
STATUTORY INSTRUMENTS

2012 No. 1905 (W.232)

CHILDREN AND YOUNG PERSONS, WALES

**The Adoption Agencies (Wales)
(Amendment) Regulations 2012**

<i>Made</i>	- - - -	<i>18 July 2012</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>19 July 2012</i>
<i>Coming into force</i>	- -	<i>1 September 2012</i>

The Welsh Ministers in exercise of powers conferred by sections 9(1)(a), 140(7) and (8), 142(4) and (5) of the Adoption and Children Act 2002(1)(2) make the following regulations:

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Adoption Agencies (Wales) (Amendment) Regulations 2012.

(2) These Regulations come into force on 1 September 2012.

(3) These Regulations apply in relation to Wales.

(4) In these Regulations “the Principal Regulations” (“*y Prif Reoliadau*”) means the Adoption Agencies (Wales) Regulations 2005(3).

Amendment of the Principal Regulations

2. The Principal Regulations are amended as follows.

3. In regulation 2 in the appropriate place insert—

““care order” (“*gorchymyn gofal*”) has the meaning given in section 105(1) of the 1989 Act(4);”.

4. In regulation 7 —

(a) before “The adoption agency must”, insert “(1)”;

(1) 2002 c. 38. For the definition of “regulations” see section 144(1).

(2) The power conferred on the National Assembly for Wales to make regulations under the Adoption and Children Act 2002 was transferred to the Welsh Ministers under section 162(1) and paragraph 30 of Schedule 11 of the Government of Wales Act 2006.

(3) S.I. 2005 / 1313 (W.167).

(4) 1989 c. 41.

- (b) after “in relation to adoption” insert “to ensure that the panel is organised effectively and operates efficiently.”;
 - (c) omit “and such instructions must be kept under review and, where appropriate, revised by the agency.”; and
 - (d) insert as a new sub-paragraph “(2) The adoption agency must keep the instructions in regulation 7(1) under review and revise them where appropriate.”.
5. Insert following regulation 8—
- “8A.** The adoption agency must ensure that adoption panels are properly advised by an appropriately qualified person in relation to adoptions with a foreign element if such a case is being considered.”.
6. In regulation 17—
- (a) in the heading, omit “for the adoption panel”,
 - (b) for paragraph (2) substitute—
 - “(2) In a case where—
 - (a) the adoption agency is a local authority and is considering whether the child ought to be placed for adoption, and
 - (b) either paragraph (2A) or (2B) applies,the adoption agency may not refer the case to the adoption panel.
 - (2A) This paragraph applies when—
 - (a) the child is placed for adoption by the adoption agency or is being provided with accommodation by the local authority;
 - (b) no adoption agency is authorised to place the child for adoption, and
 - (c) the child has no parent or guardian, or the agency consider that the conditions in section 31(2) of the 1989 Act are met in relation to the child.
 - (2B) This paragraph applies where—
 - (a) an application has been made, and has not been disposed of, on which a care order might be made in respect of the child, or
 - (b) the child is subject to a care order and the adoption agency are not authorised to place the child for adoption.
 - (2C) In a case not falling within paragraph (2), the adoption agency must send the information and reports referred to in (2D) to the adoption panel.
 - (2D) For the purposes of paragraph (2C) and regulation 19(1)(A) the information and reports are—
 - (i) the written report referred to in regulation 17(1),
 - (ii) the written report on the state of the child’s health referred to in regulation 15(2)(b), unless the adoption agency has received advice from the medical adviser that such a report is unnecessary, and
 - (iii) the information relating to the health of the child’s natural parents.”.
7. In regulation 19 —
- (a) in paragraph (1) at the start insert “In any case falling within regulation 17(2C)”, and
 - (b) after paragraph (1) insert —
 - “(1A) In any case falling within regulation 17(2) the adoption agency must take into account the information and reports referred to in regulation 17(2D), and any other

relevant information, in coming to a decision about whether the child ought to be placed for adoption”.

Revocation

8. Regulation 9 of the Local Authority Adoption Service (Wales) Regulations 2007 is revoked⁽⁵⁾.

Transitional provision

9.—(1) This regulation applies where —

- (a) an adoption agency have referred a case to the adoption panel prior to the coming into force of these Regulations, and
- (b) the case falls within regulation 17(2) of the Principal Regulations.

(2) In a case where the information and reports referred to in regulation 17(2D) of the Principal Regulations were sent to the adoption panel but the adoption panel has not met to consider the case prior to the coming into force of these Regulations, the adoption agency must withdraw the information and reports from the panel and proceed to make a decision in accordance with regulation 19(1A) of the Principal Regulations.

(3) In a case where the information and reports referred to in regulation 17(2D) of the Principal Regulations were sent to the adoption panel and the panel met to consider the case prior to the coming into force of these Regulations, and —

- (a) has decided what recommendation to make but has not communicated that recommendation to the adoption agency, or
- (b) is awaiting further information from the adoption agency pursuant to regulation 18(2)(b) of the Principal Regulations, or legal advice pursuant to regulation 18(2)(c) of the Principal Regulations,

the adoption panel must proceed to make its recommendation pursuant to regulation 18 of the Principal Regulations, and the adoption agency must take that recommendation into account pursuant to regulation 19(1) of the Principal Regulations, as if these Regulations had not been made.

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

18 July 2012

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Adoption Agencies (Wales) Regulations 2005 (“the Principal Regulations”), which make provision about the exercise by adoption agencies (that is, local authorities and registered adoption societies) of their functions in relation to adoption under the Adoption and Children Act 2002. They come into force on 1 September 2012.

The Principal Regulations require that, when an adoption agency is considering adoption for a child, the agency must refer the case to an adoption panel, which must then make a recommendation to the agency as to whether the child should be placed for adoption.

Section 22(1) and (2) of the Adoption and Children Act 2002 provide that, where a local authority decides that a child should be placed for adoption, and the criteria set out in either of those provisions are met, the local authority must then apply to the court for a placement order.

These Regulations change the process in cases where the local authority, as the adoption agency, is considering whether the child ought to be placed for adoption in circumstances where, if they decide that the child should be so placed, the decision triggers the duty under s22(1) or s22(2) to apply for a placement order. In those cases the adoption agency is now prohibited from referring the case to the adoption panel before making its decision.

The Adoption Agencies Regulations 2005 make provision in relation to England about the exercise of adoption agencies' functions in relation to adoption. Corresponding amendments will be made to those Regulations with effect from 1 September 2012. Consequential amendments to the Adoption with a Foreign Element Regulations 2005 will also come into force on this date.

These Regulations also revoke regulation 9 of the Local Authority Adoption Services (Wales) Regulations 2007. With the exception of regulation 9(1)(b) and 9(1)(c), regulation 9 imposes the same duties on local authorities as are imposed on them as adoption agencies in the Principal Regulations. To the extent that requirements in regulation 9(1)(b) (regarding written policies for adoption panels) are not already reflected in regulation 7 of the Principal Regulations, regulation 7 is amended accordingly. The duty described in regulation 9(1)(c) (advice in cases with a foreign element) is imposed on adoption agencies by the insertion of regulation 8A into the Principal Regulations.

An impact assessment has not been prepared for these Regulations because no impact on the private, voluntary or public sectors is foreseen.