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WELSH STATUTORY INSTRUMENTS

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**2018 No. 1333 (W. 260)**

**SOCIAL CARE, WALES**

**The Fostering Panels (Establishment and  
Functions) (Wales) Regulations 2018**

<i>Made</i>	- - - -	<i>10 December 2018</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>11 December 2018</i>
<i>Coming into force</i>	- -	<i>29th April 2019</i>

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 87, 93, 94A and 196(1) and (2) of the Social Services and Well-being (Wales) Act 2014<sup>(1)</sup>.

**Title and commencement**

1.—(1) The title of these Regulations is the Fostering Panels (Establishment and Functions) (Wales) Regulations 2018.

(2) These Regulations come into force on 29 April 2019.

**Interpretation**

2. In these Regulations—

“the 2014 Act” (“*Deddf 2014*”) means the Social Services and Well-being (Wales) Act 2014;

“the 2016 Act” (“*Deddf 2016*”) means the Regulation and Inspection of Social Care (Wales) Act 2016<sup>(2)</sup>;

“the 2003 Regulations” (“*Rheoliadau 2003*”) means the Fostering Services (Wales) Regulations 2003<sup>(3)</sup>;

“the 2015 Regulations” (“*Rheoliadau 2015*”) means the Care Planning, Placement and Case Review (Wales) Regulations 2015<sup>(4)</sup>;

“central list” (“*rhestr ganolog*”) means a list established in accordance with regulation 3;

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(1) 2014 anaw 4.

(2) 2016 anaw 2.

(3) S.I. 2003/237 (W. 35).

(4) S.I. 2015/1818 (W. 261).

“employee” (*“cyflogai”*) has the same meaning as in section 230(1) of the Employment Rights Act 1996<sup>(5)</sup>;

“foster care agreement” (*“cytundeb gofal maeth”*) means the written agreement covering the matters specified in Schedule 3 which is entered into between the fostering services provider and the foster parent;

“foster parent” (*“rhiant maeth”*) means a person who has been approved as a foster parent in accordance with these Regulations;

“fostering panel” (*“panel maethu”*) means a panel established in accordance with regulation 4;

“fostering services provider” (*“darparwr gwasanaethau maethu”*) means—

- (a) a local authority fostering services provider;
- (b) a regulated fostering services provider;

“fostering services provider in England” (*“darparwr gwasanaethau maethu yn Lloegr”*) means—

- (a) a fostering agency within the meaning of section 4(4)(a) of the Care Standards Act 2000<sup>(6)</sup>, or
- (b) a local authority discharging “relevant fostering functions” within the meaning of section 43(3)(b)(i) of that Act<sup>(7)</sup>;

“local authority fostering service” (*“gwasanaeth maethu awdurdod lleol”*) means any service provided in Wales by a local authority which consists of or includes the placement of children with foster parents or exercising functions in connection with such a placement, and “service” (*“gwasanaeth”*) is to be construed accordingly;

“local authority fostering services provider” (*“darparwr gwasanaethau maethu awdurdod lleol”*) means the local authority providing the local authority fostering services;

“parent” (*“rhiant”*), in relation to a child, includes any person who has parental responsibility for the child;

“placement” (*“lleoliad”*) means the placement of a child with a foster parent under section 81(5), (6)(a) and (b) of the 2014 Act;

“regulated fostering service” (*“gwasanaeth maethu rheoleiddiedig”*) means any service provided in Wales by a person registered under section 7 of the 2016 Act to provide a fostering service;

“regulated fostering services provider” (*“darparwr gwasanaethau maethu rheoleiddiedig”*) means a person registered under section 7 of the 2016 Act to provide a fostering service;

“social worker” (*“gweithiwr cymdeithasol”*) means a person who is registered as a social worker in the register maintained by Social Care Wales<sup>(8)</sup> under section 80 of the 2016 Act, in Part 16 of the register maintained by the Health and Care Professions Council under article 5 of the Health and Social Work Professions Order 2001<sup>(9)</sup> or in a corresponding register maintained under the law of Scotland or Northern Ireland.

<sup>(5)</sup> 1996 c. 18.

<sup>(6)</sup> 2000 c. 14.

<sup>(7)</sup> Section 43(3)(b)(i) of the Care Standards Act 2000 defines “relevant fostering functions” in relation to a local authority as functions under section 22C of the Children Act 1989 (c. 41) in connection with placements with local authority foster parents or regulations made under paragraph 12E(a), (b), (d) or (e) or 12F of Schedule 2 to that Act.

<sup>(8)</sup> See section 67(3) of the 2016 Act for the definition of Social Care Wales.

<sup>(9)</sup> S.I. 2002/254.

### **Central list**

**3.—**(1) The fostering services provider must maintain a list of persons who are considered by the provider to be suitable to be members of a fostering panel (“the central list”), including—

- (a) one or more social workers who have at least three years’ relevant post-qualifying experience, and
- (b) one or more persons who have acted as a foster parent, provided that they are not, and never have been, appointed as a foster parent by the fostering services provider referred to in this paragraph.

(2) A person who is included in the central list may at any time ask to be removed from the central list by giving one month’s notice in writing to the fostering services provider.

(3) Where the fostering services provider is of the opinion that a person included in the central list is unsuitable or unable to remain on the list, the fostering services provider may remove that person’s name from the list by giving them one month’s notice in writing, setting out the reasons for the decision.

(4) Subject to paragraph (5), a member of the central list—

- (a) may hold office for a term not exceeding three years, and
- (b) may not hold office as a member of the central list of the same fostering services provider for more than three terms without an intervening period.

(5) For the purposes of paragraph (4)(b), 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 central list.

### **Fostering panels**

**4.—**(1) Subject to paragraph (2), the fostering services provider must constitute one or more fostering panels, as necessary, to perform the functions of a fostering panel under these Regulations, and must appoint from the persons on the central list panel members including—

- (a) a person to chair the panel who must be independent of the fostering services provider (see paragraph (7)), and
- (b) one or two persons who may act as chair if the person appointed to chair the panel is absent or that office is vacant (“the vice chairs”).

(2) A fostering panel may be constituted jointly by any two or more fostering services providers, in which case the appointment of members must be made by agreement between the fostering services providers, provided that no member appointed is, or ever has been, approved as a foster parent by either or any of the fostering services providers who are constituting the joint panel.

(3) A fostering services provider may pay to any member of a fostering panel constituted by them such fee as they may determine, being a fee of a reasonable amount.

(4) The fostering services provider must ensure that the fostering panel has sufficient members, and that individual members have between them the experience and expertise necessary, to effectively discharge the functions of the panel.

(5) Any fostering panel member may resign at any time by giving one month’s notice in writing to the fostering services provider which appointed them.

(6) Where a fostering services provider is of the opinion that any member of the fostering panel appointed by them is unsuitable or unable to continue as a panel member, they may terminate that member’s appointment at any time by giving the member notice in writing, setting out the reasons for the decision.

(7) For the purposes of this regulation and regulation 6, a person is not independent of the fostering services provider if—

- (a) they are currently approved by the fostering services provider as a foster parent,
- (b) they are related to an employee of the fostering services provider, or to any person concerned in the management of that service,
- (c) in the case of a local authority fostering service, the person is an elected member of that local authority, or is employed by that local authority for the purposes of the fostering service or for the purposes of any of that local authority's functions relating to the protection or placement of children,
- (d) in the case of a regulated fostering service, the person is employed by, or is a trustee of, that service,
- (e) for the purposes of sub-paragraph (b), a person ("person A") is related to another person ("person B") if person A is—
  - (i) a member of the household of, or married to or the civil partner of person B;
  - (ii) the son, daughter, mother, father, sister or brother of person B; or
  - (iii) the son, daughter, mother, father, sister or brother of the person to whom person B is married or with whom person B has registered a civil partnership.

### **Functions of fostering panels**

**5.—**(1) The functions of the fostering panel in respect of cases referred to it by the fostering services provider are—

- (a) to consider each application for approval and to recommend whether or not a person is suitable to act as a foster parent,
  - (b) where it recommends approval of an application, to recommend the terms on which the approval is given,
  - (c) to recommend whether or not a person remains suitable to act as a foster parent, and whether or not the terms of the person's approval remain appropriate—
    - (i) on the first review carried out in accordance with regulation 9(2), and
    - (ii) on the occasion of any other review when requested to do so by the fostering services provider in accordance with regulation 9(5), and
  - (d) to consider any case referred to it under regulation 8(9) or 9(10).
- (2) 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 7, 8 or 9 (as the case may be),
  - (b) may request the fostering services 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.
- (3) In relation to the case of a person in respect of whom a report has been prepared in accordance with regulation 7(6), the fostering panel must either—
- (a) request the fostering services provider to prepare a further written report, covering all the matters set out in regulation 7(5)(c), or
  - (b) recommend that the person is not suitable to be a foster parent.

(4) The fostering services 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.

(5) The fostering panel must also—

- (a) advise on the procedures under which reviews in accordance with regulation 9 are carried out by the fostering services provider and periodically monitor their effectiveness,
- (b) oversee the conduct of assessments carried out by the fostering services provider, and
- (c) give advice and make recommendations on such other matters or individual cases as the fostering services provider may refer to it.

(6) The fostering panel must also make a written record of its proceedings and the reasons for its recommendations.

(7) In this regulation, “recommend” means recommend to the fostering services provider.

### **Meetings of fostering panels**

**6.—**(1) No business may be conducted by a fostering panel unless at least the following meet as the panel—

- (a) either the person appointed to chair the panel or one of the vice chairs,
- (b) one member who is a social worker who has at least three years’ relevant post-qualifying experience, and
- (c) three, or in the case of a fostering panel constituted jointly under regulation 4(2), four other members, and

where the chair is not present and the vice chair who is present is not independent of the fostering services provider, at least one of the other panel members must be independent of the fostering services provider.

(2) A fostering panel must make a written record of its proceedings and the reasons for its recommendations.

### **Assessment of prospective foster parents**

**7.—**(1) Where a person applies to become a foster parent and the fostering services provider decides to assess that person’s suitability to become a foster parent, any such assessment must be carried out in accordance with this regulation.

(2) Subject to paragraph (3), the fostering services provider—

- (a) must, as soon as reasonably practicable, obtain the information specified in Part 1 of Schedule 1 relating to the person and other members of the person’s household and family,
- (b) where the person has been a foster parent within the preceding three years and was approved as such by another fostering services provider or by a fostering services provider in England, must request a written reference from that other fostering services provider,
- (c) except in a case where sub-paragraph (b) applies and the other fostering services provider provides the reference requested, must interview at least two individuals nominated by the person to provide personal references for them, and prepare written reports of the interviews,
- (d) except where the fostering services provider is a local authority and the person lives in the area of that authority, must consult, and take into account the views of, the local authority in whose area the person lives,

- (e) may, where the person was approved as a foster parent by another fostering services provider and consents, request access to the relevant records compiled by that other fostering services provider in relation to the person, and
  - (f) may, where the person has been approved as a prospective adopter by an adoption agency and consents, request access to the relevant records compiled by that adoption agency in relation to that person.
- (3) Where—
- (a) having regard to any information obtained under paragraph (2), the fostering services provider decides that the person is not suitable to become a foster parent, or
  - (b) the person is not suitable to become a foster parent by virtue of paragraphs (8) to (10), and paragraph (11) does not apply,
- the fostering services provider must notify the person in writing that they are not suitable to be a foster parent, giving the reasons for that decision.
- (4) The notification in paragraph (3)—
- (a) is not a determination in respect of which the person may apply to the Welsh Ministers for a review by an independent review panel,
  - (b) may be given notwithstanding that the fostering services provider has not obtained all the information set out in paragraph (2), and
  - (c) may not be given more than 10 working days after the fostering services provider has obtained all the information set out in paragraph (2).
- (5) Where the fostering services provider has obtained all the information set out in paragraph (2) and has not given the notification in paragraph (3) within 10 working days of doing so, the fostering services provider must, subject to paragraph (6)—
- (a) obtain the information specified in Part 2 of Schedule 1 relating to the person and other members of the person's household and any other information considered relevant,
  - (b) consider whether the person is suitable to be a foster parent and whether the person's household is suitable for any child,
  - (c) prepare a written report on the person which includes the following matters—
    - (i) the information required by Schedule 1 and any other information the fostering services provider considers relevant,
    - (ii) the assessment of the fostering services provider of the person's suitability to be a foster parent, and
    - (iii) the proposals of the fostering services provider about any terms of approval, and
  - (d) notify the person that the case is to be referred to the fostering panel, and give the person a copy of the report prepared under sub-paragraph (c) inviting the person to send any observations in writing to the fostering services provider within 10 working days beginning with the date on which the notification is sent.
- (6) Where, having regard to any information obtained under paragraph (5)(a), the fostering services provider decides that the person is unlikely to be considered suitable to become a foster parent, it may proceed to prepare a written report under paragraph (5)(c) notwithstanding that it may not have obtained all the information about the person which is required by paragraph (5)(c).
- (7) At the end of the 10 working days referred to in paragraph (5)(d) (or when the person's observations are received, whichever is sooner), the fostering services provider must send—
- (a) the report prepared under paragraph (5)(c),
  - (b) the person's observations on that report, if any, and

(c) any other relevant information obtained by the fostering services provider, to the fostering panel.

(8) Subject to paragraph (11), the person is not suitable to be a foster parent if the person, or any member of the person's household aged 18 or over—

- (a) has been convicted of a specified offence committed at the age of 18 or over, or
- (b) has been cautioned by a constable in respect of any such offence.

(9) In paragraph (8), “specified offence” (“*trosedd benodedig*”) means—

- (a) an offence against a child,
- (b) an offence specified in Part 1 of Schedule 2,
- (c) an offence contrary to section 170 of the Customs and Excise Management Act 1979<sup>(10)</sup> in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876<sup>(11)</sup> (prohibitions and restrictions) where the prohibited goods included indecent photographs of children under the age of 16,
- (d) any other offence involving bodily injury to a child, other than an offence of common assault or battery, and

the expression “offence against a child” (“*trosedd yn erbyn plentyn*”) has the meaning given to it by section 26(1) of the Criminal Justice and Court Services Act 2000<sup>(12)</sup>, notwithstanding that that provision has been repealed<sup>(13)</sup>, except that it does not include an offence contrary to section 9 of the Sexual Offences Act 2003<sup>(14)</sup> (sexual activity with a child) in a case where the offender was under the age of 20 at the time the offence was committed and the child was aged 13 or over.

(10) Subject to paragraph (11), a person is not suitable to be a foster parent if the person, or any member of the person's household aged 18 or over—

- (a) has been convicted of an offence specified in paragraph 11 of Part 2 of Schedule 2 committed at the age of 18 or over, or has been cautioned by a constable in respect of any such offence, or
- (b) falls within paragraph 12 or 13 of Part 2 of Schedule 2,

notwithstanding that the statutory offences in Part 2 of Schedule 2 have been repealed.

(11) The fostering services provider may regard a person who falls within paragraph (8) or (10) as suitable to be a foster parent in relation to a particular child (or children), if the fostering services provider is satisfied that the welfare of that child (or those children) requires it, and either—

- (a) the person, or a member of their household, is a relative of the child, or
- (b) the person is already acting as a foster parent for the child.

(12) In this regulation, regulation 9 and Schedule 1, a person who is living in the person's household in parent and child arrangements is a member of the person's household.

### Approval of foster parents

**8.—**(1) A fostering services provider must not approve a person who has been approved as a foster parent by another fostering services provider or by a fostering services provider in England and whose approval has not been terminated.

(2) A fostering services provider must not approve a person as a foster parent unless—

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<sup>(10)</sup> 1979 c. 2.

<sup>(11)</sup> 1876 c. 36. Section 42 was amended by Part 9 of Schedule 1 to the Statute Law (Repeals) Act 1993 (c. 50), and paragraph 1 of Schedule 2 to the Statute Law (Repeals) Act 2008 (c. 12) and by other provisions which are not relevant to these Regulations.

<sup>(12)</sup> 2000 c. 43.

<sup>(13)</sup> See Schedule 10 to the Safeguarding Vulnerable Groups Act 2006 (c. 47).

<sup>(14)</sup> 2003 c. 42.

- (a) the provider has completed its assessment of the person's suitability, and
  - (b) the provider's fostering panel has considered the application.
- (3) A fostering services 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 the fostering panel.
- (4) No member of the fostering panel may take part in any decision made by a fostering services provider under paragraph (3).
- (5) If a fostering services provider decides to approve a person as a foster parent, the provider must—
- (a) give the person notice in writing specifying the terms of the approval as a foster parent, 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 foster care agreement with the person.
- (6) If a fostering services provider considers that a person is not suitable to act as a foster parent, the provider must, subject to paragraph (7)—
- (a) give the person written notice of the proposal not to approve the person as suitable to act as a foster parent (a "determination"), together with the reasons for that proposal 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 services 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 services provider decides that they are no longer of the view that a person is suitable to act or to continue to act, as the case may be, as a foster parent under regulation 7(11).
- (8) If within the period referred to in paragraph (6)(b)—
- (a) the fostering services 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 services provider may proceed to make its decision.
- (9) If within the period referred to in paragraph (6)(b) the fostering services provider receives any written representations, the provider must—
- (a) refer the case to the fostering panel for further consideration, and
  - (b) make a 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 services provider must make a 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 services provider must notify the person 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 services provider must send to the Welsh Ministers a copy of the notification referred to in paragraph (11).

### **Reviews and terminations of approval**

**9.—**(1) The fostering services 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 services provider considers it necessary, but at intervals of not more than one year.

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

- (a) make such enquiries and obtain such information as considered 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) in the case of a regulated fostering services provider, any local authority which has within the preceding year placed a child with the foster parent.

(4) At the conclusion of the review the fostering services 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 services provider must on the occasion of the first review under this regulation, and may on any subsequent review, refer their report to the fostering panel for consideration.

(6) If the fostering services 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, the provider must give written notice to the foster parent of that decision.

(7) If taking into account any recommendation made by the fostering panel, the fostering services 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, the provider must (subject to paragraph (9))

- (a) give written notice to the foster parent of the proposal to terminate or, as the case may be, revise the terms of the foster parent's approval (a "determination"), together with the reasons for that proposal 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 services 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 the fostering services provider decides that they are no longer of the view that a person is suitable to act or to continue to act, as the case may be, as a foster parent under regulation 7(11).

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

- (a) the fostering services 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 services provider may proceed to make its decision.

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

- (a) refer the case to the fostering panel for its consideration, and
- (b) make a 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 services provider must make their decision taking into account any recommendations made by the 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 services 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 services 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 services provider.

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

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

### **Information to be sent to the independent review panel**

**10.—**(1) This regulation applies where the fostering services provider receives notice from the Welsh Ministers that a person has applied for a review of a determination by an independent review panel.

(2) The fostering services provider must, within 10 working days of receipt of the notice 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 7, 8 or 9 as the case may be,
- (b) any relevant information in relation to the person which was obtained by the fostering services 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 8(6)(a) or 9(7)(a).

### **Case records relating to foster parents and others**

**11.**—(1) A fostering services provider must maintain a case record for each foster parent approved by the provider which must include copies of the documents specified in paragraph (2) and the information specified in paragraph (3).

(2) The documents referred to in paragraph (1) are, as the case may be—

- (a) the report prepared under regulation 7(5)(c) and any other reports submitted to the fostering panel,
- (b) the notice of approval given under regulation 8(5)(a),
- (c) any report of a review of approval prepared under regulation 9(4)(a),
- (d) any notice given under regulation 9(12),
- (e) the foster care agreement setting out the matters and obligations listed in Schedule 3, and
- (f) any recommendations made by the fostering panel.

(3) The information referred to in paragraph (1) is, as the case may be—

- (a) a record of each placement with the foster parent including the name, age and sex of each child placed, the dates on which each placement began and terminated and the circumstances of the termination,
- (b) the information obtained by the fostering services provider in relation to the assessment and approval of the foster parent and in relation to any review or termination of the approval.

(4) The fostering services provider must compile a record for each person whom it does not approve as a foster parent, or whose application is withdrawn prior to approval, which must include in relation to the person—

- (a) the information obtained in connection with the assessment,
- (b) any report submitted to the fostering panel and any recommendation made by the fostering panel, and
- (c) any notification given under regulation 8.

(5) A local authority fostering services provider must also maintain a case record for each person with whom a child is placed under regulation 26 of the 2015 Regulations (temporary approval of a relative, friend or other person connected with a child) or under regulation 28 of those Regulations (temporary approval of a particular prospective adopter as a foster parent) which must include in relation to that person—

- (a) a record in relation to the placement, including the name, age and sex of each child placed, the date on which the placement began and, if the placement has been terminated, the date and circumstances of the termination, and
- (b) the information obtained in relation to the enquiries carried out under regulation 26(2) or regulation 28 (as appropriate) of the 2015 Regulations.

### **List of foster parents**

**12.** The fostering services provider must maintain a list of foster parents and enter in it the following particulars in relation to each foster parent—

- (a) the name, address, date of birth and sex of each foster parent and, in the case of a local authority fostering service, of each person with whom it has placed a child under regulation 26 or regulation 28 of the 2015 Regulations,
- (b) the date of approval and of each review of approval (as the case may be), and
- (c) the current terms of the approval (if any).

### **Retention and confidentiality of records**

**13.**—(1) The records compiled in relation to a foster parent under regulation 11(1), and any entry relating to that person in the list maintained under regulation 12 must be retained for at least ten years from the date on which that person's approval is terminated.

(2) The records compiled by a local authority under regulation 11(5) in relation to a person with whom a child is placed under regulation 26 or regulation 28 of the 2015 Regulations, and any entry relating to such a person in the list maintained under regulation 12, must be retained for at least ten years from the date on which the placement is terminated.

(3) The records compiled under regulation 11(4) must be retained for at least three years from the refusal or withdrawal, as the case may be, of the application to become a foster parent.

(4) Any records maintained in accordance with regulation 11 or 12 must be kept securely and may not be disclosed to any person except in accordance with—

- (a) any provision of, or made under, or by virtue of, a statute under which access to such records is authorised, or
- (b) any court order authorising access to such records.

### **Transitional provisions**

**14.**—(1) Any member of a fostering panel established under regulation 24 of the 2003 Regulations who remained a panel member immediately before these Regulations came into force is, from the date these Regulations come into force, deemed to have been appointed as a member of a panel constituted under these Regulations for a period equivalent to the remainder of the term of office for which the person was appointed under the 2003 Regulations.

(2) Where a fostering panel established under regulation 24 of the 2003 Regulations starts to consider a case referred to it under section 26(1) of those Regulations but defers making a recommendation until after the date on which these Regulations come into force, the fostering panel may continue to consider that case under the 2003 Regulations as if these Regulations had not been made.

(3) In a case where a fostering service provider, as defined in the 2003 Regulations<sup>(15)</sup>, had, prior to the coming into force of these Regulations—

- (a) started, but not completed, its assessment of a prospective foster parent under regulation 27 of the 2003 Regulations,
- (b) started to consider, but not made, its decision to approve a person as a foster parent under regulation 28 of the 2003 Regulations,
- (c) started, but not completed, its review of the approval of a foster parent under regulation 29 of the 2003 Regulations,

the fostering service provider must complete those functions as if these Regulations had not been made.

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<sup>(15)</sup> See the definition of “fostering service provider” in regulation 2(1) of the 2003 Regulations.

10 December 2018

*Huw Irranca-Davies*  
Minister for Children, Older People and Social  
Care under authority of the Cabinet Secretary  
for Health and Social Services, one of the Welsh  
Ministers

## SCHEDULE 1

Regulation 7(2), (5) and (12)

Information as to prospective foster parents and other members of their household and family

### PART 1

1. Full name, address and date of birth.
2. Details of health (supported by a medical report).
3. Particulars of any other adult members of the household.
4. Particulars of the children in the family, whether or not members of the household, and any other children in the household.
5. Particulars of their accommodation.
6. The outcome of any request or application made by them or any other member of their household to foster or adopt children, or for registration as a child minder or provider of day care under Part 2 of the Children and Families (Wales) Measure 2010<sup>(16)</sup>, including particulars of any previous approval or refusal of approval relating to them or to any other member of the household.
7. If the person has, in the preceding three years, been a foster parent approved by another fostering services provider or a fostering services provider in England, the name and address of that fostering services provider.
8. Names and addresses of two persons who will provide personal references for the person.
9. In relation to the person and any other member of the person's household who is aged 18 or over, an enhanced criminal record certificate issued under section 113B of the Police Act 1997<sup>(17)</sup> which includes suitability information relating to children (within the meaning of section 113BA(2) of that Act).
10. Details of current, and any previous, marriage, civil partnership or similar relationship.

### PART 2

11. Details of personality.
12. Religious persuasion, and capacity to care for a child from any particular religious persuasion.
13. Racial origin, cultural and linguistic background and capacity to care for a child from any particular racial origin or cultural or linguistic background.
14. Capacity to provide support to a child in relation to their sexual orientation and gender identity.
15. Past and present employment or occupation, standard of living, leisure activities and interests.
16. Previous experience (if any) of caring for their own and other children.
17. Skill, competence and potential relevant to their capacity to care effectively for a child placed with them.

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<sup>(16)</sup> 2010 nawm 1.

<sup>(17)</sup> 1997 c. 50.

## SCHEDULE 2

Regulation 7(9) and (10)

Offences specified for the purposes of regulation 7(9) and (10)

### PART 1

#### Offences in England and Wales

1. Any of the following offences against an adult—
  - (a) an offence of rape under section 1 of the Sexual Offences Act 2003<sup>(18)</sup>,
  - (b) an offence of assault by penetration under section 2 of that Act,
  - (c) an offence of causing a person to engage in sexual activity without consent under section 4 of that Act, if the activity fell within subsection (4) of that section,
  - (d) an offence of sexual activity with a person with a mental disorder impeding choice under section 30 of that Act, if the touching fell within subsection (3) of that section,
  - (e) an offence of causing or inciting a person with a mental disorder impeding choice to engage in sexual activity under section 31 of that Act, if the activity caused or incited fell within subsection (3) of that section,
  - (f) an offence of inducement, threat or deception to procure sexual activity with a person with a mental disorder under section 34 of that Act, if the touching involved fell within subsection (2) of that section, and
  - (g) an offence of causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception under section 35 of that Act, if the activity fell within subsection (2) of that section.

#### Offences in Scotland

2. An offence under section 1 (rape) and 18 (rape of a young child) of the Sexual Offences (Scotland) Act 2009<sup>(19)</sup>.
3. An offence specified in Schedule 1 to the Criminal Procedure (Scotland) Act 1995<sup>(20)</sup>, except in a case where the offender was under the age of 20 at the time the offence was committed.
4. An offence of plagium (theft of a child below the age of puberty).
5. An offence under section 52 or 52A of the Civic Government (Scotland) Act 1982<sup>(21)</sup> (indecent photographs of children).
6. An offence under section 3 of the Sexual Offences (Amendment) Act 2000<sup>(22)</sup> (abuse of trust).

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<sup>(18)</sup> 2003 c. 42.

<sup>(19)</sup> 2009 asp 9.

<sup>(20)</sup> 1995 c. 46. Schedule 1 was amended by paragraph 2(8)(a) and (b) of Schedule 5 to the Sexual Offences (Scotland) Act 2009, sections 7(1) and 8(2) of the Prohibition of Female Genital Mutilation (Scotland) Act 2005 (asp 8), paragraph 2 of Schedule 1 to the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) and by section 41(2) of the Criminal Justice Licensing (Scotland) Act 2010 (asp 13).

<sup>(21)</sup> 1982 c. 45. Section 52 was amended by section 84(6) of, and paragraph 17 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33) (“the 1994 Act”), paragraph 44(3) of Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40) and paragraph 89 of Schedule 15 to the Criminal Justice Act 1988 (c. 33) (“the 1988 Act”). Section 52A was inserted by section 161 of the 1988 Act and was amended by section 84(7) of the 1994 Act.

<sup>(22)</sup> 2000 c. 44. Section 3 was amended by paragraph 62 of Schedule 28 to the Civil Partnership Act 2004 (c. 33) and repealed by Schedule 6 of the Sexual Offences (Scotland) Act 2009 (not yet in force).

**Offences in Northern Ireland**

7. An offence under Article 5 (rape) and Article 12 (rape of a child under 13) of the Sexual Offences (Northern Ireland) Order 2008<sup>(23)</sup>.

8. An offence specified in Schedule 1 to the Children and Young Persons Act (Northern Ireland) 1968<sup>(24)</sup>, except in the case where the offender was under the age of 20 at the time the offence was committed.

9. An offence under Article 3 of the Protection of Children (Northern Ireland) Order 1978<sup>(25)</sup> (indecent photographs).

10. An offence contrary to Article 15 of the Criminal Justice (Evidence, etc.) (Northern Ireland) Order 1988<sup>(26)</sup> (possession of indecent photographs of children).

**PART 2**

11.—(1) An offence under any of the following sections of the Sexual Offences Act 1956<sup>(27)</sup>—

- (a) section 1 (rape),
- (b) section 5 (intercourse with girl under 13),
- (c) subject to paragraph 14, section 6 (intercourse with girl between 13 and 16),
- (d) section 19 or 20 (abduction of girl under 18 or 16),
- (e) section 25 or 26 (permitting girl under 13, or between 13 and 16, to use premises for intercourse), and
- (f) section 28 (causing or encouraging prostitution of, intercourse with, or indecent assault on, girl under 16).

(2) An offence under section 1 of the Indecency with Children Act 1960<sup>(28)</sup> (indecent conduct towards young child).

(3) An offence under section 54 of the Criminal Law Act 1977<sup>(29)</sup> (inciting girl under 16 to incest).

(4) An offence under section 3 of the Sexual Offences (Amendment) Act 2000<sup>(30)</sup> (abuse of trust).

12. A person falls within this paragraph if the person has been convicted of any of the following offences against a child committed at the age of 18 or over or has been cautioned by a constable in respect of any such offence—

- (a) an offence under section 2 or 3 of the Sexual Offences Act 1956 (procurement of woman by threats or false pretences),

<sup>(23)</sup> S.I. 2008/1769 (N.I. 2) (“the 2008 Order”).

<sup>(24)</sup> 1968 c. 34 (N.I.) Schedule 1 was amended by paragraph 7 of Schedule 10 to the Domestic Violence, Crime and Victims Act 2004 (c. 28), Article 7 of the Child Abduction (Northern Ireland) Order 1985 (N.I. 17), paragraph 54(b) of Schedule 9 to the Children (Northern Ireland) Order 1995 (N.I. 17), paragraph 6(a), (b) and (c) of Schedule 1 to the Criminal Justice (Northern Ireland) Order 2003 (N.I. 13), paragraph 18(3) of Schedule 6 to the Sexual Offences Act 2003 (c. 42), paragraph 12(4) of Schedule 1 to the 2008 Order and paragraph 57 of Schedule 21 to the Coroner and Justice Act 2009 (c. 25).

<sup>(25)</sup> S.I. 1978/1047 (N.I. 17). Article 3 was amended by section 84 of the 1994 Act and Article 42(4) of the 2008 Order.

<sup>(26)</sup> S.I. 1988/1847 (N.I. 17). Article 15 was amended by section 41(4) of the Criminal Justice and Courts Services Act 2000 (c. 43), section 84(11) of the 1994 Act, paragraph 25 of Schedule 26 to the Criminal Justice and Immigration Act 2008 and Article 42(7) of the 2008 Order.

<sup>(27)</sup> 1956 c. 69.

<sup>(28)</sup> 1960 c. 33.

<sup>(29)</sup> 1977 c. 45.

<sup>(30)</sup> 2000 c. 44.



- (b) an offence under section 4 of that Act (administering drugs to obtain or facilitate intercourse),
- (c) an offence under section 14 or 15 of that Act (indecent assault),
- (d) an offence under section 16 of that Act (assault with intent to commit buggery),
- (e) an offence under section 17 of that Act (abduction of woman by force or for the sake of her property), and
- (f) an offence under section 24 of that Act (detention of woman in brothel or other premises).

**13.** A person falls within this paragraph if the person has been convicted of any of the following offences committed at the age of 18 or over or has been cautioned by a constable in respect of any such offence—

- (a) an offence under section 7 of the Sexual Offences Act 1956 (intercourse with defective) by having sexual intercourse with a child,
- (b) an offence under section 9 of that Act (procurement of defective) by procuring a child to have sexual intercourse,
- (c) an offence under section 10 of that Act (incest by a man) by having sexual intercourse with a child,
- (d) an offence under section 11 of that Act (incest by a woman) by allowing a child to have sexual intercourse with her,
- (e) subject to paragraph 14, an offence under section 12 of that Act by committing buggery with a child under the age of 16,
- (f) subject to paragraph 14, an offence under section 13 of that Act by committing an act of gross indecency with a child,
- (g) an offence under section 21 of that Act (abduction of defective from parent or guardian) by taking a child out of the possession of her parent or guardian,
- (h) an offence under section 22 of that Act (causing prostitution of women) in relation to a child,
- (i) an offence under section 23 of that Act (procurement of girl under 21) by procuring a child to have sexual intercourse with a third person,
- (j) an offence under section 27 of that Act (permitting defective to use premises for intercourse) by inducing or suffering a child to resort to or be on premises for the purpose of having sexual intercourse,
- (k) an offence under section 29 of that Act (causing or encouraging prostitution of defective) by causing or encouraging the prostitution of a child,
- (l) an offence under section 30 of that Act (man living on earnings of prostitution) in a case where the prostitute is a child,
- (m) an offence under section 31 of that Act (woman exercising control over prostitute) in a case where the prostitute is a child,
- (n) an offence under section 128 of the Mental Health Act 1959<sup>(31)</sup> (sexual intercourse with patients), notwithstanding that the provision has been repealed, by having sexual intercourse with a child,
- (o) an offence under section 4 of the Sexual Offences Act 1967<sup>(32)</sup> (procuring others to commit homosexual acts) (notwithstanding that the provision has been repealed) by—
  - (i) procuring a child to commit an act of buggery with any person, or

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<sup>(31)</sup> 1959 c. 72.

<sup>(32)</sup> 1967 c. 60.

*Status: This is the original version (as it was originally made).*

- (ii) procuring any person to commit an act of buggery with a child,
- (p) an offence under section 5 of that Act (living on earnings of male prostitution) by living wholly or in part on the earnings of prostitution of a child, and
- (q) an offence under section 9(1)(a) of the Theft Act 1968<sup>(33)</sup> (burglary), by entering a building or part of a building with intent to rape a child.

**14.** Paragraphs 11(1)(c) and 13(e) and (f) do not include offences in a case where the offender was under the age of 20 at the time the offence was committed.

### SCHEDULE 3

Regulations 2 and 11(2)(e)

#### Matters and obligations in foster care agreements

##### 1. Matters to be recorded—

- (a) the terms of the foster parent's approval,
- (b) support and training to be given to the foster parent,
- (c) the procedure for the review of approval of a foster parent,
- (d) the procedure in connection with the placement of children,
- (e) the arrangements for meeting any legal liabilities of the foster parent arising by reason of a placement,
- (f) the procedure available to foster parents for making complaints and representations.

##### 2. Obligations on the foster parent—

- (a) to care for any child placed with them as if the child was a member of the foster parent's family and to promote that child's welfare having regard to the long and short term plans for the child,
- (b) to give written notice to the fostering services provider without delay, with full particulars, of—
  - (i) any intended change of the foster parent's address,
  - (ii) any change in the composition of the household,
  - (iii) any other change in the foster parent's personal circumstances and any other event affecting either their capacity to care for any child placed or the suitability of household, and
  - (iv) any request or application to adopt children, or for registration for child minding or day care under Part 2 of the Children and Families (Wales) Measure 2010,
- (c) not to administer corporal punishment to any child placed with the foster parent,
- (d) to ensure that any information relating to a child placed with the foster parent, to the child's family or to any other person, which has been given to them in confidence in connection with a placement, is kept confidential and is not disclosed to any person without the consent of the fostering services provider,
- (e) to provide care and support to a child placed with the foster parent in accordance with the child's care and support plan and in a way which maintains, protects and promotes the safety and well-being of the child,

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(33) 1968 c. 60.

- (f) to maintain a good personal and professional relationship with a child placed with the foster parent,
  - (g) not to deprive the liberty of any child placed with the foster parent without lawful authority,
  - (h) to promote contact between a child placed with a foster parent and the child's parents, relatives and friends, in accordance with the child's care and support plan and any court order relating to contact,
  - (i) to comply with the policies and procedures of the fostering services provider,
  - (j) to promote the health and development of a child placed with a foster parent,
  - (k) to ensure that the premises, facilities and equipment used by foster parents are—
    - (i) suitable and safe for the purpose for which they are intended to be used,
    - (ii) used in a safe way,
    - (iii) properly maintained, and
    - (iv) kept clean to a standard which is appropriate for the purpose for which they are being used,
  - (l) to co-operate as reasonably required with the Welsh Ministers and in particular to allow a person authorised by the Welsh Ministers to interview the foster parent and visit the foster parent's home at any reasonable time,
  - (m) to keep the fostering services provider informed about the child's progress and to notify it as soon as is reasonably practicable of any significant events affecting the child.
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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Section 94A of the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”) provides that regulations may make provision about the exercise by local authorities of functions conferred on them by section 87 (regulations about looked after children) of that Act. Regulations made under section 87 of the 2014 Act may make further provision about children looked after by local authorities, including regulations providing for the approval of local authority foster parents by local authority fostering services providers or other specified persons (section 93).

Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”) introduced a new concept of a “regulated service” which is defined in section 2 of that Act. Section 2(1)(e) of the 2016 Act provides that a fostering service is a regulated service, which is defined in paragraph 5 of Schedule 1 to that Act as meaning any service provided in Wales by a person other than a local authority which consists of or includes the placement of children with foster parents or exercising functions in connection with such placement, and which is referred to in these Regulations as “a regulated fostering service”.

These Regulations specify regulated fostering services providers as specified persons who may approve local authority foster parents for the purposes of section 93(1)(a) of the 2014 Act.

These Regulations impose requirements in relation to the establishment and functions of fostering panels on local authority fostering services providers and on regulated fostering services providers,

which together are referred to as “fostering services providers”, replacing the requirements set out in Part 4 of the Fostering Services (Wales) Regulations 2003 (S.I. 2003/237 (W. 35)).

Regulation 3 makes provision for the establishment of a central list of people who are considered suitable to sit on a fostering panel, from which fostering panel members may be drawn under regulation 4.

Regulation 5 sets out the functions of fostering panels, in particular, to consider applications for the approval of foster parents and make recommendations as to whether a person is suitable to act as a foster parent. Fostering panels also make recommendations as to whether a person remains suitable to act as a foster parent whenever a review is carried out under regulation 9.

Regulation 6 prescribes minimum attendance requirements for foster panel meetings, and requires each panel to make a written record of its proceedings and the reasons for the recommendations made.

Regulation 7 sets out the requirements for the assessment of prospective foster parents. Under regulation 7(3), the fostering services provider may notify a person that they are not suitable to become a foster parent. If no such notification is given, the fostering services provider must continue to assess the person’s suitability to be a foster parent under regulation 7(5).

Regulation 8 deals with the approval or otherwise of a person to be a foster parent, and sets out the process to be followed where the fostering services provider considers a person to be unsuitable. Regulation 9 provides that a person who is informed they are unlikely to be approved has the right to (a) submit representations to the fostering services provider or (b) have their case reviewed by the independent review panel. Regulation 10 lists the information which the fostering services provider must send to the independent review panel.

The fostering services provider must maintain case records in relation to each foster parent (regulation 11) and a list of each foster parent it has approved and not approved (regulation 12). Regulation 13 sets out the retention periods for the records which must be kept, and requires the records to be stored securely.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ