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STATUTORY INSTRUMENTS

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**2005 No. 3482**

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

The Adoption and Children (Miscellaneous  
Amendments) Regulations 2005

*Made* - - - - 19th December 2005  
22nd December  
*Laid before Parliament* 2005  
*Coming into force* - - 30th December 2005

The Secretary of State for Education and Skills makes the following Regulations in exercise of the powers conferred by sections 1 and 4(2) of the Education Act 1962(1), section 26(3B)(2) and (3C)(3) and 59(4) and (5) of the Children Act 1989(4), sections 22 and 42(6) of the Teaching and Higher Education Act 1998(5), section 1 of the Adoption (Intercountry Aspects) Act 1999(6), sections 3(4) (b), 9(1), 53(1) to (3), 54, 56-64, 98, and 140(1) and (7) of the Adoption and Children Act 2002(7).

In accordance with section 16(1)(8) of the Adoption (Intercountry Aspects) Act 1999, the Secretary of State has consulted with the National Assembly for Wales in relation to the exercise of the powers conferred by section 1 of that Act.

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- (1) 1962 c. 12; the relevant provisions as amended are set out in Schedule 5 to the Education Act 1980 (c. 20); section 1(3)(d) was amended by the Education (Grants and Awards) Act 1984 (c. 11); section 4 was amended by the Education Act 1994 (c. 30); the entire Act was repealed by the Teaching and Higher Education Act 1998 (c. 30), subject to the transitional and saving provisions set out in the Teaching and Higher Education Act 1998 (Commencement No. 4 and Transitional Provisions) Order 1998 (S.I.1998/3237).
- (2) Subsection (3B) was inserted in section 26 of the Children Act 1989 (c. 41) by section 117(2) of the Adoption and Children Act 2002 (c. 38).
- (3) Subsection (3C) was inserted in section 26 of the Children Act 1989 by section 117(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43).
- (4) 1989 c. 41. The functions of the Secretary of State under the provisions of the Children Act 1989, so far as exercisable in relation to Wales were transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).
- (5) 1998 c. 30; section 22 was amended by the Learning and Skills Act 2000 (c. 21), the Income and Tax (Earnings and Pensions) Act 2003 (c. 1), the Finance Act 2003 (c. 14) and the Higher Education Act 2004 (c. 8). Section 42 was amended by the Education Act 2002 (c. 32).
- (6) 1999 c. 18.
- (7) 2002 c. 38.
- (8) Section 16(1) of the Adoption (Intercountry Aspects) Act 1999 was amended by the Adoption and Children Act 2002, Schedule 3, paragraph 101.

### **Citation and commencement**

1. These Regulations may be cited as the Adoption and Children (Miscellaneous Amendments) Regulations 2005 and come into force on 30<sup>th</sup> December 2005.

### **Amendment of the Representations Procedure (Children) Regulations 1991**

2.—(1) In Part 2 (representations and their consideration) of the Representations Procedure (Children) Regulations 1991(9) immediately before regulation 3 insert—

#### **“Representations about functions under the Adoption and Children Act 2002**

2A.—(1) Subject to paragraph (2), the provision of adoption support services as prescribed by regulation 3 of the Adoption Support Services Regulations 2005(10) is, for the purposes of section 26(3B) of the Act, a specified function under the Adoption and Children Act 2002.

(2) The provision of the services prescribed in regulation 3(1)(b) of those Regulations is only a specified function in so far as it is to enable adoptive children to discuss matters relating to adoption.

(3) In this regulation “adoptive children” means—

- (a) children who have been adopted or in respect of whom notice of intention to adopt has been given under section 44 of the Adoption and Children Act 2002; or
- (b) children whom an adoption agency has matched with prospective adopters or placed for adoption.

#### **Representations about functions under section 14F of the Children Act 1989**

2B. For the purposes of section 26(3C) of the Act, the provision of special guardianship support services under regulation 3(1)(a), (b)(i), and (c) to (e) of the Special Guardianship Regulations 2005(11) is a specified function.”.

(2) This regulation applies in relation to England only.

### **Amendment of the Education (Mandatory Awards) Regulations 2003**

3. In paragraph 12(1) of Schedule 2 (requirements) of the Education (Mandatory Awards) Regulations 2003(12) for paragraph (c) in the definition of “income” substitute—

“(c) any financial support payable to his spouse or civil partner in accordance with regulations made under sections 2, 3 and 4 of the Adoption and Children Act 2002;”.

### **Amendment of the Education (Student Support) Regulations 2005**

4. In paragraph (2)(c) of regulation 21 (grants for dependants – interpretation) of the Education (Student Support) Regulations 2005(13) for “paragraph 3 of Schedule 4 to”, substitute “sections 2, 3 and 4 of”.

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(9) S.I. 1991/894.

(10) S.I. 2005/691.

(11) S.I. 2005/1109.

(12) S.I. 2003/1994. The definition of “income” in paragraph 12(1) of Schedule 2 is amended by S.I. 2005/2083.

(13) S.I. 2005/52, amended by S.I. 2005/1341 and S.I. 2005/2084.

## Amendment of the Adoption Agencies Regulations 2005

5. The Adoption Agencies Regulations 2005(14) are amended as follows—

- (a) in regulation 3(1) (adoption panel) after “paragraph (5)” insert “and regulation 3A”;
- (b) for regulation 3(7)(b) substitute—
  - “(b) in the case of a local authority, he—
    - (i) is or has been within the last year employed by that authority in their children and family social services;
    - (ii) is related to a person falling within head (i); or
    - (iii) is or has been within the last year a member of that authority.”;
- (c) after regulation 3 insert—

“**3A.** Where an adoption agency operates only for the purpose of putting persons into contact with other adoption agencies and for the purpose of putting such agencies into contact with each other or for either of such purposes, regulations 3, 8, 10 and, to the extent that it requires consultation with the adoption panel, regulation 7 shall not apply to such an agency.”;
- (d) in regulation 10 (establishment of new adoption panel on 30<sup>th</sup> December 2005)—
  - (i) in paragraph (3) for “the term of office of” substitute “a person’s term of office as”;
  - (ii) in paragraph (4) for “a member of the old adoption panel was in his first” substitute “the person served only one”; and
  - (iii) in paragraph (5) for “A member of the old adoption panel who holds office immediately before 30<sup>th</sup> December 2005” substitute “A person who has been at any time a member of an old adoption panel”;
- (e) in regulation 11 (applications of regulations) for “11” substitute “12”;
- (f) in regulation 17(2) (child’s permanence report) insert at the beginning “Subject to paragraph (2A),”;
- (g) after regulation 17(2) insert—

“(2A) The adoption agency shall only send the documents referred to in paragraph (2) (b) and (c) to the adoption panel if the agency’s medical adviser advises it to do so.”;
- (h) in regulation 20 (request to appoint officer of the Service) after “parent or guardian of the child” insert “resides in England and Wales and”;
- (i) after regulation 20 insert—

“**20A.**—(1) Where the parent or guardian resides outside England and Wales and is prepared to consent to the placement of the child for adoption under section 19 of the Act and, as the case may be, to consent to the making of a future adoption order under section 20 of the Act, the adoption agency must arrange for the appointment of an authorised person to witness the execution of the form of consent to placement or to adoption by that parent or guardian and send to that person the information specified in Schedule 2.

(2) “Authorised person” for the purposes of this regulation means in relation to a form of consent executed—
  - (a) in Scotland, a Justice of the Peace or a Sheriff;
  - (b) in Northern Ireland, a Justice of the Peace;

- (c) outside the United Kingdom, any person for the time being authorised by law in the place where the document is executed to administer an oath for any judicial or other legal purpose; a British Consular officer; a notary public; or, if the person executing the document is serving in any of the regular armed forces of the Crown, an officer holding a commission in any of those forces.”;
- (j) in regulation 25 (prospective adopter’s report)—
  - (i) in paragraph (1), omit “, following the procedures referred to in regulations 23 and 24,”;
  - (ii) after paragraph (7) insert—
    - “(7A) The report shall not be completed until the adoption agency has carried out police checks in accordance with regulation 23 and made arrangements for the prospective adopter to receive preparation for adoption in accordance with regulation 24.”; and
  - (iii) in paragraph (9)(b) after “paragraphs (3) and (4)” insert “but in the case of reports obtained in accordance with paragraph (3)(a), only if the agency’s medical adviser advises it to do so”;
- (k) in regulation 26 (function of the adoption panel) —
  - (i) in paragraph (1) for “paragraph (2)” substitute “paragraphs (2) and (2A)”;
  - (ii) after paragraph (2) insert—
    - “(2A) In relation to the case of a prospective adopter in respect of whom a report has been prepared in accordance with regulation 25(7), the adoption panel must either—
      - (a) request the adoption agency to prepare a further prospective adopter’s report, covering all the matters set out in regulation 25(5); or
      - (b) recommend that the prospective adopter is not suitable to adopt a child.”;
- (l) in regulation 29(1)(b) (review and termination of approval) after “prospective adopter” insert “or the agency is considering placing a child with the prospective adopter in accordance with regulations 31 to 33”;
- (m) in regulation 29(4)(c) for “sent” substitute “given to him”;
- (n) in regulation 31(3) (proposed placement) for “The adoption agency” substitute “Where the adoption agency remains of the view that the proposed placement should proceed, it”;
- (o) in regulation 36 (reviews)—
  - (i) in paragraph (6)(d) omit “where the child is placed for adoption”;
  - (ii) in paragraph (6)(e) insert “where the child is placed for adoption”; and
  - (iii) in paragraph (8) omit “the outcome of a review and of”;
- (p) in regulation 42(1)(a) (access to case records and disclosure of information) for “section 81 of the 1989 Act (inquiries) or section 17 of the Act (inquiries)” substitute “sections 3 and 4 of the Children Act 2004(15) (inquiries held by the Children’s Commissioner) or under the Inquiries Act 2005(16)”;
- (q) in regulation 45 (modification of 1989 Act)—
  - (i) in paragraph (2)(b) for the first full stop substitute a semi-colon;
  - (ii) in paragraph (4)(a) omit “(2)(a)”;

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(15) 2004 c. 31.

(16) 2005 c. 12.

- (iii) in paragraph (4)(c) for the first full stop substitute a semi-colon;
- (r) in paragraph 12 of Schedule 4 (information about the prospective adopter), omit “is” and in paragraph 12(a) insert “is” before “married”; and
- (s) in paragraph 1 of Schedule 5 (adoption placement plan) after “Whether” insert “the child is”.

### **Amendment of the Adoptions with a Foreign Element Regulations 2005**

**6.** The Adoptions with a Foreign Element Regulations 2005<sup>(17)</sup> are amended as follows—

- (a) in regulation 18(2) (procedure following decision as to suitability to adopt)—
  - (i) omit paragraph (b);
  - (ii) at the end of paragraph (d) omit “and”; and
  - (iii) after paragraph (d) insert—
    - “(da) if the prospective adopter applied to the appropriate Minister<sup>(18)</sup> for a review under section 12 of the Adoption and Children Act 2002, the record of the proceedings of the panel, its recommendation and the reasons for its recommendation; and”;
- (b) for regulation 26 (prospective adopter unable to proceed with adoption) substitute—

“**26.**—(1) Where the prospective adopter gives notice to the relevant local authority that he does not wish to proceed with the adoption and no longer wishes to give the child a home, he must return the child to that authority not later than the end of the period of seven days beginning with the date on which notice was given.

(2) Where a relevant local authority have received a notice in accordance with paragraph (1), that authority must give notice to the relevant Central Authority of the decision of the prospective adopter not to proceed with the adoption.”; and

- (c) in regulation 59 (offences) for paragraphs (a) to (c) substitute—
  - “(a) regulation 24 (requirements in respect of prospective adopter following child’s entry into the United Kingdom);
  - (b) regulation 26(1) (return of child to relevant local authority where prospective adopter does not wish to proceed);
  - (c) regulation 27(1)(b) (return of child to relevant local authority on request of local authority or by order of court); or
  - (d) regulation 33 (refusal of a court in England or Wales to make a Convention adoption order).”.

### **Amendment of the Adoption Support Services Regulations 2005**

**7.** In the Adoption Support Services Regulations 2005<sup>(19)</sup> after regulation 24(3) (transitional provision) insert—

“(4) This paragraph applies where a person carrying on an adoption support agency has applied to the registration authority to be registered in respect of it under Part 2 of the Care

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<sup>(17)</sup> S.I. 2005/392.

<sup>(18)</sup> “Appropriate Minister” is defined in section 144(1) of the Adoption and Children Act 2002 (c. 38).

<sup>(19)</sup> S.I. 2005/691.

Standards Act 2000(20) before 30<sup>th</sup> December 2005 and the application has not yet been determined.

(5) Where paragraph (4) applies, the adoption support agency shall be treated as if it were a registered adoption support agency for the purposes of regulation 5 until it is notified whether its application has been finally determined.”.

#### **Amendment of the Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005**

8. In regulation 9 (disclosure required for the purposes of inquiries, inspections etc.) of the Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005(21)—

(a) in paragraph (a) for “section 17 of the Act or section 81 of the Children Act 1989” substitute “sections 3 and 4 of the Children Act 2004 (inquiries held by the Children’s Commissioner) or under the Inquiries Act 2005”; and

(b) after paragraph (g) insert—

“(h) to the Public Services Ombudsman for Wales for the purposes of an inquiry held by him under section 2 of the Public Services Ombudsman (Wales) Act 2005.”.

#### **Amendment of the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005**

9. In the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005(22) after regulation 18 (fees) insert—

##### **“Transitional provision for adoption support agencies awaiting registration**

19.—(1) This regulation applies where a person carrying on an adoption support agency has applied to the registration authority to be registered in respect of it under Part 2 of the Care Standards Act 2000 before 30<sup>th</sup> December 2005 and the application has not yet been determined.

(2) The adoption support agency shall be treated as if it were a registered adoption support agency for the purposes of these Regulations until it is notified whether its application has been finally determined.”.

19th December 2005

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

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(20) 2000 c. 14.  
(21) S.I. 2005/888.  
(22) S.I. 2005/890.

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## EXPLANATORY NOTE

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

These Regulations make a number of minor and consequential amendments to other Regulations as follows.

Regulation 2(1) extends the ambit of the Representations Procedure (Children) Regulations 1991 to ensure that the procedure to be followed by a local authority when considering representations (including complaints) under section 26 of the Children Act 1989 Act covers the authority's provision of adoption support services and special guardianship support services. Regulation 2 applies in relation to England only.

Regulations 3 and 4 substitute reference to the Adoption and Children Act 2002 for obsolete statutory references in the Education (Mandatory Awards) Regulations 2003 and the Education (Student Support) Regulations 2005. Regulations 7 and 9 insert transitional provisions in the Adoption Support Services Regulations 2005 and the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005, to enable adoption support agencies to continue to provide services after 30<sup>th</sup> December 2005 pending registration.

Regulation 5 makes a number of minor amendments to the Adoption Agencies Regulations 2005 ("the Agencies Regulations"). In particular—

- (i) regulation 5(c) inserts a new provision that creates an exception to the general requirement in regulation 3(1) of the Agencies Regulations that an adoption agency must establish an adoption panel;
- (ii) regulation 5(g) and (j)(iii) amends regulations 17(2) and 25(9)(b) of the Agencies Regulations. Regulation 17(2) is amended so that the adoption agency is only required to send the child's health report and information regarding the health of his natural parents to the adoption panel if advised to do so by the agency's medical adviser. Regulation 25(9)(b) is amended so that the adoption agency is only required to send the prospective adopter's health report to the adoption panel if advised to do so by the agency's medical adviser;
- (iii) regulation 5(i) inserts a new regulation 20A in the Agencies Regulations which lists for the purposes of that regulation those authorised to witness the execution outside England and Wales by parents and guardians of forms of consent to placement for adoption and, as the case may be, to the making of a future adoption order. This amendment is consistent with rule 28 of the Family Procedure (Adoption) Rules 2005<sup>(23)</sup>.

Regulation 6 amends the Adoptions with a Foreign Element Regulations 2005 so that regulation 18 is consistent with regulation 30 of the Agencies Regulations; to clarify the nature of the offence under regulation 26 (the failure by a prospective adopter to return a child to the local authority where the prospective adopter is unable to proceed with the adoption); and to add failure to give the notice in accordance with regulation 24 to the list of offences in regulation 59.

Regulation 8 makes minor amendments to the Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005.

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(23) S.I. 2005/2795 L.22.