred to in paragraph (7)(b) the fostering service provider receives any written representations, it must —

(a) refer the case to the fostering panel for its consideration; and

(b) make its decision, taking into account any recommendation made by the fostering panel.

(11) If the foster parent applies within the period referred to in paragraph (7)(b) to the Welsh Ministers for a review of the determination by an independent review panel, the fostering service provider must make its decision taking into account any recommendations made by its fostering panel and the recommendation of the independent review panel.

(12) As soon as practicable after making the decision referred to in paragraph (9), (10)(b) or (11), the fostering service provider must give written notice to the foster parent stating, as the case may be —

- (a) that the foster parent and the foster parent’s household continue to be suitable, and that the terms of the approval continue to be appropriate;
- (b) that the foster parent’s approval is terminated from a specified date, and the reasons for the termination; or
- (c) the revised terms of the approval and the reasons for the revision.

(13) A foster parent may give notice in writing to the fostering service provider at any time that the foster parent no longer wishes to act as a foster parent, whereupon the foster parent’s approval is terminated with effect from 28 days from the date on which the notice is received by the fostering service provider.

(14) A copy of any notice given under this regulation must be sent to the responsible authority for any child placed with the foster parent (unless the responsible authority is also the fostering service provider), and the area authority.

(15) In a case where an independent review panel has made a recommendation, the fostering service provider must send to the Welsh Ministers a copy of the notification referred to in paragraph (13).”.

Amendment to the Fostering Regulations — duty to send information to Welsh Ministers

27. After regulation 29 of the Fostering Regulations, insert —

“Information to be sent to the independent review panel

29A.—(1) This regulation applies where the fostering service provider receives notification from the Welsh Ministers that a person has applied for a review of a determination by an independent review panel.

(2) The fostering service provider must, within 10 working days of receipt of the notification referred to in paragraph (1), send to the Welsh Ministers the documents and information specified in paragraph (3).

(3) The following documents and information are specified for the purposes of paragraph (2) —

- (a) a copy of any report prepared for, and of any other documents referred to the fostering panel, for the purposes of regulation 27, 28, or 29 as the case may be;
- (b) any relevant information in relation to the person which was obtained by the fostering service provider after the date on which the report was prepared or the documents referred to the fostering panel; and
- (c) a copy of the notice and of any other documents sent in accordance with regulation 28(6)(a) or 29(7)(a).”.

PART 5

MISCELLANEOUS

Cases in progress under the Independent Review Regulations 2006 on the appointed day

28.—(1) In relation to any application by a prospective adopter for a review of a qualifying determination made before the appointed day, any action or decision taken before the appointed day

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

under a provision of the Independent Review Regulations 2006 must, on or after the appointed day, be treated as if it were an action or decision under the corresponding provision of these Regulations.

(2) In this regulation “appointed day” (“*diwrnod penodedig*”) means 2 April 2010.

Revocation

29. The Independent Review Regulations 2006 are hereby revoked.

Gwenda Thomas
Deputy Minister for Social Services, under
authority of the Minister for Health and Social
Services, one of the Welsh Ministers

11 March 2010

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Adoption and Children Act 2002 (“the 2002 Act”) and the Children Act 1989 (“the 1989 Act”). They make provision for the review by an independent panel in three types of case. First, a determination made by an adoption agency under the Adoption Agencies (Wales) Regulations 2005 that it proposes not to approve a prospective adopter as suitable to adopt a child or determines on review that a prospective adopter is no longer suitable to adopt a child. Secondly, determinations made by an adoption agency under the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005. Such determinations are specified in regulation 3 of these Regulations as qualifying determinations for the purposes of section 12(2) of the 2002 Act. Thirdly, a determination made by a fostering service provider under the Fostering Services (Wales) Regulations 2003 that it does not propose to approve a prospective foster parent as suitable to foster a child or decides to terminate or to revise the terms of the approval of a person as suitable to act as a foster parent. Such a determination is specified in regulation 4 of these Regulations as qualifying determinations for the purposes of paragraph 12A(2)(b) of Schedule 2 to the 1989 Act.

Part 2 makes provision for the constitution and membership of panels, their functions and the payment of fees, meetings and record keeping of the panels which are appointed by the Welsh Ministers to review qualifying determinations.

Part 3 makes provision for the procedure to be followed when a review of a qualifying determination by a panel constituted under Part 2 is sought and for the organisation that made the qualifying determination to pay such costs to the Welsh Ministers as the Welsh Ministers consider reasonable.

Part 4 makes amendments to the Fostering Services (Wales) Regulations 2003. Regulation 24 of those Regulations is amended in relation to the terms of office of panel members. Regulation 25 is amended in relation to the functions of the fostering panel. New regulations 28 and 29 are substituted in these Regulations providing for a right of independent review of certain fostering service decisions. A new regulation 29A is inserted which refers to the information that must be sent to the independent review panel.