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STATUTORY INSTRUMENTS

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**2005 No. 389**

**The Adoption Agencies Regulations 2005**

**PART 4**

**DUTIES OF ADOPTION AGENCY IN  
RESPECT OF A PROSPECTIVE ADOPTER**

**Requirement to provide counselling and information**

**21.**—(1) Where an adoption agency is considering a person's suitability to adopt a child, the agency must—

- (a) provide a counselling service for the prospective adopter;
- (b) in a section 83 case, explain to the prospective adopter the procedure in relation to, and the legal implications of, adopting a child from the country from which the prospective adopter wishes to adopt;
- (c) in any other case, explain to him the procedure in relation to, and the legal implications of, placement for adoption and adoption; and
- (d) provide him with written information about the matters referred to in sub-paragraph (b) or, as the case may be, (c).

(2) Paragraph (1) does not apply if the adoption agency is satisfied that the requirements set out in that paragraph have been carried out in respect of the prospective adopter by another adoption agency.

**Requirement to consider application for an assessment of suitability to adopt a child**

**22.**—(1) Where the adoption agency, following the procedures referred to in regulation 21, receives an application in writing in the form provided by the agency from a prospective adopter for an assessment of his suitability to adopt a child, the agency must set up a case record in respect of that prospective adopter ("the prospective adopter's case record") and consider his suitability to adopt a child.

(2) The adoption agency may ask the prospective adopter to provide any further information in writing the agency may reasonably require.

(3) The adoption agency must place on the prospective adopter's case record—

- (a) the application by the prospective adopter for an assessment of his suitability to adopt a child referred to in paragraph (1);
- (b) the information and reports obtained by the agency by virtue of this Part;
- (c) the prospective adopter's report and his observations on that report;
- (d) the written record of the proceedings of the adoption panel under regulation 26 (and, where applicable, regulation 27(6)), its recommendation and the reasons for its recommendation and any advice given by the panel to the agency;
- (e) the record of the agency's decision under regulation 27(3), (5) or, as the case may be, (9);

- (f) where the prospective adopter applied to the Secretary of State for a review by an independent review panel the recommendation of that review panel;
- (g) where applicable, the prospective adopter’s review report and his observations on that report; and
- (h) any other documents or information obtained by the agency which it considers should be included in that case record.

### **Requirement to carry out police checks**

**23.**—(1) An adoption agency must take steps to obtain—

- (a) in respect of the prospective adopter, an enhanced criminal record certificate within the meaning of section 115 of the Police Act 1997<sup>(1)</sup> including the matters specified in subsection (6A) of that section; and
- (b) in respect of any other member of his household aged 18 or over, an enhanced criminal record certificate under section 115 of that Act including the matters specified in subsection (6A) of that section.

(2) An adoption agency may not consider a person suitable to adopt a child if he or any member of his household aged 18 or over—

- (a) has been convicted of a specified offence committed at the age of 18 or over; or
- (b) has been cautioned by a constable in respect of any such offence which, at the time the caution was given, he admitted.

(3) In paragraph (2), “specified offence” means—

- (a) an offence against a child;
- (b) an offence specified in Part 1 of Schedule 3;
- (c) an offence contrary to section 170 of the Customs and Excise Management Act 1979<sup>(2)</sup> in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (prohibitions and restrictions relating to pornography)<sup>(3)</sup> where the prohibited goods included indecent photographs of children under the age of 16;
- (d) any other offence involving bodily injury to a child, other than an offence of common assault or battery,

and the expression “offence against a child” has the meaning given to it by section 26(1) of the Criminal Justice and Court Services Act 2000<sup>(4)</sup> except that it does not include an offence contrary to section 9 of the Sexual Offences Act 2003 (sexual activity with a child) in a case where the offender was under the age of 20 and the child was aged 13 or over at the time the offence was committed.

(4) An adoption agency may not consider a person suitable to adopt a child if he or any member of his household aged 18 or over—

- (a) has been convicted of an offence specified in paragraph 1 of Part 2 of Schedule 3 committed at the age of 18 or over or has been cautioned by a constable in respect of any such offence which, at the time the caution was given, was admitted; or
- (b) falls within paragraph 2 or 3 of Part 2 of Schedule 3,

(1) 1997 c. 50. Section 115 was amended by section 328 of the Criminal Justice Act 2003 (c. 44) section 19 of the Health and Social Care Act 2001 (c. 15) sections 90, 102, 104 and 116 of, and Schedule 4 to the Care Standards Act 2000 (c. 14) sections 152 and 215 of, and Schedules 13, 21 and 22 to, the Education Act 2002 (c. 32) section 8 of the Protection of Children Act 1999 (c. 14) section 135 of the Act, Schedule 2 to the National Health Service Reform and Health Care Professions Act 2002 (c. 17) and section 198 of and Schedule 6 to the Licensing Act 2003.

(2) 1979 c. 2.

(3) 1876 c. 36.

(4) 2000 c. 43. Schedule 4 to the 2000 Act was amended by the Sexual Offences Act 2003 (c. 42) and by the Asylum and Immigration (Treatment of Claimants) Act 2004 (c. 19).

notwithstanding that the statutory offences specified in Part 2 of Schedule 3 have been repealed.

(5) Where an adoption agency becomes aware that a prospective adopter or a member of his household falls within paragraph (2) or (4), the agency must notify the prospective adopter as soon as possible that he cannot be considered suitable to adopt a child.

### **Requirement to provide preparation for adoption**

**24.**—(1) Where an adoption agency is considering a person’s suitability to adopt a child, the agency must make arrangements for the prospective adopter to receive such preparation for adoption as the agency considers appropriate.

(2) In paragraph (1) “preparation for adoption” includes the provision of information to the prospective adopter about—

- (a) the age range, sex, likely needs and background of children who may be placed for adoption by the adoption agency;
- (b) the significance of adoption for a child and his family;
- (c) contact between a child and his parent or guardian or other relatives where a child is authorised to be placed for adoption or is adopted;
- (d) the skills which are necessary for an adoptive parent;
- (e) the adoption agency’s procedures in relation to the assessment of a prospective adopter and the placement of a child for adoption; and
- (f) the procedure in relation to placement for adoption and adoption.

(3) Paragraph (1) does not apply if the adoption agency is satisfied that the requirements set out in that paragraph have been carried out in respect of the prospective adopter by another adoption agency.

### **Prospective adopter’s report**

**25.**—(1) This regulation applies where the adoption agency, following the procedures referred to in regulations 23 and 24, consider the prospective adopter may be suitable to adopt a child.

(2) The adoption agency must obtain the information about the prospective adopter which is specified in Part 1 of Schedule 4.

(3) The adoption agency must obtain—

- (a) a written report from a registered medical practitioner about the health of the prospective adopter following a full examination which must include matters specified in Part 2 of Schedule 4 unless the agency has received advice from its medical adviser that such an examination and report is unnecessary; and
- (b) a written report of each of the interviews with the persons nominated by the prospective adopter to provide personal references for him.

(4) The adoption agency must ascertain whether the local authority in whose area the prospective adopter has his home have any information about the prospective adopter which may be relevant to the assessment and if so obtain from that authority a written report setting out that information.

(5) The adoption agency must prepare a written report (“the prospective adopter’s report”) which shall include—

- (a) the information about the prospective adopter and his family which is specified in Part 1 of Schedule 4;
- (b) a summary, written by the agency’s medical adviser, of the state of health of the prospective adopter;

- (c) any relevant information the agency obtains under paragraph (4);
  - (d) any observations of the agency on the matters referred to in regulations 21, 23 and 24;
  - (e) the agency's assessment of the prospective adopter's suitability to adopt a child; and
  - (f) any other information which the agency considers to be relevant.
- (6) In a section 83 case, the prospective adopter's report shall also include—
- (a) the name of the country from which the prospective adopter wishes to adopt ("country of origin");
  - (b) confirmation that the prospective adopter meets the eligibility requirements to adopt from the country of origin;
  - (c) additional information obtained as a consequence of the requirements of the country of origin; and
  - (d) the agency's assessment of the prospective adopter's suitability to adopt a child who is habitually resident outside the British Islands.

(7) Where the adoption agency receives information under paragraph (2), (3) or (4) or other information in relation to the assessment of the prospective adopter and is of the opinion that a prospective adopter is unlikely to be considered suitable to adopt a child, it may make the prospective adopter's report under paragraph (5) notwithstanding that the agency may not have obtained all the information about the prospective adopter which may be required by this regulation.

(8) The adoption agency must notify the prospective adopter that his application is to be referred to the adoption panel and give him a copy of the prospective adopter's report, inviting him to send any observations in writing to the agency within 10 working days, beginning with the date on which the notification is sent.

(9) At the end of the period of 10 working days referred to in paragraph (8) (or earlier if any observations made by the prospective adopter are received before that period has expired) the adoption agency must send—

- (a) the prospective adopter's report and the prospective adopter's observations;
- (b) the written reports referred to in paragraphs (3) and (4); and
- (c) any other relevant information obtained by the agency,

to the adoption panel.

(10) The adoption agency must obtain, so far as is reasonably practicable, any other relevant information which may be required by the adoption panel and send that information to the panel.

### **Function of the adoption panel**

**26.—**(1) Subject to paragraph (2), the adoption panel must consider the case of the prospective adopter referred to it by the adoption agency and make a recommendation to the agency as to whether the prospective adopter is suitable to adopt a child.

(2) In considering what recommendation to make the adoption panel—

- (a) must consider and take into account all the information and reports passed to it in accordance with regulation 25;
- (b) may request the adoption agency to obtain any other relevant information which the panel considers necessary; and
- (c) may obtain legal advice as it considers necessary in relation to the case.

(3) Where the adoption panel makes a recommendation to the adoption agency that the prospective adopter is suitable to adopt a child, the panel may consider and give advice to the agency

about the number of children the prospective adopter may be suitable to adopt, their age range, sex, likely needs and background.

(4) Before making any recommendation, the adoption panel must invite the prospective adopters to attend a meeting of the panel.

### **Adoption agency decision and notification**

**27.**—(1) The adoption agency must make a decision about whether the prospective adopter is suitable to adopt a child.

(2) No member of the adoption panel shall take part in any decision made by the adoption agency under paragraph (1).

(3) Where the adoption agency decides to approve the prospective adopter as suitable to adopt a child, it must notify him in writing of its decision.

(4) Where the adoption agency considers that the prospective adopter is not suitable to adopt a child, it must—

- (a) notify the prospective adopter in writing that it proposes not to approve him as suitable to adopt a child (“qualifying determination”);
- (b) send with that notification its reasons together with a copy of the recommendation of the adoption panel if that recommendation is different;
- (c) advise the prospective adopter that within 40 working days beginning with the date on which the notification was sent he may—
  - (i) submit any representations he wishes to make to the agency; or
  - (ii) apply to the Secretary of State for a review by an independent review panel of the qualifying determination.

(5) If, within the period of 40 working days referred to in paragraph (4), the prospective adopter has not made any representations or applied to the Secretary of State for a review by an independent review panel, the adoption agency shall proceed to make its decision and shall notify the prospective adopter in writing of its decision together with the reasons for that decision.

(6) If, within the period of 40 working days referred to in paragraph (4), the adoption agency receives further representations from the prospective adopter, it may refer the case together with all the relevant information to the adoption panel for further consideration.

(7) The adoption panel must consider any case referred to it under paragraph (6) and make a fresh recommendation to the adoption agency as to whether the prospective adopter is suitable to adopt a child.

(8) The adoption agency must make a decision on the case but—

- (a) if the case has been referred to the adoption panel under paragraph (6), the agency must make the decision only after taking into account the recommendations of the adoption panel made under both paragraph (7) and regulation 26; or
- (b) if the prospective adopter has applied to the Secretary of State for a review by an independent review panel of the qualifying determination, the agency must make the decision only after taking into account the recommendation of the independent review panel and the recommendation of the adoption panel made under regulation 26.

(9) As soon as possible after making its decision under paragraph (8), the adoption agency must notify the prospective adopter in writing of its decision stating its reasons for that decision if they do not consider the prospective adopter suitable to adopt a child, and of the adoption panel’s recommendation under paragraph (7), if this is different from the agency’s decision.

(10) In a case where an independent review panel has made a recommendation, the adoption agency shall send to the Secretary of State a copy of the notification referred to in paragraph (9).

#### **Information to be sent to the independent review panel**

**28.**—(1) If the adoption agency receives notification from the Secretary of State that a prospective adopter has applied for a review by an independent review panel of the qualifying determination, the agency must, within 10 working days of receipt of that notification, send to the Secretary of State the information specified in paragraph (2).

(2) The following information is specified for the purposes of paragraph (1)—

- (a) all of the documents and information which were passed to the adoption panel in accordance with regulation 25;
- (b) any relevant information in relation to the prospective adopter which was obtained by the agency after the date on which the documents and information referred to in subparagraph (a) were passed to the adoption panel; and
- (c) the documents referred to in regulation 27(4)(a) and (b).

#### **Review and termination of approval**

**29.**—(1) The adoption agency must review the approval of each prospective adopter in accordance with this regulation, unless—

- (a) in a section 83 case, the prospective adopter has visited the child in the country in which the child is habitually resident and has confirmed in writing that he wishes to proceed with the adoption; and
- (b) in any other case, a child is placed for adoption with the prospective adopter.

(2) A review must take place whenever the adoption agency considers it necessary but otherwise not more than one year after approval and thereafter at intervals of not more than a year.

(3) When undertaking such a review the adoption agency must—

- (a) make such enquiries and obtain such information as it considers necessary in order to review whether the prospective adopter continues to be suitable to adopt a child; and
- (b) seek and take into account the views of the prospective adopter.

(4) If at the conclusion of the review, the adoption agency considers that the prospective adopter may no longer be suitable to adopt a child, it must—

- (a) prepare a written report (“the prospective adopter’s review report”) which shall include the agency’s reasons;
- (b) notify the prospective adopter that his case is to be referred to the adoption panel; and
- (c) give him a copy of the report inviting him to send any observations to the agency within 10 working days beginning with the date on which that report is sent.

(5) At the end of the period of 10 working days referred to in paragraph (4)(c) (or earlier if the prospective adopter’s comments are received before that period has expired), the adoption agency must send the prospective adopter’s review report together with the prospective adopter’s observations to the adoption panel.

(6) The adoption agency must obtain, so far as is reasonably practicable, any other relevant information which may be required by the adoption panel and send that information to the panel.

(7) The adoption panel must consider the prospective adopter’s review report, the prospective adopter’s observations and any other information passed to it by the adoption agency and make a

recommendation to the agency as to whether the prospective adopter continues to be suitable to adopt a child.

(8) The adoption agency must make a decision as to whether the prospective adopter continues to be suitable to adopt a child and regulation 27(2) to (10) shall apply in relation to that decision by the agency.

**Duties of the adoption agency in a section 83 case**

**30.** Where the adoption agency decides in a section 83 case to approve a prospective adopter as suitable to adopt a child, the agency must send to the Secretary of State—

- (a) written confirmation of the decision and any recommendation the agency may make in relation to the number of children the prospective adopter may be suitable to adopt, their age range, sex, likely needs and background;
- (b) all the documents and information which were passed to the adoption panel in accordance with regulation 25;
- (c) the record of the proceedings of the adoption panel, its recommendation and the reasons for its recommendation;
- (d) if the prospective adopter applied to the Secretary of State for a review by an independent review panel of a qualifying determination, the record of the proceedings of that panel, its recommendation and the reasons for its recommendation; and
- (e) any other information relating to the case which the Secretary of State or the relevant foreign authority may require.