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WELSH STATUTORY INSTRUMENTS

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**2005 No. 1819 (W.147)**

**SOCIAL CARE, WALES  
CHILDREN AND YOUNG PERSONS, WALES**

The Independent Review of Determinations  
(Adoption) (Wales) Regulations 2005

*Made* - - - - 5 July 2005

*Coming into force* - - 30 December 2005

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 9(1), (2) and (4) and 12(1) to (3) of the Adoption and Children Act 2002<sup>(1)</sup>, having consulted such persons as it considers appropriate, hereby makes the following regulations:—

**PART 1**

GENERAL

**Title, commencement and application**

1.—(1) The title of these Regulations is the Independent Review of Determinations (Adoption) (Wales) Regulations 2005 and come into force on 30 December 2005.

(2) These Regulations apply in relation to Wales.

(3) These Regulations will apply to cases where the prospective adopter's suitability to be an adoptive parent is considered by an adoption panel for the first time or is being reviewed by an adoption panel on or after 1 April 2006 only.

**Interpretation**

2.—(1) In these Regulations —

“the Act” (“*y Ddeddf*”) means the Adoption and Children Act 2002;

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(1) Minister, who is defined in section 144 of the Act in relation to England, as the Secretary of State, in relation to Wales as the National Assembly for Wales and in relation to England and Wales, as the Secretary of State and the National Assembly for Wales acting jointly.

“the 2005 Regulations” (“*Rheoliadau 2005*”) means the Adoption Agencies (Wales) Regulations 2005<sup>(2)</sup>;

“adoption agency” (“*asiantaeth fabwysiadu*”) means an appropriate voluntary organisation or local authority;

“adoption panel” (“*panel mabwysiadu*”) means a panel established in accordance with regulation 3 of the 2005 Regulations;

“National Assembly” (“*Cynulliad Cenedlaethol*”) means the National Assembly for Wales;

“prospective adopter” (“*darpar fabwysiadwr*”) means a person who proposes to adopt a child;

“working day” (“*diwrnod gwaith*”) means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971<sup>(3)</sup>.

- (2) In these Regulations, unless the context requires otherwise, a reference —
- (a) to a numbered regulation is to the regulation in these Regulations bearing that number;
  - (b) in a regulation to a numbered paragraph is to the paragraph in that regulation bearing that number;
  - (c) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.

### Qualifying determinations

3. For the purposes of section 12(2) of the Act, a qualifying determination is a determination that has been made by an adoption agency in accordance with the 2005 Regulations as follows:

- (a) where under regulation 28(4) of the 2005 Regulations the agency do not propose to approve a prospective adopter as suitable to be an adoptive parent;
- (b) where the agency consider that a prospective adopter is no longer suitable to be an adoptive parent following a review under regulation 30 of the 2005 Regulations.

## PART 2

### PANELS

#### Constitution and functions of panels

4.—(1) The National Assembly must, at the request of a prospective adopter, constitute a panel for the purpose of reviewing a qualifying determination in relation to the prospective adopter.

(2) The members of the panel must be drawn from a list of persons appointed and serving as members of adoption agency panels in Wales (in these Regulations referred to as “the central list”), kept by the National Assembly who are considered by the National Assembly to be suitable, by virtue of their skills, qualifications or experience to be members of a panel.

- (3) A panel established under paragraph (1) must —
- (a) review the qualifying determination; and
  - (b) make a recommendation to the adoption agency which made the qualifying determination as to whether or not a prospective adopter is suitable to be an adoptive parent.

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(2) [S.I 2005/1313 \(W.95\)](#).

(3) [1971 c. 80](#).

### **Membership of panels**

5.—(1) Subject to paragraphs (2) and (3), the National Assembly must appoint no more than five persons as members of the panel, who must (where reasonably practicable) include:

- (a) an adoptive parent; and
- (b) an adopted person who has attained the age of 18 years.

(2) The panel must be advised by:

- (a) a social worker within the meaning of Part IV of the Care Standards Act 2000<sup>(4)</sup> and has at least 5 years post qualifying experience in adoption and family placement work;
- (b) a registered medical practitioner with expertise in adoption work; and
- (c) where the panel considers it appropriate, a legal advisor with knowledge and expertise in adoption legislation.

(3) No person will be appointed, either as a member or an advisor, to a panel which is convened to review a qualifying determination made by an adoption agency by which he or she was employed at any time in the two years before the date on which the case is referred to the panel.

(4) In this regulation reference to having been employed includes being employed by an adoption agency whether or not for payment and whether under a contract of services or a contract for services or as a volunteer.

### **Chair and vice chair**

6. When constituting a panel in accordance with regulation 4, the National Assembly will appoint:

- (a) to chair the panel a person who has —
  - (i) expertise in adoption work; and
  - (ii) the skills and experience necessary for chairing a panel; and
- (b) one of the members of the panel as vice chair to act as chair if the person appointed to chair the panel is absent or his or her office is vacant.

### **Administration of Panels**

7. The panel will be administered by the National Assembly, who will make suitable provision for clerking services to the panel.

### **Expenses of panel members**

8. The National Assembly may at its discretion pay to any member of a panel such fees as the National Assembly considers to be reasonable.

### **Meetings of panels**

9. A panel must not conduct any business unless at least four of its members including the chair or vice chair meet as a panel.

### **Records**

10. A panel must —

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(4) 2000 c. 14. By virtue of section 55(2)(a) and (4) of the Care Standards Act 2000, a social worker for the purposes of Part IV of that Act, is a person who engages in social work that is required in connection with any health, education or social services provided by any person.

- (a) keep a written record of its reviews of qualifying determinations, including the reasons for its recommendations; and
- (b) ensure that such records are kept in conditions of appropriate security.

## **PART 3**

### **PROCEDURE**

#### **Application by prospective adopter for review of qualifying determination**

**11.**—(1) A prospective adopter may within 20 working days beginning with the date on which a notification was sent by the adoption agency of the qualifying determination in relation to him or her, make a request to the National Assembly for a panel to be constituted to review that determination in accordance with regulation 4.

- (2) A request under paragraph (1) must —
  - (a) be in writing; and
  - (b) state the reason for the request.

#### **Acknowledgement of application**

**12.** The National Assembly must acknowledge in writing within 5 working days, receipt of any request made in accordance with regulation 11.

#### **Appointment of panel and notification of review**

**13.**—(1) The National Assembly must notify the adoption agency within 5 working days of receipt of any request made in accordance with regulation 11.

(2) The National Assembly must, within 25 working days of receipt of a request which has been made in accordance with regulation 11 appoint a panel and set a date for the panel to meet and review that qualifying determination.

(3) The date fixed for the review will be no later than 3 months after the date that the determination is referred.

(4) The National Assembly must inform the adoption agency and the prospective adopter of the date, time and place for the review no less than 5 working days before the date fixed for the review.

(5) The National Assembly will ensure that the panel receive all relevant papers relating to the review no less than 5 working days before the date fixed for the review.

#### **Recommendation of panel**

**14.**—(1) The panel's recommendation must be that of the majority.

(2) The recommendation may be made and announced at the end of the review or reserved.

(3) The recommendation and the reasons for it must be recorded without delay in a document signed and dated by the chair.

(4) The recommendation must be treated as having been made on the date on which the chair signed the document referred to in paragraph (3).

(5) The National Assembly must without delay and in any event no later than 10 working days after the date on which the recommendation is made send a copy of the recommendation to —

- (a) the adoption agency which made the qualifying determination; and

(b) the prospective adopter.

**Order for payment of costs**

**15.** The panel may make an order for the payment by the adoption agency by which the qualifying determination reviewed was made of such costs as the adoption panel considers reasonable.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(5)

5 July 2005

*D. Elis-Thomas*  
The Presiding Officer of the National Assembly

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These regulations establish independent review panels whose function is to review the following determinations made by adoption agency panels: a) a decision not to approve applicants as suitable to become adoptive parents of children in relation to domestic adoption and b) a decision that a prospective adopter is no longer suitable to be an adoptive parent.

The review panel cannot overturn a determination of an adoption agency. It can review the information before the adoption agency panel and request further information. It can then make a recommendation to the adoption agency panel as to the suitability of the prospective adopters. The adoption agency must take into account the review panel's recommendation when making its final decision as to the prospective adopters' suitability.