

**EXPLANATORY MEMORANDUM TO**  
**THE ADOPTION AGENCIES (MISCELLANEOUS AMENDMENTS) REGULATIONS**  
**2013**

**2013 No. 985**

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 These Regulations amend the Adoption Agencies Regulations 2005 ('the 2005 Regulations') by substituting a new Part 4 (Duties of Adoption Agencies in Respect of a Prospective Adopter). Part 4 makes provision for the assessment of prospective adopters and is amended to introduce a new two-stage approval process.

2.2 In particular, these Regulations introduce time limits for the adopter approval process with Stage One (the pre-assessment process) being limited to two months and Stage Two (the assessment decision) taking four months. Provision is made to enable both timescales to be extended in certain circumstances. All prescribed checks (including criminal records checks, references etc.) are conducted during Stage One. The regulations also introduce a fast-track process to allow certain previous adopters or foster parents to proceed straight to Stage Two and receive a tailored assessment.

**3. Matters of special interest to the [Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments]**

3.1 None

**4. Legislative Context**

4.1 These Regulations amend the Adoption Agencies Regulations 2005 which make provision relating to the exercise by adoption agencies (local authorities and registered adoption societies) of their functions in relation to adoption under the Adoption and Children Act 2002.

4.2 A new Regulation 19A is inserted into Part 3 of the 2005 Regulations to place a new requirement on adoption agencies to refer children's details to the organisation which maintains the Adoption Register as soon as possible and no later than three months from the decision that the child should be placed for adoption (unless they are actively considering a match for the child with a particular prospective adopter).

4.3 Part 4 of the 2005 Regulations is replaced with a new Part 4 to make provision for the new two-stage adopter approval process as follows:

- Regulation 21 provides that Stage One of the adopter approval process begins when the agency notifies the potential adopter, in response to their registration of interest, that they may proceed to Stage One of the adopter approval process;
- Regulation 22 provides that the agency must prepare a prospective adopter Stage One plan, which must include certain prescribed information.
- Regulation 25 (requirement to carry out police checks) and 26 (other pre-assessment information) set out the information the agency must collect and the prescribed checks the agency must make prior to making a decision about suitability to proceed to Stage Two.
- Regulation 27 provides that the agency must make a pre-assessment decision as to whether a prospective adopter may be suitable to adopt a child and progress to Stage Two within two months of the commencement of Stage One.
- Regulation 28 provides that Stage Two begins when the prospective adopter notifies the agency that they wish to continue with the assessment process provided it is within six months from the date on which the agency notified the prospective adopter that they may be suitable to adopt (at the end of Stage One).
- Regulation 29 provides that the agency must prepare a prospective adopter Stage Two plan, which must include certain prescribed information.
- A new Regulation 30F is inserted to provide for a fast-track process of approval for certain previous adopters or approved foster carers.
- A new Regulation 30G is inserted to place a new requirement on adoption agencies to refer approved prospective adopter's details to the organisation which maintains the Adoption Register as soon as possible and no later than three months from the determination that they are suitable to adopt a child (unless they are actively considering matching him/her with a particular child).
- A new Regulation 30H is inserted to provide for a prospective adopter matching plan, a written agreement covering the matching process: duties of the agency and the role of the prospective adopter.
- Part 1 of Schedule 4 is amended with Part 1 prescribing the information to be collected during Stage One and Part 3 prescribing the information to be collected during Stage Two.
- A new Schedule 4A is inserted providing for the detail of the fast-track process.
- Transitional provision is made to provide that an adoption agency which has started to assess the suitability of a prospective adopter in accordance with Part 4 of the Adoption Agencies Regulations 2005, prior to the coming into force of these Regulations, to continue that assessment as if these Regulations had not been made.

4.4 The Regulations make other consequential amendments which are set out in the Schedule including making minor amendments to the Independent Review of Determinations (Adoption and Fostering) Regulations 2009 consequent on amendments made by the Adoption Agencies and Independent Review of Determinations (Amendment) Regulations 2011, which make provision for the review of certain determinations by adoption agencies and fostering service providers, to be carried out by an independent panel appointed by the Secretary of State. Amendments are also made to the Adoptions with a Foreign Element Regulations 2005 (which apply to England and

Wales) to ensure that the inter-country adopter assessment process is in line with the process in Part 4 of these Regulations.

## **5. Territorial Extent and Application**

5.1 This instrument, apart from the amendments to the Adoptions with a Foreign Element Regulations 2005 which apply in relation to England and Wales, applies in relation to England only.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 We need more adoptive families, in particular more who can meet the needs of children with complex needs including those who may be harder to place: older and disabled children and those in sibling groups. The current prospective adopter approval process in Part 4 of the 2005 Regulations often takes too long, is bureaucratic and inflexible. It also does not allow the prospective adopters to have a sufficient role in the process.

7.2 Delays in the adoption system can cause lasting harm for vulnerable children, and may rob them of their best chance of the love and stability of a new family. Based on an in-depth study of the case histories of 130 older looked after children for whom adoption had been identified as the best option, Dr Julie Selwyn concluded that: 'delay in decision making and action has an unacceptable price in terms of the reduction in children's life chances and the financial costs to local authorities, the emotional and financial burden later placed on adoptive families and future costs to society'<sup>1</sup>.

7.3 In March 2012 there were 4,600 children waiting to be adopted<sup>2</sup>. This means we need more than 600 additional adopters each year to keep up with the growing number of children waiting to be adopted. We also need a further 2000 - 3000 adopters to tackle the backlog of children waiting to be adopted.

7.4 To overcome this we are introducing a new, time-limited, two-stage adopter approval process. Whilst remaining rigorous, it will allow for greater prospective adopter involvement in the process and be more transparent with clearer timescales. It will mean that, in the majority of cases, prospective adopters can expect to wait no longer than six months to become approved as an adopter.

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<sup>1</sup> Selwyn, J.; Sturgess, W.; Quinton, D. and Baxter, C. (2006) Costs and outcomes of non-infant adoptions, British Association for Adoption and Fostering.

<sup>2</sup> Department for Education (2013) Further Action on Adoption: Finding More Loving Homes.

7.5 Stage One will last for two months and will begin when the potential adopter notifies the agency that they want to adopt a child and the agency notifies that person that they have decided to proceed with the pre-assessment process. The agency will pursue all prescribed checks during Stage One and the prospective adopter will begin initial training and preparation for adoption. Timescales can be extended where the agency is satisfied there is good reason (for example delays in obtaining information about the prospective adopter) or upon the request of the prospective adopter. Stage One will end with the agency's decision on whether the prospective adopter may be suitable to adopt a child and can therefore proceed to Stage Two. Prospective adopters who are deemed not suitable to adopt at this stage are unable to proceed to Stage Two.

7.6 Stage Two will last for four months and begins when the prospective adopter notifies the agency that they wish to proceed with Stage Two of the assessment process. Timescales can be extended where the agency considers there are exceptional circumstances meaning it cannot make a decision within that time or upon the request of the prospective adopter. A prospective adopter assessment plan will be prepared by the agency in consultation with the prospective adopter covering the Stage Two process. During Stage Two the prospective adopter will complete further intensive training and the agency will complete a prospective adopter report which will be submitted to the Adoption Panel. Stage Two ends with the adoption agency's decision on whether the prospective adopter is suitable to adopt a child. Prospective adopters who are deemed unsuitable at this stage may submit representations to the agency or apply to the Secretary of State for a review by the Independent Review Mechanism.

7.7 A fast-track process will be introduced for certain previous adopters and approved foster parents who will proceed straight to Stage Two and receive a tailored assessment including any necessary additional training.

7.8 Agencies will be required to give the required information about approved prospective adopters to the organisation which maintains the Adoption Register as soon as possible and no later than three months from being determined suitable to adopt a child (unless they are actively considering matching him/her with a particular child).

7.9 Agencies will be required to give the required information about a child which it has decided should be placed for adoption to the organisation which maintains the Adoption Register as soon as possible and no later than three months after the decision (unless they are actively considering matching him/her with a particular adopter)

## **8. Consultation outcome**

8.1 The Department for Education invited managers, specialists and practitioners from across the adoption system to form a working group to look at the adopter assessment process. They suggested a radical overhaul of the process to make it shorter, more supportive, more consistent and more analytical. The improvements they proposed have informed these changes.

8.2 The Department for Education consulted on the proposed changes in autumn 2012 and 197 responses were received. In addition 429 responses from looked after and adopted children were collected by the Office of the Children's Rights Director in December 2012 about their views on, amongst other things, speeding up the training and approval of adoptive parents, and fast approval for parents who had adopted or fostered before. The responses were particularly helpful in bringing to our attention practical difficulties with some of the proposed time limits in the process; as a result we made a small number of amendments to the draft Regulations that we consulted on. The only subject to which respondents were strongly opposed was about the size of adoption panels and limiting the number of non-members attending the meeting; as a result these proposed changes are not being taken forward. The [Government's response](#) to the consultation has been published on the Department for Education's website on [www.education.gov.uk](http://www.education.gov.uk).

## **9. Guidance**

9.1 These Regulations are being accompanied by revised adoption statutory guidance which is being updated to reflect the changes made by these Regulations. The guidance is issued under section 7 of the Local Authority Social Services Act 1970, which requires local authorities in their social services functions to act under the general guidance of the Secretary of State. The revised guidance will be posted on the Department of Education's website.

9.2 In addition changes are being made to the Adoption National Minimum Standards including new standards relating to dealing with enquiries, the two-stage process, the fast-track and the relevant timescales

## **10. Impact**

10.1 The impact on voluntary adoption agencies will be that they will need to amend their practices in order that assessments are carried out under the new two-stage process but once in place the changes should assist voluntary adoption agencies by:

10.1.1 Clarifying the process and timescales.

10.2.1 Reducing the burden on the agencies in Stage One, as the prospective adopter will be more actively engaged in the process.

10.3.1 Enabling agencies to sift out unsuitable applicants prior to the full assessment by conducting prescribed checks in Stage One.

10.4.1 Reducing the time spent on assessing applicants who have been previously assessed either as adopters or foster carers through the new fast track process.

10.5.1 Fewer cases might be referred to the Independent Review Mechanism as some unsuitable prospective adopters will have been removed from the process during Stage One. This should reduce the time spent by agencies preparing responses to cases referred to the Mechanism.

- 10.2 The impact on local authorities will be the same as for voluntary adoption agencies. In addition the changes will also benefit local authorities by enabling them to assess prospective adopters more quickly.
- 10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

11.1 The legislation does not apply to small business

## **12. Monitoring & review**

12.1 Adoption agencies in England are inspected by the Office for Standards in Education, Children's Services and Skills. (Ofsted). Ofsted is independent of Government. 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 Ofsted publishes the inspection reports of individual agencies on its website. Ofsted 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 Ofsted 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. Data will show how swiftly local authorities place children in need of adoption and how swiftly they and adoption agencies deal with prospective adopters. Key indicators are included in the adoption timeliness scorecards which will allow local authorities and other adoption agencies to monitor their own performance and compare it with that of others. Because comprehensive national data on timeliness for prospective adopters will not be available until autumn 2014, the scorecard will focus initially on local authorities and the adoption process for children. In the interim, we will assess the timeliness of the prospective adopter's journey in a cross-section of adoption agencies as they prepare to implement the new training and assessment process. From 2014, the scorecards will include data on prospective adopters and will be published for all adoption agencies to allow for a full comparison.

### **13. Contact**

Alison Mattocks at the Department for Education (tel: 0114 2742274 or email: [alison.mattocks@education.gsi.gov.uk](mailto:alison.mattocks@education.gsi.gov.uk)) can answer any queries regarding the instrument.