

Explanatory Memorandum to the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2026

This Explanatory Memorandum has been prepared by the Health, Social Care and Early Years Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2026. I am satisfied that the benefits justify the likely costs.

Dawn Bowden MS
Minister for Children and Social Care
9 February 2026

PART 1

1. Description

1.1 The Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2026 (“the 2026 Regulations”) revoke and replace the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010 (“the 2010 Regulations”) to modernise and clarify the legal framework governing the Independent Review Mechanism (IRM) in Wales. The 2010 Regulations make provision for the review by an independent panel of certain determinations made by adoption agencies and fostering service providers.

The determinations are:

- where an adoption agency determines that a prospective adopter is not suitable to adopt a child, or is no longer suitable to adopt a child following a review;
- where an adoption agency makes a determination under the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005;
- where a fostering service provider determines that a person is not suitable to act as a foster parent or decides to terminate or revise the terms of a foster parent’s existing approval.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 None.

3. Legislative background

3.1 These Regulations are made by the Welsh Ministers under powers conferred by the Adoption and Children Act 2002 and the Social Services and Well-being (Wales) Act 2014. They are being made under the Senedd annulment procedure.

3.2 Two of the enabling powers: sections 9 and 12 of the Adoption and Children Act 2002 were originally conferred on the National Assembly for Wales without a specified procedure. At the time, all legislation was voted on, so the 2010 Regulations were made under the affirmative procedure. Following the transfer of functions to Welsh Ministers via paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (added by the Wales Act 2017), the applicable procedure is now determined by paragraph 34 of that Schedule. This provides that where a corresponding power to make subordinate legislation has been conferred on a Minister of the Crown in relation to England, the Senedd procedure mirrors the one that would apply to the exercise of that power by a Minister of the Crown. In this case,

section 140(2) of the Adoption and Children Act 2002 confirms that the Senedd annulment procedure applies.

4. Purpose and intended effect of the legislation

- 4.1 The Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2026 ('the 2026 Regulations') revoke and replace the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010 ('the 2010 Regulations') to ensure the Independent Review Mechanism (IRM) in Wales remains legally robust, operationally effective, and fair to individuals affected by key decisions in adoption and fostering.
- 4.2 The Independent Review Mechanism (IRM) is the process by which a prospective or approved foster carer or a prospective adopter, can seek a review of a decision or 'qualifying determination' made by a fostering or adoption service. This might be a decision not to approve a prospective foster carer or adopter, terminate approval as a foster care, or change the terms of approval.
- 4.3 The IRM process is set out in the 2010 Regulations which require the Welsh Ministers, on receipt of an application for review of a decision, to set up a panel; and set out the review panel's membership and functions, and the timetable to be followed. The IRM was set up in 2010 to fulfil this function on behalf of the Welsh Ministers and ensure operational independence.
- 4.4 The Fostering Panels (Establishment and Functions) (Wales) Regulations 2018 introduced a two-stage assessment process for approval as a foster carer and the concept of a 'brief report'. This allows a fostering service provider to prepare a report if information is received during the assessment which makes it unlikely that the applicant will be considered suitable to become a foster carer, even if the assessment has not been completed – known as a 'brief report'.
- 4.5 If the recommendation is that the applicant is not suitable to be a foster parent, the fostering service provider may issue a determination to the applicant which is notice that the fostering service proposes not to approve them as a foster carer, and therefore advises the applicant that they may make further representations or apply to the Welsh Ministers for review by the independent panel.
- 4.6 The 2010 Regulations pre-date the introduction of the brief report to fostering panels and there could be potential issues if an applicant makes an application through the IRM after receiving a brief report. This is because there is currently no provision within the 2010 Regulations to enable the independent panel to request that a full assessment should still be completed following a brief report. The panel will not therefore be able to recommend approval as a foster parent because the full assessment will not have been completed and as a result will only be able to recommend

that the applicant is not suitable to be a foster parent. In addition, the right of an applicant to request a review of the fostering service provider's qualifying determination will have no practical effect where the service proposes refusal of approval after a brief report.

4.7 The 2026 Regulations will therefore enable the independent panel to make a recommendation for a full report to be prepared if required, following the issue of a brief report.

4.8 The 2010 Regulations were made under powers in the Adoption and Children Act 2002, for adoption-related decisions, and the Children Act 1989, for provisions relating to reviews of fostering-related decisions. The fostering provisions previously outlined in the Children Act 1989 have been disapplied and remade for Wales through sections 87 and 93 of the Social Services and Well-being (Wales) Act 2014. Whilst the 2010 Regulations are still applicable the revoking and replacement of these Regulations with the 2026 Regulations will improve legal clarity and accessibility resulting in the reader being able to see all the relevant enabling powers in one place.

4.9 As part of revoking and remaking the 2010 Regulations we have also taken the opportunity to correct outdated references and improve legal clarity and to make a number of minor but important changes to ensure the legal framework is clearer, more consistent, and easier to apply in practice.

4.10 These changes will:

- clarify how panels should approach the interests of individuals affected by disclosure decisions. The welfare of an adopted child remains the paramount consideration, as before but the new regulations will require panels to consider the impact of disclosure on any other person who may be affected by the disclosure. This change reflects how courts already approach similar issues within child care proceedings and ensures a fair and balanced process.
- remove a provision in the 2010 Regulations requiring the Welsh Ministers to administer the review panel and arrange clerking support. Welsh Ministers already have this responsibility under existing legislation.
- remove the requirement for records to be kept "in conditions of appropriate security." This is because data protection laws (such as the Data Protection Act 2018 and UK GDPR) already require organisations to keep personal data secure.
- introduce a 40 working day deadline for all types of qualifying determinations (adoption, fostering or disclosure), ensuring consistency and clarity for everyone involved. Previously, only adoption suitability decisions had a clear deadline (40 working days) for requesting a review.

4.11 These changes enhance fairness, transparency, and operational effectiveness in the review process, ensuring the IRM continues to serve its intended purpose within a modern legislative context.

4.12 The legislation affects:

- Prospective and approved foster carers and adopters seeking review of decisions.
- Adoption agencies and fostering service providers.
- Panel members and advisers appointed by the Welsh Ministers.
- Individuals affected by disclosure decisions under adoption records.

4.13 Failure to implement the new legislation would:

- Leave applicants without a meaningful route to challenge a brief report.
- Reduce clarity and accessibility of the law because the amended Regulations would continue to cite out of date enabling powers (the up-to-date enabling powers would be cited in the amending Regulations but not the amended Regulations).
- Undermine fairness and transparency in the review process.
- Risk reputational damage to the Welsh Government and potential legal challenge.

4.14 The legislation enables more efficient operation of the IRM process by:

- Clarifying roles, procedures, and timelines for all parties involved.
- Reducing administrative burden through removal of duplicative provisions.
- Supporting consistent decision-making and reducing delays in the review process.

4.15 The legislation will improve access to justice for individuals who may be disadvantaged by initial determinations, particularly where assessments are prematurely shortened. They also ensure a fairer process for those seeking to become foster carers or adopters, and for individuals affected by disclosure decisions.

4.16 The 2026 Regulations apply to Wales only. They are made under powers devolved to the Welsh Ministers and relate specifically to the operation of fostering and adoption services within Wales.

5. Consultation

5.1 A 12-week consultation ran from 4 August 2025 to 27 October 2025 on the proposed changes to the 2010 Regulations. The consultation was drawn to the attention of a range of key stakeholders including local authorities, third sector organisations, independent fostering providers, third sector fostering providers, adoption agencies, the National Adoption Service and Foster Wales.

5.2 14 responses were received to the consultation. There was broad agreement to all of the proposals in the consultation. No amendments were considered necessary to the proposed changes.

5.3 The consultation documents and a summary of the responses are available [here](#)

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

- 6.1 Three options have been considered in the analysis of the costs, benefits, and risks of introducing changes to the IRM in Wales:
- Option 1: Do Nothing - retain The Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010
 - Option 2: Retain and amend the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010
 - Option 3: Revoke and Replace the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010 with the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2026

Option 1: Do Nothing - retain the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010

- 6.2 This option would retain the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010 without amendment. While it avoids immediate legislative effort, it fails to address the shortcomings in the current legal framework.

Costs

- 6.3 The IRM is delivered through a contract funded by the Welsh Government for 2024-2027 at a cost of £247,600. These costs cover the administration and delivery of independent panel reviews, including panel member fees and expenses, case management, IT infrastructure, Continuing Professional Development (CPD) and support services.
- 6.4 These costs also support quality assurance activities and the provision of public guidance; all aimed at ensuring a fair and transparent review process within the existing contractual arrangements.
- 6.5 There are no additional costs associated with this option.

Benefits

- 6.6 Maintaining the current approach offers two key advantages: there is no immediate financial outlay, avoiding any additional costs associated with implementing changes, and it ensures continuity by maintaining existing processes without disruption.

Risks

- 6.7 Continuing with the current approach presents several significant challenges. Operational inefficiency arises because the IRM panel cannot recommend a full assessment following a brief report, rendering the review process ineffective in such cases. There is also a legal risk, as reliance on outdated legislative references increases the likelihood of misinterpretation and potential legal challenge. Furthermore, reputational damage is a concern, with the Welsh Government potentially perceived as failing to modernise and uphold fairness. The administrative burden on practitioners is considerable, requiring them to interpret repealed legislation and rely on the Interpretation Act 1978, which adds complexity. Finally, issues of fairness and transparency persist, as applicants may be denied a meaningful review, undermining procedural fairness.

Conclusion

- 6.8 This option is not recommended. While it maintains the status quo, it fails to address critical legal, operational, and reputational risks. The continued use of outdated legislative references undermines the effectiveness and fairness of the IRM process, increases the risk of legal challenge, and places unnecessary burdens on practitioners. Modernising the framework is essential to uphold transparency, ensure procedural clarity, and maintain public confidence in the system.

Option 2: Retain and amend The Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010

- 6.9 Under this option, the existing 2010 Regulations would be retained but with some minor amendment to address the brief report issue.

Costs

- 6.10 As outlined in Option 1, the IRM is funded through a Welsh Government contract for 2024–2027 at a cost of £247,600, covering all core operational elements. The proposed targeted amendments to the IRM regulations will be implemented within the scope of this contract with no increase in the cost. Any one-off training for panel members and awareness-raising with local authorities and independent providers will also be delivered and funded through the existing agreement with Children in Wales during the 2026-27 financial year.
- 6.11 Although training and awareness-raising will be funded through the existing agreement with Children in Wales, there will be an opportunity

cost relating to the diversion of resources and time from other priorities. Staff and stakeholder capacity used for these activities could otherwise support service improvements or strategic initiatives. While financial impact is contained, the trade-off is reduced focus on alternative work.

Benefits

- 6.12 Retaining the existing framework offers several advantages. First, it ensures continuity by maintaining familiarity for stakeholders and avoiding disruption to established processes. Second, it is cost-effective, as minor amendments are far less resource-intensive than full legislative reform, reducing the need for extensive legal drafting, training, and implementation efforts by building on familiar systems and processes. Finally, targeted updates improve clarity by addressing known issues such as the brief report requirement and enhancing overall usability.

Risks

- 6.13 While targeted amendments may offer some improvements, they present notable limitations. The impact would be limited, as addressing the brief report issue alone leaves other outdated provisions and structural weaknesses unresolved, including rigid procedural requirements, outdated legislative references, and a narrow scope for review that restricts flexibility and alignment with current practice. Legal ambiguity is another concern, as amending regulations built on repealed legislation introduces complexity and may require careful interpretation. This approach also risks ongoing confusion, with practitioners and applicants continuing to face challenges in understanding the legal framework, particularly if multiple documents are needed for reference. Ultimately, this represents only partial modernisation, as broader issues within the IRM framework such as inflexible procedures and outdated legal references would remain, limiting adaptability and reducing alignment with current policy and practice.

Conclusion

- 6.14 This option is not recommended. Whilst it offers a partial solution it does not fully modernise or clarify the regulatory framework. It improves functionality but retains significant weaknesses.

Option 3: Revoke and Replace the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010 with the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2026

- 6.15 Under this option the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010 would be revoked and replaced by The Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2026 incorporating all necessary updates and improvements.

Costs

- 6.16 As outlined in Option 1, the IRM is funded through a Welsh Government contract for 2024–2027 at a cost of £247,600, covering all core operational elements. The proposed targeted amendments to the IRM regulations will be implemented within the scope of this contract with no increase in the cost. Any one-off training for panel members and awareness-raising with local authorities and independent providers will also be delivered and funded through the existing agreement with Children in Wales during the 2026-27 financial year.
- 6.17 Stakeholder engagement and training will divert capacity from ongoing operational and strategic work. While the change delivers long-term benefits through modernised regulations, the trade-off is reduced focus on alternative activities during the transition period.
- 6.18 Enabling the independent review panel to request a full assessment may result in additional costs for fostering service providers. These costs would vary depending on local authority structures, staffing capacity, and existing processes, so it is not possible to quantify them at this stage. The impact is expected to differ across Wales, with some providers incurring higher resource demands than others.
- 6.19 The remaining amendments in the Regulations largely formalise existing practice and are therefore not expected to result in any additional costs for local authorities, independent providers, or other stakeholders.

Benefits:

- 6.20 Comprehensive reform would deliver significant benefits. It would provide legal clarity by consolidating enabling powers under the Adoption and Children Act 2002 and the Social Services and Well-being (Wales) Act 2014. Operational effectiveness would be strengthened by empowering IRM panels to recommend full assessments following brief reports, restoring the practical value of the review process. Consistency would be achieved through a uniform 40-working-day deadline across all qualifying determinations, enhancing clarity and fairness. Modernisation would remove outdated provisions already covered by other legislation,

such as clerking support and data security. Fairness and transparency would be improved by ensuring panels consider the impact of disclosure on all affected individuals, aligning with judicial best practice. Finally, accessibility would be enhanced by enabling stakeholders to understand the regulations without tracing legislative history, making the framework more user-friendly and efficient.

Risks

- 6.21 Implementation challenges are expected to be minimal, with only minor risks associated with transitioning to the new framework. These may include the need for stakeholder familiarisation and updates to internal guidance, but such risks are considered manageable and can be mitigated through clear communication and phased implementation.

Conclusion

- 6.22 This option delivers comprehensive improvements in fairness, clarity, and functionality. The benefits significantly outweigh the costs, making it the preferred and recommended approach.

Overall Recommendation

- 6.23 **Option 3** – to revoke and remake the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010 is recommended. This approach offers a legally robust, fair, and operationally effective solution to the issues identified in the current framework. It aligns with modern legislative standards and stakeholder expectations and supports improved outcomes for all parties involved

7. Competition Assessment

- 7.1 A competition filter test has been undertaken for the proposed Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2026. The assessment indicates that the regulations are not expected to negatively impact competition. They apply consistently across all relevant providers and aim to improve fairness, legal clarity, and operational efficiency in the Independent Review Mechanism. The changes do not introduce barriers to entry, alter market dynamics, or disadvantage any particular provider. The sector remains publicly led and collaborative, with no evidence of market concentration or technological disruption.

8. Post implementation review

- 8.1 A post implementation review will be conducted to assess whether the remade regulations are delivering their intended outcomes. This will include monitoring application volumes, panel decisions, and adherence

to timelines, alongside stakeholder feedback and legal analysis. An initial review will take place within 24 months, followed by ongoing annual monitoring and a full review within 3–5 years. Findings will inform any necessary updates to ensure the regulations remain effective, fair, and aligned with policy objectives.