



Independent Review Mechanism Fostering and Adoption

Consultation Response Form

**The closing date for this consultation is:
30 September 2009**

Your comments must reach us by that date

The information you provide in your response will be subject to the Freedom of Information Act 2000 and the Environmental Information Regulations, which allow public access to information held by the Department. This does not necessarily mean that your response can be made available to the public as there are exemptions relating to information provided in confidence and information to which the Data Protection Act 1998 applies. You may request confidentiality by ticking the box below, but you should note that neither this, nor an automatically generated e-mail confidentiality statement, would not necessarily exclude the public right of access.

Please tick if you want us to keep your response confidential	
---	--

Name:	Carly Sheen
Organisation (if applicable)	Welsh Committee of the Administrative Justice & Tribunals Council
E mail/telephone number	enquiries@ajtc.gsi.gov.uk 020 7855 5200
Address:	81 Chancery Lane London WC2A 1BQ

If your enquiry is related to the consultation you can contact Debra Jenkins on: 029 20823668 or Jacqui Moyle on 029 20823101

Please select one box that best describes you as a respondent

Local authority	<input type="checkbox"/>	Independent Fostering Provider	<input type="checkbox"/>
Independent Adoption Provider	<input type="checkbox"/>	Existing Foster Carer	<input type="checkbox"/>
Prospective Foster Carer	<input type="checkbox"/>	Other	<input checked="" type="checkbox"/>

<p>Please Specify:</p> <p>The AJTC is an advisory Non Departmental Public Body set up under the Tribunals, Courts and Enforcement Act 2007. It has a statutory Welsh Committee.</p> <p>The AJTC has oversight of tribunals listed under the Administrative Justice and Tribunals Council (Listed Tribunals) (Wales) Order 2007, which includes review panels constituted under the Independent Review of Determinations (Adoption) (Wales) Regulations 2006. The Tribunals, Courts and Enforcement Act requires that the AJTC be consulted on any changes to these Regulations.</p> <p>The AJTC's overarching strategic objective is to focus, first and foremost, on the needs of the users of the administrative justice system.</p>
--

Section One – Introduction of an Independent Review Mechanism for Fostering & Amendments to the Fostering Services (Wales) Regulations 2003

1. **Do you agree with the general approach to the Independent review mechanism for fostering?**

Agree

Disagree

Not sure

Comments:

It seems sensible that an independent review mechanism should be available for fostering as well as adoption.

2. **Do you agree that registered providers that are an individual should not be required to sit on the fostering panel, with flexibility for another senior manager to sit on the panel instead?**

Agree

Disagree

Not sure

Comments: No comment.

3. **Do you agree that the maximum period of office on a provider's fostering panel should be extended from a maximum of two consecutive terms to a maximum tenure of three consecutive terms whether consecutive or not?**

Agree

Disagree

Not sure

Comments:

No comment.

Currently, a fostering service provider's panel reviewing a decision bases their recommendation on the information that was provided to the original panel, the recommendations made by that panel and the decision reached by the Provider. The Fostering Services Regulations (Wales) 2003 do not explicitly state that the panel may seek additional information or legal advice. The absence of such a reference in the Fostering Services (Wales) Regulations 2003 does not bar members of a fostering panel from seeking additional information, however, its inclusion would set up an expectation that the panel consider whether additional information or legal advice is required.

On this basis we would be grateful for your views on whether there should be an explicit reference in the legislation to (1) the fostering IRM panel and (2) the fostering service provider's panel being able to request additional information or assistance from the provider, and to seek legal advice.

4. **Do you think it would be helpful for regulations to state that the independent review panel should be able to seek additional information?**

Agree

Disagree

Not sure

Comments: Panels should be able to access all the information needed to make an informed decision.

5. Do you think it would be helpful for regulations to expressly state that the fostering service provider’s fostering panel should be able to access legal advice?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input type="checkbox"/>
-----	-------------------------------------	----	--------------------------	----------	--------------------------

Comments: In principle, legal or medical advice at an early stage should assist fostering panels to make informed decisions and might lead to fewer requests for independent review.

Section two

Amendments to the existing arrangements for the Independent Review of Determinations for Adoption

1. Do you agree with our proposals to charge fostering service providers and adoption agencies a contribution towards the cost of a review?

Agree Disagree Not sure

Comments: The Committee is concerned that a high charge, as in England, may encourage fostering service providers to approve borderline applications, in order to avoid the cost of a review.

Currently, the timescale within which a representation can be made differs between fostering and adoption. A person seeking a review of a decision relating to their suitability to adopt has 20 working days, to make a representation beginning on the date on which the notification was sent. In contrast, the Fostering Services (Wales) Regulations 2003 state that a person seeking a review of a decision relating to fostering has 28 calendar days from the date of the notification. In England the timescale within which a representation can be made in relation to adoption is 40 working days.

We would be grateful for your views on whether or not the timescale for applying to Welsh Ministers for an independent review of an adoption qualifying determination should be extended. In particular, your views about what should be the appropriate time limit are sought. You may wish to have regard to the balance between the needs of the applicants seeking review to have sufficient time to make a considered decision and the needs of the relevant child not to suffer undue delay in any on-going child care proceedings.

2. **Do you think that the current 20 working day limit for prospective adopters to apply to Welsh Ministers to have their case reviewed should be extended. If so, to what extent?**

Agree

Disagree

Not sure

Comments: It seems sensible that the time limit for adoption and fostering be consistent at 28 days, as far as possible. However, there may be a need to make special arrangements for fostering appeals where an existing foster carer has been de-registered. A quicker process is needed with these appeals, to minimise the disruption to any children in their care.

3. **Do you agree with our proposals to amend the current arrangements with regard to the constitution of panels, including the requirement for social workers to have at least three years post-qualifying experience rather than five years experience?**

Agree

Disagree

Not sure

Comments: The consultation document does not provide the policy rationale or reasoning behind this proposal, which makes it difficult to respond to this question.

Currently the maximum number of people who may be appointed to a panel is five and the panel must be advised by a social worker; a registered medical practitioner with the relevant experience in adoption work and may be advised by a legal adviser with knowledge and

experience of adoption legislation and any other person who the panel considers has relevant expertise in relation to the determination being considered.

We propose to prescribe that there must be five people appointed to the panel to include at least:

- (a) two social workers who have at least three years post-qualifying experience in adoption and family placement work;
- (b) One registered practitioner; and
- (c) two other persons who are considered by Welsh Ministers to be suitable as members of the panel, including, where reasonably practicable, persons with personal experience of adoption.

The proceedings of the panel will be invalidated unless the 5 panel members are present.

4. Do you agree with our proposals in respect of the constitution of the panel?

Agree

Disagree

Not sure

Comments:

The Committee agrees that the panel should be made up of 5 members.

It is unclear from the consultation document why there is no requirement for an IRD fostering panel to include a registered practitioner. It would seem that similar issues requiring medical expertise may apply in determining suitability of current or prospective foster carers.

We propose that there should be five people on a panel to review a disclosure determination to include two social workers who have at least three years' post qualifying experience in adoption and family placement work and three other persons who are considered by Welsh Ministers to be suitable as panel members, including wherever reasonably practicable persons with personal experience of adoption. The proceedings of the panel will be invalidated unless all five members are present.

5. Do you agree with the proposals in respect of the constitution of disclosure panels?

Agree

Disagree

Not sure

Comments:

6. Do you agree with our proposal to reduce the period in which a person employed by or a member of a local authority which made the qualifying determination may not be appointed to a panel from two to one year?

Agree **Disagree** **Not sure**

Comments:

The consultation document does not include the rationale for this proposal. The Committee strongly opposes this amendment, as such a short period between being employed or a member of the local authority and being appointed to a panel could compromise the actual independence of the Panel, and the perception of independence.

7. Do you agree that we should reduce the period in which a person who is an employee or trustee of an organisation that made the qualifying determination may not be appointed to a panel from two years to one year?

Agree **Disagree** **Not sure**

Comments:

The consultation document does not include the rationale for this proposal. The Committee strongly opposes this amendment, as such a short period between being employed by or a trustee of the organisation in question and being appointed to a panel could compromise the actual independence of the Panel and the perception of independence.

8. We have included provisions in regulations for the IRD panel to adjourn to request further information. Do you agree?

Agree

Disagree

Not sure

Comments:

The Committee agrees that there should be provisions for IRD panels to adjourn to request further information where absolutely necessary. However, all efforts should be made to secure all relevant information before the hearing.

It is important that matters are resolved quickly, and there should also be a time limit for the resolution of the independent review, including the adjournment period.

9. We have amended the provision in regulations to reduce the timescale for the written record of a panel's review of a qualifying determination, including the reasons for its recommendation and whether the recommendation was unanimous or that of a majority, to be retained for 1 year instead of 5 years. Do you agree?

Agree

Disagree

Not sure

Comments:

The consultation document does not include the rationale for this proposal.

The Committee strongly opposes this amendment. Proper record management procedures dictate that this information should be kept for at least 5 years. There is also the possibility that an applicant could bring judicial review proceedings or make a complaint about the process and records will be needed beyond one year.

10. **Provision has been included in regulations for the organisation which made the qualifying determination to provide any information and assistance that the IRD panel may require. Do you agree with this?**

Agree

Disagree

Not sure

Comments:

This seems reasonable.

11. **Please take this opportunity to raise any questions or make any comments you wish regarding an Independent Review of Determination.**

Comments:

Welsh Assembly Government officials have indicated that it is the government intention that the AJTC continue to have oversight of IRD adoption panels, and that its oversight is extended to IRD fostering panels.

An order should be made to amend the Administrative Justice and Tribunals Council (Listed Tribunals) (Wales) Order 2007, to replace review panels constituted under the Independent Review of Determinations (Adoption) (Wales) Regulations 2006 with review panels constituted under the new regulation.

The Committee is concerned about the outsourcing of the operation of IRD panels to an independent organisation. The consultation provides no policy rationale for this decision nor an explanation of how this will provide a better service or improved value.

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply	X
-------------------------------	---

The 8 week timescale for consultation on the independent review mechanism for fostering (IRM) will allow the Department to make and lay regulations in time for the IRM to be implemented from 1 January 2010. We propose to issue a joint contract for managing the fostering IRM and the adoption IRM in the interests of efficiency and value for money.

Thank you for taking the time to respond to this consultation.

Completed questionnaires and other responses should be sent to the address shown below by 30 September 2009.

Send by post to:

Debra Jenkins
Children's Health and Social Services Directorate
Welsh Assembly Government
Cathays Park
Cardiff
CF10 3NQ

Send by e-mail to: Debra.Jenkins@wales.gsi.gov.uk