
STATUTORY INSTRUMENTS

2011 No. 589

CHILDREN AND YOUNG PERSONS, ENGLAND

**The Adoption Agencies and Independent Review
of Determinations (Amendment) Regulations 2011**

<i>Made</i>	- - - -	<i>3rd March 2011</i>
<i>Laid before Parliament</i>		<i>10th March 2011</i>
<i>Coming into force</i>	- -	<i>1st April 2011</i>

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by section 22C(11) of, and paragraph 12F(1)(b) of Schedule 2 to, the Children Act 1989⁽¹⁾ and sections 9(1)(a), 12, 140(7) and (8) and 142(5) of the Adoption and Children Act 2002⁽²⁾.

Citation and commencement

1. These Regulations may be cited as the Adoption Agencies and Independent Review of Determinations (Amendment) Regulations 2011 and come into force on 1st April 2011.

Amendment of the Adoption Agencies Regulations 2005

2. For regulations 3 to 10 (adoption agency – arrangements for adoption work) of the Adoption Agencies Regulations 2005⁽³⁾ substitute—

“The central list

3.—(1) Subject to regulation 5, an adoption agency⁽⁴⁾ must maintain a list of persons who are considered by it to be suitable to be members of an adoption panel (“the central list”), including—

- (a) one or more social workers who have at least three years’ relevant post-qualifying experience, and
- (b) the medical adviser to the adoption agency (or at least one if more than one medical adviser is appointed).

(1) 1989 c.41. Section 22C was inserted by section 8(1) of the Children and Young Persons Act 2008 (c.23) (“the 2008 Act”) and paragraph 12F was inserted by paragraph 4 of Schedule 1 to the 2008 Act. The powers are expressed to be exercisable by the “appropriate national authority”, defined in section 30A of the Children Act 1989 (“the 1989 Act”) (which was inserted by paragraph 22 of Schedule 3 to the 2008 Act) as meaning, in relation to England, the Secretary of State.

(2) 2002 c.38. Section 12 was amended by sections 34 and 42 of, and Schedule 2 to, the 2008 Act.

(3) S.I. 2005/389; amended by S.I. 2005/3482, 2007/603, 2009/1892, 2009/1895 and 2010/1172.

(4) Section 2(1) of the Adoption and Children Act 2002 provides that a local authority or registered adoption society may be referred to as an adoption agency. A registered adoption society is defined in section 2(2) as meaning a voluntary organisation which is an adoption society registered under Part 2 of the Care Standards Act 2000 (c.14).

(2) A person who is included in the central list may at any time ask to be removed from the central list by giving one month's notice in writing.

(3) Where the adoption agency is of the opinion that a person included in the central list is unsuitable or unable to remain in the list the agency may remove that person's name from the list by giving them one month's notice in writing with reasons.

Constituting an adoption panel

4.—(1) The adoption agency must constitute one or more adoption panels, as necessary, to perform the functions of an adoption panel under these Regulations⁽⁵⁾ and must appoint the panel members from the persons in the central list including—

- (a) a person to chair the panel, being an independent person, who has the skills and experience necessary for chairing an adoption panel, and
- (b) one or two persons who may act as chair if the person appointed to chair the panel is absent or that office is vacant ("the vice chairs").

(2) The adoption agency must ensure that an adoption panel has sufficient members, and that individual members have between them the experience and expertise necessary to effectively discharge the functions of the panel.

(3) Any two or more local authorities may jointly constitute an adoption panel ("a joint adoption panel") in which case the appointment of members must be by agreement between the authorities.

(4) A local authority may pay to any member of an adoption panel constituted by it such fee as it may determine, being a fee of a reasonable amount.

(5) Any adoption panel member may resign at any time by giving one month's notice in writing to the adoption agency which appointed them.

(6) Where an adoption agency is of the opinion that any member of the adoption panel appointed by it is unsuitable or unable to continue as a panel member, it may terminate that member's appointment at any time by giving the member notice in writing with reasons.

(7) A person ("P") is not an independent person for the purposes of this regulation and regulation 6 if—

- (a) in the case of a registered adoption society, P is a trustee or employee of that society, or
- (b) in the case of a local authority, P—
 - (i) is an elected member of that authority, or
 - (ii) is employed by that authority for the purposes of the adoption service or for the purposes of any of that local authority's functions relating to the protection or placement of children, or
- (c) P is the adoptive parent of a child who was—
 - (i) placed for adoption with P by the adoption agency ("agency A"), or

(5) Regulation 18 of the Adoption Agencies Regulations 2005 requires the adoption panel to consider cases of children referred to it by the adoption agency and make a recommendation to the agency as to whether the child should be placed for adoption. Regulation 26 requires the panel to consider cases of prospective adopters 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, and under regulation 29 the adoption panel must make a recommendation on a review of a prospective adopter's approval as to whether that person continues to be suitable to adopt a child. Regulation 32 requires the panel to consider proposed placements that are referred to it by the agency and make a recommendation as to whether the child should be placed for adoption with that particular prospective adopter.

- (ii) placed for adoption with P by another adoption agency where P had been approved as suitable to be an adoptive parent by agency A, unless at least 12 months has elapsed since the adoption order was made in respect of the child.

Adoption agencies operating only for certain purposes

5. 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, 4, 8 and, to the extent that it requires consultation with persons in the central list, regulation 7 shall not apply to such an agency.

Meetings of adoption panel

6.—(1) No business may be conducted by an adoption panel unless at least the following meet as the panel—

- (a) either the person appointed to chair the panel or one of the vice chairs,
- (b) one person falling within regulation 3(1)(a),
- (c) three, or in the case of an adoption panel established under regulation 4(3) four, other members and where the chair is not present and the vice chair is not an independent person, at least one other panel member must be an independent person.

(2) An adoption panel must make a written record of its proceedings, its recommendations and the reasons for its recommendations.

Adoption agency arrangements for adoption work

7. An adoption agency must, in consultation with such persons in the central list as the agency considers appropriate and, to the extent specified in regulation 8(4) with the agency's medical adviser, prepare and implement written policy and procedural instructions governing the exercise of the functions of the agency and an adoption panel in relation to adoption and such instructions shall be kept under review and, where appropriate, revised by the agency.

Requirement to appoint an agency adviser and a medical adviser

8.—(1) The adoption agency must appoint a senior member of staff, or where local authorities agree to constitute joint adoption panels as necessary appoint a senior member of staff of one of them, (referred to in this regulation as the "agency adviser")—

- (a) to assist the agency with the maintenance of the central list and the constitution of adoption panels,
- (b) to be responsible for the induction and training of persons in the central list,
- (c) to be responsible for liaison between the agency and an adoption panel, monitoring the performance of persons in the central list and members of the adoption panel and the administration of adoption panels, and
- (d) to give such advice to an adoption panel as the panel may request in relation to any case or generally.

(2) The agency adviser must be a social worker and have at least five years' relevant post-qualification experience and, in the opinion of the adoption agency, relevant management experience.

(3) The adoption agency must appoint at least one registered medical practitioner to be the agency's medical adviser.

(4) The medical adviser shall be consulted in relation to the arrangements for access to, and disclosure of, health information which is required or permitted by virtue of these Regulations."

Transitional provision

3. An adoption panel established under the Adoption Agencies Regulations 2005, and which is carrying out the functions of an adoption panel on 1st April 2011, may continue to carry out the functions of a panel under those Regulations in relation to any case referred to it before that date.

Amendment of the Independent Review of Determinations (Adoption and Fostering) Regulations 2009

4.—(1) The Independent Review of Determinations (Adoption and Fostering) Regulations 2009⁽⁶⁾ are amended as follows.

(2) In regulation 2—

- (a) in paragraph (c) of the definition of "applicant" for "regulation 28(6)(a) or 29(7)(a) of the FSR" substitute "regulation 27(6)(a) or 28(7)(a) of the FSR",
- (b) in the definition of "fostering panel" for "regulation 24" substitute "regulation 23", and
- (c) in the definition of "the FSR" for "the Fostering Services Regulations 2002(7)" substitute "the Fostering Services (England) Regulations 2011(8)".

(3) In regulation 4—

- (a) in paragraph (a) for "regulation 27(6)" substitute "regulation 26(8)" and for "regulation 28(6)" substitute "regulation 27(6)(a)", and
- (b) in paragraph (b) for "regulation 27(6)" substitute "regulation 26(8)" and for "regulation 29(7)" substitute "regulation 28(7)(a)".

(4) Regulations 6, 7 and 8 are omitted.

(5) In regulation 10 (disqualification of panel members)—

(a) for paragraph (1)(b) substitute—

"(b) where the organisation which made the qualifying determination is a local authority, P is—

- (i) an elected member of that authority, or
- (ii) employed by that authority for the purposes of the adoption service or for the purposes of any of that authority's functions relating to the protection or placement of children;"

(b) in paragraph (1)(c) omit " , or has been within the period of one year prior to the date on which the qualifying determination was made,"

(c) omit paragraph (1)(d),

(d) for paragraph (1)(e) substitute—

⁽⁶⁾ S.I. 2009/395.

⁽⁷⁾ S.I. 2002/57.

⁽⁸⁾ S.I. 2011/581.

- “(e) the organisation which made the qualifying determination—
 - (i) has placed a child with P as a local authority foster parent, or
 - (ii) has placed a child for adoption with P, unless at least 12 months has elapsed since the adoption order was made in respect of the child;”, and
- (e) omit paragraph (2)(b).
- (6) In regulation 13(3)(a) for “regulation 29A” substitute “regulation 29”.
- (7) In regulation 15(1) for “unless all three members are present” substitute “unless three members of the panel are present including at least two persons falling within regulation 5(3)(a)”.

3rd March 2011

Tim Loughton
Parliamentary Under Secretary of State
Department for Education

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make changes to the provisions in the Adoption Agencies Regulations 2005 (“the 2005 Regulations”) relating to the setting up and operation of adoption panels. The Regulations also make minor changes to provisions for the constitution of independent review panels for adoption and fostering in the Independent Review of Determinations (Adoption and Fostering) Regulations 2009 (“the IRD Regulations”).

Regulation 2 substitutes new regulations 3 to 10 in Part 2 of the 2005 Regulations which makes provision in relation to the arrangements for adoption work. The new regulation 3 places a duty on adoption agencies to maintain a list of persons who are suitable to be members of an adoption panel (“the central list”) and specifies that this must include at least one social worker with at least 3 years’ relevant post-qualification experience and the medical adviser to the adoption agency.

The new regulation 4 requires the adoption agency to constitute an adoption panel by appointing its members from the central list, as and when it is necessary for a panel to perform functions under the 2005 Regulations, such as considering cases relating to whether a child should be placed for adoption, the suitability of prospective adopters and whether a child should be placed for adoption with particular prospective adopters. There is no limit as to the number of members who may be appointed to a panel but the agency must ensure that there are sufficient members, and with the appropriate level of experience and expertise, to effectively discharge the panel’s functions (regulation 4(2)). In addition, the new regulation 6 provides that an adoption panel will only be quorate where either the chair or one of the vice chairs, a social worker with at least three years’ post-qualifying experience and three other members (or four, in the case of a panel established jointly by one or more local authorities) are present.

The new regulations 7 and 8 maintain the requirements in the 2005 Regulations for the adoption agency to prepare and implement written instructions governing the exercise of functions of the agency and an adoption panel and for the agency to appoint an agency adviser and medical adviser.

Regulation 3 makes a transitional provision so that an adoption panel established prior to 1st April 2011 may continue to consider those cases that remain ongoing as at that date.

Regulation 4 of these Regulations makes amendments to the IRD Regulations. Regulations 6, 7 and 8 which relate to the membership of review panels and, in particular, provide for a maximum number of panel members are omitted. Instead, regulation 15 (paragraph (1) of which is amended) now sets out the requirements as to the members that must be present for the panel to conduct its proceedings in relation to disclosure determinations and adoption suitability or fostering determinations. Regulation 10 is amended to bring the provisions relating to disqualification of panel members in line with those relating to independent members in the 2005 Regulations. Amendments are also made to replace references to the Fostering Services Regulations 2002 with references to the Fostering Services (England) Regulations 2011 which come into force on 1st April 2011.

An impact assessment has not been prepared for these Regulations because no impact on the private, voluntary or public sectors is foreseen.