

EXPLANATORY MEMORANDUM TO THE

ADOPTION SUPPORT AGENCIES (ENGLAND) AND ADOPTION AGENCIES (MISCELLANEOUS AMENDMENTS) REGULATIONS 2005

2005 No. 2720

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

- 2. Description**

2.1 The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005 form the basis of the regulatory framework for Adoption Support Agencies (ASAs) in England. They place a range of requirements on ASAs regarding the persons carrying on and managing an ASA, and the conduct of an agency. The Regulations oblige an ASA to produce a statement of purpose setting out the aims and objectives of the agency and, if it provides services to children, a written guide to the agency which is suitable for children. The Regulations set out requirements about the conduct of an agency in relation to the protection of children, providing services appropriate to the service users needs, maintaining records, complaints procedures, staffing the agency appropriately and ensuring that the agency's premises are suitable. There are also provisions regarding the financial position of an agency, notifiable events and offences.

2.2 The Regulations amend the National Care Standards Commission (Fees and Frequency of Inspections) (Adoption Agencies) Regulations 2003 to provide for the fees to be paid by ASAs and to provide for ASAs to be inspected at least once every 3 years.

2.3 The Regulations amend the National Care Standards Commission (Registration) Regulations 2001, so that the Commission for Social Care Inspection (CSCI) is obliged to record certain particulars in its registers as specified in Schedule 7 to the 2001 Regulations.

2.4 The Regulations amend the National Care Standards Commission (Fees and Frequency of Inspections) (Adoption Agencies) 2003 Regulations to provide for the fees to be paid to CSCI. These Regulations are also amended to provide for the premises used by an ASA to be inspected by CSCI at least once in every 3 years.

2.5 The Regulations amend the Commission for Social Care Inspection (Fees and Frequency of Inspections) Regulations 2004, so that that set of Regulations does not apply to ASAs.

2.6 The Regulations amend the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005 in view of the fact that an ASA may keep information in relation to a person's adoption, ie the adoption case record.

[DN – also need to list here the 1983 Regulation amendments]

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

3.1 None

4. Legislative Background

4.1 The Adoption and Children Act 2002 (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 that have been laid to implement the core provisions of the 2002 Act. The legislative and policy background for the core provisions of the 2002 Act is 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 8(1) of the 2002 Act defines “adoption support agency,” and sections 9 and 10 provide powers for making regulations to govern the conduct and management of ASAs. Section 8(3) of the 2002 Act amends the Care Standards Act 2000 (the 2000 Act) with the effect that ASAs are within the description of agencies to which Part 2 of that Act applies. Part 2 provides the framework for the regulation of such agencies such as ASAs; a person carrying on or managing an agency will have to satisfy CSCI that they are complying with the requirements of these Regulations in order to be registered with CSCI.

4.3 The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005 are made under sections 9(2) and (3) and 67(5) of the Adoption Act 1976, sections 11(4), 12(2), 15(3), 16(1) and (3), 31(7), 34(1), 35(1) and 118(5) to (7) of the 2000 Act and sections 2(6)(b), 8(2)(f), 9(1)(b) and (3), 10(1), (3) and (4), 98, 140(7) and (8) and 142(1) of the 2002 Act.

5. Extent

5.1 This instrument applies to England only.

6. European Convention on Human Rights

6.1 No statement required

7. Policy background

7.1 At present, adoption support services are provided by local authorities and voluntary adoption agencies (VAAs) as well as independent providers. Unlike local authorities and VAAs, independent providers are currently unregulated despite the sensitive nature of the adoption-related services. There is a risk that service users may be offered inappropriate, poor-quality services by independent adoption support providers who are not suitably qualified or experienced to meet their needs.

7.2 Regulation of independent adoption support services providers is necessary in order to raise standards and protect service users. The effect of the 2002 Act, the Regulations and accompanying NMS is that currently unregulated providers of adoption support services will be required to register with CSCI as ASAs. A provider will have to meet the ASA Regulations to be registered with CSCI and in making that decision CSCI will take into account the provider's compliance with the NMS. This should safeguard service users, ensure that unqualified providers cease to operate and provide assurance to service users as to the quality of the service they can expect.

8. Impact

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

9. Contact

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FULL REGULATORY IMPACT ASSESSMENT (RIA) FOR THE ADOPTION SUPPORT AGENCIES (ENGLAND) AND ADOPTION AGENCIES (MISCELLANEOUS AMENDMENTS) REGULATIONS 2005

TITLE OF PROPOSAL

The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005

PURPOSE AND INTENDED EFFECT OF MEASURE

Objective

The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005 (the ASA Regulations) are to be made primarily under the Adoption and Children Act 2002 (the 2002 Act), which received Royal Assent in November 2002. They seek to implement part of the 2002 Act which makes new provision to regulate independent adoption support providers as 'Adoption Support Agencies' (ASAs) to ensure that services are provided to a high standard and by those suitably qualified and experienced to meet adoption-related needs.

Regulation of the currently unregulated independent adoption support services sector will seek to stop unsuitable or unqualified providers from offering services to those affected by adoption, in addition to driving up standards in overall service provision.

It is also the objective that in addition to local authorities and voluntary adoption agencies (VAAs), others wishing to provide birth records counselling to adopted adults will be able to register as ASAs for this specific purpose.

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 8 of the 2002 Act amends the Care Standards Act 2000 (the 2000 Act) to make new provision for the registration of ASAs by CSCI in England.

At present, adoption support services are provided by local authorities and VAAs as well as independent providers who are not subject to any form of inspection or regulation despite the sensitive nature of the adoption-related services. This new provision will require independent adoption support providers to register as ASAs with the Commission for Social Care Inspection (CSCI). ASAs will have to comply with Regulations and meet National Minimum Standards to ensure that services are provided to a high standard and by those who are appropriately qualified and experienced.

The ASA Regulations make requirements in relation to the conduct of the ASAs, for example as to the protection of children, providing services appropriate to the users' needs, complaints, staffing (including record-keeping in relation to staff) and fitness of premises. In addition, the ASA Regulations amend some other sets of Regulations in order to make further provision necessary in relation to ASAs. For example, the amendments provide for the fees to be paid to CSCI on application for registration as the registered provider of an ASA and also make provision for premises used by ASAs to be inspected by CSCI at least once every 3 years.

The ASA Regulations also amend the Adoption Agencies 1983 Regulations to enable adoption agencies to extend the term of office of certain members of adoption panels, and to

allow any voluntary adoption agency that is planning to become an ASA to retain its adoption records.

The National Minimum Standards (NMS) for ASAs accompany the Regulations and will assist CSCI in deciding whether an ASA is meeting the Regulations. They may also be used by providers and staff in assessing their own services, may provide a basis for the induction and training of staff, may be used by service users as a guide to what they should expect an ASA to provide and do, and can provide guidance on what is required when setting up an ASA. Those involved in the provision of adoption support services will be encouraged to make full use of these standards in these ways.

VAAAs and local authorities are exempt from registering as ASAs even though they provide adoption support services. However, the Government is keen to ensure that there is a level playing field amongst different providers of adoption support services. It is the intention therefore that when the regulations and standards governing the regulation of VAAAs and local authorities are revised in light of the 2002 Act, they incorporate elements of the Regulations and NMS for ASAs in order to raise the standard of adoption support provision across the board. The ASA Regulations make an amendment to the National Care Standards Commission (Registration) Regulations 2001 to require CSCI to add to their register of VAAAs categories of VAA that provide adoption support services in addition to adoption services.

Risk Assessment

Adoption support services are designed to meet the needs of all those affected by adoption, including children placed for adoption, adopted children and adults, and their adoptive and birth families. Adopted children for example, may need support to come to terms with the loss of their birth family and with issues of identity arising as a result of their adoption. Birth parents may need help to deal with their feelings about the adoption of their child. Services can range from giving advice in relation to adoption on a single occasion to a comprehensive tailored package of intensive therapeutic services for an adoptive child and their family which could last until the child reaches adulthood.

Formal provision of adoption support services is a relatively recent phenomenon following the acknowledgement that adoption has life-long implications and the significant shift in the kinds of children who are adopted. Adoption today is less about providing homes for relinquished babies and more about providing secure, permanent relationships for children in the looked after system. Service users may be extremely vulnerable and have complex needs, particularly formerly looked after children who may have experienced a traumatic childhood. In order to protect service users, it is important that adoption support services are provided by those suitably qualified and experienced to meet the needs of those affected by adoption and who understand the impact of adoption.

The main providers of adoption support services are local authorities, VAAAs and independent providers (specialist centres and individuals e.g. counsellors and therapists.) While local authorities and VAAAs are regulated under the 2000 Act, independent providers of adoption support services are currently operating unregulated.

Over the last few years, some concerns have been expressed by practitioners in the adoption field and people affected by adoption about the practice of unregulated adoption support providers. The concerns focused on areas such as the skills and qualifications of staff, some areas of the practice of providers (such as the methods of counselling and therapeutic services being used) and the lack of peer review. The Department for Education and Skills is also aware through reports from adopted people of inappropriate attempts by unregulated providers to put birth families in contact with adopted people against the adopted person's wishes. People affected by adoption are currently faced with inconsistency in terms of the quality of service provision from the independent sector due to lack of regulation.

Without regulation of this sector those affected by adoption will continue to access support services without any assurances as to the quality of those services. There is a risk that service users will be offered inappropriate, low-quality services by providers who may not be suitably qualified or experienced. There is also risk that more adoptions will disrupt, as access

to appropriate adoption support services is often vital in ensuring the continuance of an adoptive placement. Inappropriate support services delivered by those without relevant expertise can contribute to the disruption of an adoptive relationship. These risks could potentially affect a large number of people. There have been approximately 875,000 adoptions since the Adoption of Children Act 1926. When the numbers of birth parents and other relatives are considered, there could potentially be as many as 2 million people who might have an interest in accessing adoption support services.

Regulation of this sector through ASA Regulations and NMS is needed to ensure that inappropriate and unqualified providers cease to operate, thus safeguarding vulnerable service users. Regulation will set nationally consistent standards, providing assurances to service users as to the quality of the service they can expect.

OPTIONS

Option 1

Do nothing and maintain a situation where independent providers of adoption support services are not subject to any form of regulation.

The key risk with this option is that service users will continue to be able to access adoption support services without any assurance as to the quality of the service that they can expect to receive. Those accessing support services may be particularly vulnerable and for example an adoptive placement may be close to breaking down. It is vital therefore that service users receive a sensitive, quality service to support them in making an adoptive placement a success and avoiding a return to the looked after system for a child.

The 2002 Act, including the provision to regulate adoption support providers, has been widely welcomed by the adoption field, including the independent adoption support services sector. There would be a great deal of concern if a provision in this Act were to remain on the statute books but not be implemented. Indeed, not implementing this provision of the 2002 Act would have even greater implications since other provisions, in particular those related to access to information about a person's adoption, could not be implemented, as the chief providers of new services – ASAs – would be removed from the sector.

Option 2

To set up a voluntary registration scheme for independent providers of adoption support services rather than implement the provision in the 2002 Act.

The establishment of a voluntary registration scheme was considered when drawing up the provisions of the Adoption & Children Bill, however it was rejected in favour of a compulsory registration scheme. A voluntary scheme would achieve the objective if all providers were willing to register. However the risk is that it would not create a real incentive for unregulated and poor providers to register since refusing to register would not be an offence. Poor providers would not therefore be removed from the service sector and service users would still be able to get services from unregistered providers thus creating a two-tier level of support provision.

As with option 1, choosing this option would mean that the provisions in the 2002 Act on access to information could not be fully implemented, since registered ASAs, the main providers of the new scheme, would be removed from the sector.

Option 3

To bring forward Regulations for England under the 2002 Act and 2000 Act to regulate all independent providers of adoption support services as ASAs.

This option would fully meet the objective. Regulation should ensure that adoption support services are provided to a high standard and are only provided by those suitably qualified and

experienced to meet adoption-related needs. It is clearly important that services are professional and effective and that vulnerable service users are protected, and Regulation should achieve this.

Under the 2002 Act and ASA Regulations, currently unregulated independent providers of adoption support services will be required to register as ASAs with the CSCI. CSCI will determine whether a provider should be registered as an ASA. ASAs will have to meet the ASA Regulations and NMS and will be inspected every 3 years to ensure they comply. The Regulations and NMS make requirements in relation to the conduct of the agency, for example as to the protection of children, providing services appropriate to the users' needs, complaints, staffing (including record-keeping in relation to staff) and fitness of premises.

COSTS AND BENEFITS

Business sectors affected

These Regulations will apply to approximately 60-100 currently unregulated independent adoption support services providers, both not-for-profit and profit-making.

Benefits

Option 1

The only perceived benefit of this option is that independent providers of adoption support services would not have to undergo an inspection and registration process or pay the fees associated with this. However this is an insufficiently strong reason for the Government failing to put in place a system which would provide assurances and safeguards for vulnerable individuals and families affected by adoption.

Option 2

A voluntary scheme would meet the objective in part, however its success would be wholly dependent on all independent adoption support providers being willing to register, which is unlikely. Poor providers who did not wish to register could continue to operate without committing an offence, putting vulnerable service users at risk.

Option 3

This option would fully meet the objective. Regulation should ensure that adoption support services are provided to a high and consistent standard and that service users are protected, whereas Options 1 and 2 will not.

The 2002 Act amends the 2000 Act to allow for the regulation of ASAs using the well recognised framework of regulations and national minimum standards which is used to regulate other social care providers. This framework is clear and understandable for agencies and will provide services users with the assurance that a particular ASA has been approved to provide a particular service and that it meets the nationally agreed standards.

Quantifying and valuing the benefits

The benefits of ensuring that adoption support service provision is suitably regulated and provided to national minimum standards will not largely manifest themselves in monetary terms. The value will be seen particularly in improving the stability of adoptive placements where timely intervention and appropriate and professionally provided adoption support services can be the key determinant as to whether a placement continues or disrupts. This ultimately influences the outcomes for many vulnerable looked after children who would otherwise be in the looked after system.

In the longer term there are clearly financial benefits to ensuring that adoptions succeed as local authority 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 and the numbers and types of children adopted.

Costs

Option 1

None

Option 2

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

Option 3

Compliance costs for businesses, charities and voluntary organisations

Organisations and individuals providing any regulated adoption support service will be required to apply to CSCI and pay an initial registration fee and an annual fee which will help to cover the cost of regulatory activity.

In 2005-06, the registration fee for ASAs will be £1,320 (£360 for a small agency). The manager registration fee will be £360 (no charge for a small agency.) The annual fee will be £600 (£300 for small agencies.) Fees for variations of conditions of registration will be £660 for a variation requiring a visit (£360 for small agencies) and £60 for a minor variation.

For some currently unregulated providers of adoption support services there may be other compliance costs associated with meeting the Regulations and NMS. For example, the Regulations state that staff should receive appropriate training, supervision and appraisal. This could result in increased costs for organisations which do not currently provide this for staff.

We do not expect the compliance costs of meeting the Regulations and NMS to be significant for adoption support providers. Most providers of adoption support services currently meet the majority of the requirements in the Regulations as a matter of good practice. In any case, it is the intention that compliance costs will be passed onto those purchasing services who will benefit from the assurances which registration can give.

Costs to Government

It has been estimated that there will be approximately 60-100 registered ASAs under option 3, which will be subject to inspection by CSCI. The costs of inspection and other regulatory activity will be partly met by fee income from ASAs, and partly by central government. We estimate that costs to central government of regulatory activity over the first 3-year period (from 2005-06) will be in the region of £320k.

It is the intention with option 3 that ASAs' compliance costs will be passed onto purchasers of ASAs' services via higher charges. So local authorities purchasing services from ASAs are likely to have to pay higher charges as an indirect result of the Regulations. However, it is intended that the £70m of extra adoption support services funding provided by central government to local authorities will cover these increased costs.

Costs to others

In some cases, those affected by adoption may seek support services themselves rather than go through a local authority, and will pay for the service themselves. The cost obviously depends on the service accessed and could range from a few pounds for written material to thousands of pounds for intensive therapeutic services. ASAs' compliance costs in meeting the Regulations may be passed on to these service users through increased charges.

However, the new national framework for adoption support services places a duty on local authorities to complete an assessment of need for adoption support services. This means that in the majority of cases where adoptive families are seeking services, they will be able to approach their local authority for an assessment of their needs through the new framework. Where the local authority decides that services are to be provided it will be the local authority that will fund the provision of those services.

SMALL FIRMS' IMPACT TEST

In drawing up these Regulations the Department for Education and Skills has consulted with representatives of various small businesses who may be affected by the proposals. Representatives include: 'Attachment in Action' – a group representing Attachment Therapists working with adopted children and the British Association for Counselling and Psychotherapy (BACP).

Some impact on small firms has been identified as part of stage one of the Small Firms' Impact Test, but this is not thought to be significant. The main concern of small adoption support services providers is how they will accommodate the cost of regulation.

After discussions with representatives of small firms in this sector and analysis of written consultation responses, we believe that any impact is negated by the benefits that these proposals will have. Small businesses in this sector broadly welcome the proposals as a way of providers gaining recognition for the valuable work they do. As we have not identified a significant impact on small firms we have not carried out stage two of the Small Firms' Impact Test.

COMPETITION ASSESSMENT

We have assessed the impact that these Regulations may have on competition and consider the impact to be low.

Adoption support services are currently provided by 150 local authorities, 32 VAAs and approximately 60-100 unregulated independent providers in England. Access to support services for those affected by adoption will normally be through a local authority which may choose to provide services itself or secure their provision for a fee from another local authority, a VAA or an independent provider. In the current situation where local authority adoption services and VAAs are regulated and independent support providers are not, it is often the case that local authorities prefer to commission services from VAAs.

When these Regulations come into force, independent providers registered as ASAs will equally be able to give assurance to local authorities as to the quality of their services and this is likely to lead to an increase in business for ASAs. However as there are costs associated with regulation, this will also mean that the cost of ASA services will have to rise.

The increase in business for ASAs may affect the business of VAAs in that both types of providers will be in direct competition in securing contracts to provide adoption support services with local authorities. However, VAAs have a well-established reputation in the adoption service sector and it is unlikely they will lose out significantly through the introduction of regulation of the independent sector. If anything, it will encourage both VAAs and ASAs to consider how they can best provide tailored services to local authorities in a more cost effective way.

ENFORCEMENT AND SANCTIONS

Independent providers of adoption support services will be required to register with CSCI as an ASA and comply with the ASA Regulations. If the Regulations are judged to be breached, CSCI must decide what action, if any, to take. In practice, if the Regulations were not being met in few respects it is likely that CSCI would note this in its inspection report and send a written warning. If the Regulations were persistently flouted and/or they were substantially or seriously disregarded, CSCI may decide to take enforcement action either in cancelling

registration or through the courts which could result in a fine (not exceeding level 5 on the standard scale), or a criminal prosecution. Carrying on or managing an ASA without being registered will be an offence under section 11 of the 2000 Act.

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. Discussions have also taken place with potential ASAs and VAAs currently providing adoption support services. The draft Regulations and NMS were issued for a full public consultation in the document *Draft Regulations and guidance for consultation: Adoption Support and Adoption Support Agencies* on 28 May 2004. The consultation closed on 31 August 2004. A focus group to discuss the draft ASA Regulations with key stakeholders was held on 17 September 2004.

There were 75 written responses to the consultation document which were positive overall. The majority of respondents (55%) thought that the list of adoption support services requiring registration as an ASA was right. 38% of respondents disagreed with the proposed list, with 7% expressing no view. Most respondents (56%) thought that we should not provide any specific exemptions from registration, with 27% stating that we should provide exemptions and 17% expressing no view. 63% of respondents thought that the draft Regulations were clear and understandable, with 31% disagreeing and 6% expressing no view. 91% of respondents felt that the NMS were clear and helpful, with 9% disagreeing. A majority of respondents agreed with the proposed definition of a small adoption agency, the proposed frequency of inspections, the proposed transitional arrangements and the proposed approach to volunteers. Some respondents raised concerns over the cost of complying with the Regulations. However, it is important not to overestimate these. The fee levels paid by ASAs to CSCI are relatively modest (see costs section for 2005-06 figures) and there will be fee concessions for small ASAs.

We have carefully considered the consultation responses and taken them into account in finalising the Regulations. We have made a number of changes to the draft Regulations following the consultation.

MONITORING AND REVIEW

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

Ministers will receive information about ASAs and the impact of the Regulations through a variety of routes, one of which is CSCI, who will be responsible for registering and inspecting ASAs.

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 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 adoption. The Government has indicated its intention to bring forward regulations to implement the 2002 Act, of which the Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005 form part.

Our recommended approach is Option 3, to bring forward these Regulations as drafted. This will meet the objective, driving up standards in the provision of adoption support services and ensuring that service users are protected. The Regulations will implement a system for ASAs which is consistent with the regulation of other social care establishments. During the drawing up of these proposals, regulation of this sector has been broadly welcomed.

MINISTERIAL DECLARATION

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

Maria Eagle..... Date...30th September 2005

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