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WELSH STATUTORY INSTRUMENTS

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**2005 No. 1313**

**The Adoption Agencies (Wales) Regulations 2005**

**PART 4**

**DUTIES OF ADOPTION AGENCY IN  
RESPECT OF A PROSPECTIVE ADOPTER**

**Requirement to provide counselling and information**

**21.** Where the adoption agency is considering a person's suitability to adopt a child, the agency must —

- (a) provide a counselling service for the prospective adopter;
- (b) in a section 83 case, explain to the prospective adopter the procedure in relation to, and the legal implications of, adopting a child from the country from which the prospective adopter wishes to adopt;
- (c) in any other case explain to the prospective adopter the procedure in relation to, and the legal implications of, placement for adoption (including placement by consent under section 19 of the Act, consent to the making of a future adoption order under section 20 of the Act, restriction of parental responsibility and placement orders) and adoption; and
- (d) provide the prospective adopter with written information about the matters referred to in sub-paragraph (b) or, as the case may be, (c).

**Requirement to consider application for an assessment of suitability to adopt a child**

**22.—(1)** Where the adoption agency, following the procedures referred to in regulation 21, receives an application in writing from a prospective adopter for an assessment of their suitability to adopt a child, the agency must set up a case record in respect of that prospective adopter and consider that person's suitability to adopt a child.

(2) The adoption agency may ask the prospective adopter to provide any further information in writing the agency may reasonably require.

(3) Where paragraph (1) applies in relation to a couple, the assessment of their suitability to adopt a child will be considered jointly and the agency will set up a single case record.

**Requirement to carry out police checks**

**23.—(1)** The adoption agency must obtain —

- (a) in respect of the prospective adopter, an enhanced criminal record certificate within the meaning of section 115 of the Police Act 1997(1) including the matters specified in subsection (6A) of that section; and

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(1) 1997 c. 50. Section 115 was amended by section 328 of the Criminal Justice Act 2003, section 19 of the Health and Social Care Act 2001, sections 90, 103, 104 and 116 of the Care Standards Act 2000, section 152 of and Schedules 21 and 22 to the

- (b) in respect of any other member of the prospective adopter’s household aged 18 or over, an enhanced criminal record certificate under section 115 of that Act including the matters specified in subsection (6A) of that section.
- (2) The adoption agency must not consider a person suitable to adopt a child or, as the case may be, must consider a person no longer suitable to adopt a child, if the person or any member of the person’s household aged 18 or over —
- (a) has been convicted of a specified offence committed at the age of 18 or over; or
  - (b) has been cautioned by a constable in respect of any such offence which, at the time the caution was given, the person admitted.
- (3) In paragraph (2) “specified offence” means —
- (a) an offence against a child;
  - (b) an offence specified in Part 1 of Schedule 3;
  - (c) an offence contrary to section 170 of the Customs and Excise Management Act 1979<sup>(2)</sup> in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (prohibitions and restrictions relating to pornography)<sup>(3)</sup> where the prohibited goods included indecent photographs of children under the age of 16;
  - (d) any other offence involving bodily injury to a child, other than an offence of common assault or battery,

and the expression “offence against a child” has the meaning given to it by section 26(1) of the Criminal Justice and Court Services Act 2000<sup>(4)</sup> except that it does not include an offence contrary to section 9 of the Sexual Offences Act 2003 (sexual activity with a child) in a case where the offender was under the age of 20 and the child was aged 13 or over at the time the offence was committed.

- (4) An adoption agency may not consider a person to be suitable to adopt a child or, as the case may be, must consider a person no longer suitable to adopt a child, if that person or any member of that person’s household aged 18 or over—
- (a) has been convicted of an offence specified in paragraph 1 of Part 2 of Schedule 3 committed at the age of 18 or over or has been cautioned by a constable in respect of any such offence which, at the time the caution was given, was admitted; or
  - (b) falls within paragraph 2 or 3 of Part 2 of Schedule 3,

notwithstanding that the statutory offences specified in Part 2 of Schedule 3 have been repealed.

### **Requirement to notify**

**24.** The adoption agency must notify the prospective adopter in writing as soon as possible after becoming aware that the person is not suitable, or as the case may be, is no longer suitable, to adopt a child by virtue of regulation 23 (2) to (4).

### **Requirement to provide preparation for adoption**

**25.—**(1) Where the adoption agency is considering whether a person may be suitable to adopt a child, the agency must make arrangements for the prospective adopter to receive such preparation for adoption as the agency considers appropriate.

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Education Act 2002, section 8 of the Protection of Children Act 1999, section 135 of the Act, section 2 and Schedule 2 to the National Health Service Reform and Health Care Professions Act 2002 and section 115 of the Licensing Act 2003.

(2) 1979 c. 2.

(3) 1876 c. 36.

(4) 2000 c. 43. Schedule 4 to the 2000 Act was amended by the Sexual Offences Act 2003 c. 42.

(2) Paragraph (1) does not apply if the adoption agency is satisfied that the requirements set out in that paragraph have been carried out in respect of the prospective adopter by another adoption agency.

(3) Where the prospective adopter is not prepared to undertake the preparation for adoption which the adoption agency considers appropriate in their case, the agency may refuse to proceed further with the prospective adopter's application for an assessment of their suitability to adopt.

(4) In paragraph (1) "preparation for adoption" includes the provision of information to the prospective adopter about —

- (a) the age range, gender and likely needs and background of children who may be placed for adoption by the adoption agency;
- (b) the significance and legal implications of adoption for a child and his family;
- (c) contact between a child and his natural parents and other relatives where a child is authorised to be placed for adoption or the child is adopted;
- (d) the skills needed to be an adoptive parent;
- (e) the perspective of the child and the child's family;
- (f) the adoption agency's procedures in relation to assessment of prospective adopters and placement of a child for adoption; and
- (g) the procedure in relation to placement for adoption and adoption.

#### **Procedure in respect of carrying out an assessment**

**26.—**(1) Where the adoption agency, after having followed the procedures referred to in regulations 23 and 25, considers the prospective adopter may be suitable to be an adoptive parent, it must carry out an assessment in accordance with this regulation.

(2) The adoption agency must obtain such particulars about the prospective adopter as are referred to in Part 1 of Schedule 4.

(3) The adoption agency must obtain —

- (a) a written report from a registered medical practitioner about the health of the prospective adopter which must deal with the matters specified in Part 2 of Schedule 4 unless such a report has been made within 6 months of the panel's consideration of the case under regulation 27 and is available to the agency;
- (b) a written report of each of the interviews with the persons nominated by the prospective adopter as personal referees; and
- (c) a written report from the local authority in whose area the prospective adopter lives, and where the prospective adopter has lived in that area for a period of less than twelve months the agency must obtain a written report also from the local authority in whose area the prospective adopter lived previously.

(4) The adoption agency must prepare a written report which must include —

- (a) the details of the prospective adopter as set out in Part 1 of Schedule 4;
- (b) a summary, written by the agency's medical adviser, of the state of health of the prospective adopter;
- (c) the agency's assessment of the prospective adopter's suitability to adopt a child, and in determining the suitability of a couple to adopt a child the agency must have proper regard to the need for stability and permanence in their relationship;
- (d) any relevant information the agency obtains under paragraph (3)(c);
- (e) any observations of the agency on the matters referred to in regulations 22, 23, and 25;

- (f) any other information which the agency considers relevant.
- (5) In a section 83 case the report must include —
- (a) the name of the country (“country of origin”) from which the prospective adopter wishes to adopt;
  - (b) confirmation that the prospective adopter meets the eligibility requirements to adopt from the country of origin;
  - (c) additional information obtained as a consequence of the requirements of the country of origin; and
  - (d) the agency’s assessment of the prospective adopter’s suitability to adopt a child who is habitually resident outside the British Islands.
- (6) The adoption agency must notify the prospective adopter their application is to be referred to the adoption panel and at the same time send the prospective adopter a copy of the agency’s report referred to in paragraph (4), and invite any observations on the report to be sent in writing to the agency within 10 working days, beginning with the date on which the notification was sent.
- (7) At the end of the period of 10 working days referred to in paragraph (6) (or earlier if any observations made by the prospective adopter are received before the 10 working days have expired) the adoption agency must send —
- (a) the report referred to in paragraph (4), together with any observations provided by the prospective adopter under paragraph (6);
  - (b) the written reports referred to in paragraph (3); and
  - (c) any other relevant information obtained by the agency under this regulation
- to the adoption panel.
- (8) The adoption agency must obtain, so far as is reasonably practicable, any other relevant information which may be required by the adoption panel and send that information to the panel.

### **Function of the adoption panel**

- 27.—**(1) Subject to paragraph (2), the adoption panel must consider the case of the prospective adopter referred to it by the adoption agency and make a recommendation to that agency as to whether the prospective adopter is suitable to adopt a child.
- (2) In considering what recommendation to make, the adoption panel —
- (a) must consider and take into account all information and reports passed to it in accordance with regulation 26;
  - (b) may request the adoption agency to obtain any other relevant information which the panel considers necessary; and
  - (c) must obtain legal advice as it considers necessary in relation to the case.
- (3) Where the adoption panel make a recommendation to the adoption agency that the prospective adopter is suitable to adopt a child, it may consider and at the same time give advice to the agency about the number of children the prospective adopter may be suitable to adopt, their age range, gender and characteristics (health and social).
- (4) Before making any recommendation, the adoption panel must invite the prospective adopters to attend the panel meeting.

### **Adoption agency decision and notification**

- 28.—**(1) The adoption agency must take into account the recommendation of the adoption panel in coming to a decision about whether the prospective adopter is suitable to adopt a child.

(2) No member of the adoption panel is to take part in any decision made by the adoption agency under paragraph (1).

(3) Where the adoption agency decides to approve the prospective adopter as suitable to adopt a child it must notify the prospective adopter in writing of its decision.

(4) Where the adoption agency considers that the prospective adopter is not suitable to adopt a child, it must —

- (a) notify the prospective adopter in writing that it proposes not to approve the prospective adopter as suitable to adopt a child (“qualifying determination”);
- (b) send with that notification its reasons together with a copy of the recommendation of the adoption panel, if different;
- (c) advise the prospective adopter that within 20 working days beginning with the date on which the notification was sent the prospective adopter may —
  - (i) submit any representations to the agency, or
  - (ii) apply to the independent review panel for a review of the qualifying determination.

(5) If, within the period of 20 working days referred to in paragraph (4), the prospective adopter has not made any representations or applied to the independent review panel, the adoption agency must proceed to make its decision and must notify the prospective adopter in writing of its decision together with the reasons for that decision.

(6) If, within the period of 20 working days referred to in paragraph (4), the adoption agency receive further representations from the prospective adopter, it may refer the case together with all the relevant information back to their adoption panel for further consideration.

(7) The adoption panel must consider any case referred to it under paragraph (6) and make a fresh recommendation to the adoption agency as to whether the prospective adopter is suitable to adopt a child.

(8) The adoption agency must make a decision on the case but if the case has been referred to the adoption panel under paragraph (6) or the prospective adopter has applied to the independent review panel for a review of the qualifying determination it must make the decision only after taking into account any recommendation of the adoption panel made under paragraph (7) and regulation 27 or, as the case may be, of the independent review panel.

(9) As soon as possible after making its decision under paragraph (8), the adoption agency must notify the prospective adopter in writing of its decision, stating its reasons for that decision if it does not consider the prospective adopter to be suitable to adopt a child, and of the adoption panel’s recommendation under paragraph (7), if this is different from the adoption agency’s decision.

### **Information to be sent to the independent review panel**

**29.—**(1) Where the adoption agency receives notification from the independent review panel that a prospective adopter has applied for a review of the qualifying determination, the agency must, within 10 working days of receipt of that notification, send to the independent review panel the information specified in paragraph (2)(5).

(2) The following information is specified for the purposes of paragraph (1) —

- (a) all the reports and information which were sent to the adoption panel in accordance with regulation 26;
- (b) any written representations made by the prospective adopter in accordance with regulation 26(6);

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(5) The operation and procedure of the independent review panel is to be prescribed in further regulations made under section 9 of the Act.

- (c) any other reports or information sent by the adoption agency to the adoption panel;
- (d) the record of the proceedings of the adoption panel, its recommendations and the reasons for its recommendations;
- (e) the notification, together with reasons sent by the adoption agency to the prospective adopter in accordance with 28(4)(a) and (b).

### **Reviews and termination of approval**

**30.**—(1) The adoption agency must review the approval of each prospective adopter in accordance with this regulation, unless—

- (a) in a section 83 case, the prospective adopter has visited the child in the country in which the child is habitually resident and has confirmed in writing that he wishes to proceed with the adoption; and
- (b) in any other case, the child is placed for adoption with the prospective adopter.

(2) A review must take place whenever the adoption agency considers it necessary but otherwise not more than two years after approval and thereafter at intervals of not more than two years.

(3) When undertaking such a review the adoption agency must —

- (a) make such enquiries and obtain such information as it considers necessary in order to review whether the prospective adopter continues to be suitable to adopt a child; and
- (b) seek and take account of the views of the prospective adopter.

(4) As a part of each review the adoption agency must consider —

- (a) why no child has yet been placed with the prospective adopter;
- (b) any arrangements for the provision of adoption support services and whether they should continue or be modified;
- (c) where a child is returned to the adoption agency in accordance with section 35(1) or (2) of the Act, the reasons for the child’s return; and
- (d) whether the prospective adopter is still suitable to adopt a child.

(5) The adoption agency must —

- (a) set out in writing the arrangements governing the manner in which the review of a prospective adopter is to be carried out and must draw the written arrangements to the attention of —
  - (i) the prospective adopter; and
  - (ii) any other person the agency considers relevant.
- (b) ensure that —
  - (i) the information obtained in respect of the prospective adopter;
  - (ii) details of the proceedings at any meeting arranged by the agency to consider any aspect of the review; and
  - (iii) details of any decision made in the course of or as a result of the review, are recorded in writing and placed on the prospective adopter’s case record.

(6) If at the conclusion of the review, the adoption agency considers the prospective adopter may no longer be suitable to be an adoptive parent, it must prepare a written report which must include —

- (a) the information obtained on the matters referred to in paragraphs (3) and (4);
- (b) the agency’s reasons; and
- (c) any other information which the agency considers relevant.

(7) The adoption agency must notify the prospective adopter that the report referred to in paragraph (6) is to be referred to the adoption panel and give the prospective adopter a copy of that report and invite any observations on the report to be sent in writing to the agency within 10 working days, beginning with the date on which the notification was sent.

(8) At the end of the period of 10 working days referred to in paragraph (7) (or earlier if the prospective adopter's comments are received before the 10 working days have expired), the adoption agency must send a copy of the report referred to in paragraph (6) together with the prospective adopter's observations and the report prepared for panel under regulation 26(4).

(9) The adoption agency must obtain, so far as is reasonably practicable, any other relevant information which may be required by the adoption panel and send that information to the adoption panel.

(10) The adoption panel must consider the report and any other information passed to it by the adoption agency under this regulation and make a recommendation to the agency as to whether the prospective adopter continues to be suitable to adopt a child.

(11) Regulation 28 will apply in relation to the decision by the adoption agency about whether a prospective adopter continues to be suitable to adopt a child as it applies in relation to the decision by the agency about whether the prospective adopter is suitable to adopt a child.

### **Duties of the adoption agency in a section 83 case following approval of prospective adopter**

**31.** Where the adoption agency decides in a section 83 case to approve a prospective adopter as suitable to adopt a child, the agency must send to the National Assembly —

- (a) written confirmation of the decision and any recommendation the agency may make in relation to the number of children the prospective adopter may be suitable to adopt, their age range, gender, likely needs and background;
- (b) all of the documents and information which were passed to the adoption panel in accordance with regulation 26;
- (c) the record of the proceedings of the adoption panel, its recommendations and the reasons for its recommendations;
- (d) if the prospective adopter had applied for a review by an independent panel of a qualifying determination, the record of the proceedings of that panel, its recommendations and the reasons for its recommendations; and
- (e) any other information relating to the case which the National Assembly or the relevant foreign authority may require.