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

Made - - - -	*11 March 2010*
Laid before the National Assembly for Wales - -	*12 March 2010*
Coming into force - -	*2 April 2010*

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 —

(a) in the case of an adoption suitability determination, a prospective adopter;

(b) in the case of a disclosure determination, a relevant person within the meaning of regulation 13A(7) of the Disclosure Regulations;

(c) 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" ("*darparydd 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 fabwysiadydd*") 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 —