

AUTUMN 2020 Edition of the AFA Cymru Legal Newsletter

Welcome to the autumn edition of the AFA Legal Newsletter where we aim to provide Welsh specific legal advice and information.

An update on Covid arrangements.

There were a number of arrangements made at the beginning of the pandemic that Welsh Government described as 'easements' or 'flexibilities' to the regulations (both in fostering and adoption). These easements were effectively permission giving by Welsh Government for adoption agencies and fostering service providers to depart from the strict wording of the regulations in order to cope with Covid.

These easements are now coming to an end. With some of them there are new Covid regulations coming into force on 1 November to take their place; with others we are having to go back to the regulations as they stand.

Fostering

Medicals

At the start of the pandemic Welsh Government created an easement that allowed for the use of the CoramBAAF Adult health self declaration form. This easement allowed the form to be used by prospective foster parents if (and only if) they could not obtain a face to face medical with their GP. The easement required that, if foster parents were approved using this form, then they would have to undertake a review, post approval, using the full AHR form, within 6 months of the lifting of restrictions. That six month period started from the 1st October and so all full reviews (AHR examination and report) will need to take place before 31 March 2021.

The easement will expire on 7 November and there are no Covid regulations to replace it. The 'lead in time' provided is designed to ensure that current self declaration forms may go through panel /DM without any delay.

However, any applicants attending panel after 7 November will have to have undertaken a full assessment with the GP, although the examination part may be undertaken (again if only necessary) remotely. The AHR form has an additional part to it (Form C(7) for use if the examination is conducted remotely). The form is available via CoramBAAF

There is also a pro forma letter to the GP that can be used to explain the nature of the request to undertake an assessment and why it is important. The letter is available from the AFA website. [Letter-to-GP-AH-reports](#)

In short:

- Any foster parents already approved with the self declaration form will need to be back to panel for a review with a full AH Form assessment (which may, if necessary, have been done remotely) and report by 31 March
- Any prospective foster parents going to panel before 7 November can use the self declaration form but will have to be back to panel by 31 March with a full AH Form assessment (which may, if necessary, have been done remotely) and report
- Any prospective foster parents going to panel after 7 November will have to go with a full AH Form assessment (which may, if necessary, have been done remotely) and report.

Connected persons assessments

The Covid regulations coming into force in November (**Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020**) will allow for a kinship /connected person's assessment to take up to 24 weeks, rather than 16 weeks, on a regulatory footing. Regulations 26 Care Planning, Placement and Case Review (Wales) Regulations 2015 will be amended accordingly. This means that regulation 27 will now allow for an extension of the temporary approval, subject to the safeguards set out in reg 27(4) (consideration of the appropriateness of the placement / seek views of panel / inform the IRO) for up to 32 weeks.

AFA has written a short good practice guide for Welsh Government on this amendment which will shortly be available on the AFA website and will be distributed to all local authorities.

Adoption

Two stage process for assessment

The easement at the beginning of the pandemic affecting the adoption regulations was complicated as it was granted at the same time that a new, two stage, assessment process came into force, with the Adoption Agencies (Wales) (Amendment) Regulations 2020.

The easement allowed for Stages 1 (pre assessment process) and 2 (assessment process) to be run concurrently, so that there would not be a delay in the assessment if Stage 1 checks and references (including the GP medical report) were difficult to obtain. However, this was not a reversion to the old regulations, as although stages 1 and 2 were running concurrently, it was important to be clear about a decision that an applicant was not suitable to adopt, as a Stage 1 decision

did not amount to a 'Qualifying Determination' – that is the decision under Stage 1 does not go to panel / ADM and may not go to the IRM.

NAS published a good practice guide and a webinar to help practitioners with bringing together a two stage process but running those processes concurrently.

Welsh Government has given this easement an additional month to run (for October). The new Covid regulations coming into force on 1 November, the **Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020**, will, effectively, provide regulations which allow this process to continue with some amendments.

Instead of allowing Stages 1 and 2 to be run concurrently, the regulations allow for an adoption agency to proceed to Stage 2 even though Stage 1 information has yet to be obtained. The Stage 1 information may, therefore, be obtained during Stage 2. However, a decision made in respect of Stage 1 information (even if undertaken in Stage 2) that a prospective adopter is not suitable, will not amount to a qualifying determination (i.e. does not need to go to panel /ADM and does not have the right to go to the IRM).

These new regulations, although phrased differently from the easement, amount to the same practice – that of being able to start Stage 2 without having to wait for the Stage 1 information. It just requires a letter to prospective adopters at the beginning of the assessment to tell them that Stage 1 checks will be undertaken during Stage 2.

The NAS Covid good practice guide, which practitioners will be using already, has been amended and updated to bring it in line with the new regulations. There will not be a great deal of difference in terms of practice except for the letter to go out to prospective adopters right at the start of Stage 1. The template for that letter will be appended to the updated Covid GPG. The GPG will be distributed to the regions and available on the NAS and AFA websites shortly.

These regulations will remain in force until 31 March 2021 (or earlier if conditions improve).

Back to fostering

The use of fostering regulations where there are resident parents

We have had a number of queries on our advice line concerning the assessment and approval of connected persons (usually grandparents) as foster carers when there is a resident parent or parents. This is not a 'parent and child' placement as such, but it appears that some courts are wanting the additional safeguard for a looked after child living with parents and other family members for those family members to be foster carers.

This causes real confusion over parental responsibility and delegated authority as between the local authority, resident birth parent and family foster carer.

When a child is looked after, then the provisions of s81 Social Services and Well-being (Wales) Act 2014 apply.

The duty is firstly to place a child with a parent or person with PR, so long as that is consistent with the child's well-being and it is reasonably practicable to do so. The placement is then subject to the regulations set out in Part 4 Care Planning, Placement and Case Review (Wales) Regulations 2015 (usually known as the 'placement with parent' regulations).

If the local authority is unable to place the child with a parent or someone with existing PR then they have to place them under one of the provisions of s81(6) SSWB(W)A and if the placement is with a connected person it is under s81(6)(a), that is a person who is a connected person and is also approved as a local authority foster carer.

It is therefore clear in the SSWB(W)A that a child is either placed with a parent or person with PR **OR** with a connected person who is also a local authority foster carer. The regulations also make clear that only one of the regulatory frameworks for placing a looked after child can exist at the same time.

It is not, therefore, possible to place a child with a parent under Part 4 and with a connected person/ kinship foster carer. It must be one or the other. That means that if the child is placed with an approved kinship foster carer, the parent, though retaining parental responsibility under s33 Children Act 1989, has no effective use of their PR in the day to day life of the child. The LA retains the PR that they can exercise to the extent that it safeguards and promotes the child's welfare; the kinship foster carer has delegated authority given to them by the local authority.

It does not take much imagination to see how this kind of arrangement will be fraught with difficulty with two people (parent and kinship carer) living with a child for whom neither can exercise PR without the agreement of the local authority.

The point of Part 4 CPPCR(W)R is to place a child with parents and have the safeguards provided to the child in those regulations and in particular regulation 21:

'Where C is placed, or is to be placed, with P, the responsible authority must provide such services and support to P as appear to the responsible authority to be necessary to safeguard and promote C's well-being and it must record details of such services and support in C's care plan.'

The support to be offered to a child is, therefore, to be set out in the child's care plan and subsequent Part 6 care and support plan. If a well resourced and managed plan cannot safeguard and promote the child's welfare then the question should be asked: 'should this child be placed, as a looked after child, with this parent?'

There is nothing to prevent a family member living with and supporting a child placed under s81(3) and in line with a particular care plan, and this will be quite common, particularly where there is a young parent or parent under a disability. However, they should not need to be assessed and approved as a foster carer if the plan is for the child to be placed with a parent under s81(3) and regulation 21 is adhered to.

There may be occasions where a family member will need to be assessed as a foster carer, usually as part of a contingency plan. This would be part of an overall

care plan and they would only become a foster carer for that child in the event of the breakdown in the s81(3) placement.

The advantage of being clear with these arrangements is that it clarifies:

- a) Who is able to exercise parental responsibility or delegated authority; a household without which certainty will be problematic;
- b) Whether the placement will be or is being resourced and supported sufficiently; and
- c) Whether the placement is in fact the right one for the child.

The answer surely lies in the plan, made under regulation 21, to support a placement with a parent, not the additional layer of regulation in making the family support a foster carer.

The status of EU children who are looked after

We have made reference to this in a previous newsletter. Looked after children and care leavers who have European parents and / or nationality for whom a formal immigration status has not, before now, been required, could be exposed to the requirements of the Immigration Rules next year, following the UK leaving the European Union.

These children may be eligible for status under the EU settlement scheme but time is running out – the scheme closes in June 2021 and the evidence needed (for example of a child's UK residence) may be difficult to obtain quickly.

Welsh Government have this in hand and have commissioned a specialist law firm to advise EU citizens living in Wales on the settlement scheme. If anyone has concerns over a particular child's status they should contact Welsh Government directly and seek expert help.

Many thanks to Rachel Thomas from the Children's Commissioner's Office and Julie Doughty from Cardiff University for help with this information.

We wish you all well in the coming weeks

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