

REGULATORY APPRAISAL

SOCIAL CARE, WALES

CHILDREN AND YOUNG PERSONS, WALES

LOCAL AUTHORITIES (PRESCRIBED FEES) (ADOPTIONS WITH A FOREIGN ELEMENT) (WALES) REGULATIONS 2005

Background

1. At present, local authorities may charge prospective intercountry adopters for assessing their suitability. Authorities rely on the power under section 57(3) of the Adoption Act 1976 to levy a charge. This power has not been re-enacted in the Adoption and Children Act 2002.
2. Section 95 of the 2002 Act prohibits certain payments from being made for or in consideration of the adoption of a child. However, section 96(2) of the 2002 Act allows a voluntary adoption agency to charge a person, who adopts or proposes to adopt a child, expenses reasonably incurred by the agency in connection with the adoption or proposed adoption of a child. Section 96(2) does not extend to local authorities. Parliament accepted that local authorities should not be able to charge a fee in relation to applications by people wishing to adopt a British child.
3. However, section 11(2) of the 2002 Act allows for Regulations to be made to prescribe the fees, which may be charged by local authorities in respect of the provision of prescribed facilities of the Adoption Service. The facilities concerned relate to intercountry adoption, for example the adoption of a child brought into the UK for the purpose of adoption, or a Convention adoption, an overseas adoption, or an adoption effected under the law of a country or territory outside the British Islands.
4. Where individuals wish to adopt a child from abroad, or individuals from outside the British Islands wish to adopt a child from Wales, the Act allows Regulations to be made to enable local authorities to decide whether it is reasonable for applicants to pay the costs incurred by the local authority in providing the necessary adoption facilities. This is because the first priority of a local authority is to deliver an adoption service that meets the needs of children and their families in the authority's area. Resources are therefore directed at finding families for those children.

Purpose and intended effect of the measure

5. The intended effect of the Regulations is to provide a discretionary power for local social services authorities to charge intercountry adopters for a range of facilities provided to them.
6. The Regulations allow local social services authorities in Wales (as adoption agencies), to continue to charge for intercountry adoption

services. Charging would otherwise be prohibited under section 95 of the Adoption and Children Act 2002. The prohibition in the adoption legislation on making a profit from adoption means that local authorities could charge no more than the costs reasonably incurred.

7. The Welsh Assembly Government does not consider it appropriate to set or recommend any particular fee level. This is because each local authority will have slightly different costs and should be able to recoup their costs in the fee charged. To ensure transparency, the local authority must provide details of the method by which the fee was calculated when asked to do so by the prospective adopter/adopter.

Risk Assessment

8. If the Regulations are not made as envisaged, local authorities will lose their power to charge for intercountry adoption facilities. The Adoption Act 1976 power will have been repealed from 30 December 2005.

Options

Option 1: Do Nothing

9. This would leave local authorities without a power to charge. Such a situation would have potentially adverse effects on the ability of the authorities to undertake intercountry adoption work within existing resources and could result in delay to individuals seeking an assessment of suitability to adopt a child from abroad.

Option 2: Make the Legislation

10. This will allow local authorities to decide if they want to continue charging reasonable costs for intercountry adoption applications.

Benefits

11. These Regulations deliver the Adoption and Children Act 2002 provisions, allowing local authorities to continue to charge for intercountry adoption applications.

Costs

12. There are no additional financial implications for the Assembly, local authorities or other public bodies arising from these Regulations.
13. The Regulations have no effect on any business sectors but will affect those individuals who seek to adopt a child from abroad. The impact depends on whether particular local authorities decide to charge their reasonable costs of conducting an assessment of the prospective adopters' suitability. While costs can vary, it is possible for charges to amount to £3,500. The expected income is low. On average, about 12 applications to adopt a child from abroad are made in Wales each year. Some authorities may not encounter a case for several years.

Competition Assessment

14. All 22 local authorities have a duty to provide adoption services, including intercountry adoption services. Through these Regulations, they will have discretion to charge individuals seeking to adopt a child from abroad. No voluntary adoption agencies based in Wales have sought approval to conduct intercountry adoption assessments.
15. It is unlawful for home study assessments of prospective adopters' suitability to be carried out privately.

Consultation

With Stakeholders

16. The Assembly issued a consultation document on 20 April 2005 to local authorities and other key stakeholders. A list of consultees is attached at Annex 1. A summary of responses is also attached at Annex 2 along with a list of respondents. The consultation document contained draft Regulations and draft guidance on charging fees for intercountry adoption applications. The majority of respondents agreed with the charging principle underlying the Regulations.
17. Following analysis of the responses received from the consultation, the key points of concern were noted and the Regulations were amended. The main concern was that the costs in providing information in response to initial enquiries should not be included in the charges. This was taken into account when amending and finalising the draft Regulations. It has also been decided not to include a power to charge for preparation of reports to the courts, nor for counselling in connection with the proposed match of a child with the prospective adopters.

With Subject Committee

18. The Regulations were notified to the Health and Social Services Committee via the list of forthcoming legislation (paper ref. no: HSS (2) 04-05 item No: HSS13/04) on 2 March 2005 and have remained ever since. The Regulations were not identified for detailed scrutiny.

Review

19. Following implementation of the Adoption and Children Act 2002 on 30 December 2005, the Child Protection and Placements Team will monitor all the Regulations made thereunder and will review them, taking account of the views of focus groups and practitioners, to consider if any changes are needed.

Summary

20. These Regulations will allow local authorities that may be asked to provide intercountry adoption facilities to have discretion to charge reasonable fees to cover their costs.

Consultation document sent to:

22 Local Authorities
22 Local Health Boards
NHS Trusts
Children's Commissioner
Chief Officer of Voluntary Adoption Agencies, Wales
Children in Wales
Voices from Care
CAFCASS Cymru
Welsh Local Government Association
ADSS in Wales
Designated Doctors and Nurses for child protection

Summary

- **Q1 Persons to whom a fee may be charged (paragraph 3 of guidance). Do you agree the list of person to whom a fee may be charged by a local authority as set out in paragraph 3 of the guidance.**

Overall agreement. Comments were ‘the list of persons represents the main body of potential applicants who are known to children’s services’.

- **Q2 Facilities, which may attract a fee (paragraph 4 of the guidance). Do you agree the facilities that may attract a fee as set out in paragraph 4 of the guidance?**

Overall agreement. Comments were to question inclusion of pre-assessment counselling service (at initial enquiry stage) as this is sharing information to assist applicants to make a decision. Suggestion that charges be made for essential training, the medical assessment and CRB checks, for which unit costs would need to be agreed. One respondent queried whether educational facilities could be included in charges under these powers.

- **Q3 Local authority’s costs in providing the facilities (paragraph 5 of guidance). Do you agree that the fees should not exceed the local authority’s costs expenses properly incurred in providing the facilities?**

Overall agencies agree. 3 respondents recommend a single fee for the whole of Wales for preparing and writing a report on the applicants so that agencies are ‘not in competition with each other’.

- **Q4 Independent review mechanism. Do you agree that no element of the recovery cost of a review (independent review mechanism) should be included in the fee?**

Only one comment made – to the effect that “applicants should proportionally meet a review fee as a separate cost of the review required”.

- **Q5 Method of calculation fees. Do you consider it reasonable to require local authorities to provide on request details of the method by which the fee was calculated?**

All agencies agree but two consider that Welsh Assembly Government should set a fee across Wales to avoid competition between agencies.

- **Q6 Transitional provisions. Do you think transitional provision are necessary to move from fee charging system under the adoption act 1976 and the regulated system under the adoption and children act 2002?**

Out of six replies, four disagree and two agree, with one of the latter respondents stating that the Assembly should set a clear date for changing from requirements of one Act to another.

- **Q7 Overall details of regulations. Do you agree the level of detail is about right?**

All commented that the level of detail was about right

- **Q8 Overall details of guidance. Overall is the guidance clear and helpful in assisting you in interpreting the requirements set out in the regulations?**

All commented that the guidance was most helpful – straightforward and addressed all the issues.

- **Q9 General Comments**

Pre-assessment counselling service involved sharing information to assist applicants in a decision only at enquiry stage and should not be subject to fees.

A standard fee should be set for Wales which should be charged by every agency. Need to be aware of exceptional circumstances in preparing and writing an assessment report which may affect level of charges made. Agencies should have some more guidance to provide evidence to services.

Respondent	Date	Comments
Caerphilly CBC	17 May 2005	Yes
Flintshire CC	24 May 2005	Yes
Gwynedd CC	20 June 2005	Yes
National Public Health Service for Wales	26 May 2005	One issue - guidance
Neath Port Talbot CBC	24 May 2005	No comment
Newport City Council	24 June 2005	Yes
Torfaen CBC	29 June 2005	Yes
Rhondda Cynon Taf CBC	9 June 2005	Yes
West Wales Adoption Service	2 May 2005	Yes

