

---

STATUTORY INSTRUMENTS

---

**2013 No. 985**

**The Adoption Agencies (Miscellaneous  
Amendments) Regulations 2013**

**Amendment of the Adoption Agencies Regulations 2005**

5. For Part 4 substitute—

**“PART 4**

**Duties of Adoption Agency in Respect of a Prospective Adopter**

*Stage 1 – the pre-assessment process*

**Registration of interest in adoption**

**21.** Regulations 22 to 27 apply when a person has notified an adoption agency that they want to adopt a child and the agency has notified that person that it has decided to proceed with the pre-assessment process in respect of that person.

**Prospective adopter stage one plan**

**22.** The adoption agency must prepare a written plan in consultation with the prospective adopter (“the prospective adopter stage one plan”) which includes the following matters—

- (a) information about the counselling, information and preparation for adoption to be provided under regulation 24;
- (b) the procedure for carrying out police checks under regulation 25;
- (c) details of any training that the prospective adopter has agreed to undertake;
- (d) information about the role of the prospective adopter in the stage one process;
- (e) any applicable timescales;
- (f) information about the process for making a representation (including a complaint) under the 1989 Regulations; and
- (g) any other information that the agency considers relevant.

**Prospective adopter’s case record**

**23.—(1)** The adoption agency must set up a case record in respect of the prospective adopter (“the prospective adopter’s case record”) and place on that case record—

- (a) the prospective adopter stage one plan;
- (b) the information and reports obtained by the agency by virtue of this Part;
- (c) the prospective adopter assessment plan;

- (d) the prospective adopter's report and the prospective adopter's observations on that report;
  - (e) the written record of the proceedings of the adoption panel under regulation 30A (and where applicable regulation 30B(8)), its recommendation, the reasons for the recommendation and any advice given by the panel to the agency;
  - (f) the record of the agency's decision under regulation 30B(1), (6) or as the case may be (9);
  - (g) where the prospective adopter applied to the Secretary of State for a review by an independent review panel the recommendation of that review panel;
  - (h) where applicable, the prospective adopter's review report and the prospective adopter's observations on that report;
  - (i) the prospective adopter matching plan; and
  - (j) any other documents or information obtained by the agency which it considers should be included in that case record.
- (2) The adoption agency may ask the prospective adopter to provide any further information the agency may reasonably require.

**Requirement to provide counselling, information and preparation for adoption**

- 24.—**(1) The adoption agency must—
- (a) provide a counselling service for the prospective adopter;
  - (b) in a section 83 case, explain to the prospective adopter, and provide written information about, 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 the prospective adopter, and provide written information about, the procedure in relation to, and the legal implications of, placement for adoption and adoption;
  - (d) provide the prospective adopter with any information and any training materials relating to adopting a child available for use; and
  - (e) make arrangements for the prospective adopter to receive such preparation for adoption as the agency considers appropriate.
- (2) In paragraph (1)(e) "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 the child's family;
  - (c) contact between a child and the child's 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.

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

**25.**—(1) In respect of the prospective adopter and any other member of the prospective adopter’s household who is aged 18 or over, the adoption agency must obtain an enhanced criminal record certificate issued under section 113B of the Police Act 1997(1) which includes suitability information relating to children (within the meaning of section 113BA(2) of that Act).

(2) An adoption agency may not consider a person suitable to adopt a child if that person or any member of that person’s 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, was 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(2) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (prohibitions and restrictions relating to pornography)(3) 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 Courts Services Act 2000(4) except that it does not include an offence contrary to section 9 of the Sexual Offences Act 2003 (sexual activity with a child)(5) in a case where the offender was under the age of 20 and the child was 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 that person or any member of that person’s 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,

notwithstanding that the 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 the prospective adopter’s household falls within paragraph (2) or (4), the agency must

---

(1) 1997 c. 50. Section 113B was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c.15) and amended by: section 63(1) of, and paragraph 14(1) and (3) of Schedule 9 to, the Safeguarding and Vulnerable Groups Act 2006 (c.47) (‘the 2006 Act’); section 378(1) of, and paragraph 149 of Schedule 16 to, the Armed Forces Act 2006 (c.52); sections 79(1) and 80 of the Protection of Vulnerable Groups (Scotland) Act 2007 (2007 asp. 14); sections 97(2) and 112(2) of, and part 8 of Schedule 8 to, the Policing and Crime Act 2009 (c. 26), by sections 79(2)(b), 80(1)(a) to (d), 82(3)(a) and (b), 115(1) and (2) of the Protection of Freedoms Act 2012 (c.9) (‘the 2012 Act’); and by S.I. 2009/203, 2010/1146 and 2012/3006. Section 113BA(2) was inserted by section 63(1) of, and paragraph 14(1) and (4) of Schedule 9 to, the 2006 Act and amended by: section 81(2) and (3)(h) of the Policing and Crime Act 2009; section 170(2) of the Education and Inspections Act 2006 (c.40); and section 169 of, and paragraph 12(a) and (b) of Schedule 1 to, the Education and Skills Act 2008 (c.25) and section 115(1) and (2) of the 2012 Act.

(2) 1979 c. 2.

(3) 1876 c. 36. Section 42 was amended by Part 9 of Schedule 1 to the Statute Law (Repeals) Act 1993 (c.50), and paragraph 1 of Schedule 2 to the Statute Law (Repeals) Act 2008 (c.12) and by other provisions which are not relevant to these Regulations.

(4) 2000 c. 43. Section 26 is repealed by Schedule 10 of the 2006 Act on a date to be appointed.

(5) 2003 c. 42.

notify the prospective adopter as soon as possible in writing that they cannot be considered suitable to adopt a child.

### **Other pre-assessment information**

**26.** The adoption agency must—

- (a) obtain the information about the prospective adopter which is specified in Part 1 of Schedule 4;
- (b) obtain a written report from a registered medical practitioner about the health of the prospective adopter following a full examination which must include the 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;
- (c) obtain a written report of each of the interviews with the persons nominated by the prospective adopter to provide personal references for the prospective adopter;
- (d) where the adoption agency considers it necessary, obtain a personal reference from the prospective adopter's former spouse, civil partner or partner; and
- (e) where it is not the local authority in whose area the prospective adopter has their home ascertain whether the local authority in whose area the prospective adopter has their home have any information about the prospective adopter which may be relevant to an assessment of the prospective adopter's suitability to adopt and if so obtain from that authority a written report setting out that information.

### **Pre-assessment decision**

**27.—**(1) The adoption agency must, taking into account the information obtained under regulations 25 and 26, decide whether—

- (a) the prospective adopter may be suitable to adopt a child; or
- (b) that the prospective adopter is not suitable to adopt a child.

(2) Subject to paragraph (3), the agency must make its decision under paragraph (1) within a period of two months from the date on which the adoption agency notified the prospective adopter that they had decided to proceed with the pre-assessment process in accordance with regulation 21.

(3) The adoption agency may delay making the decision under paragraph (1)—

- (a) where it is satisfied there are good reasons because, for example, there has been a delay in obtaining information about the prospective adopter; or
- (b) upon the request of the prospective adopter.

(4) Where the adoption agency decides that the prospective adopter may be suitable to adopt a child the agency must—

- (a) as soon as practicable, notify in writing the prospective adopter of its decision; and
- (b) explain to the prospective adopter that they must notify the adoption agency that they wish to continue with the assessment process within six months of the date on which the notification is given.

(5) Where the adoption agency decides that the prospective adopter is not suitable to adopt a child the agency must as soon as practicable after making the decision notify the prospective adopter in writing of its decision together with reasons for its decision.

*Stage 2 – the assessment decision*

## **Stage 2 assessment**

**28.**—(1) Regulations 28 to 30G apply where the prospective adopter notifies the adoption agency that they wish to continue with the assessment process within six months from the date on which the agency notified the prospective adopter that they may be suitable to adopt under regulation 27(4).

(2) Where the prospective adopter notifies the adoption agency that they wish to continue with the assessment process more than six months from the date on which the agency notified the prospective adopter that they may be suitable to adopt under regulation 27(4), the agency must notify the prospective adopter in writing that the prospective adopter cannot proceed with the assessment process.

## **Prospective adopter assessment plan**

**29.** The adoption agency must prepare a written plan in consultation with the prospective adopter (“the prospective adopter assessment plan”) which includes the following matters—

- (a) the procedure for assessing the prospective adopter’s suitability to adopt a child;
- (b) any applicable timescales;
- (c) the arrangements for the prospective adopter to receive any additional counselling or preparation for adoption;
- (d) details of any training that the prospective adopter has agreed to undertake;
- (e) information about the role of the prospective adopter in the assessment process;
- (f) information about the process for submitting representations or applying to the Secretary of State for a review under regulation 30B(5)(c); and
- (g) any other matters which the agency considers relevant.

## **Prospective adopter’s report**

**30.**—(1) The adoption agency must obtain the information about the prospective adopter which is specified in Part 3 of Schedule 4.

(2) The adoption agency must prepare a written report (“the prospective adopter’s report”) which includes—

- (a) the information about the prospective adopter and the prospective adopter’s family which is specified in Parts 1 and 3 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 obtained by the agency under regulation 26(e);
  - (d) any observations of the agency on the matters referred to in regulations 24 and 25;
  - (e) the agency’s assessment of the prospective adopter’s suitability to adopt; and
  - (f) any other information which the agency considers relevant.
- (3) In a section 83 case, the prospective adopter’s report must also include—
- (a) the name of the country from which the prospective adopter wishes to adopt a child (“country of origin”);
  - (b) confirmation that the prospective adopter meets the eligibility requirements to adopt from the country of origin;
  - (c) any 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.

(4) Where the adoption agency receives information under paragraph (1) or other information in relation to the assessment of the prospective adopter and is of the opinion that the prospective adopter is unlikely to be considered suitable to adopt a child, it may prepare the prospective adopter's report under paragraph (2) notwithstanding that the agency may not have received all the information about the prospective adopter which may be required by this regulation.

(5) The adoption agency must—

- (a) notify the prospective adopter that the prospective adopter's application is to be referred to the adoption panel;
- (b) give the prospective adopter a copy of the prospective adopter's report;
- (c) invite the prospective adopter to send any observations in writing to the agency within 5 working days, beginning with the date on which the notification is sent; and
- (d) explain to the prospective adopter that the adoption agency may, in exceptional circumstances, extend the timescale referred to in paragraph (c) above.

(6) At the end of the 5 working days referred to in paragraph (5)(c) (or, where that timescale is extended by the adoption agency, as soon as possible after the prospective adopter's observations are received) the adoption agency must send—

- (a) the prospective adopter's report and the prospective adopter's observations;
- (b) the written reports and references referred to in regulation 26(b) to (e) but in the case of reports obtained in accordance with regulation 26(b), only if the agency's medical adviser advises it to do so; and
- (c) any other relevant information obtained by the agency,

to the adoption panel.

(7) 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**

**30A.**—(1) Subject to paragraphs (2) and (3), 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 30;
- (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) In relation to the case of a prospective adopter in respect of whom a report has been prepared in accordance with regulation 30(4), the adoption panel must either—

- (a) request the adoption agency to prepare a further prospective adopter's report, covering all the matters set out in regulation 30(2); or
- (b) recommend that the prospective adopter is not suitable to adopt a child.

(4) 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 and likely needs.

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

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

**30B.**—(1) Subject to paragraph (2), the adoption agency must decide whether the prospective adopter is suitable to adopt a child within four months of the date on which the agency received the prospective adopter’s notification that they wished to proceed with the assessment process.

(2) The adoption agency may delay making the decision under paragraph (1)—

- (a) in a case where the adoption agency considers there are exceptional circumstances which mean it cannot make the decision within that time, or
- (b) upon the request of the prospective adopter.

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

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

(5) 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 the prospective adopter 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; and
- (c) advise the prospective adopter that within 40 working days beginning with the date on which the notification was sent the prospective adopter may—
  - (i) submit any representations the prospective adopter 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.

(6) If, within the period of 40 working days referred to in paragraph (5)(c), 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 must proceed to make its decision and notify the prospective adopter in writing of its decision together with reasons for that decision.

(7) If, within the period of 40 working days referred to in paragraph (5)(c), the adoption agency receives further representations from the prospective adopter, it may refer the case together with all relevant information to the adoption panel for further consideration.

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

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

- (a) if the case has been referred to the adoption panel under paragraph (7), the agency must make the decision only after taking into account the recommendations of the adoption panel made under both paragraph (8) and regulation 30A; 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 30A.

(10) As soon as possible after making its decision under paragraph (9), 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 (8), if this is different from the agency's decision.

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

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

**30C.**—(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 30;
  - (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 sub-paragraph (a) were passed to the adoption panel; and
  - (c) the documents referred to in regulation 30B(5)(a) and (b).

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

**30D.**—(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 they wish to proceed with the adoption; and
- (b) in any other case, a child is placed for adoption with the prospective adopter or the agency is considering placing a child with the prospective adopter in accordance with regulations 31 to 33.

(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 one 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 includes the agency’s reasons;
- (b) notify the prospective adopter that the case is to be referred to the adoption panel; and
- (c) give the prospective adopter a copy of the report inviting the prospective adopter to send any observations to the agency within 10 working days beginning with the date on which that report is given to the prospective adopter.

(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 30B(2) to (11) apply in relation to that decision by the agency.

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

**30E.** 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 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 and likely needs;
- (b) all the documents and information which were passed to the adoption panel in accordance with regulation 30;
- (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.

#### **Application of Part 4 with modifications to specified persons**

**30F.—(1)** This paragraph applies where the adoption agency is satisfied that the prospective adopter—

- (a) is an approved foster parent; or
- (b) has, at any time, adopted a child—

- (i) in England and Wales, after having been assessed as suitable to adopt in accordance with these Regulations or corresponding Welsh provision; or
- (ii) after having been assessed as suitable to adopt in accordance with the Adoptions with a Foreign Element Regulations 2005<sup>(6)</sup> (“the 2005 Regulations”).

(2) “Corresponding Welsh provision” for the purposes of this regulation means in relation to a Part or a regulation of these Regulations the provision of regulations made by the Assembly under section 9 of the Act which corresponds to that Part or regulation.

(3) Where paragraph (1) applies Part 4 has effect subject to the modifications set out in Schedule 4A.

(4) Where the prospective adopter is an approved foster parent and consents, the adoption agency may request access to any relevant records compiled in relation to that approval by the fostering service provider.

(5) In this regulation “approved foster parent” means a person who is approved as a foster parent in accordance with the Fostering Services (England) Regulations 2011<sup>(7)</sup> but does not include a person with whom a child is placed under regulation 24 or 25A of the Care Planning, Placement and Case Review (England) Regulations 2010<sup>(8)</sup>.

### **Referral to the Adoption Register – prospective adopters**

**30G.**—(1) Where paragraph (2) applies the agency must give the information about the prospective adopter requested by the organisation which maintains the Adoption Register to that organisation for entry in the Register as soon as possible and in any event no later than three months after the determination referred to in paragraph (2)(a).

- (2) Other than in a section 83 case, this paragraph applies where—
  - (a) an adoption agency has, in accordance with regulation 30B, determined that a prospective adopter is suitable to adopt a child;
  - (b) the agency has not identified a particular child who it is considering placing with that prospective adopter; and
  - (c) the agency has obtained the consent of the prospective adopter.

### **Prospective adopter matching plan**

**30H.** Except in a section 83 case, where an adoption agency has approved a prospective adopter as suitable to adopt a child in accordance with regulation 30B, the agency must prepare a written plan in consultation with the prospective adopter (“the prospective adopter matching plan”) which includes—

- (a) information about the duties of the adoption agency under Parts 5 and 6 of these Regulations;
- (b) information about the role of the prospective adopter in identifying a child for whom they would be an appropriate adopter;
- (c) information about the process for making a representation (including a complaint) under the 1989 Regulations; and
- (d) any other matters that the agency consider relevant.”.

---

<sup>(6)</sup> S.I. 2005/392, amended by S.I. 2005/3482, S.I. 2009/2563, S.I. 2010/1172 and S.I. 2012/1410 .

<sup>(7)</sup> S.I. 2011/581, amended by S.I. 2013/984.

<sup>(8)</sup> S.I. 2010/959. Regulation 24 was amended by S.I. 2011/58. Regulation 25A was inserted by S.I. 2013/984.

---

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

---