

Explanatory Memorandum to the code of practice on fostering services relating to The Local Authority Fostering Services (Wales) Regulations 2018, as amended by The Local Authority Fostering Services (Wales) (Amendment) Regulations 2019

This Explanatory Memorandum has been prepared by the Health and Social Services Department and is laid before the National Assembly for Wales in conjunction with the above code of practice in accordance with Standing Order 27.14

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the code of practice on fostering services.

Julie Morgan AM
Deputy Minister for Health and Social Services
14 March 2019

PART 1

1. Description

In 2011, the Welsh Government published the white paper *Sustainable Social Services: A Framework for Action*, which set out an ambitious plan to create a new integrated and person-centred approach to social services provision in Wales. To achieve this new approach, in the last assembly term, the Welsh Government made two pieces of primary legislation: the *Social Services and Well-being (Wales) Act 2014* ('the 2014 Act') and the *Regulation and Inspection of Social Care (Wales) Act 2016* ('the 2016 Act').

The 2014 Act provides the legal framework for improving the well-being of people who need care and support, and carers who need support. Part 6 of the Act sets out social services functions in relation to looked after and accommodated children, including those who are placed in foster care. It also enables the Welsh Ministers to put in place regulations and issue codes of practice.

This Explanatory Memorandum relates to the *Code of Practice for Local Authority Fostering Services* ('the code of practice'), which will come into effect in May 2019. The code of practice relates to The *Local Authority Fostering Services (Wales) Regulations 2018* ('the 2018 Regulations') as amended by The *Local Authority Fostering Services (Wales) (Amendment) Regulations 2019* ('the Amendment Regulations'). It provides guidance to local authorities on how to implement the relevant requirements within the Regulations.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

Section 146 of the 2014 Act lays down the procedure to be followed before issuing and approving this code of practice. This draft code of practice was subject to consultation as required by section 146, and will now be laid before the National Assembly for 40 days, after which time, if no resolutions are made not to approve the draft, Welsh Ministers must issue the code.

There are no other matters of special interest to the Constitutional and Legislative Affairs Committee.

3. Legislative background

The powers enabling the making of this code are contained in sections 145 and 146 of the 2014 Act. Section 145 permits the Welsh Ministers to issue, and from time to time revise, one or more codes on the exercise of social services functions. Section 146 lays down the procedure to be followed when issuing or revising a code under section 145.

On 12 December 2018, the 2018 Regulations were made under powers contained in sections 87 (regulations about looked after children), 92 (regulations about the

placing of children with local authority foster parents) and 94A (regulation of the exercise of local authority functions relating to looked after and accommodated children) of the 2014 Act. In March 2019, the Amendment Regulations were made in order to insert a small number of corrections, prior to the 2018 Regulations coming into force on 29 April 2019.

Local authorities, when exercising their social services functions in respect of fostering services, must act in accordance with the requirements set out in both the Regulations and the code, and have regard to the guidance set out within the code.

4. Purpose and intended effect of the Code of Practice

The purpose of the code of practice is to give guidance to local authorities on how their fostering services and local authority managers may comply with the requirements contained within Parts 2 to 11 of the 2018 Regulations, as amended. The requirements seek to ensure that local authority fostering services provide services to the required standards so that the well-being and safety of children and young people in foster placements is promoted and maintained, and that foster parents are appropriately supported.

Local authority fostering services providers will be responsible for deciding how the requirements in the Regulations will be met, taking into account the needs of children using the service and the statement of purpose for the service. Care Inspectorate Wales will use the code of practice to inform decisions about the extent to which local authority fostering services providers and managers are meeting the requirements set out in the Regulations, and as a basis for their inspections of local authority fostering services.

The code of practice follows the structure of the 2018 Regulations, and gives guidance to local authorities on the various Parts. Parts 2 to 10 of the 2018 Regulations, as amended, set out the requirements on a local authority fostering services provider in relation to the standard of service that must be provided. They highlight the importance of the well-being of children who are receiving care and support. They also impose other requirements on local authority fostering services providers relating to the operation of the service. Part 11 sets out the duties placed on the local authority fostering services manager.

The Regulations and this code of practice replace existing requirements on local authority fostering services in the Fostering Services (Wales) Regulations 2003 and the associated National Minimum Standards. The key changes between the 2003 Regulations / National Minimum Standards and the Regulations / code of practice are set out in the Regulatory Impact Assessment which was laid before the National Assembly for Wales, alongside the 2018 Regulations, in December 2018. This can be found at:

<http://www.assembly.wales/laid%20documents/sub-ld11991-em/sub-ld11991-em-e.pdf>

The Regulations complement a local authority's duties in relation to the placement of looked after children under The Care Planning, Placement and Case Review (Wales)

Regulations 2015 and the Part 6 Code of Practice (Looked After and Accommodated Children).

Both the 2018 and the Amendment Regulations come into force on 29 April 2019. Following the end of its 40 day laying period, an Appointed Day Order will be made to enable the code to come into effect from mid-May 2019.

5. Consultation

Section 146(1) of the 2014 Act states that before issuing or revising a code under section 145, the Welsh Ministers must consult on a draft code. A 12-week public consultation ran from 24 May to 16 August 2018, seeking views on draft regulations covering local authority and independent fostering services providers. This was accompanied by draft statutory guidance for independent service providers and a draft code of practice for local authority providers. The consultation received 27 formal responses.

Prior to consultation, the draft regulations, statutory guidance and code were developed and tested with the assistance of a stakeholder technical group which met several times in autumn/winter 2017-18.

Following the consultation, the code was reviewed and amendments were made, where appropriate, to take into account the views of respondents. A consultation summary report together with a list of respondents will be published on the Welsh Government website:

<https://beta.gov.wales/sites/default/files/consultations/2018-12/fostering-summary-of-responses.pdf>

The code has been further reviewed to take account of corrections to the 2018 Regulations made through the Amendment Regulations and to include appropriate references to 'pathway plans'.

6. Regulatory Impact Assessment (RIA)

The code is not subordinate legislation made by statutory instrument and for that reason a RIA is not required under section 4.2 of the Welsh Ministers Regulatory Impact Assessment Code.

However, consideration has nonetheless been given to whether the impact of the code is in any case sufficient to warrant completion of an RIA. Given that this code does not impose additional requirements on local authority fostering services providers and managers, but rather illustrates how they can meet the requirements set out in the Regulations, it has been decided that its impact is not such as to warrant completion of an RIA.

An Explanatory Memorandum and fully scoped RIA to support the 2018 Regulations has been completed and can be found here:

<http://www.assembly.wales/en/bus-home/Pages/Plenary.aspx?assembly=5&category=Laid%20Document>

No separate RIA has been completed for the Amendment Regulations as these only make minor corrections to the 2018 Regulations, the impact of which have already been addressed within the RIA referenced above.