
WELSH STATUTORY INSTRUMENTS

2006 No. 3100 (W.284)

SOCIAL CARE, WALES

CHILDREN AND YOUNG PERSONS, WALES

The Independent Review of Determinations
(Adoption) (Wales) Regulations 2006

Made - - - - 21 November 2006

Coming into force - - 31 December 2006

The National Assembly for Wales in exercise of the powers conferred by sections 9 and 12 of the Adoption and Children Act 2002(1) makes the following Regulations—

PART 1

GENERAL

Title, commencement and application

1.—(1) The title of these Regulations is the Independent Review of Determinations (Adoption) (Wales) Regulations 2006.

(2) They come into force on 31 December 2006.

(3) These Regulations apply to Wales.

Interpretation

2. In these Regulations—

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

“the Agencies Regulations” means the Adoption Agencies (Wales) Regulations 2005(2);

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

“applicant” means—

(a) in the case of a suitability determination, a prospective adopter;

(1) 2002 c. 38. Section 12 was amended by section 57 of the Children Act 2004 (c. 31).

(2) S.I. 2005/1313.

- (b) in the case of a disclosure determination, a relevant person within the meaning of regulation 13A(7) of the Disclosure Regulations;
- “the central list” is to be construed in accordance with regulation 4;
- “disclosure determination” means a qualifying determination described in regulation 13A(1) of the Disclosure Regulations(3);
- “the Disclosure Regulations” means the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005(4);
- “the Independent Review Regulations 2005” means the Independent Review of Determinations (Adoption) (Wales) Regulations 2006(5);
- “the National Assembly” means the National Assembly for Wales;
- “panel” means a panel constituted in accordance with regulation 4(1);
- “qualifying determination” means a determination described in regulation 3;
- “review meeting” means a meeting convened in accordance with regulation 13 for the purposes of reviewing a qualifying determination;
- “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(6) or in a corresponding register maintained under the law of Scotland or Northern Ireland; and
- “suitability determination” means a qualifying determination described in regulation 3(a).

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

- 3. For the purposes of section 12(2) of the Act, a qualifying determination is—
 - (a) a determination that has been made by an adoption agency in accordance with the 2005 Regulations as follows:
 - (i) Where under regulation 28(4) of the Agency Regulations the agency do not propose to approve a prospective adopter as suitable to be an adoptive parent.
 - (ii) Where the agency consider that a prospective adopter is no longer suitable to be an adoptive parent following a review under regulation 30 of the Agency Regulations.
 - (b) A determination described in regulation 13A(1) of the Disclosure Regulations(7)

(3) Regulation 13A (1) of the Disclosure Regulations specifies the following determinations by the appropriate adoption agency in relation to an application under section 61 of the Act (a) not to proceed with an application from any person for the disclosure of protected information; (b) to disclose information to an applicant when that person has withheld consent to the disclosure of the information; and (c) not to disclose information about a person to the applicant where that person has given consent to the disclosure of information.

(4) [S.I. 2005/2689](#).

(5) [2005/1891 \(W.147\)](#).

(6) Care Standards Act 2000 Ch 14

(7) See regulation 16 of these Regulations.

PART 2

PANELS

Constitution of panels

4.—(1) The National Assembly must, on receipt of an application made by an applicant in accordance with regulation 12, constitute a panel for the purpose of reviewing the qualifying determination.

(2) The members of the panel must be drawn from a list of persons appointed and serving as members of adoption agency panels in Wales (in these Regulations referred to as “the central list”), kept by the National Assembly who are considered by the National Assembly to be suitable, by virtue of their skills, qualifications or experience to be members of a panel.

(3) The members of the central list must include—

- (a) Social workers within the meaning of Part IV Care Standards Act 2000 who have at least five years post-qualifying experience in adoption and family placement work; and
- (b) other persons who are considered by the National Assembly to be suitable as members including, where reasonably practicable, persons with personal experience of adoption.

Membership of Panels

5.—(1) The maximum number of people who may be appointed to a panel is five.

(2) A panel must be advised by:

- (a) A social worker within the meaning of Part IV of the Care Standards Act with appropriate qualifications, skills and experience;
- (b) A registered medical practitioner with relevant expertise in adoption work;

(3) A panel may, where the panel considers it appropriate, be advised by:

- (a) A legal advisor with knowledge and expertise in adoption legislation;
- (b) Any other person who the panel considers has relevant expertise in relation to the determination being considered.

(4) Where the qualifying determination being reviewed is a disclosure determination, the panel must include at least two persons falling within regulation 4 (3)(a).

(5) The National Assembly must—

- (a) appoint to chair a panel a person who has the skills and experience necessary for chairing a panel; and
- (b) in the case of a panel constituted to review a suitability 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.

(6) A person must not be appointed to a panel if—

- (a) that person is a member of the adoption panel of the adoption agency that made the qualifying determination;
- (b) where the adoption agency which made the qualifying determination is a local authority the person is, or has been within the period of two years prior to the date on which the qualifying determination was made, employed by that authority in their children and family social services or a member of that authority;

- (c) where the adoption agency which made the qualifying determination is a registered adoption society the person is, or has been within the period of two years prior to the date on which the qualifying determination was made, an employee or a trustee of that agency;
 - (d) that person is related to a person falling within sub-paragraph (a), (b) or (c);
 - (e) that person has within the last two years had a child placed for adoption with him or her by the adoption agency which made the qualifying determination;
 - (f) that person was within the last two years approved as a prospective adopter by the adoption agency that made the qualifying determination; or
 - (g) that person knows the applicant in a personal or professional capacity.
- (7) 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) a person (“*person A*”) is related to another person (“*person B*”) if person A is—
 - (i) a member of the household of, or married to or the civil partner of, person B;
 - (ii) the son, daughter, mother, father, sister or brother of person B; or
 - (iii) the son, daughter, mother, father, sister or brother of the person to whom person B is married or with whom person B has formed a civil partnership.

Meetings of panels

6. —The proceedings of a panel will be invalidated unless at least four of its members are present.

Functions of panel constituted to review a suitability determination

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

- (2) A panel must —
- (a) review the suitability determination; and
 - (b) make a recommendation to the adoption agency which made the qualifying determination as to whether or not a prospective adopter is suitable to be an adoptive parent.
- (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 29 of the Agencies 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 as it considers necessary in relation to the case.

Functions of panel constituted to review a disclosure determination

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

(2) A panel must 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 13A 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; and
- (d) must consider the welfare of any adopted person and if the person is an adopted child, that child's welfare must be paramount. In the case of any other child the panel must have particular regard to their welfare.

Administration of Panels

9. The panel must be administered by the National Assembly, who must make suitable provision for clerking arrangements to the panel.

Fees of panel members

10. The National Assembly may pay to any member of a panel such fees as the National Assembly considers to be reasonable.

Records

11. The National Assembly must 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 5 years 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

12.—(1) An application to the National Assembly for a review of a qualifying determination must be made by the applicant in writing and include the grounds of the application.

(2) In the case of a suitability determination only a prospective adopter may within 20 working days beginning with the date on which a notification was sent by the adoption agency of the qualifying determination in relation to him or her, make a request to the National Assembly for a panel to be constituted to review that determination.

Appointment of panel and conduct of review

13. Upon receipt of an application which has been made in accordance with regulation 12, the National Assembly must—

- (a) Within 5 working days notify the adoption agency which made the qualifying determination that the application has been made by sending to the agency a copy of the application;
- (b) Within 5 working days send a written acknowledgment of the application to the applicant and notify the applicant of the steps taken under sub-paragraph (a);
- (c) Within 25 working days appoint a panel in accordance with regulation 4 and fix a date, time and venue for the panel to meet for the purpose of a review meeting;

- (d) After taking the steps prescribed in sub-paragraph (c), and no less than 5 working days before the date fixed for review, inform in writing the applicant and the adoption agency which made the qualifying determination of—
- (i) the appointment of the panel; and
 - (ii) the date, time and venue of the review meeting;
- (2) The date fixed for the review will be no later than 3 months of the receipt of the application by the Assembly.
- (3) The National Assembly must ensure that the panel receives all relevant papers relating to the review as soon as possible but no less than 5 working days before the date fixed for the review.

Recommendation of panel

- 14.**—(1) Where the panel’s recommendation is not unanimous the recommendation must be that of the majority.
- (2) The recommendation may be made and announced at the end of the review or reserved.
- (3) 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.
- (4) The National Assembly must without delay and in any event no later than 10 working days after the date on which the recommendation is made send a copy of the recommendation and the reasons for it to the applicant and to the adoption agency which made the qualifying determination.

Order for payment of costs

- 15.** The panel may make an order for the payment by the adoption agency by which the qualifying determination reviewed was made of such costs as the panel considers reasonable.

Amendment of the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005

- 16.**—(1) The Access to Information (Post Commencement Adoptions) (Wales) Regulations 2005 are amended in accordance with the following provisions of this regulation.
- (2) In regulation 2, at the appropriate place insert—
- ““appropriate adoption agency” has the same meaning as in section 65(1) of the Act.
 - “National Assembly” means the National Assembly for Wales”
- (3) After regulation 13 (Record of Views) there is to be inserted the following regulation—

“Independent Review—

- 13A.**—(1) The following determinations by the appropriate adoption agency in relation to an application under section 61 of the Act are qualifying determinations for the purposes of section 12 of the Act (independent review of determinations)—
- (a) not to proceed with an application from any person for disclosure of protected information;
 - (b) to disclose information to an applicant about a person when that person has withheld consent to the disclosure of the information;
 - (c) not to disclose information about a person to the applicant where that person has given consent to the disclosure of information.

(2) The adoption agency must give the relevant person written notification of the determination, which must—

- (a) state the reasons for it; and
- (b) advise the relevant person that he or she may apply to the National Assembly within 20 working days, beginning with the date on which the notification was sent, for a review by an independent review panel of the qualifying determination.

(3) If the adoption agency receives notification from the National Assembly that the relevant person 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 National Assembly—

- (a) a copy of the application for disclosure of information;
- (b) a copy of the notification given under paragraph (2);
- (c) the record of any views obtained by the agency under section 61(3) of the Act; and
- (d) any additional information requested by the panel.

(4) The adoption agency must not take any action in accordance with its original determination before—

- (a) the independent review panel has made its recommendation; or
- (b) if the person has not applied for a review within that 20 working day period, the end of that period.

(5) The adoption agency must have regard to any recommendation of the independent review panel in deciding whether to proceed with its original determination.

(6) In paragraph (3)—

- (a) the reference to an independent review panel is to a panel constituted for the purposes of section 12 of the Act; and
- (b) “working day” means any day other than a Saturday or Sunday, Christmas day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.

(7) In this regulation “the relevant person” is—

- (a) in the case of a qualifying determination mentioned in paragraph (1)(a) or (c), the applicant;
- (b) in the case of a qualifying determination mentioned in paragraph (1)(b) or (c), the person the protected information is about.”

Cases in progress under the Independent Review Regulations 2005 on the appointed day

17.—(1) In relation to any application by a prospective adopter for a review of a qualifying determination made before the appointed day, any action or decision taken before the appointed day under a provision of the Independent Review Regulations 2005 must on or after the appointed day, be treated as if it were an action or decision under the corresponding provision of these Regulations.

(2) In the regulation “appointed day” means 31 December 2006.

Revocation

18. The Independent Review of Determinations (Adoption) (Wales) Regulations 2005(8) is hereby revoked.

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

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998⁽⁹⁾.

21 November 2006

D. Elis-Thomas
The Presiding Officer of the National Assembly

⁽⁹⁾ 1998 c. 38.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Adoption and Children Act 2002 (“the Act”). They apply to Wales only. They make provision for the review by an independent panel in two types of case. First, a determination made by an adoption agency under the Adoption Agencies (Wales) Regulations 2005 that it does not propose to approve a prospective adopter as suitable to adopt a child or decides on review that a prospective adopter is no longer 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 Act. Secondly, determinations made by an adoption agency under the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005. These determinations are specified in a new regulation 13A of those Regulations as qualifying determinations for the purposes of section 12(2) of the Act.

Part 2 makes provision for the constitution and membership of panels, their functions and the payment of fees, meetings and record keeping of the panels which are appointed by the National Assembly for Wales to review qualifying determinations.

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.