

2005 No. 3332

CHILDREN AND YOUNG PERSONS, ENGLAND

SOCIAL CARE, ENGLAND

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

<i>Made</i> - - - -	<i>3rd December 2005</i>
<i>Laid before Parliament</i>	<i>9th December 2005</i>
<i>Coming into force</i> - -	<i>30th December 2005</i>

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The Secretary of State for Education and Skills in exercise of the powers conferred by sections 9 and 12 of the Adoption and Children Act 2002(a) makes the following Regulations—

PART 1 GENERAL

Citation, commencement and application

1.—(1) These Regulations may be cited as the Independent Review of Determinations (Adoption) Regulations 2005 and shall come into force on 30th December 2005.

(2) These Regulations apply to England only.

Interpretation

2. In these Regulations—

“the Act” means the Adoption and Children Act 2002;

“the Agencies Regulations” means the Adoption Agencies Regulations 2005(b);

“adoption panel” means a panel constituted in accordance with regulation 3 of the Agencies Regulations;

“applicant” means—

(a) in the case of a suitability determination, a prospective adopter;

(b) in the case of a disclosure determination, a relevant person within the meaning of regulation 15(7) of the Disclosure Regulations;

“the central list” shall be construed in accordance with regulation 4;

“disclosure determination” means a qualifying determination described in regulation 15(1) of the Disclosure Regulations(c);

“the Disclosure Regulations” means the Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005(d);

“panel” means a panel constituted in accordance with regulation 4(1);

“prospective adopter’s report” means a report prepared in accordance with regulation 25 of the Agencies Regulations;

“qualifying determination” means a determination described in regulation 3 of these Regulations or regulation 15(1) of the Disclosure Regulations for the purposes of section 12(2) of the Act;

“review meeting” means a meeting convened in accordance with regulation 11 for the purposes of reviewing a qualifying determination;

“social worker” means a person who is registered as a social worker in a register maintained by the General Social Care Council or the Care Council for Wales under section 56 of the Care Standards Act 2000(e) or in a corresponding register maintained under the law of Scotland or Northern Ireland; and

“suitability determination” means a qualifying determination described in regulation 3.

(a) 2002 c.38. Section 12 was amended by section 57 of the Children Act 2004 (c.31).

(b) S.I. 2005/389.

(c) Regulation 15(1) of the Disclosure Regulations specifies the following determinations by the appropriate adoption agency in relation to an application under section 61 of the Act (a) not to proceed with an application from any person for the disclosure of protected information; (b) to disclose information against the express views of the person the information is about; and (c) not to disclose information about a person to the applicant where that person has expressed the view that the information should be disclosed.

(d) S.I. 2005/888.

(e) 2000 c.14.

Qualifying determination for the purposes of section 12(2) of the Act

3. A determination made by an adoption agency in accordance with regulation 27(4) of the Agencies Regulations that the adoption agency does not propose to approve a prospective adopter as suitable to adopt a child is a qualifying determination for the purposes of section 12(2) of the Act.

PART 2

PANELS

Constitution and membership of panels

4.—(1) The Secretary of State shall, on receipt of an application made by an applicant in accordance with regulation 10, constitute a panel for the purpose of reviewing the qualifying determination.

(2) The members of the panel shall be appointed by the Secretary of State from a list of persons (“the central list”) kept by the Secretary of State.

(3) The members of the central list shall include—

- (a) social workers who have at least three years’ post-qualifying experience in child care social work, including direct experience in adoption work;
- (b) registered medical practitioners; and
- (c) other persons who are considered by the Secretary of State to be suitable as members including, where reasonably practicable, persons with personal experience of adoption.

(4) Where the qualifying determination being reviewed is a suitability determination, the maximum number of people who may be appointed to a panel is ten and the panel shall include at least—

- (a) two persons falling within paragraph (3)(a);
- (b) one person falling within paragraph (3)(b); and
- (c) four other persons falling within paragraph (3)(c) including where reasonably practicable at least two persons with personal experience of adoption.

(5) Where the qualifying determination being reviewed is a disclosure determination, the number of people who shall be appointed to a panel is three and the panel shall include at least two persons falling within paragraph (3)(a).

(6) The Secretary of State shall—

- (a) appoint to chair the panel a person who has the skills and experience necessary for chairing a panel; and
- (b) in the case of a panel constituted to review a suitability determination, appoint 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 if the office of chair is vacant.

(7) A person shall not be appointed to a panel if—

- (a) he is a member of the adoption panel of the adoption agency that made the qualifying determination;
- (b) where the adoption agency which made the qualifying determination is a local authority he is, or has been within the period of one year prior to the date on which the qualifying determination was made, employed by that authority in their children and family social services or a member of that authority;
- (c) where the adoption agency which made the qualifying determination is a registered adoption society he is, or has been within the period of one year prior to the date on which the qualifying determination was made, an employee or a trustee of that agency;
- (d) he is related to a person falling within sub-paragraph (a), (b) or (c);

- (e) he has had a child placed for adoption with him by the adoption agency which made the qualifying determination;
 - (f) in the case of an adopted person, the adoption agency which made the qualifying determination was the adoption agency which arranged his adoption;
 - (g) he was approved as a prospective adopter by the adoption agency that made the qualifying determination; or
 - (h) he knows the applicant in a personal or professional capacity.
- (8) In this regulation—
- (a) “employed” includes employed whether or not for payment and whether under a contract of service or a contract for services or as a volunteer; and
 - (b) a person (“person A”) is related to another person (“person B”) if person A is—
 - (i) a member of the household of, or married to or the civil partner of, person B;
 - (ii) the son, daughter, mother, father, sister or brother of person B; or
 - (iii) the son, daughter, mother, father, sister or brother of the person to whom person B is married or with whom person B has formed a civil partnership.

Functions of panel constituted to review a suitability determination

5.—(1) This regulation applies where the qualifying determination being reviewed is a suitability determination.

- (2) A panel constituted under regulation 4(4) shall review the suitability determination and—
- (a) where paragraph (3) applies, make to the adoption agency that made the suitability determination a recommendation as to whether or not the prospective adopter is suitable to adopt a child; or
 - (b) where paragraph (4) applies, make to the adoption agency that made the suitability determination a recommendation that—
 - (i) it should prepare a prospective adopter’s report in accordance with paragraph (5) of regulation 25 of the Agencies Regulations to include all of the information required by that regulation; or
 - (ii) the prospective adopter is not suitable to adopt a child.

(3) This paragraph applies where the prospective adopter’s report included all of the information required by regulation 25 of the Agencies Regulations.

(4) This paragraph applies where the prospective adopter’s report, in accordance with regulation 25(7) of the Agencies Regulations, did not include all of the information required by regulation 25 of the Agencies Regulations.

- (5) In considering what recommendation to make, the panel—
- (a) must consider and take into account all of the information passed to it in accordance with regulation 28 of the Agencies Regulations;
 - (b) may request the adoption agency to obtain any other relevant information which the panel considers necessary or to provide such other assistance as the panel may request; and
 - (c) may obtain such legal advice as it considers necessary in relation to the case.

Functions of panel constituted to review a disclosure determination

6.—(1) This regulation applies where the qualifying determination being reviewed is a disclosure determination.

(2) A panel constituted under regulation 4(5) shall review the disclosure determination and make to the adoption agency that made the disclosure determination a recommendation as to whether or not the agency should proceed with its original determination.

- (3) In considering what recommendation to make, the panel—

- (a) must consider and take into account all of the information passed to it in accordance with regulation 15(3) of the Disclosure Regulations;
- (b) may request the adoption agency to obtain any other relevant information which the panel considers necessary or to provide such other assistance as the panel may request; and
- (c) may obtain such legal advice or advice from a registered medical practitioner included in the central list as it considers necessary in relation to the case.

Fees of panel members

7. The Secretary of State may pay to any member of a panel such fees as the Secretary of State considers to be reasonable.

Meetings of panels

8.—(1) Where the qualifying determination being reviewed is a suitability determination, the proceedings of the panel will be invalidated unless at least five of its members including the chair or vice chair and a person falling within regulation 4(3)(a) are present.

(2) Where the qualifying determination being reviewed is a disclosure determination, the proceedings of the panel will be invalidated unless all three members are present.

Records

9. The Secretary of State shall ensure that a written record of a panel's review of a qualifying determination, including the reasons for its recommendation and whether the recommendation was unanimous or that of a majority, is retained—

- (a) for a period of 12 months from the date on which the recommendation is made; and
- (b) in conditions of appropriate security.

PART 3 PROCEDURE

Application for review of qualifying determination

10. An application to the Secretary of State for a review of a qualifying determination must be made by the applicant in writing and include the grounds of the application.

Appointment of panel and conduct of review

11. Upon receipt of an application which has been made in accordance with regulation 10, the Secretary of State shall—

- (a) notify the adoption agency which made the qualifying determination that the application has been made by sending to the agency a copy of the application;
- (b) send a written acknowledgment of the application to the applicant and notify him of the steps taken under sub-paragraph (a);
- (c) constitute a panel in accordance with regulation 4;
- (d) fix a date, time and venue for the panel to meet for the purposes of a review meeting;
- (e) after taking the steps prescribed in sub-paragraph (d), inform in writing the applicant and the adoption agency which made the qualifying determination of—
 - (i) the appointment of the panel; and
 - (ii) the date, time and venue of the review meeting; and

- (f) inform the applicant in writing that he may, if he wishes, provide to the panel further details of the grounds of his application in writing in the period up to two weeks before the review meeting and orally at the review meeting.

Recommendation of panel

12.—(1) The panel’s recommendation may be that of the majority.

(2) The recommendation and the reasons for it and whether it was unanimous or that of a majority must be recorded without delay in a document signed and dated by the chair.

(3) The panel must without delay send a copy of the recommendation and the reasons for it to the applicant and to the adoption agency which made the qualifying determination.

Order for payment of costs

13. 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 panel considers reasonable.

3rd December 2005

Maria Eagle
Parliamentary-Under Secretary of State,
Department for Education and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Adoption and Children Act 2002 (“the Act”). They apply to England only. They make provision for the review by an independent panel in two types of case. First, a determination made by an adoption agency under the Adoption Agencies Regulations 2005 that it does not propose to approve a prospective adopter as suitable to adopt a child. Such a determination is specified in regulation 3 of these Regulations as a qualifying determination for the purposes of section 12(2) of the Act. Secondly, determinations made by an adoption agency under the Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005. These determinations are specified in regulation 15(1) of those Regulations as qualifying determinations for the purposes of section 12(2) of the Act.

Part 2 makes provision for the constitution and membership of panels, their functions and the payment of fees, meetings and record keeping of the panels which are appointed by the Secretary of State to review qualifying determinations.

Part 3 makes provision for the procedure to be followed when a review of a qualifying determination by a panel constituted under Part 2 is sought.

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