

# SL(5)338 – The Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019

## Background and Purpose

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These Regulations are made under the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) and set out the regulatory requirements and related provisions for providers of regulated adoption services and for those persons who are designated as the “responsible individuals” for such services.

## Procedure

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Affirmative.

## Technical Scrutiny

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Two points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### **1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

Regulation 2(1) includes the following definition:

“approved by the service” means approved by the service as suitable to be an adoptive parent in accordance with the Adoption Agencies (Wales) Regulations 2005.

The term “approved by the service” is used in several places in the Regulations, for example, paragraph 30 of Schedule 3 states:

30. Any serious complaint about a prospective adopter approved by the service where a child is placed for adoption with that prospective adopter by the service.

However, it is unclear how “the service” can approve in this context. (This also raises the question of the use of “the service” at the end of that paragraph, which also arises in several other places in the Regulations.)

Failure to notify the area authority of the circumstances in paragraph 30 of Schedule 3 is a criminal offence. We therefore emphasise the need for clarity.

### **2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

Regulation 7(4) deals with the issue of a “responsible individual” being unable to fulfil their duties. According to regulation 7(4)(c), where the responsible individual is unable to fulfil their duties, the service provider must ensure there are arrangements in place for the service to comply with the requirements of **Parts 3 to 10** of the Regulations.

However, Parts 11 to 15 of the Regulations impose very important requirements on responsible individuals. We therefore wonder why regulation 7(4)(c) does not require the service provider to ensure there are arrangements in place for the service to comply with the requirements of **Parts 3 to 15** of the Regulations?



(We note that in the equivalent place in the Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019, there is reference to Parts 3 to 15 of those Regulations.)

The same issue arises in respect of regulation 8(3) of these Regulations.

## Merits Scrutiny

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One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

### **1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly**

The Explanatory Memorandum to these Regulations states:

Section 27(4) of the Regulation and Inspection of Social Care Act (RISCA) provides that “Before making regulations under this section the Welsh Ministers must—(a) consult any persons they think appropriate, and (b) publish a statement about the consultation.” To discharge this requirement, a summary of the responses, together with a list of respondents will be published on the Welsh Government website:

<https://beta.gov.wales/new-regulatory-framework-adoption-services>

However, that webpage does not provide a summary of responses and does not list the respondents. At the time of preparing this report, the webpage includes the original consultation documents and was last updated on 27 November 2018, i.e. the day the consultation closed.

## Implications arising from exiting the European Union

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No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

## Government Response

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The technical scrutiny element of the draft report refers to two drafting points which are noted.

In relation to the first point, Part 4 of the Adoption Agencies (Wales) Regulations 2005 (“the 2005 Regulations”) sets out the process for the assessment and approval of prospective adopters to be suitable adoptive parents by adoption agencies which, for the purposes of those Regulations are local authorities or registered adoption societies. The 2019 Regulations apply to adoption services within the meaning of the 2016 Act (that is, adoption societies and adoption support agencies within the meaning of the 2002 Act) but not to local authorities. The 2019 Regulations define “the service” as meaning, unless otherwise indicated, an adoption service which is provided in relation to a specified area.

The phrase “approved by the service” makes clear that the word “service” is used not in the sense of “an act of providing support” but in the sense of “a body providing a benefit to the public”.

The prospective adopter has been subject to the process of the adoption service which is set out in Part 4 of the 2005 Regulations. We do not consider that there is a viable argument that, in the context used, the phrase “approved by the service” could be interpreted in any other way. On that basis, we do not



propose to bring forward any amendment to the definition as we are satisfied that the meaning is sufficiently clear.

In relation to the second point, regulation 7(4) provides for the service provider, during any time when the responsible individual (“RI”) is unable to fulfil their duties, to ensure there are arrangements in place to fulfil the duties set out in regulation 7(4)(a), (b) and (d). These are responsibilities of the RI. Regulation 7(4) also creates a specific requirement (in sub-paragraph (c)) for the service provider to put in place steps for ensuring that their own duties (those of the provider) are also met during a period of RI absence. Regulation 8 is different only to the extent that it applies where the service provider is an individual. In such a case, the individual must ensure arrangements are in place for a person other than him/herself to ensure the service remains compliant with (a) to (d) of regulation 8(3). We are satisfied that the drafting is sufficiently clear and do not propose to bring forward any amendment to regulation 7 or 8.

The merits scrutiny element of the draft report refers to one point which is noted.

Welsh Government fully intends to publish a statement about the consultation, along with a summary of responses and list of respondents within the next two weeks and therefore before the 2019 Regulations are debated in Plenary on 26 March, and made by the Minister.

## Committee Consideration

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The Committee considered the instrument at its meeting on 11 March 2019 and reports to the Assembly in line with the technical and merits points above.

