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STATUTORY INSTRUMENTS

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**2009 No. 395**

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

The Independent Review of Determinations  
(Adoption and Fostering) Regulations 2009

<i>Made</i>	- - - -	<i>27th February 2009</i>
<i>Laid before Parliament</i>		<i>6th March 2009</i>
<i>Coming into force</i>	- -	<i>1st April 2009</i>

The Secretary of State for Children, Schools and Families makes the following Regulations in exercise of the powers conferred by sections 23(2) and (9) and 104(4) of, and paragraph 12A of Schedule 2 to, the Children Act 1989(1) and sections 9, 12 and 142(5) of the Adoption and Children Act 2002(2).

PART 1

GENERAL

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Independent Review of Determinations (Adoption and Fostering) Regulations 2009 and come into force on 1st April 2009.

(2) These Regulations apply in relation to England only.

**Interpretation**

2. In these Regulations—

“the 1989 Act” means the Children Act 1989;

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- (1) 1989 c. 41, Schedule 2 to the Children Act 1989 (“the 1989 Act”) has effect with the modifications specified in Schedule 2 to the Children and Young Persons Act 2008 (c. 23) (“the 2008 Act”) until the coming into force of section 8(1) of the 2008 Act. Section 8(1) substitutes for section 23 of the 1989 Act new sections 22A to 22F and section 8(2) amends Schedule 2 to the 1989 Act.
- (2) 2002 c. 38, Section 12 of the Adoption and Children Act 2002 (“the 2002 Act”) was amended by section 57 of the Children Act 2004 (c. 31) and section 34 of the Children and Young Persons Act 2008.

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

“the AAR” means the Adoption Agencies Regulations 2005(3);

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

“adoption suitability determination” means a qualifying determination described in regulation 3;

“applicant” means—

- (a) in the case of an adoption 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;
- (c) in the case of a fostering determination, a person to whom notice has been given for the purposes of regulation 28(6)(a) or 29(7)(a) of the FSR;

“the central list” shall be construed in accordance with regulation 5;

“disclosure determination” means a qualifying determination described in regulation 15(1) of the Disclosure Regulations(4);

“the Disclosure Regulations” means the Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005(5);

“fostering determination” means a qualifying determination of a description prescribed in regulation 4;

“fostering panel” means a panel constituted in accordance with regulation 24 of the FSR;

“fostering service provider” has the meaning given in regulation 2(1) of the FSR;

“the FSR” means the Fostering Services Regulations 2002(6);

“organisation” means an adoption agency or a fostering service provider as the case may be;

“panel” means a panel constituted in accordance with regulation 6, 7 or 8 (as the case may be);

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

“qualifying determination” means a determination described in regulation 3 or 4 of these Regulations or regulation 15(1) of the Disclosure Regulations; and

“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(7) or in a corresponding register maintained under the law of Scotland or Northern Ireland.

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(3) [S.I. 2005/389](#), as amended by [S.I. 2005/3482](#) and [S.I. 2007/603](#).

(4) Regulation 15(1) of the Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005 ([S.I. 2005/888](#)) specifies the following determinations by the appropriate adoption agency in relation to an application under section 61 of the 2002 Act: determinations (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.

(5) [S.I. 2005/888](#), as amended by [S.I. 2005/3482](#) and [S.I. 2007/603](#).

(6) [S.I. 2002/57](#) as amended by [S.I. 2002/865](#), [S.I. 2002/2469](#), [S.I. 2006/1738](#), [S.I. 2007/603](#), [S.I. 2008/640](#) and [S.I. 2009/394](#).

(7) [2000 c. 14](#). Section 56 was amended by regulations 230 and 232 of the European Qualifications (Health and Social Care Professions) Regulations 2007, [S.I. 2007/3101](#).

### **Qualifying determination for the purposes of section 12(2) of the 2002 Act**

3. A determination made by an adoption agency<sup>(8)</sup> in accordance with regulation 27(4) of the AAR that the adoption agency proposes not to approve a prospective adopter as suitable to adopt a child is a qualifying determination for the purposes of section 12(2) of the 2002 Act.

### **Qualifying determination – prescribed description for the purposes of paragraph 12A(2)(b) of Schedule 2 to the 1989 Act**

4. For the purposes of paragraph 12A(2)(b) of Schedule 2 to the 1989 Act the following descriptions of determination are prescribed—

- (a) a determination (other than a determination made pursuant to regulation 27(6) of the FSR) that the fostering service provider proposes not to approve a person as suitable to act as a foster parent, in accordance with regulation 28(6) of the FSR, and
- (b) a determination (other than a determination made pursuant to regulation 27(6) of the FSR) that the fostering service provider proposes to terminate, or to revise the terms of, the approval of a person as suitable to act as a foster parent, in accordance with regulation 29(7) of the FSR,

where notice of the determination is given on a date on or after 1st April 2009.

## **PART 2**

### **PANELS**

#### **Constitution of panels**

5.—(1) The Secretary of State shall, on receipt of an application made by an applicant in accordance with regulation 17, constitute a panel in accordance with regulation 6, 7 or 8, as the case may be, 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) social workers who have at least three years’ post-qualifying experience in child care social work including direct experience in fostering work;
- (c) registered medical practitioners; and
- (d) other persons who are considered by the Secretary of State to be suitable as members of a panel including, where reasonably practicable, persons with personal experience of adoption and persons who are, or within the previous two years have been, a local authority foster parent<sup>(9)</sup>.

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<sup>(8)</sup> Section 2 of the 2002 Act provides that a local authority or registered adoption society may be referred to as an adoption agency.

<sup>(9)</sup> “Local authority foster parent” is defined in section 23(3) of the 1989 Act.

### **Membership of a panel to review an adoption suitability determination**

6. Where the qualifying determination being reviewed is an adoption 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 regulation 5(3)(a);
- (b) one person falling within regulation 5(3)(c); and
- (c) four other persons falling within regulation 5(3)(d) including where reasonably practicable at least two persons with personal experience of adoption.

### **Membership of a panel to review a disclosure determination**

7. 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 regulation 5(3)(a).

### **Membership of a panel to review a fostering determination**

8. Where the qualifying determination being reviewed is a fostering 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 regulation 5(3)(b); and
- (b) four other persons falling within regulation 5(3)(d) including where reasonably practicable at least two persons who are, or within the previous two years have been, a local authority foster parent.

### **Appointment of panel chair**

9. The Secretary of State shall—

- (a) appoint to chair the panel one of the members of the panel who has the skills and experience necessary for chairing a panel; and
- (b) in the case of a panel constituted to review an adoption suitability determination or a fostering 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.

### **Disqualification of panel members**

10.—(1) A person (“P”) shall not be appointed to a panel if—

- (a) P is a member of an adoption panel or a fostering panel of the organisation which made the qualifying determination;
- (b) where the organisation which made the qualifying determination is a local authority, P is, or has been within the period of one year prior to the date on which the qualifying determination was made—
  - (i) employed by that authority in their children and family social services, or
  - (ii) a member of that authority;
- (c) where the organisation which made the qualifying determination is not a local authority, P 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 organisation;
- (d) P is related to a person falling within sub-paragraph (a), (b) or (c);

- (e) the organisation which made the qualifying determination has placed a child for adoption with P or placed a child with P as a local authority foster parent;
  - (f) where P was adopted or fostered as a child, the organisation which made the qualifying determination was the organisation which arranged P's adoption or fostering;
  - (g) P was approved as a foster parent in accordance with the FSR or as a prospective adopter by the organisation which made the qualifying determination; or
  - (h) P knows the applicant in a personal or professional capacity.
- (2) 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) P is related to a person (“A”) if P is—
    - (i) a member of the household of, or married to or the civil partner of, A;
    - (ii) the son, daughter, mother, father, sister or brother of A; or
    - (iii) the son, daughter, mother, father, sister or brother of the person to whom A is married or with whom A has formed a civil partnership.

### **Functions of a panel constituted to review an adoption suitability determination**

**11.**—(1) This regulation applies where the qualifying determination being reviewed is an adoption suitability determination.

(2) A panel constituted in accordance with regulation 6 shall review the adoption suitability determination and—

- (a) where paragraph (3) applies, make to the adoption agency that made the adoption suitability determination a recommendation as to whether or not the applicant is suitable to adopt a child; or
- (b) where paragraph (4) applies, make to the adoption agency that made the adoption suitability determination a recommendation that—
  - (i) it should prepare a prospective adopter's report in accordance with regulation 25(5) of the AAR to include all of the information required by that regulation; or
  - (ii) the applicant 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 AAR.

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

- (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 AAR;
  - (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.

(6) Where the panel makes a recommendation that the applicant is suitable to adopt a child, the panel may consider and give advice to the adoption agency about the number of children the applicant may be suitable to adopt, their age range, sex, likely needs and background.

### **Functions of a panel constituted to review a disclosure determination**

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

(2) A panel constituted in accordance with regulation 7 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.

### **Functions of a panel constituted to review a fostering determination**

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

(2) A panel constituted in accordance with regulation 8 shall review the fostering determination and make to the fostering service provider that made the fostering determination—

- (a) a recommendation as to whether or not the applicant is suitable to act as a foster parent; or
- (b) where the qualifying determination relates to the terms of the approval of the applicant as suitable to act as a foster parent, a recommendation to the fostering service provider as to those terms.

(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 29A of the FSR;
- (b) may request the fostering service provider 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.

(4) Where the panel makes a recommendation that the applicant is suitable to act as a foster parent, the panel may also make a recommendation to the fostering service provider as to the terms of any approval.

### **Fees of panel members**

14. 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**

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

(2) Where the qualifying determination being reviewed is an adoption suitability determination or a fostering determination, the proceedings of the panel will be invalidated unless at least five of its members are present including—

- (a) the chair or vice chair; and
- (b) in the case of an adoption suitability determination, a person falling within regulation 5(3)(a) or, in the case of a fostering determination, a person falling within regulation 5(3)(b).

### **Records**

**16.** 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**

**17.** 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**

**18.** Upon receipt of an application which has been made in accordance with regulation 17, the Secretary of State shall—

- (a) notify the organisation which made the qualifying determination that the application has been made by sending to the organisation 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) fix a date, time and venue for the panel constituted in accordance with regulation 6, 7 or 8 to meet for the purposes of reviewing the qualifying determination (“review meeting”);
- (d) after taking the steps set out in sub-paragraph (c), inform in writing the applicant and the organisation which made the qualifying determination of—
  - (i) the appointment of the panel; and
  - (ii) the date, time and venue of the review meeting; and
- (e) inform the applicant in writing that the applicant may, if the applicant wishes, provide to the panel further details of the grounds of the application in writing in the period up to three weeks before the review meeting and orally at the review meeting.

### **Duty to provide information and assistance**

**19.** The organisation which made the qualifying determination shall provide, as far as is reasonably practicable, any information or assistance requested by the panel under regulation 11(5)(b), 12(3)(b) or 13(3)(b), as the case may be.

### **Recommendation of panel**

**20.—(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 organisation which made the qualifying determination.

**Duty to pay costs in connection with a review**

**21.** The organisation which made the qualifying determination must pay to the Secretary of State such costs in connection with the review of that qualifying determination as the Secretary of State considers reasonable.

## PART 4

### REVOCATION AND TRANSITIONAL ARRANGEMENTS

**Revocation of the Independent Review of Determinations (Adoption) Regulations 2005 and transitional arrangements**

**22.—(1)** The Independent Review of Determinations (Adoption) Regulations 2005<sup>(10)</sup> are revoked.

(2) Anything done for the purposes of or in connection with a provision of the Independent Review of Determinations (Adoption) Regulations 2005 shall be treated as if it were done for the purposes of or in connection with the corresponding provision of these Regulations.

27th February 2009

*Delyth Morgan*  
Parliamentary Under Secretary of State  
Department for Children, School and Families

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(10) [S.I. 2005/3332](#).

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## EXPLANATORY NOTE

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

These Regulations are made under the Children Act 1989 (“the 1989 Act”) and the Adoption and Children Act 2002 (“the 2002 Act”). They apply in relation to England only. They make provision for the review of a qualifying determination by an independent panel appointed by the Secretary of State. The types of qualifying determination are:

- (a) a determination made by an adoption agency under the Adoption Agencies Regulations 2005 (S.I. 2005/389) that it proposes not 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 2002 Act;
- (b) a determination made by an adoption agency under the Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005 (S.I. 2005/888). Such a determination is specified in regulation 15(1) of those Regulations as a qualifying determination for the purposes of section 12(2) of the 2002 Act; and
- (c) a determination made by a fostering service provider in accordance with the Fostering Services Regulations 2002 (S.I. 2002/57) that it proposes not to approve a person as suitable to act as a foster parent, or that it proposes to terminate, or to revise the terms of approval of, a person as suitable to act as a foster parent. Such determinations are specified in regulation 4 of these Regulations as qualifying determinations for the purposes of paragraph 12A(2) of Schedule 2 to the 1989 Act.

Part 2 makes provision for the constitution and membership of panels, their functions, the payment of fees to panel members, meetings, and record keeping of the panels.

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. Regulation 21 provides that the organisation must pay costs in connection with the review.

Part 4 revokes the Independent Review of Determinations (Adoption) Regulations 2005 (S.I. 2005/3332) and makes transitional provision.