

EXPLANATORY MEMORANDUM TO
THE RESTRICTION ON THE PREPARATION OF ADOPTION REPORTS
REGULATIONS 2005

2005 No.

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 Read with section 94 of the Adoption and Children Act 2002 (the 2002 Act), these Regulations provide restrictions on who may prepare reports about the suitability of a person to adopt a child or of a child for adoption, about placement for adoption of a child or about the adoption of a child. The Regulations set out the skills and experience required before someone will be permitted to prepare these reports, which form an essential part of the adoption decision-making process. These Regulations apply to reports prepared both in domestic and intercountry adoption.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 These Regulations will be made under the powers conferred by section 94(1) of the 2002 Act. Section 140(3)(b) of the 2002 Act provides that regulations made under section 94 are subject to approval under the affirmative resolution procedure.

4. **Legislative Background**

4.1 The 2002 Act modernises entirely the existing legal framework for domestic and intercountry adoption. This statutory instrument is one of a series of statutory instruments to be laid to implement the core provisions of the 2002 Act. The legislative and policy background for the core provisions of the 2002 Act are set out in the overarching explanatory memorandum on the implementation of the 2002 Act that was laid before Parliament on 2 March 2005. A copy of this memorandum is attached.

4.2 Section 94 of the 2002 Act provides that a person who is not within a prescribed description may not, in any prescribed circumstances, prepare a report for any person about the suitability of a child for adoption, or of a person to adopt a child or about the adoption, or placement for adoption of a child. The Restriction on the Preparation of Adoption Reports Regulations

2005 specify the prescribed description of persons and prescribed circumstances. This is the first use of this power.

4.3 Regulation 3 sets out the prescribed description of a person for the purposes of section 94(1) of the 2002 Act. Such a person will be able to prepare adoption reports in prescribed circumstances. A person is within the prescribed description if he is a registered social worker employed by or acting on behalf of an adoption agency or a social work student employed by or placed with an adoption agency, who satisfies the appropriate conditions in paragraph (2) of regulation 3. Those conditions relate to the relevant experience of the person in question and the person who supervises him or her.

4.4 Regulation 4 states that the prescribed circumstances for the purposes of section 94(1) of the 2002 Act are the preparation of:

- the report on a child where an adoption agency is considering adoption for him (regulation 4(a))
- the report on the suitability of a prospective adopter to adopt a child (regulation 4(b))
- the report where an agency is considering placing a child for adoption with a particular prospective adopter (regulation 4(c))
- the report of a visit to a child after he has been placed for adoption (regulation 4(d))
- in intercountry adoption cases, the reports which review a child's case (regulation 4(e) and (f))
- the report which may be prepared at the request of a foreign government in intercountry adoption cases, once a child has begun to reside with prospective adopters in this country or after a full adoption order has been made (regulation 4(g) and (h))
- the reports prepared for the Court considering an adoption application (regulation 4(i))
- the report prepared for the Court considering giving parental responsibility prior to adoption abroad (regulation 4(j))

4.5 The Restriction on the Preparation of Adoption Reports Regulations 2005 relate to and refer to the following Regulations: the Adoption Agencies Regulations 2005, any corresponding provision made by the National Assembly for Wales, and the Adoptions with a Foreign Element Regulations 2005.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

Lord Filkin, Parliamentary Under-Secretary of State, Department for Education and Skills, has made the following statement regarding Human Rights:

In my view the provisions of the Restriction on the Preparation of Adoption Reports Regulations 2005 are compatible with the Convention rights.

7. Policy background

7.1 The preparation of reports is an important part of the adoption process since the detailed information collected provides a vital source of evidence on which key decisions are based – decisions which have a life-changing impact on vulnerable children and adoptive parents. Without accurate reports, prepared by those with the right expertise, experience and qualifications, inappropriate plans might be made for children.

7.2 The Department has undertaken extensive consultation with adoption agencies and other stakeholders on these Regulations. A consultation document on the draft Regulations and Guidance on Adoption Reports and Adoptions with Foreign Element was published in January 2004 and the consultation closed on 30 April. The Welsh Assembly Government sought views from stakeholders in Wales. A clear majority of respondents in both England and Wales thought that the proposed restrictions on the preparation of adoption reports were about right. For further details please refer to the analysis of consultation responses in the attached Regulatory Impact Assessment.

8. Impact

8.1 A Regulatory Impact Assessment (RIA) is attached to this memorandum. The RIA also explains the impact on the public sector.

9. Contact

Claire Allan at the Department for Education and Skills tel: 020 7273 5692 or e-mail: claire.allan@dfes.gsi.gov.uk can answer any queries regarding the instrument.

EXPLANATORY MEMORANDUM ON THE IMPLEMENTATION OF THE ADOPTION AND CHILDREN ACT 2002

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is submitted voluntarily.

Description

2. This is an overarching explanatory memorandum which explains the context of the Adoption and Children Act 2002¹ (“the 2002 Act”), and relates to a series of Statutory Instruments, as set out in paragraphs 14 and 15, which are intended to be made and laid during 2005 to implement the 2002 Act.

Matters of special interest to the Joint Committee on Statutory Instruments

3. Three of these Statutory Instruments will be subject to the affirmative resolution procedure. These are The Restriction on the Preparation of Adoption Reports Regulations 2005, The Suitability of Adopters Regulations 2005 and an Order to be made under section 142 of the 2002 Act to amend the statutory adoption pay provisions as a consequence of unmarried couples being able to apply to adopt jointly.

Legislative background

4. Following a review of adoption law carried out by the Department of Health between 1991 and 1993, a draft Adoption Bill was published in 1996. The Bill was generally well received, but was never introduced into Parliament. In February 2000, the Prime Minister announced that he would lead a thorough review of adoption policy. He commissioned the Performance and Innovation Unit (PIU) to carry out a review of adoption and make recommendations to the Government for future action. The PIU review reported in July 2000 and made a number of recommendations to Government, including several related to changes in adoption legislation.
5. In December 2000, the Department of Health published a White Paper *Adoption: a new approach*, which took on board many of the PIU recommendations. The Government made a commitment to legislate in 2001 to ‘overhaul and modernise the legal framework for adoption.’²

¹ 2002 c.38.

² *Adoption: a new approach*, White Paper, December 2000, p.25.

6. The Adoption and Children Bill was subsequently introduced in 2001, and received Royal Assent in November 2002. The 2002 Act:
- aligns adoption law with the relevant provisions of the Children Act 1989³ to ensure that the child's welfare is the paramount consideration in all decisions relating to adoption;
 - places a duty on local authorities to maintain an adoption service, including arrangements for the provision of adoption support services;
 - provides a new right to an assessment of needs for adoption support services for adoptive families and others;
 - sets out a new regulatory structure for adoption support agencies (requiring them to be registered under the Care Standards Act 2000⁴);
 - enables the appropriate Minister to establish an independent review mechanism in relation to qualifying determinations made by an adoption agency;
 - makes provision for the process of adoption including new measures for placement for adoption with consent and placement orders;
 - provides for adoption orders to be made in favour of single people, married couples and, for the first time, unmarried couples (amended by the Civil Partnership Act);⁵
 - provides for a new framework designed to ensure a more consistent approach by adoption agencies in respect of access to information held about adoptions which take place after the 2002 Act comes into force;
 - provides for a new regulatory framework within which intermediary agencies (registered adoption support agencies or adoption agencies) will be able to assist adopted adults to obtain information about their adoption and facilitate contact between them and their adult birth relatives, where the person was adopted before the 2002 Act came into force;
 - provides additional restrictions on bringing a child into the UK in connection with adoption;
 - provides for restrictions on arranging adoptions and advertising children for adoption other than through adoption agencies;
 - makes provision enabling the Secretary of State to establish a statutory Adoption and Children Act Register to suggest matches between children waiting to be adopted and approve prospective adopters; and
 - amends the Children Act 1989 to introduce a new special guardianship order, intended to provide permanence for children for whom adoption is not appropriate.

³ 1989 c.41.

⁴ 2000 c.14.

⁵ The definition of couple in section 144(4) of the 2002 Act has been amended by the Civil Partnership Act 2004 (2004 c.33) to include a civil partnership.

7. The 2002 Act provides the framework for the new approach to adoption, which is to be complemented by secondary legislation.

Early implementation

8. In accordance with commitments made by Ministers during the passage of the 2002 Act through Parliament, the 2002 Act included provisions to amend the existing Adoption Act 1976⁶ to enable important elements of the new adoption framework to be implemented in advance of the full implementation of the 2002 Act (see Schedule 4 of the 2002 Act).
9. In June 2003 the Intercountry Adoption (Hague Convention) Regulations 2003⁷ and Adoption (Bringing Children into the United Kingdom) Regulations 2003⁸ came into force. These Regulations put in place the necessary provisions to give effect to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption concluded at the Hague on the 29 May 1993 (“the Hague Convention”) and provide an increased level of protection to children coming into the UK from other countries.
10. The first phase of the adoption support services framework was implemented on 30 October 2003 when the Adoption Support Services (Local Authorities) (England) Regulations 2003⁹ came into force. These Regulations give adoptive families an entitlement to receive an assessment of their adoption support needs and give birth relatives an entitlement to receive an assessment in relation to support for contact arrangements. They also require local authorities to make arrangements for the provision of a range of adoption support services, including financial support, and to appoint an adoption support services adviser to act as a first port of call for enquiries and signpost families to services.
11. The independent review mechanism in respect of qualifying determinations made by adoption agencies, where they consider that a prospective adopter is not suitable to be an adoptive parent and does not propose to approve him as suitable to be an adoptive parent was introduced in April 2004 when the Independent Review of Determinations (Adoption) Regulations 2004¹⁰ came into force.

⁶ 1976 c.36.

⁷ SI 2003/118.

⁸ SI 2003/1173.

⁹ SI 2003/1348.

¹⁰ SI 2004/190 as corrected, and as amended by SI 2004/1081 and 2004/1868.

12. As the early implementation relates to the current Adoption Act 1976 scheme for adoption, similar provision in secondary legislation needs to be made in the context of the 2002 Act scheme for adoption in respect of those elements of the Act which have been implemented early.
13. The annex summarises the position regarding implementation of amendments to the Children Act 1989 made by the 2002 Act which relate to areas other than adoption and special guardianship.

Implementation

14. The statutory instruments necessary to implement the 2002 Act are to be made in two main stages. The first series of statutory instruments will be as follows, and each will be accompanied by an individual explanatory memorandum setting out the detail of the SI, and a regulatory impact assessment:
 - **The Adoption Agencies Regulations 2005** will provide for the duties agencies will have in relation to arranging adoptions under the 2002 Act, including agency arrangements for adoption work, considering whether a child should be placed for adoption, approval of prospective adopters and whether a particular child should be placed with prospective adopters.
 - **The Adoptions with a Foreign Element Regulations 2005** will provide additional requirements for, and set out additional procedures in relation to, the adoption of children from abroad by British residents and the adoption of children in England and Wales by persons resident abroad. This includes adoptions falling within the scope of the Hague Convention and non-Convention adoptions.
 - **The Suitability of Adopters Regulations 2005 (affirmative)** will prescribe the matters which must be taken into account by an adoption agency in preparing reports on and determining the suitability of a person wishing to adopt a child.
 - **The Restriction on the Preparation of Adoption Reports Regulations 2005 (affirmative)** will specify who may prepare reports in specified circumstances in connection with adoption.
 - **The Adoption Support Services Regulations 2005** will build on the framework established through the 2003 Regulations, widening the pool of people entitled to an assessment of their need for adoption support services and extending the list of adoption support services that local authorities are required to maintain to explicitly include services to assist with disruption. The 2005 Regulations also further refine the process for assessment of need and for the planning and review of service provision as well as further clarifying the role of the adoption support services adviser.
 - **The Adoption Support Agencies Regulations 2005** together with accompanying national minimum standards issued under section 23 of the Care Standards Act 2000 will govern the management and

general operation of adoption support agencies, including making provision for their registration.

- **The Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005** will apply to adoptions made after the 2002 Act came into force and will provide adoption agencies with a framework within which they are required to consider certain issues, such as the adopted person's welfare, before making a determination as to whether to disclose sensitive identifying information which would identify persons affected by an adoption.
- **The Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005** will enable registered adoption support agencies and adoption agencies to operate a regulated intermediary service so that adults adopted before the 2002 Act comes into force can obtain information about their adoption and contact between adopted adults and their adult birth relatives can be facilitated where appropriate.
- **The Adopted Children and Adoption Contact Registers Regulations 2005** will prescribe the form of entry in the Adopted Children Register, requirements etc. in relation to registrable foreign adoptions, information for the purposes of the Adoption Contact Register and for obtaining information from the registers and information about adopted persons and their relatives for the purposes of the Adoption Contact Register.
- **The Special Guardianship Regulations 2005** will prescribe the list of special guardianship support services which local authorities are required to maintain, the process for assessing special guardianship support needs, and requirements in respect of the planning, delivery and review of special guardianship support services. The Regulations will also prescribe the matters that local authorities are required to include in the report that the court must receive before it can make a special guardianship order.

15. The second series of statutory instruments will be as follows:

- **The Independent Review of Determinations (Adoption) Regulations 2005** will provide for the continued operation of an independent review mechanism in respect of qualifying determinations made by adoption agencies under the new scheme for adoption.
- **Adoption Agencies (Prescribed Fees) (England) Regulations 2005** will provide that fees may be charged by adoption agencies for their services in certain circumstances, for example, fees local authorities may charge for the preparation and assessment of prospective adopters who wish to adopt a child who is not resident in this country.
- Regulations made under section 108 of the 2002 Act regarding corresponding provisions in the Channel Islands and the Isle of Man. This will allow us to make the new adoption system work with the adoption system in the Channel Islands and the Isle of

Man, for example in terms of mutual recognition of orders.

- Regulations made under section 87 of the 2002 Act prescribing the requirements that ought to be met by an adoption for it to be an “overseas adoption”. An overseas adoption is an adoption of a description specified in an order (to be made under section 87), being a description of an adoption effected under the law of any country or territory outside the British Islands. The status of children adopted under an overseas adoption is recognised by virtue of section 66 of the 2002 Act.
- **Non-Agency Adoptions Regulations 2005** will prescribe the local authority responsible for assessing the suitability of prospective adopters and providing a report to the court where the child is already living with the applicants and they give notice of their intention to apply for an adoption order, such as foster carers or relatives of the child and require the local authority to carry out CRB checks in respect of the applicants.
- Regulations making provision for any necessary consequential and transitional provisions.
- Regulations under section 2(2) of the European Communities Act 1972 to ensure the 2002 Act is consistent with Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services.
- An order (affirmative) made under section 142 of the 2002 Act will amend the statutory adoption pay provisions as a consequence of unmarried couples being able to apply to adopt jointly.

16. The intention is that all of the SIs set out in paragraphs 14 and 15 above will come into force on 30 December 2005.
17. As noted above, the White Paper recommended the establishment of a statutory adoption register – the Adoption and Children Act Register – for which provision was made in the 2002 Act. This provision is not being implemented at present. Ministers have decided to continue with a non-statutory register for the next three years. This will give a stronger evidence base on which to assess the effectiveness of a non-statutory register and the desirability of moving to a statutory register.

Extent

18. Regulations will apply either in England only or in England and Wales. Each individual explanatory memorandum will set out the application of each statutory instrument.

Policy background

19. The total number of adoption orders made in England has declined from 5,657 in the year ending 31 December 2001, to 4,479 in 2003. At the same time, the number of adoptions in respect of looked after children in England has increased from 3,400 in the year ending 31 March 2002, to 3,700 in 2004. The number of applications to adopt a

child from overseas processed by the DfES has remained relatively steady at around 300 each year (330 in year ending 31 December 2004).

20. The PIU review of adoption in 2000 and the White Paper *Adoption: a new approach* identified some key problems which meant the needs of looked after children were not consistently being met, including:
- wide variation by councils in the use and practice of adoption;
 - to the detriment of children, the adoption process was widely seen as prone to delay, with clear concerns over the consistency, quality and clarity of the process;
 - a lack of consistency in the law;
 - the review mechanism for those applying to adopt was seen as unfair and not impartial;
 - little support was available for adopters; and
 - delays in the court processes over adoption.
21. Implementation of the 2002 Act will fulfil the Government's intention to reform adoption law and implement the proposals in the 2000 White Paper which require legislation. The overriding aim of improving the adoption service and promoting greater use of adoption will be furthered by the implementation of the SIs.

Public Consultation

22. There has been extensive public consultation upon the adoption procedures set out in the regulations. The explanatory memorandum to accompany each statutory instrument will give further details of the public consultations.
23. Five consultation packages on draft regulations and draft guidance to be made under the 2002 Act were published in 2003 and 2004. A further consultation document will be issued in early 2005 to cover the key draft SIs in the second series set out in paragraph 15 above which introduce the final changes. The numbers of respondents for each package are listed below. The overall number of written responses was 422.
- Arranging Adoptions and Assessing Prospective Adopters – (115 responses)
 - Adoption Reports and Adoptions with a Foreign Element – (50 responses)
 - Access to Information (including the Registrar General's functions) – (124 responses)
 - Adoption Support and Adoption Support Agencies (75 responses)
 - Care Planning and Special Guardianship (58 responses)
24. The responses to these documents together with the information gathered at 14 regional consultation events and 15 focus groups and

numerous other meetings held earlier in the year have informed the development of the Regulations and implementation arrangements. The explanatory memorandum in relation to the individual SIs will provide more detail.

Impact

25. Each Statutory Instrument will have a regulatory impact assessment attached.

Contact

26. Helen Steele, Head of Adoption, 4th Floor, Caxton House, Tothill Street, London, SW1H 9NA.

Annex: Implementation of amendments to the Children Act 1989 that are not adoption or special guardianship related

The Government has already implemented the following key provisions of the Adoption and Children Act 2002:

- On Royal Assent (7 November 2002): provision in respect of local authorities' power to provide accommodation for children in need under section 17 of the Children Act 1989.
- 1 December 2003: parental responsibility for unmarried fathers who jointly register the birth of their child with the mother.
- 1 April 2004: advocacy services for children and young people. Amendment and widening of the application of, the procedure for making representations under that Act and to impose a duty on local authorities to make arrangements for the provision of advocacy services to children or young people making or intending to make representations.
- 27 September 2004: Independent Reviewing Officers, responsible for chairing statutory reviews of all looked after children.
- 31 January 2005: Amendment to the definition of 'harm' in the 1989 Act to make clear that harm includes any impairment of the child's health or development as a result of witnessing the ill treatment of another person.

The remaining provisions will be implemented as follows:

- 30 December 2005: Amendment enabling the acquisition of parental responsibility by a step-parent either by agreement of both parents or a court order.
- 30 December 2005: Amendment enabling local authority foster carers to seek leave of the court to apply for an order under section 8 of the 1989 Act (including a residence order) if the child has been living with them for one year, rather than the current three years.
- 30 December 2005: Amendment enabling courts to make residence orders that have effect until the child reaches the age of 18.
- DfES have consulted on the draft Regulations required to implement the provisions in respect of inquiries by local authorities into representations. Ministers are considering the timetable for implementation in the light of the responses to that consultation.

FULL REGULATORY IMPACT ASSESSMENT (RIA) FOR THE RESTRICTION ON THE PREPARATION OF ADOPTION REPORTS REGULATIONS 2005

TITLE OF PROPOSAL

The Restriction on the Preparation of Adoption Reports Regulations 2005.

PURPOSE AND INTENDED EFFECT OF MEASURE

Objective

These Regulations are to be made under section 94 of the Adoption and Children Act 2002 (the 2002 Act). The purpose of the Regulations, when read with section 94(1) of the 2002 Act, is to provide restrictions on who may prepare prescribed adoption reports, including reports about the suitability of a person to adopt a child, or of a child for adoption. These reports form an essential part of the adoption decision making process and it is vital that they are impartial and accurate, and produced by suitably experienced and qualified staff. There is a need for tighter safeguards on who may prepare adoption reports and these Regulations will explicitly set out the skills and experience required before someone will be permitted to prepare them.

Background

The 2002 Act makes statutory provision in respect of a number of the new policies for adoption set out in the White Paper *Adoption: a new approach*, published in December 2000 (which itself followed on from the Review of Adoption commissioned by the Prime Minister in 2000).

Section 94 of the 2002 Act provides that a person who is not within a prescribed description may not, in any prescribed circumstances, prepare a report for any person about the suitability of a child for adoption, or of a person to adopt a child or about the adoption, or placement for adoption, of a child. The prescribed descriptions and circumstances are set out in the Restriction on the Preparation of Adoption Reports Regulations 2005 (the Regulations).

The adoption reports covered by the restrictions in the Regulations are:

- the assessment report on a child where an adoption agency is considering adoption for him
- the assessment report on the suitability of a prospective adopter to adopt a child
- the assessment report where an agency is considering placing a child for adoption with a particular prospective adopter
- the reports prepared for the Court considering an adoption application
- the report of a visit to a child after he has been placed for adoption
- in intercountry adoption cases, the reports which review a child's case
- the report which may be prepared at the request of a foreign government in intercountry adoption cases, once a child has begun to reside with prospective adopters in this country or after a full adoption order has been made
- the report prepared for the Court considering giving parental responsibility prior to adoption abroad.

There have been intercountry adoption cases of couples seeking to circumvent the safeguards by privately commissioning independent social workers to write, in some cases, inaccurate and unjustifiably favourable reports to support their adoption applications. In some instances this has resulted in unsuitable placements in which the children involved subsequently had to be removed. The Regulations and section 94 of the 2002 Act ensure that unqualified, unregulated individuals acting for financial gain will not be able to prepare prescribed adoption reports.

It will be an offence to prepare or ask a report to be prepared by someone who does not meet the description in the Regulations (section 94(2) of the 2002 Act). This will stop those who wish to circumnavigate the law and ensure that adoption reports offer an accurate reflection of the situation.

Risk assessment

The preparation of reports is an important part of the adoption process since the detailed information collected provides a vital source of evidence on which key decisions are made – decisions which have a life-changing impact on vulnerable children and adoptive parents. The key risk is that without accurate reports, prepared by those with the right expertise, experience and qualifications, children can be mismatched with adoptive parents or their progress in placement may not be accurately assessed. This can lead to trauma and distress for both, a lack of stability and permanence for the child, placements which disrupt and the return of children to local authority care. The restrictions provided by the Regulations will cover specified reports for all adoptions of children with the addition of pre and post adoption order reports in intercountry adoptions where required.

There have been several cases in recent years which have highlighted the need for tighter safeguards and clarification on who may prepare adoption reports.

The need to improve the quality of post placement and post adoption reports in intercountry adoption reports has also been stressed in recent years. These reports in intercountry adoption cases are often prepared by the adopters themselves. Several foreign adoption authorities have expressed concerns regarding the poor quality of reports prepared by adopters and have requested in the strongest possible terms that such reports are written only by professional adoption workers.

The consequences of poor and inaccurate reports forming the basis of important decisions in the adoption process can be disastrous for the children and families involved. Measures are needed to strengthen existing legislation and clarify who may prepare adoption reports.

OPTIONS

Option 1

Do nothing and rely on current arrangements. This is effectively not an option. The Adoption Act 1976 is an outdated piece of legislation which does not address the need for adoption reports to be prepared by experienced and suitably qualified professionals. The 2002 Act has already received Royal Assent, and now needs to be implemented through regulations and guidance if the Government's commitment to modernise the legal framework for adoption is to be delivered.

Option 2

Issue guidance under section 7 of the Local Authorities Social Services Act 1970 specifying the qualifications and experience needed to prepare adoption reports. The risk here is that guidance under section 7 is only binding on local authority adoption services. Although Voluntary Adoption Agencies (VAAs) would normally work to the same standards as local authorities as a matter of good practice, neither they, nor independent social workers would be required to comply with the guidance. This would not achieve the full policy objective, in particular with regard to independent social workers, some of whom have been involved in the cases which have caused the most concern. This option would therefore effectively create a two-tier system with reports being prepared to different standards by authors with variable qualifications and experience.

Option 3

Bring forward Regulations for England and Wales under the 2002 Act as drafted which restrict the preparation of reports to:

- (i) social workers employed by an adoption agency (either a local authority or a VAA) who either (a) have at least 3 years post-qualifying experience in child care social work, including direct experience of adoption work or (b) are supervised by an agency social worker with this experience;
- (ii) social workers acting on behalf of an adoption agency who have the experience stated at (i)(a) above and are supervised by a social worker who is employed by that agency and who has the experience stated at (i)(a);
- (iii) social work students who are undertaking an approved course of study and are employed by, or placed with, an adoption agency as part of that course and who are supervised by a social worker who is employed by that agency and who has the experience stated at (i)(a).

This will ensure that all adoption reports are prepared by suitably qualified and experienced staff.

COSTS AND BENEFITS

Business sectors affected

The Regulations will apply to 172 local authorities and 32 VAAs in England and Wales, and to independent social workers.

Benefits

Option 1

There may appear to be superficial benefits of this option to those adoptive parents who choose to privately engage an independent social worker who may prepare an unjustifiably favourable report on their behalf. There may also appear to be superficial benefits to adoption agencies, who would retain greater flexibility over which staff prepare reports. However, in the longer term it is neither in the interests of the child nor the adoptive parents for agencies and adoption panels to make their decisions based on reports which do not give a fair reflection of needs or parenting capacity.

Option 2

This option would ensure that local authority adoption services produced adoption reports prepared by suitably qualified staff. However, section 7 guidance would not be binding on VAAs and independent social workers and would not prevent individuals wishing to adopt from commissioning independent social workers to write biased reports.

Option 3

Regulations will ensure that prescribed adoption reports, whether prepared by local authority adoption services or VAAs, or independent social workers working on behalf of an adoption agency, have been produced by social workers with the prescribed qualifications and experience. The benefits of this option will be seen in an improvement of the quality of adoption reports, which will in turn improve the quality of decision-making in the adoption process, and reassure the relevant foreign authorities that adopted children would be appropriately safeguarded.

Quantifying and valuing the benefits

The benefits of protecting children who may be considered suitable for adoption and of ensuring that all those who wish to adopt are assessed by those with appropriate qualifications, experience and supervision will largely not manifest themselves in monetary terms. The value will be seen in ensuring only appropriate people prepare reports thus helping to ensure the safety and welfare of children who are adopted.

In the longer term, there are clearly benefits to ensuring that adoptions succeed and the preparation of good quality reports which accurately assess a situation play a vital role in this. Expenditure on supporting adoptive families is likely to be significantly less than care provision which would be necessary if an adoption disrupted. As yet we are not able to provide a figure for the overall saving but the cost will depend on the cost of adoption support services provided under the framework for adoption support services, and on the numbers and types of children who are adopted. Regulations for the framework of adoption support services came into effect in England from October 2003 and in Wales from 1 October 2004.

Costs

The potential costs of the Regulations are outlined broadly below. A lack of data on adoption service provision costs hampers serious attempts to forecast the financial implications of the 2002 Act and the new regulations. This should be partially alleviated by a new research project, the Adoption Research Initiative, which will fund research to measure the effect of the 2002 Act on outcomes for children and prospective adopters. Some of this research is expected to run for up to five years after the 2002 Act is implemented.

Option 1

None

Option 2

The costs of this option would be similar to those of option 3

Option 3

Compliance costs for business, charities and voluntary organisations

With Option 3, there is potential for increased costs to the VAAs that currently carry out adoption work as they will need to ensure that their report writers meet the necessary standards and are registered (and have paid the annual fee) with either the General Social Care Council in England or the Care Council for Wales.

If extra costs were to arise from the Regulations, VAAs would be able to recoup these costs from local authorities or adopters via the fees they charge them for their services.

The Regulations may reduce business for independent social workers, as the regulations specify that only suitably skilled, professionally qualified and professionally supervised persons working on behalf of local authorities or VAAs will be able to prepare and write reports. The paramount concern however must be safeguarding children through a high standard of reports with clear accountability. Independent social workers can still be contracted by adoption agencies, providing they have the required qualifications and registration and are professionally supervised by the agency that has commissioned the report.

Costs to Government

These Regulations may result in some additional costs to local authorities (which fund their own adoption services and also reimburse VAAs for work they have done in assessing and preparing adopters via the inter-agency fee, which could increase as a result of the Regulations). Local authorities will need to ensure that their report writers meet the necessary standards and are registered (and have paid the annual fee) with either the General Social Care Council in England or the Care Council for Wales. We would not expect these extra costs to be significant.

This also needs to be seen in the context of the increased government funding for adoption services.

Local authorities in England have received an overall 42.9% total increase in children's social services resources between 1996-97 and 2003-04. This includes £66.5m over the three years 2001-02 to 2003-04 delivered mainly through the Quality Protects grant to secure sustained improvements in adoption services, fund the White Paper implementation agenda and meet the costs of implementing the National Adoption Standards. This funding has been mainstreamed from 2004-05.

The Welsh Assembly Government injected an extra £48m into local authorities' social services funding in 2000, with the expectation that one third would be invested in Children's services. It has also provided a grant through its Children First programme (in excess of £100m since 1999) and within that provision was made for improvements in adoption services. In its budget announced in November 2004, the Assembly Government increased its services for children budget by £10m to £41m for 2005/06, to help meet the costs of implementing various new legislative requirements including the Adoption and Children Act 2002.

Costs to others

In the case of intercountry adoption, agencies have the discretion to charge the adopter for their services, and usually do so in practice. Therefore any rise in the cost of producing an adoption report for an intercountry adoption as a result of these Regulations is likely to be passed directly to the prospective adopter.

SMALL FIRMS' IMPACT TEST

There is no impact on small businesses. Vulnerable children and others involved in adoption need to be protected. Domestic and international laws seek to protect the rights of children and reduce the risk of child trafficking. The Adoption and Children Act 2002 replicates the Adoption Act 1976 in preventing any organisation making arrangements for adoption from making a profit. To be approved as a VAA, the organisation must be a not-for-profit incorporated body.

However, the Government has considered the impact on small VAAs. They will be in a position to recover any increase in costs that do occur, via the inter-agency fee.

COMPETITION ASSESSMENT

The restrictions provided by the Regulations will mean that only those working for or on behalf of local authority adoption services and VAAs will be able to prepare adoption reports. Any element of competition is therefore limited to these agencies. However in practice, reports are likely to be written by the adoption agency dealing with a particular case, for example, where a child is looked after by a local authority it will be that local authority who will prepare a report. In the case of intercountry adoptions where adopters have been requested by a foreign authority to submit a post adoption report, it is likely that adopters will either approach the adoption agency which assessed them as adopters, or the local authority area in which they live. Local authorities and VAAs may (and generally do) charge reasonable fees to cover their expenses in preparing post placement or post adoption reports, but they cannot make a profit from this work. In this case, it is likely therefore that competition between local authority adoption services and VAAs will be minimal.

ENFORCEMENT AND SANCTIONS

Local authorities and VAAs will be required to comply with these Regulations. The Commission for Social Care Inspection (CSCI) and the Assembly's Care Standards Inspectorate for Wales (CSIW) will inspect compliance with these Regulations.

Section 94 of the 2002 Act specifically provides a series of offences for failure to comply with section 94(1). Anyone who commits an offence under section 94 of the 2002 Act will be liable on summary conviction to imprisonment for a term not exceeding 6 months, or a fine not exceeding level 5 on the standard scale, or both. Section 95(1)(e) of the 2002 Act also provides an offence of making payments for or in consideration of preparing, causing to be prepared or submitting a report the preparation of which contravenes section 94(1), which would attract on summary conviction imprisonment for a term not exceeding 6 months, or a fine not exceeding £10,000, or both.

CONSULTATION

The Department for Education and Skills has consulted with other key Government interests including the National Assembly for Wales in its development of the Regulations.

The Regulations were issued for full public consultation in the document *Draft Regulations and guidance for consultation: Adoption Reports and Adoptions with a Foreign Element* on 31 January 2004. The consultation closed on 30 April 2004. 50 written responses were received to the consultation in England and 10 in Wales. The Department also held an event for key stakeholders to discuss the draft Adoption Reports Regulations. The Welsh Assembly Government sought views from stakeholders in Wales.

A clear majority of respondents who provided written responses in both England and Wales believed that the proposed restrictions on the preparation of adoption reports were about right.

In England, 76% (in Wales 100%) of respondents thought that the list of reports subject to restrictions was 'about right' rather than 'too short' or 'too extensive', with 73% (in Wales 70%) stating that the definition of who is allowed to prepare reports was 'about right'.

92% (100%) agreed with the requirement that only those registered as a social worker or training as a social worker should prepare adoption reports. 60% (70%) agreed with the requirement that anyone preparing an adoption report must have at least 3 years post-qualifying experience in adoption or be supervised by someone with this experience. Some highlighted the need for more experienced staff, and said that in some cases it would be difficult to fill all related posts with staff that had the relevant 3 years experience.

In relation to the partial RIA that was issued in the consultation document, 86% (100%) of the respondents thought that the assessment of the benefits of the Regulations was 'about right.' 50% (63%) of respondents agreed with the assessment made on the likely impact of the Regulations. A majority of respondents who commented believed that the Regulations would lead to a rise in costs for adoption agencies, but this was difficult to quantify.

We have carefully considered the consultation responses and taken them into account in finalising the Regulations. The overall response to the draft Regulations was very positive, and only a limited number of changes were made. These were mainly drafting changes to make the Regulations clearer and more precise.

MONITORING AND REVIEW

The impact of the Regulations will be monitored and reviewed as follows:

Ministers in England will receive information about local authorities' adoption services through a variety of routes, one of which is CSCI, who are responsible for the performance assessment framework, based on in-year and end-year monitoring, performance indicators and a range of inspection reports. CSCI are also responsible for the social services element of the Audit Commission's Comprehensive Performance Assessment of local authorities. Welsh Assembly Government Ministers will receive information on local authority performance from, for example, CSIW, Social Services Inspectorate Wales's (SSIW's) service inspections and performance evaluations and reports of Joint Reviews conducted by SSIW and the Audit Commission.

A new research project, the Adoption Research Initiative, will fund research to measure the effect of the 2002 Act on outcomes for children and prospective adopters. Some of this research is expected to run for up to five years after the Act is implemented.

SUMMARY AND RECOMMENDATION

The 2002 Act represents a radical overhaul of adoption law, replacing the outdated Adoption Act 1976 and modernising the legal framework for domestic and intercountry adoption. The Government has indicated its intention to bring forward regulations to implement the 2002 Act, of which the Restriction on the Preparation of Adoption Reports Regulations form part.

Our recommended approach is Option 3, to bring forward the Regulations as drafted. Regulations are needed to ensure that only those with suitable qualifications and experience produce adoption reports. Option 3 should lead to an improvement in the quality of reports, which will in turn improve the quality of decision-making in the adoption process. If these Regulations are not brought forward, there is a risk that inaccurate reports will lead to children being mismatched with adoptive parents. This can lead to trauma for both if placements disrupt and the child may then have to return to the looked after system.

MINISTERIAL DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Filkin

25 February 05

..... Date.....

CONTACT POINT

Claire Allan
Looked After Children Division
Department for Education and Skills
Caxton House
Tothill Street
London SW1H 9NA

Tel: 020 7273 5692
Email: claire.allan@dfes.gsi.gov.uk