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WELSH STATUTORY INSTRUMENTS

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**2018 No. 1339 (W. 261)**

**SOCIAL CARE, WALES**

The Local Authority Fostering  
Services (Wales) Regulations 2018

<i>Made</i>	- - - -	<i>12 December 2018</i>
<i>Laid</i>	- - - -	<i>13 December 2018</i>
<i>Coming into force</i>	- -	<i>29 April 2019</i>

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 87, 92, 94A and 196(1) and (2) of the Social Services and Well-being (Wales) Act 2014 <sup>M1</sup>.

**Marginal Citations**

**M1** 2014 anaw 4; *see* section 197(1) for the definition of “regulations” and “specified”.

**PART 1**

General

**Title and commencement**

1.—(1) The title of these Regulations is the Local Authority Fostering Services (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>M2</sup>;

“the 2015 Regulations” (“*Rheoliadau 2015*”) means the Care Planning, Placement and Case Review (Wales) Regulations 2015 <sup>M3</sup>;

*Status: Point in time view as at 29/04/2019.*

*Changes to legislation: There are currently no known outstanding effects for the The Local Authority Fostering Services (Wales) Regulations 2018. (See end of Document for details)*

“the 2018 Regulations” (“*Rheoliadau 2018*”) means the Fostering Panels (Establishment and Functions) (Wales) Regulations 2018 <sup>M4</sup>;

“area authority” (“*awdurdod ardal*”) means the local authority or local authority in England for the area in which the child is placed, or is to be placed, where this is different from the authority which is looking after the child;

“care and support plan” (“*cynllun gofal a chymorth*”) means a plan for the child made under section 83 of the 2014 Act;

“DBS certificate” (“*tystysgrif GDG*”) means a certificate of a type referred to in paragraph 2 or 3 of Schedule 3;

“the Disclosure and Barring Service” (“*y Gwasanaeth Datgelu a Gwahardd*”) and “DBS” (“*GDG*”) mean the body formed by section 87(1) of the Protection of Freedoms Act 2012 <sup>M5</sup>;

“employee” (“*cyflogai*”) has the same meaning as in section 230(1) of the Employment Rights Act 1996 <sup>M6</sup>;

“foster care agreement” (“*cytundeb gofal maeth*”) means the written agreement covering the matters specified in Schedule 3 to the 2018 Regulations;

“general practitioner” (“*ymarferydd cyffredinol*”) means a registered medical practitioner <sup>M7</sup> who—

- (a) provides primary medical services under Part 4 of the National Health Service (Wales) Act 2006 <sup>M8</sup>, or
- (b) provides services which correspond to services provided under Part 4 of the National Health Service (Wales) Act 2006, otherwise than in pursuance of that Act;

“improper treatment” (“*triniaeth amhriodol*”) means discrimination or unlawful restraint, including inappropriate deprivation of liberty under the terms of the Mental Capacity Act 2005 <sup>M9</sup>;

“local authority foster parent” (“*rhiant maeth awdurdod lleol*”) has the same meaning as that given in section 197 of the 2014 Act, and includes a 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 regulation 28 of those Regulations (temporary approval of a particular prospective adopter as a foster parent);

“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 manager” (“*rheolwr awdurdod lleol*”) means the person appointed by the local authority fostering services provider as manager under regulation 7;

“local authority provider” (“*darparwr 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;

“personal outcomes” (“*canlyniadau personol*”) means—

- (a) the outcomes that the child wishes to achieve, or
- (b) the outcomes that any persons with parental responsibility wish to achieve in relation to the child;

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

“reasonable adjustments” (“*addasiadau rhesymol*”) means such reasonable adjustments as would be required under the Equality Act 2010 <sup>M10</sup>;

“Social Care Wales” (“*Gofal Cymdeithasol Cymru*”) has the meaning given in section 67(3) of the 2016 Act;

“social worker” (“*gweithiwr cymdeithasol*”) means a person who is registered as a social worker in the register maintained by Social Care Wales 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>M11</sup> or in a corresponding register maintained under the law of Scotland or Northern Ireland;

“staff” (“*staff*”) includes—

(a) persons employed by the local authority provider to work at the service as an employee or a worker, and

(b) persons engaged by the local authority provider under a contract for services,

but does not include persons who are allowed to work as volunteers;

“statement of purpose” (“*datganiad o ddiben*”) means the document containing the information which must be provided in accordance with Schedule 1 for the place in relation to which the service is provided;

“worker” (“*gweithiwr*”) has the same meaning as in section 230(3) of the Employment Rights Act 1996 <sup>M12</sup>.

#### Marginal Citations

M2 2016 anaw 2.

M3 S.I. 2015/1818 (W. 261).

M4 S.I. 2018/1333 (W. 260). These Regulations are made under section 93 of the 2014 Act and make provision for securing that a child is not placed with a local authority foster parent unless that person is approved as a local authority foster parent by such local authority.

M5 2012 c. 9.

M6 1996 c. 18.

M7 The definition of a “registered medical practitioner” in Schedule 1 to the [Interpretation Act 1978](#) (c. 30) was substituted by S.I. 2002/3135, [Schedule 1, paragraph 10](#) with effect from 16 November 2009.

M8 2006 c. 42.

M9 2005 c. 9.

M10 2010 c. 15.

M11 S.I. 2002/254.

M12 1996 c. 18.

## PART 2

### General requirements for local authority providers

#### Requirements in relation to the provision of the local authority fostering service

3. The local authority provider must ensure that the service is provided with sufficient care, competence and skill, having regard to the statement of purpose.

### **Content of statement of purpose**

4. The local authority provider must prepare a statement of purpose which contains the information listed in Schedule 1.

### **Requirements in relation to statement of purpose**

5.—(1) The local authority provider must provide the service in accordance with the statement of purpose.

(2) The local authority provider must—

- (a) keep the statement of purpose under review, and
- (b) where appropriate, revise the statement of purpose.

(3) The local authority provider must give notice to the persons listed in paragraph (4) of any revision to be made to the statement of purpose at least 28 days before it is to take effect.

(4) The persons who must be given notice of any revision to the statement of purpose in accordance with paragraph (3) are—

- (a) the Welsh Ministers,
- (b) any child placed by the local authority provider, unless it would not be appropriate to do so having regard to the child's age and understanding,
- (c) the parents of any such child,
- (d) foster parents and prospective foster parents,
- (e) persons working for the purposes of the local authority fostering service.

(5) The local authority provider must provide the up to date statement of purpose to any person on request, unless it is not appropriate to do so or would be inconsistent with the well-being of a child.

### **Requirements in relation to monitoring and improvement**

6.—(1) The local authority provider must ensure that there are effective arrangements in place for monitoring, reviewing and improving the quality of the service.

(2) Those arrangements must include arrangements for seeking the views of—

- (a) any child placed by the local authority provider,
- (b) the parents of any such child, unless this is inappropriate or inconsistent with the child's well-being,
- (c) foster parents,
- (d) persons working for the purposes of the local authority fostering service, and
- (e) any area authority,

on the quality of the service.

(3) When making any decisions on plans for improvement of the quality of the service, the local authority provider must take into account the views of those persons consulted in accordance with paragraph (2).

### **Requirement to appoint a local authority manager**

7.—(1) The local authority provider must appoint [<sup>F1</sup>an officer] to be responsible for the management of the service.

(2) The local authority provider must immediately give notice in writing to the Welsh Ministers—

- (a) of the name of the person appointed as manager,

- (b) of the date on which the appointment is to take effect,
- (c) if the person appointed as manager ceases to manage the local authority fostering service.

#### **Textual Amendments**

- F1** Words in [reg. 7\(1\)](#) substituted (29.4.2019) by [The Local Authority Fostering Services \(Wales\) \(Amendment\) Regulations 2019 \(S.I. 2019/545\)](#), regs. 1(2), **2(a)**

#### **Fitness requirements for appointment of manager**

**8.—**(1) The local authority provider must not appoint a person to manage the service unless that person is fit to do so.

(2) For the purposes of paragraph (1), a person is not fit to manage the service unless the requirements of regulation 29(2) (fitness of staff) are met in respect of that person.

#### **Other requirements in relation to the manager**

**9.—**(1) The local authority provider must ensure that the person who is appointed as the manager—

- (a) is supported to carry out their duties effectively, and
- (b) undertakes appropriate training.

(2) The local authority provider must ensure that the manager complies with the requirements of Part 11 (duties of local authority managers).

(3) In the event that the local authority provider has reason to believe that the manager has not complied with a requirement imposed by the regulations in Part 11, the provider must take such action as is necessary to ensure that the requirement is complied with.

(4) The local authority provider must put suitable arrangements in place to ensure that the service is managed effectively at any time when there is no manager appointed or when the manager is absent from the service.

#### **Requirement to provide the service in accordance with policies and procedures**

**10.—**(1) The local authority provider must ensure that the following policies and procedures are in place for the service—

- (a) safeguarding (see regulation 20),
- (b) appropriate use of control or restraint (see regulation 21),
- (c) bullying (see regulation 24),
- (d) absence (see regulation 25),
- (e) medication (see regulation 26 (access to health services)),
- (f) supporting and developing staff (see regulation 30),
- (g) staff discipline (see regulation 32),
- (h) complaints (see regulation 39),
- (i) whistleblowing (see regulation 40),
- (j) support for foster parents on how to help children manage their money (see regulation 45).

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Changes to legislation: There are currently no known outstanding effects for the The Local Authority Fostering Services (Wales) Regulations 2018. (See end of Document for details)

(2) The local authority provider must also have such other policies and procedures in place as are reasonably necessary to support the aims and objectives of the service set out in the statement of purpose.

(3) The local authority provider must ensure that the content of the policies and procedures which are required to be in place by virtue of paragraphs (1) and (2) is—

- (a) appropriate to the needs of children for whom care and support is provided,
- (b) consistent with the statement of purpose, and
- (c) kept up to date.

(4) The local authority provider must put arrangements in place to ensure that the service is provided in accordance with its policies and procedures.

(5) The local authority provider must ensure that the content of the policies and procedures which are required to be in place under paragraph (1)(a), (b), (c) and (h) takes into account the needs of any other children who may be affected by the placement being made.

**Duty of candour**

11. The local authority provider must act in an open and honest way with—

- (a) any child placed by it,
- (b) the parents of any such child,
- (c) foster parents and prospective foster parents,
- [<sup>F2</sup>(d) in the case of a child who is placed with an area authority, that area authority.]
- <sup>F3</sup>(e) .....

**Textual Amendments**

**F2** Reg. 11(d) substituted (29.4.2019) by The Local Authority Fostering Services (Wales) (Amendment) Regulations 2019 (S.I. 2019/545), regs. 1(2), 2(c)(i)

**F3** Reg. 11(e) omitted (29.4.2019) by virtue of The Local Authority Fostering Services (Wales) (Amendment) Regulations 2019 (S.I. 2019/545), regs. 1(2), 2(c)(ii)

**PART 3**

Requirements on local authority providers as to the information to be provided to individuals on commencement of the provision of care and support

**Information about the service etc.**

12.—(1) The local authority provider must prepare a written guide to the service.

(2) The guide must be—

- (a) dated, reviewed at least annually and updated as necessary,
- (b) in a language, style, presentation and format which is appropriate for both children (of all ages and understanding) and adults,
- (c) given to—
  - (i) any child placed by the provider,
  - (ii) any foster parents and prospective foster parents,

- (iii) in the case of a child who is placed with an area authority, that authority, and
  - (d) made available to others on request, unless this is not appropriate or would be inconsistent with the well-being of the child.
- (3) The guide must contain the following—
- (a) a summary of the policies and procedures which the local authority provider must put in place under regulation 10(1)(a), (b), (c), (d), (e), (h) and (j),
  - (b) information about how to make a complaint,
  - (c) information about the availability of independent advocacy services for children who are looked after by a local authority,
  - (d) information about the role and contact details for the Children's Commissioner for Wales<sup>M13</sup>.
- (4) The local authority provider must ensure that children receive such support as is necessary to enable them to understand the information contained in the guide.

#### Marginal Citations

**M13** The office of the Children's Commissioner for Wales was created by section 72 of the [Care Standards Act 2000 \(c. 14\)](#).

## PART 4

### Requirements on local authority providers as to the standard of care and support to be provided

#### Standards of care and support to children

- 13.** The local authority provider must ensure that foster parents give care and support to a child placed with them—
- (a) in accordance with the child's care and support plan, and
  - (b) in a way which maintains, protects and promotes the safety and well-being of the child.

#### Information for children

- 14.—(1)** The local authority provider must put arrangements in place to ensure that children have the information they need to make and participate in day to day decisions about the way care and support is provided to them and how they are supported to achieve their personal outcomes.
- (2) Information provided must be available in an appropriate language, style, presentation and format for children of all ages.
- (3) The local authority provider must put arrangements in place to ensure that children receive such support as is necessary to enable them to understand the information provided.

#### Compliance with foster care agreement

- 15.** The local authority provider must monitor the foster parents' compliance with the requirements of the foster care agreement.

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### Language and communication

16.—(1) The local authority provider must ensure that the language needs of children are met.

(2) The local authority provider must ensure that children are provided with access to such aids and equipment as may be necessary to facilitate their communication with others.

### Respect and sensitivity

17.—(1) The local authority provider must put arrangements in place to ensure that children placed by the provider are treated with respect and sensitivity.

(2) This includes, but is not limited to—

- (a) respecting the child's privacy and dignity,
- (b) respecting the child's rights to confidentiality,
- (c) promoting the child's autonomy and independence, and
- (d) having regard to any relevant protected characteristics (as defined in section 4 of the Equality Act 2010 <sup>M14</sup>) of the child.

#### Marginal Citations

M14 2010 c. 15.

### Duty to promote contact

18. The local authority provider must ensure foster parents promote contact between a child placed with them 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.

## PART 5

### Requirements on local authority providers - safeguarding

#### Safeguarding – overarching requirements

19. The local authority provider must put arrangements in place to ensure that children placed by it are safe and are protected from abuse <sup>M15</sup>, neglect <sup>M16</sup> and improper treatment.

#### Marginal Citations

M15 See section 197(1) of the 2014 Act for the definition of “abuse”.

M16 See section 197(1) of the 2014 Act for the definition of “neglect”.

#### Safeguarding policies and procedures

20.—(1) The local authority provider must have policies and procedures in place—

- (a) for the prevention of abuse, neglect and improper treatment, and
- (b) for responding to any allegation or evidence of abuse, neglect or improper treatment.

(2) In this regulation, such policies and procedures are referred to as safeguarding policies and procedures.



(3) The local authority provider must ensure that its safeguarding policies and procedures are operated effectively.

(4) In particular, where there is an allegation or evidence of abuse, neglect or improper treatment, the local authority provider must—

- (a) act in accordance with its safeguarding policies and procedures,
- (b) take immediate action to ensure the safety of all children for whom care and support is provided,
- (c) make appropriate referrals to other agencies, and
- (d) keep a record of any evidence or the substance of any allegation, any action taken and any referrals made.

### **The appropriate use of control and restraint**

**21.**—(1) The local authority provider must have a policy and procedures in place on the use of control or restraint.

(2) The policy and procedures must prohibit care and support being provided in a way which includes acts intended to control or restrain a child unless those acts—

- (a) are necessary to prevent a risk of harm posed to the child or other persons or likely serious damage to property, and
- (b) are a proportionate response to such a risk.

(3) The policy and procedures must require foster parents to be trained in any methods of control or restraint to be used.

(4) The policy and procedures must require foster parents to—

- (a) make a record of any incident in which control or restraint is used, and
- (b) notify the local authority provider of any such incident within 24 hours.

(5) The local authority provider must ensure that any control or restraint used by foster parents is carried out in accordance with these policies and procedures.

(6) For the purposes of this regulation, a person controls or restrains a child if that person—

- (a) uses, or threatens to use, force to secure the doing of an act which the child resists, or
- (b) restricts the child's liberty of movement, whether or not the child resists, including by the use of physical, mechanical or chemical means.

### **Prohibition on the use of corporal punishment**

**22.** The local authority provider must ensure that foster parents do not use any form of corporal punishment at any time against any child.

### **Deprivation of liberty**

**23.** A child must not be deprived of their liberty for the purpose of receiving care and support without lawful authority.

### **Policy and procedures on bullying**

**24.** The local authority provider must have in place a policy on the prevention of bullying and procedures for dealing with an allegation of bullying.

**Procedures when child is absent without permission**

25. The local authority provider must ensure that there is a procedure to be followed when any child who has been placed with foster parents by the provider is absent without permission.

**PART 6**

Requirements on local authority providers to ensure  
access to health, education and other services

**Access to health services**

26.—(1) The local authority provider must ensure that foster parents promote [<sup>F4</sup>the physical, mental and emotional health and development] of children placed with them.

(2) In particular, the local authority provider must ensure that foster parents—

- (a) register each child with a general practitioner,
- (b) provide each child with access to such medical, dental, optical, nursing, psychological and psychiatric advice, treatment and services as the child may require,
- (c) provide each child with such individual support, aids and equipment which the child may require as a result of any particular health needs or disability they may have, and
- (d) provide each child with guidance, support and advice on health, personal care and health promotion issues appropriate to the child's needs and wishes.

(3) The local authority provider must have a policy and procedures in place in relation to the administration of medicines by foster parents.

**Textual Amendments**

**F4** Words in [reg. 26\(1\)](#) substituted (29.4.2019) by [The Local Authority Fostering Services \(Wales\) \(Amendment\) Regulations 2019 \(S.I. 2019/545\)](#), regs. 1(2), 2(d)

**Education, employment and leisure activities**

27.—(1) The local authority provider must ensure that the educational attainment of children placed with foster parents is promoted.

(2) In particular the local authority provider must—

- (a) establish a procedure for monitoring the educational attainment, progress and school attendance of children placed with foster parents,
- (b) in relation to school aged children placed with foster parents, ensure foster parents promote the children's regular attendance at school and participation in school activities, and
- (c) provide foster parents with such information and assistance, including equipment, as may be necessary to meet the educational needs of children placed with them.

(3) The local authority provider must ensure that foster parents promote the leisure interests of children placed with them and support them to engage in play and recreational activities appropriate to their age and to participate freely in cultural life and the arts <sup>M17</sup>.

(4) Where any child placed with foster parents has attained the age where they are no longer required to receive compulsory full-time education, the local authority provider must assist with the

making of, and give effect to, arrangements made for the child in respect of their education, training and employment.

#### Marginal Citations

**M17** Section 1 of the Rights of Children and Young Persons (Wales) Measure 2011 (nawm 2) requires the Welsh Ministers, when exercising any of their functions, to have due regard to the requirements of Part 1 of the United Nations Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 (“the Convention”). Article 31 of Part 1 of the Convention recognises a child's right to play.

## PART 7

### Staffing

#### Staffing - overarching requirements

**28.** The local authority provider must ensure that at all times a sufficient number of suitably qualified, trained, skilled, competent and experienced staff are deployed to work at the service, having regard to—

- (a) the statement of purpose for the service,
- (b) the care and support needs of children,
- (c) the need to support children to achieve their personal outcomes,
- (d) the need to safeguard and promote the health and welfare of children, and
- (e) the requirements of these Regulations.

#### Fitness of staff

**29.**—(1) The local authority provider must not—

- (a) employ a person under a contract of employment to work at the service unless that person is fit to do so,
- (b) allow a volunteer to work at the service unless that person is fit to do so, or
- (c) allow any other person to work at the service in a position in which they may in the course of their duties have regular contact with children who are receiving care and support unless that person is fit to do so.

(2) For the purposes of paragraph (1), a person is not fit to work at the service unless—

- (a) the person is of suitable integrity and good character,
- (b) the person has the qualifications, skills, competence and experience necessary for the work they are to perform,
- (c) the person is able by reason of their health, after reasonable adjustments are made, of properly performing the tasks which are intrinsic to their role,
- (d) the person has provided full and satisfactory information or documentation, as the case may be, in respect of each of the matters required under paragraphs 1 to 9 of Schedule 3, and this information or documentation is available at the service for inspection by the Welsh Ministers, and

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(e) where the person is employed by the local authority provider to manage the service, from <sup>F51</sup> April 2022], the person is registered as a social care manager <sup>M18</sup> with Social Care Wales.

(3) An appropriate DBS certificate must be applied for by, or on behalf of, the local authority provider, for the purpose of assessing the suitability of a person for a post referred to in paragraph (1). But this requirement does not apply if the person working at the service is registered with the Disclosure and Barring Service update service (referred to in this regulation as the DBS update service).

(4) Where a person being considered for a post referred to in paragraph (1) is registered with the DBS update service, the local authority provider must check the person's DBS certificate status for the purpose of assessing the suitability of that person for that post.

(5) Where a person appointed to a post referred to in paragraph (1) is registered with the DBS update service, the local authority provider must check the person's DBS certificate status at least annually.

(6) Where a person appointed to a post referred to in paragraph (1) is not registered with the DBS update service, the local authority provider must apply for a new DBS certificate in respect of that person within three years of the issue of the certificate applied for in accordance with paragraph (3) and thereafter further such applications must be made at least every three years.

(7) If any person working at the service is no longer fit to work at the service as a result of one or more of the requirements in paragraph (2) not being met, the local authority provider must—

- (a) take necessary and proportionate action to safeguard children, and
- (b) where appropriate, inform—
  - (i) Social Care Wales,
  - (ii) the Disclosure and Barring Service.

#### Textual Amendments

**F5** Words in [reg. 29\(2\)\(e\)](#) substituted (29.4.2019) by [The Local Authority Fostering Services \(Wales\) \(Amendment\) Regulations 2019 \(S.I. 2019/545\)](#), [regs. 1\(2\), 2\(e\)](#)

#### Marginal Citations

**M18** See section 79(1)(b) of the 2016 Act for the definition of a “social care manager”.

### Supporting and developing staff

**30.**—(1) The local authority provider must have a policy in place for the support and development of staff.

(2) The local authority provider must ensure that any person working at the service (including a person allowed to work as a volunteer)—

- (a) receives an induction appropriate to their role,
- (b) is made aware of their own responsibilities and those of other staff,
- (c) receives appropriate supervision and appraisal,
- (d) receives core training appropriate to the work to be performed by them,
- (e) receives specialist training as appropriate, and
- (f) receives support and assistance to obtain such further training as is appropriate to the work they perform.

(3) The local authority provider must ensure that any person employed to work at the service as a manager is supported to maintain any registration with Social Care Wales.

### Information for staff

**31.**—(1) The local authority provider must ensure that all persons working at the service (including any person allowed to work as a volunteer) are provided with information about the service and the way it is provided.

(2) The local authority provider must ensure that there are suitable arrangements in place to make staff aware of any codes of practice about the standards of conduct expected of social care workers which are required to be published by Social Care Wales under section 112(1)(a) of the 2016 Act.

### Disciplinary procedures

**32.**—(1) The local authority provider must put in place and operate a disciplinary procedure.

(2) The disciplinary procedure must include—

- (a) provision for the suspension, and the taking of action short of suspension, of employees in the interests of the safety or well-being of children receiving care and support from the service, and
- (b) provision that a failure on the part of an employee to report an incident of abuse, or suspected abuse, to an appropriate person, is grounds on which disciplinary proceedings may be instituted.

(3) For the purpose of paragraph (2)(b), an appropriate person is—

- (a) an officer of the Welsh Ministers,
- (b) the local authority provider,
- (c) an officer of the local authority,
- (d) in the case of an incident of abuse or suspected abuse of a child, an officer of the National Society for the Prevention of Cruelty to Children, or
- (e) a police officer,

as the case may be.

### Restrictions on employment

**33.**—(1) The local authority provider must not employ to work for the purposes of the fostering service in a position to which paragraph (2) applies, a person who is—

- (a) a foster parent approved by the fostering service, or
- (b) a member of the household of such a foster parent.

(2) This paragraph applies to any management, social work or other professional position, unless in the case of a position which is not a management or a social work position, the work is undertaken on an occasional basis, as a volunteer, or for no more than 5 hours in any week.

## **PART 8**

### Premises, facilities and equipment

#### **Premises, facilities and equipment - local authority providers**

**34.** The local authority provider must ensure that the premises, facilities and equipment used for the operation of the service are suitable, having regard to the statement of purpose for the service.

#### **Adequacy of facilities**

**35.** The local authority provider must ensure that the premises used for the operation of the service have adequate facilities for—

- (a) the supervision of staff, and
- (b) the secure storage of records.

#### **Premises, facilities and equipment - foster parents**

**36.—**(1) The local authority provider must have arrangements in place to ensure that the premises, facilities and equipment used by foster parents for the provision of care and support to children are—

- (a) suitable and safe for the purpose for which they are intended to be used,
- (b) used in a safe way,
- (c) properly maintained, and
- (d) kept clean to a standard which is appropriate for the purpose for which they are being used.

(2) The local authority provider must ensure that foster parents are properly trained on how to operate any equipment that they may use when providing care and support to a child.

## **PART 9**

### Other requirements on local authority providers

#### **Records with respect to fostering services**

**37.—**(1) The local authority provider must maintain the records specified in Schedule 2 for 15 years.

(2) The local authority provider must—

- (a) ensure that the records specified in Schedule 2 are accurate and up to date,
- (b) keep the records securely,
- (c) make suitable arrangements for the records to continue to be kept securely in the event the service closes,
- (d) make the records available to the Welsh Ministers on request,
- (e) ensure that children who use the service—
  - (i) are made aware of their rights to access their records, and
  - (ii) have such access to their records as is permitted by law.

## Conflicts of interest

38. The local authority provider must have effective arrangements in place to identify, record and manage potential conflicts of interest.

## Complaints policy and procedures

39.—(1) The local authority provider must have a complaints policy in place and ensure that the service is operated in accordance with that policy.

(2) The complaints policy must include procedures for considering complaints made to the local authority provider by or on behalf of children placed by the provider about—

- (a) the provider,
- (b) foster parents, and
- (c) any other matter considered by the provider to be relevant.

(3) The complaints policy must include procedures for considering complaints made to the local authority provider by or on behalf of any other children who may be affected by the placement made about—

- (a) the provider, and
- (b) any other matter considered by the provider to be relevant.

(4) The complaints policy must include procedures for considering complaints made to the local authority provider by foster parents about—

- (a) the provider, and
- (b) any other matter considered by the provider to be relevant.

(5) The complaints policy must include procedures for considering complaints made to the local authority provider by the parents of any child placed by the provider about—

- (a) the provider, and
- (b) any other matter considered by the provider to be relevant.

(6) The local authority provider must put effective arrangements in place for dealing with complaints including arrangements for—

- (a) identifying and investigating complaints,
- (b) ensuring that appropriate action is taken following an investigation, and
- (c) keeping records relating to the matters in sub-paragraphs (a) and (b).

(7) The local authority provider must provide a summary of complaints, responses and any subsequent action taken to the Welsh Ministers within 28 days of being requested to do so.

(8) The local authority provider must—

- (a) analyse information relating to complains and concerns, and
- (b) having regard to that analysis, identify any areas for improvement.

## Whistleblowing

40.—(1) The local authority provider must ensure that all persons working at the service (including any person allowed to work as a volunteer) are able to raise concerns about the service.

(2) These arrangements must include—

- (a) having a whistleblowing policy in place and acting in accordance with that policy, and
- (b) establishing arrangements to enable and support people working at the service to raise such concerns.

(3) The local authority provider must ensure that the arrangements required under this regulation are operated effectively.

(4) When a concern is raised, the local authority provider must ensure that—

- (a) the concern is investigated,
- (b) appropriate steps are taken following an investigation, and
- (c) a record is kept relating to the matters in sub-paragraphs (a) and (b).

## **PART 10**

### **Support and oversight of foster parents**

#### **Support, training and information for foster parents**

**41.**—(1) The local authority provider must ensure that foster parents have the information they need to provide care and support to a child placed with them in accordance with the child's care and support plan.

(2) The local authority provider must ensure foster parents receive such training, advice and support, including support outside office hours, as appears necessary in the interests of children placed with the foster parents and to enable them to provide care and support to children in accordance with each child's care and support plan.

(3) The local authority provider must ensure prospective foster parents receive such training, information and advice as is considered necessary.

(4) The local authority provider must monitor and review the information, training, advice and support provided to foster parents and prospective foster parents and make any improvements which may be necessary.

#### **Policies and procedures to foster parents**

**42.** The local authority provider must ensure that foster parents are familiar with and act in accordance with the policies and procedures established under regulations 20, 21, 24, 25, 26, 39 and 45.

#### **Supervision**

**43.** The local authority provider must ensure that foster parents are appropriately supervised.

#### **Effective working relationships**

**44.** The local authority provider must—

- (a) maintain good professional relationships with foster parents, and
- (b) encourage and assist foster parents to maintain good personal relationships with children placed with them.

#### **Supporting children to manage their money**

**45.**—(1) The local authority provider must have a policy and procedures in place to enable foster parents to provide support and assistance to children on how to manage their money.



(2) The policy and procedures which are required by this regulation to be in place must set out the steps which are to be taken by foster parents to enable and support children to manage their own money and to protect children from financial abuse<sup>M19</sup>.

(3) The policy and procedures must ensure that there is adequate oversight and monitoring by the local authority provider of savings which are made by foster parents on behalf of children.

(4) Where a child's money is held by the foster parents for any purpose, the policy and procedures required by this regulation must provide that the money is held in an account in the child's name or in an account which enables clear demarcation of the child's money.

(5) The policy and procedures must ensure that foster parents pass on all records of savings (including expenditure from savings) to the local authority provider when the placement of a child to whom the records relate comes to an end.

#### Marginal Citations

M19 See section 197(1) of the 2014 Act for the definition of “financial abuse”.

## PART 11

### Duties of local authority managers

#### Oversight of adequacy of resources

46.—(1) The local authority manager must report to the local authority provider on the adequacy of the resources available to provide the service in accordance with the requirements of these Regulations.

(2) Such reports must be made on a quarterly basis.

#### Other reports to the local authority provider

47. The local authority manager must, without delay, report to the local authority provider—

- (a) any concerns about the provision of the service,
- (b) any significant changes to the way the service is managed or provided, and
- (c) any concerns that the service is not being provided in accordance with the statement of purpose for the service.

#### Engagement with children and others

48.—(1) The local authority manager must put suitable arrangements in place for obtaining the views of—

- (a) any child placed by the local authority provider,
- (b) the parents of any such child, unless this is inappropriate or inconsistent with the child's well-being,
- (c) foster parents, and
- (d) staff employed at the service,

on the quality of care and support provided and how this can be improved.

*Status: Point in time view as at 29/04/2019.*

*Changes to legislation: There are currently no known outstanding effects for the The Local Authority Fostering Services (Wales) Regulations 2018. (See end of Document for details)*

(2) The local authority manager must report the views obtained to the local authority provider so that these views can be taken into account by the provider when making any decisions on plans for improvement of the quality of care and support provided by the service.

#### **Duty to ensure there are systems in place to record complaints**

49. The local authority manager must ensure that there are effective systems in place to record complaints.

#### **Duty to ensure there are systems in place for keeping of records**

50. The local authority manager must ensure that there are effective systems in place in relation to the keeping of records, which include systems for ensuring the accuracy and completeness of records which must be kept under regulation 37.

#### **Duty to ensure policies and procedures are up to date**

51. The local authority manager must put suitable arrangements in place to ensure that the provider's policies and procedures are kept up to date, having regard to the statement of purpose for the service.

#### **Quality of care review**

52.—(1) The local authority manager must put suitable arrangements in place to establish and maintain a system for monitoring, reviewing and improving the quality of the service.

(2) The system established under paragraph (1) must make provision for the quality of care and support to be reviewed as often as required but at least every six months.

#### **Support for raising concerns**

53. The local authority manager must ensure that the local authority provider's whistleblowing policy is being complied with and that the arrangements to enable and support people working at the service to raise such concerns are being operated effectively.

*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

Regulations 2 and 4

Information to be contained in a statement of purpose by a local authority provider

The statement of purpose prepared by a local authority provider must contain the following information—

- (a) the name and principal address of the local authority,
- (b) the name of the local authority manager,
- (c) a statement of the range of needs of the children for whom the service is to be provided,
- (d) how the service is to be provided to meet the needs of children and to support them to achieve their personal outcomes,
- (e) details of the management and staff structure of the service,
- (f) details of the facilities and equipment that will be available for foster parents to assist them to meet the needs of children for care and support and to support them to achieve their personal outcomes,
- (g) details of the arrangements made to support the cultural, linguistic and religious needs of children,
- (h) details of the arrangements made to provide support to children in relation to their sexual orientation and gender identity,
- (i) details of the arrangements made for consulting children about the operation of the local authority fostering service,
- (j) details of how the local authority will meet children's language and communication needs, including through the medium of Welsh.

## SCHEDULE 2

Regulation 37

Records to be kept by local authority providers

1. A record showing in respect of each child placed with foster parents—
  - (a) the date of the child's placement;
  - (b) the child's care and support plan;
  - (c) the foster care agreement in respect of the child;
  - (d) the name and address of the foster parents;
  - (e) the date on which the child ceased to be placed there;
  - (f) the child's address prior to placement;
  - (g) the child's address on leaving the placement;
  - (h) the statutory provision under which the child is or was provided with foster care.
2. A record of all persons working for the local authority provider, which must include in respect of a person falling within regulation 29(1) the following matters—
  - (a) full name and home address;
  - (b) date of birth;
  - (c) sex;
  - (d) qualifications relevant to, and experience of, work involving children;

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- (e) copy of birth certificate and passport (if any) in respect of the person;
  - (f) copy of each reference obtained in respect of the person;
  - (g) whether the person is employed by the local authority provider for the purposes of the local authority fostering service under a contract of service, a contract for services, or otherwise than under a contract, or is employed by someone other than the local authority provider;
  - (h) whether the person works full-time or part-time, and, if part-time, the average number of hours worked per week;
  - (i) the dates on which the person commences and ceases to be so employed;
  - (j) the position the person holds in the service;
  - (k) records of disciplinary action and any other records in relation to the person's employment; and
  - (l) a record of the date of the person's latest DBS certificate and whether there was any action taken as a result of the content of the certificate.
3. A record of all serious accidents and injuries occurring to children whilst placed with foster parents.
  4. A record of all complaints made under the complaints policy put in place by the local authority provider, and the action taken by the local authority provider in respect of any such complaints.
  5. Date and circumstances of any safeguarding referrals, and the outcome.
  6. Date and circumstances of any incident of control or restraint used by foster parents on a child.

## SCHEDULE 3

Regulations 2 and 29

### PART 1

#### Information and documentation to be available in respect of persons working in fostering services

1. Proof of identity including a recent photograph.
2. Where required for the purposes of an exempted question in accordance with section 113A(2)(b) of the Police Act 1997 <sup>M20</sup>, a copy of a valid criminal record certificate issued under section 113A of that Act together with, after the appointed day and where applicable, the information mentioned in section 30A(3) of the Safeguarding Vulnerable Groups Act 2006 <sup>M21</sup> (provision of barring information on request).

#### Marginal Citations

**M20** 1997 c. 50.

**M21** 2006 c. 47. Sections 30 to 32 of the Safeguarding Vulnerable Groups Act 2006 as originally enacted are to be replaced by new sections 30A and 30B as a result of substitutions made by section 72(1) of the Protection of Freedoms Act 2012. Section 72(1) is to be commenced on a day to be appointed.

3. Where required for the purposes of an exempted question asked for a prescribed purpose under section 113B(2)(b) of the Police Act 1997, a copy of a valid enhanced criminal record certificate issued under section 113B of that Act together with, where applicable, suitability information relating

to children (within the meaning of section 113BA(2) of that Act) or suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act).

4. Two written references, including a reference from the last employer, if any.
5. Where a person has previously worked in a position whose duties involved work with children or vulnerable adults, so far as reasonably practicable verification of the reason why the employment or position ended.
6. Documentary evidence of any relevant qualification.
7. Where relevant, documentary evidence of registration with Social Care Wales.
8. A full employment history, together with a satisfactory written explanation of any gaps in employment.
9. Details of registration with or membership of any professional body.

## PART 2

### Interpretation of Part 1

10. For the purposes of paragraphs 2 and 3 of Part 1 of this Schedule—
  - (a) if the person to whom the certificate relates is not registered with the DBS update service, a certificate is only valid if—
    - (i) it has been issued in response to an application by the local authority provider in accordance with regulation 29(3) or (6), and
    - (ii) no more than three years have elapsed since the certificate was issued;
  - (b) if the person to whom the certificate relates is registered with the DBS update service, the certificate is valid regardless of when it was issued.

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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 regulations made under 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 about the placing of children with local authority foster parents (section 92 of that Act).

These Regulations impose requirements on local authority fostering services providers, described as “local authority providers” in these Regulations.

Part 1 of these Regulations contains definitions of certain terms used in the Regulations.

Part 2 of these Regulations outlines the general requirements which apply to local authority providers as to the way in which the service is provided, including requirements in relation to the statement of purpose (with Schedule 1 setting out the information to be contained in a statement of purpose prepared by a local authority provider), the arrangements for monitoring and

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improvement and the requirement to appoint a manager to be responsible for the management of the service.

Part 3 sets out requirements relating to the provision of information. Part 4 sets out requirements as to the standard of care and support to be provided, meeting the language and communication needs of a child and treating children with respect and sensitivity.

Part 5 requires policies and procedures to be in place in relation to safeguarding and the appropriate use of control and restraint. The regulations in this Part place specific requirements as to the action to be taken in the event of an allegation or evidence of abuse, to ensure children are safe and protected from abuse, neglect and improper treatment. This Part also details other policies and procedures which must be in place, including a procedure to be followed when a child who has been placed with foster parents goes absent without permission and a policy and procedures to deal with bullying.

Part 6 sets out requirements to ensure children access health, education and other services.

Part 7 contains requirements as to staffing, which include general requirements as to the deployment of sufficient numbers of staff and specific requirements as to the fitness of individuals working at the service. These requirements apply not just to employees but extend also to volunteers and to other persons working at the fostering service, which would include agency staff. The fitness requirements include a requirement for specific information and documentation to be available in respect of persons working in fostering services, as set out in Schedule 3.

Other requirements contained in Part 7 include requirements relating to supporting and developing staff, providing information to staff and the operation of a suitable disciplinary procedure. To ensure that employees report incidents of abuse to an appropriate person, the regulations in this Part require the provider's disciplinary procedure to provide that a failure to report would itself be grounds for disciplinary proceedings. This Part also includes restrictions on persons who may not be employed by the local authority provider in specified key roles.

Part 8 ensures that premises, facilities and equipment to be used in relation to fostering services are suitable and safe.

Part 9 sets out the requirement to keep records in respect to fostering services and Schedule 2 sets out the specific records which must be kept. This Part also sets out the obligations on a local authority provider in relation to dealing with complaints and whistleblowing concerns.

Part 10 outlines the support and other assistance to be given to foster parents. This Part also requires local authority providers to supervise foster parents and to ensure that foster parents are familiar with and act in accordance with key policies and procedures.

Part 11 describes the duties which must be carried out by the manager employed by the local authority fostering service. These include responsibilities relating to the oversight of the adequacy of resources, making reports to the local authority provider, ensuring that there are systems in place to record complaints and ensuring that policies and procedures are kept up to date.

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.

**Status:**

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**Changes to legislation:**

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