

EXPLANATORY MEMORANDUM TO
THE ADOPTION AGENCIES (PANEL AND CONSEQUENTIAL AMENDMENTS)
REGULATIONS 2012

2012 No. 1410

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Adoption Agencies Regulations 2005 require that, when an adoption agency is considering adoption for a child, the agency must refer the case to an adoption panel for their consideration and recommendation, before reaching its decision. These Regulations prohibit the adoption agency from referring such cases to an adoption panel in circumstances where, if the adoption agency's decision-maker were to decide the child should be placed for adoption the local authority would be required to apply to court for a placement order.

2.2 These Regulations also make consequential amendments to the Adoptions with a Foreign Element Regulations 2005.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 These Regulations amend the Adoption Agencies Regulations 2005 (SI 2005/389) ("the 2005 Regulations") and the Adoptions with a Foreign Element Regulations 2005 (SI 2005/392). They will come into force on 1 September 2012. The Adoptions with a Foreign Element Regulations 2005 apply in relation to England and Wales. The amendments have been made following consultation with the Welsh Ministers.

4.2 An adoption agency is defined in section 2 of the Adoption and Children Act 2002 ("the Act") as a local authority or a registered adoption society (in practice the term "voluntary adoption agency" is commonly used to mean a "registered adoption society"). A child cannot be placed for adoption without the consent of the birth parents or under a placement order (see section 18(6) of the Act). While voluntary adoption agencies have the powers to place children for adoption, it is only local authorities who may apply to the court for a placement order (section 22 of the Act) to place looked after children (that is, children who are looked after by a local authority within the meaning of section 22(1) of the Children Act 1989) for adoption with approved prospective adopters. Local authorities prepare reports to the court when a looked after child is to be adopted abroad.

4.3 Adoption agencies are currently required under regulation 17(2) of the 2005 Regulations to refer to the adoption panel the case of every child who they consider should be placed for adoption. Regulation 18 of those Regulations requires the adoption panel to consider the case of every child referred to it and make a recommendation to the agency as to whether the child should be placed for adoption. Once the adoption panel has made its recommendation it is for the agency's decision-maker to decide whether or not to accept that recommendation. The regulatory change means that the agency will continue to prepare a child's permanence report (regulation 17 of the 2005 Regulations) but will be prohibited from referring the case to an adoption panel to consider whether a child should be placed for adoption in circumstances where, if the agency's decision-

maker were to decide that the child should be so placed, the local authority would be required to make an application for a placement order by section 22(1) or (2) of the Act. Instead the agency will send that report direct to the agency's decision-maker for a decision on whether a child should be placed for adoption. The agency will continue to refer all other cases (which includes those cases where the birth parent consents to placement for adoption and there are no care proceedings pending) to the adoption panel to consider and make a recommendation to the agency as to whether the child should be placed for adoption.

4.4 Being "placed for adoption" means the child goes to live with (or continues to live with) prospective adopters who have been found suitable to adopt by an adoption agency or, in the case of prospective adopters from abroad, the relevant foreign authority¹. Depending on the circumstances of the case, the prospective adopters may then apply to the courts in England or Wales:

- 4.4.1 to adopt the child as a domestic adoption under the Act,
- 4.4.2 to adopt the child in England or Wales under the terms of the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (the Hague Convention), or
- 4.4.3 for parental responsibility (under section 84 of the Act) prior to the child being adopted abroad either in a Hague Convention country or a non-Hague Convention country.

5. Territorial Extent and Application

The amendments to the 2005 Regulations apply in relation to England only. The Welsh Ministers are to make similar amendments to the Adoption Agencies (Wales) Regulations 2005 (SI 2005/1313) which govern the functions of adoption agencies in Wales and the intention is that these will come into force on 1 September 2012. The amendments to the Adoptions with a Foreign Element Regulations 2005 apply in relation to England and Wales. As noted in paragraph 4.1 above, the amendments to that set of Regulations have been made following consultation with the Welsh Ministers.

6. European Convention on Human Rights

As these Regulations are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The Coalition Government and Welsh Ministers are committed to improving the adoption service to looked after children and improving the family justice system. The aim of the adoption reform programme is to: increase the number of adoptions of looked after children (where this is in the child's best interests), encourage more people to come forward to adopt, tackle delay and remove real or perceived barriers. Similarly, the aim of the Family Justice Review is to improve the court system so that it is quicker, more cost-effective and fairer whilst continuing to protect children and vulnerable adults from risk of harm and securing their future welfare.

7.2 The Regulations implement one of the Family Justice Review's recommendations²: "The requirement that local authority adoption panels should consider the suitability for adoption of a

¹ Regulation 2 of the Adoptions with a Foreign Element Regulations 2005

² <http://www.justice.gov.uk/downloads/publications/moj/2011/family-justice-review-final-report.pdf> paragraph 78

child whose case is before the court should be removed.” The Coalition Government and Welsh Ministers accepted this recommendation on 6 February 2012.¹

7.3 The policy intention of the Regulations is twofold: firstly, to reduce delay in the adoption process so that children will be able to be placed with their prospective adoptive families earlier than now: no case will be referred to an adoption panel where an application for a placement order under section 21 of the Act is required. Secondly, to remove duplication since both adoption panels and courts undertake a full assessment of the evidence. However, adoption agencies’ decision-makers will still need to fulfil their role in considering whether particular children should be placed for adoption. This change is part of a larger adoption package of legislative reform which the Department for Education will be consulting on in summer 2012.

7.4 Adoption panels will continue to have a role to play in deciding whether some children should be placed for adoption. Those cases will be those where the courts have no role to play in the case, i.e. parents have relinquished their child for adoption or where a care order has been made and in both cases there is parental consent under section 19 of the Act.

7.5 Adoption panels have two other functions:

7.5.1 To consider and recommend to the adoption agency the suitability of prospective adopters to adopt and the termination of approval of prospective adopters.

7.5.2 To consider and recommend to the adoption agency whether a child should be placed for adoption with particular prospective adopters.

These functions are currently being reviewed as part of the Coalition Government’s wider package of adoption reform.

- ***Consolidation***

7.6 Consolidation is not considered necessary as the Adoption Agencies (Panel and Consequential Amendments) Regulations 2012 are making minor amendments to the 2005 Regulations and consequential amendments to the Adoptions with a Foreign Element Regulations 2005.

8. Consultation outcome

8.1 The Family Justice Review consulted on the recommendations (including the recommendation on adoption panels) in their interim report between 31 March and 23 June 2011. Their final report was published on 3 November 2011 and, as said in paragraph 7.2 above, the Coalition Government and Welsh Ministers accepted the recommendation. Consequently, no additional formal public consultation on the recommendation or Regulations was considered necessary. However, a limited consultation on the draft Regulations was conducted with the Association of Directors of Children’s Services in England, the Association of Directors of Social Services in Wales, HM Chief Inspector for Standards in Education, Children’s Services and Skills (Ofsted), the Care and Social Services Inspectorate Wales and the British Association for Adoption and Fostering.

9. Guidance

9.1 The statutory adoption guidance to the Act in England has been updated to reflect the change to be made by these Regulations. The guidance has been issued under section 7 of the Local Authority Social Services Act 1970, which requires local authorities in their social services

¹ <https://www.education.gov.uk/publications/eOrderingDownload/CM-8273.pdf> page 57

functions to act under the general guidance of the Secretary of State. The revised guidance can be found on the Department of Education's website <http://www.education.gov.uk/childrenandyoungpeople/families/adoption/b0072314/guidance>.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 An Impact Assessment has not been prepared for these Regulations because there will be an overall reduction in burdens for local authorities adoption services. It is expected that at least 2,500 fewer children's cases will require an adoption panel to be convened in England as a consequence of the Regulations making an estimated national saving of £11,350,000.¹

10.3 An Equality Impact Assessment can be found on the Department for Education's website at: <http://www.education.gov.uk/schools/pupilsupport/inclusionandlearnersupport/inclusion/equalityanddiversity/a0063621/equality-impact-assessments-carried-out-since-may-2010>

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

12.1 Adoption agencies in England are inspected every three years by HM Chief Inspector for Standards in Education, Children's Services and Skills ("HMCI"). HMCI is independent of the Department for Education. The purpose of inspection is to assess the quality of the services provided by the agency to children and young people, birth and adoptive parents and families, and adopted adults. The inspection process is designed to test that the agencies are complying with the relevant Regulations, statutory guidance and with the National Minimum Standards that underpin these. Inspection information is used to assess each agency's performance.

12.2 HMCI publishes inspection reports of individual agencies on its website. HMCI also published thematic reports that draw on findings aggregated from individual inspection reports. These reports offer an objective assessment of the performance of agencies as a service designed to promote high quality adoption services for children and their birth and adoptive families. Inspection data and feedback from HMCI to the Department for Education helps inform the Department's monitoring and review of these Regulations and understand where there may be concerns or issues with the regulatory framework that mean it may need revision.

12.3 The Department for Education will review the annual data received from local authorities on children looked after by Local Authorities in England to see if decisions whether specific children should be placed for adoption are being made faster. In 2011 (latest data available) it took on average 11 months for decisions to be made whether specific children should be placed for adoption; this time period includes the adoption panel process. If the data shows no significant reduction in the average timescales, the Department would seek to address this with local authorities or tackle it

¹ The figure of 2,500 is based on the number of placement orders made in respect of the 3,050 children who were adopted in 2010/2011 (latest data available). An adoption panel must be convened to consider every child's case where the adoption agency is considering whether the child should be placed for adoption, though a panel may consider a number of cases in a day. Selwyn, J et al (2009) research report [Adoption and the Inter-Agency Fee](#) (p. 19) estimated, from the data available, that the expenditure for each adoption panel was £4,000 (2007/08 prices). The £4,000 has been uplifted using the HM Treasury GDP Deflator Index. The 2012/13 cost of an adoption panel would be £4,540. Since publication of the research report, the maximum number of ten people who could sit as panel members was removed with effect from 1 April 2011 by the Adoption Agencies and Independent Review of Determinations (Amendment) Regulations 2011 (SI 2011/589). A panel must have a minimum of five panel members considering a case. Although that change reduced the cost of convening an adoption panel it is so small that it has been excluded from the 2012/13 estimate. The *Adoption and the Inter-Agency Fee* research report can be found on the Department for Education's website at: <https://www.education.gov.uk/publications/RSG/Adoptionandforstering/Page1/DCSF-RR149>.

through encouraging collaborative work between the courts and local authorities where weaknesses in the family justice system in a local area was identified.

13. Contact

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