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STATUTORY INSTRUMENTS

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**2003 No. 367**

**The Voluntary Adoption Agencies and the Adoption Agencies (Miscellaneous Amendments) Regulations 2003**

**PART I  
GENERAL**

**Citation, commencement and interpretation**

**1.—(1)** These Regulations may be cited as the Voluntary Adoption Agencies and the Adoption Agencies (Miscellaneous Amendments) Regulations 2003 and shall come into force on 30th April 2003.

**(2)** In these Regulations—

“the Act” means the Care Standards Act 2000;

“agency” means an appropriate voluntary organisation<sup>(1)</sup>;

“branch manager” shall be construed in accordance with regulation 6(1)(b);

“complaints procedure” shall be construed in accordance with regulation 11(1);

“guardian” has the meaning given to it in section 5 of the Children Act 1989<sup>(2)</sup>;

“manager” shall be construed in accordance with regulation 6(1)(a);

“organisation” means a body corporate other than a public or local authority the activities of which are not carried on for profit;

“registered provider” means, in relation to an agency, a person who is registered under Part II of the Act as the person carrying on the agency<sup>(3)</sup>;

“registration authority” means, in relation to an agency, the registration authority which may exercise, in relation to that agency, functions to which section 36A of the Act applies<sup>(4)</sup>;

“responsible individual” shall be construed in accordance with regulation 5(2);

“statement of purpose” means the written statement compiled in accordance with regulation 3(1).

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**(1)** By virtue of section 1(5) of the 1976 Act, inserted by section 116 of, and paragraph 5(2)(b) of Schedule 4 to, the Act, “appropriate voluntary organisation” is defined as a voluntary organisation which is an adoption society in respect of which a person is registered under Part II of the Act. Part II of the Act makes provision for registration of certain establishments and agencies, including voluntary adoption agencies. By section 4(7) of the Act, “voluntary adoption agency” is defined as an adoption society within the meaning of the 1976 Act which is a voluntary organisation within the meaning of that Act.

**(2)** 1989 c. 41.

**(3)** By virtue of section 121(4) of the Act the person who carries on the agency is the voluntary organisation itself.

**(4)** By virtue of sections 5 and 36A of the Act (inserted by section 16 of the 2002 Act) where the principal office of the agency is in England, the registration authority will be the National Care Standards Commission and where the principal office of the agency is in Wales, the registration authority will be the National Assembly for Wales. By section 5(b) of the Act, the National Assembly for Wales is referred to as “the Assembly”. By section 6(1) of the Act the National Care Standards Commission is referred to as “the Commission”.

(3) In these Regulations, references to employing a person include employing a person whether or not for payment, and whether under a contract of service or a contract for services, and allowing a person to work as a volunteer, and references to an employee or to a person being employed shall be construed accordingly.

### **Application for registration under Part II of the Act**

2. No application for registration under Part II of the Act shall be made in respect of a voluntary adoption agency which is an unincorporated body.

### **Statement of purpose**

3.—(1) The registered provider and the manager shall compile in relation to the agency a written statement (in these Regulations referred to as “the statement of purpose”) which shall consist of a statement as to the matters listed in Schedule 1.

(2) The registered provider and the manager shall provide a copy of the statement of purpose to the registration authority and—

- (a) if the registration authority is the Commission and the agency has a branch in Wales, to the Assembly;
- (b) if the registration authority is the Assembly and the agency has a branch in England, to the Commission.

(3) The registered provider and the manager shall make a copy of the statement of purpose available, upon request, for inspection by—

- (a) any person working for the purposes of the agency;
- (b) children who may be adopted, their parents and guardians;
- (c) persons wishing to adopt a child;
- (d) adopted persons, their parents, natural parents and former guardians;
- (e) any local authority.

(4) Subject to paragraph (5), the registered provider and the manager shall ensure that the agency is at all times conducted in a manner which is consistent with its statement of purpose.

(5) Nothing in paragraph (4) shall require or authorise the registered provider, the manager or the branch manager (if any), to contravene, or not comply with—

- (a) any other provision of these Regulations;
- (b) any conditions for the time being in force in relation to the registration of the registered provider under Part II of the Act.

### **Review of statement of purpose**

4. The registered provider and the manager shall—

- (a) keep under review and, where appropriate, revise the statement of purpose; and
- (b) notify the registration authority and—
  - (i) if the registration authority is the Commission and the agency has a branch in Wales, the Assembly;
  - (ii) if the registration authority is the Assembly and the agency has a branch in England, the Commission,

of any such revision within 28 days.

## PART II

### REGISTERED PROVIDERS, RESPONSIBLE INDIVIDUALS AND MANAGERS

#### **Fitness of registered provider**

- 5.—(1) An organisation shall not carry on an agency unless it is fit to do so.
- (2) An organisation is not fit to carry on an agency unless—
- (a) it has given notice to the registration authority of the name, address and position in the organisation of an individual (in these Regulations referred to as “the responsible individual”) who is a director, manager, secretary or other officer of the organisation and is responsible for supervising the management of the agency; and
  - (b) that individual satisfies the requirements set out in paragraph (3).
- (3) The requirements are that—
- (a) he is of integrity and good character;
  - (b) he is physically and mentally fit to carry on the agency; and
  - (c) full and satisfactory information is available in relation to him in respect of each of the matters specified in Schedule 2.

#### **Appointment of manager and branch manager**

- 6.—(1) The registered provider shall appoint—
- (a) an individual to manage the agency (in these Regulations referred to as “the manager”); and
  - (b) where the agency has a branch, an individual to manage that branch (in these Regulations referred to as “the branch manager”).
- (2) The registered provider shall forthwith notify the registration authority of—
- (a) the name of any person appointed in accordance with this regulation; and
  - (b) the date on which the appointment is to take effect.

#### **Fitness of manager and branch manager**

- 7.—(1) The registered provider shall not allow a person to manage the agency or any branch of the agency unless he is fit to do so.
- (2) A person is not fit to manage an agency or (as the case may be) branch unless—
- (a) he is of integrity and good character;
  - (b) having regard to the size of the agency or branch and the agency’s statement of purpose—
    - (i) he has the qualifications, skills and experience necessary for managing the agency or branch; and
    - (ii) he is physically and mentally fit to manage the agency or branch; and
  - (c) full and satisfactory information is available in relation to him in respect of each of the matters listed in Schedule 2.

#### **Registered provider, manager and branch manager — general requirements**

- 8.—(1) The registered provider, the manager, and the branch manager (if any) shall, having regard to—

- (a) the size of the agency or (as the case may be) branch and the agency's statement of purpose; and
- (b) the need to safeguard and promote the welfare of children who may be, or have been, placed for adoption by the agency,

carry on or manage the agency or (as the case may be) branch, with sufficient care, competence and skill.

(2) The registered provider shall ensure that the responsible individual undertakes from time to time such training as is appropriate to ensure that he has the experience and skills necessary for carrying on the agency.

(3) The registered provider shall ensure that the manager and branch manager (if any), undertake from time to time such training as is appropriate to ensure that he has the experience and skills necessary for managing the agency or (as the case may be) branch.

### **Notification of offences**

9. Where the registered provider, responsible individual, manager or branch manager (if any) is convicted of any criminal offence, whether in England and Wales or elsewhere, he shall forthwith give notice in writing to the registration authority of—

- (a) the date and place of the conviction;
- (b) the offence of which he was convicted; and
- (c) the penalty imposed on him in respect of the offence.

## **PART III**

### **CONDUCT OF AGENCIES**

#### **Arrangements for the protection of children**

10.—(1) The registered provider and the manager shall prepare and implement a written policy which—

- (a) is intended to safeguard from abuse or neglect children placed for adoption—
  - (i) by the agency; or
  - (ii) by another adoption agency but with prospective adopters approved by the agency as suitable to be adoptive parents in accordance with the Adoption Agencies Regulations 1983(5); and
- (b) sets out the procedure to be followed in the event of any allegation of abuse or neglect.

(2) The procedure under paragraph (1)(b) shall provide in particular for—

- (a) liaison and co-operation with any local authority which is, or may be, making child protection enquiries in respect of the child;
- (b) where the child is placed with prospective adopters, the prompt referral to the local authority in whose area the child is placed of any allegation of abuse or neglect;
- (c) where the child is not placed with prospective adopters, the prompt referral to the local authority in whose area the principal office of the agency is located of any allegation of abuse or neglect;

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(5) S.I. 1983/1964, amended by S.I. 1997/649, 1997/2308, 1999/2768, 2001/2237, 2001/2992, 2001/3443, 2002/808 and 2002/3220.

- (d) notification to the registration authority of the instigation and outcome of any child protection enquiries;
- (e) written records to be kept of any allegation of abuse or neglect and the action taken in response;
- (f) consideration to be given to the measures that may be necessary to protect children placed with prospective adopters following an allegation of abuse or neglect;
- (g) arrangements to be made for persons working for the purposes of the agency, prospective adopters and children who have been placed for adoption by the agency, to have access to information that would enable them to contact—
  - (i) the local authority referred to in sub-paragraph (b) or (c) (as the case may be); and
  - (ii) the registration authority,regarding any concern about child welfare or safety.

(3) In this regulation “child protection enquiries” means any enquiries carried out by a local authority in the exercise of any of its functions conferred by or under the Children Act 1989 relating to the protection of children.

### **Complaints**

**11.**—(1) The registered provider and the manager shall establish a written procedure for considering complaints (referred to in these Regulations as “the complaints procedure”) made by or on behalf of—

- (a) children who may be adopted, their parents and guardians;
  - (b) persons wishing to adopt a child;
  - (c) adopted persons, their parents, natural parents and former guardians.
- (2) The complaints procedure shall, in particular, provide—
- (a) for an opportunity for informal resolution of a complaint at an early stage;
  - (b) that no person who is the subject of a complaint takes part in its consideration other than, if the registered provider or the manager considers it appropriate, at the informal resolution stage only;
  - (c) for dealing with complaints about the registered provider, the responsible individual, the manager and branch manager (if any); and
  - (d) for complaints to be made by a person acting on behalf of a child.

(3) The registered provider and the manager shall provide a copy of the complaints procedure to every person working for the purposes of the agency and shall provide, upon request, a copy of the procedure to any person mentioned in paragraph (1)(a) to (c).

- (4) The copy of the complaints procedure supplied under paragraph (3) shall include—
- (a) the name, address and telephone number of the registration authority; and
  - (b) details of the procedure (if any) which has been notified to the registered provider by the registration authority for the making of complaints to the registration authority that relate to the agency.

### **Complaints — further requirements**

**12.**—(1) The registered provider and the manager shall ensure that any complaint made under the complaints procedure is fully investigated.

(2) The registered provider and the manager shall, so far as is reasonably practicable, within a period of 28 days beginning on the date on which the complaint is received by the agency, inform the complainant of the outcome of the investigation and the action (if any) that is to be taken in consequence.

(3) The registered provider and the manager shall ensure that a written record is made of any complaint, including details of the investigation made, the outcome and any action taken in consequence, and for that record to be retained for at least 3 years from the date that it is made.

(4) The registered provider and the manager shall take all reasonable steps to ensure that—

- (a) children are enabled to make a complaint; and
- (b) no person is subject to any reprisal by the agency for making a complaint.

(5) The registered provider shall supply to the registration authority at its request a statement containing a summary of any complaints made in accordance with the complaints procedure during the preceding 12 months and any action taken in consequence.

### **Staffing of agency**

**13.** The registered provider, the manager and, in relation to any branch, the branch manager, shall ensure that there is, having regard to—

- (a) the size of the agency or (as the case may be) branch and the agency's statement of purpose; and
- (b) the need to safeguard and promote the health and welfare of children placed for adoption—
  - (i) by the agency; or
  - (ii) by another adoption agency but with prospective adopters approved by the agency as suitable to be adoptive parents in accordance with the Adoption Agencies Regulations 1983,

a sufficient number of suitably qualified, competent, and experienced persons working for the purposes of the agency or (as the case may be) branch.

### **Fitness of workers**

**14.—(1)** The registered provider, the manager and, in relation to any branch, the branch manager, shall not—

- (a) employ a person to work for the purposes of the agency unless that person is fit to work for the purposes of an agency; or
- (b) allow a person to whom paragraph (2) applies, to work for the purposes of the agency unless that person is fit to work for the purposes of an agency.

(2) This paragraph applies to any person who is employed by a person other than the registered provider, in a position in which he may in the course of his duties have regular contact with children who may be, or have been, placed for adoption by the agency.

(3) For the purposes of paragraph (1), a person is not fit to work for the purposes of an agency unless—

- (a) he is of integrity and good character;
- (b) he has the qualifications, skills and experience necessary for the work he is to perform;
- (c) he is physically and mentally fit for the work he is to perform; and
- (d) full and satisfactory information is available in relation to him in respect of each of the matters specified in Schedule 2.

(4) The registered provider, the manager and, in relation to any branch, the branch manager, shall take reasonable steps to ensure that any person working for the agency who is not employed by the agency and to whom paragraph (2) does not apply is appropriately supervised while carrying out his duties.

### **Employment of staff**

**15.**—(1) The registered provider, the manager and, in relation to any branch, the branch manager, shall—

- (a) ensure that all permanent appointments of staff are subject to the satisfactory completion of a period of probation; and
- (b) provide all employees with a job description outlining their responsibilities.

(2) The registered provider, the manager and, in relation to any branch, the branch manager, shall ensure that all persons employed by the agency—

- (a) receive appropriate training, supervision and appraisal; and
- (b) are enabled from time to time to obtain further qualifications appropriate to the work they perform.

### **Staff disciplinary procedure**

**16.**—(1) The registered provider and the manager shall operate a disciplinary procedure which, in particular—

- (a) provides for the suspension of an employee where necessary in the interests of the safety or welfare of children placed for adoption by the agency;
- (b) provides that the failure on the part of an employee to report, to an appropriate person, an incident of abuse, or suspected abuse of a child placed for adoption by the agency is a ground on which disciplinary proceedings may be instituted.

(2) For the purposes of paragraph (1)(b), an appropriate person is—

- (a) the registered provider, the manager, or in relation to any person working at any branch of the agency, the branch manager;
- (b) an officer of the registration authority;
- (c) a police officer;
- (d) an officer of the National Society for the Prevention of Cruelty to Children;
- (e) an officer of a local authority in whose area the agency or (as the case may be) branch is situated; or
- (f) an officer of a local authority in whose area the child is placed for adoption.

### **Records with respect to staff**

**17.**—(1) The registered provider, the manager and, in relation to any person working at any branch of the agency, the branch manager, shall maintain and keep up to date the records specified in Schedule 3.

(2) The records referred to in paragraph (1) shall be retained for at least 15 years from the date of the last entry.

### **Fitness of premises**

**18.**—(1) The registered provider shall not use premises for the purposes of the agency unless the premises are suitable for the purpose of achieving the aims and objectives set out in the statement of purpose.

(2) The registered provider, the manager and, in relation to any branch, the branch manager, shall ensure—

- (a) that there are adequate security arrangements at the premises, in particular that there are secure facilities for the storage of records; and
- (b) that any records which are, for any reason, not on the premises are nevertheless kept in conditions of appropriate security.

## **PART IV**

### **MISCELLANEOUS — AGENCIES**

#### **Notifiable events**

**19.**—(1) If, in relation to an agency, any of the events listed in column 1 of the table in Schedule 4 takes place, the registered provider and the manager shall without delay notify the person indicated in respect of the event in column 2 of that table.

(2) Any notification made in accordance with this regulation which is given orally shall be confirmed in writing within 14 days.

(3) In the table—

“approved by the agency” means approved by the agency as suitable to be an adoptive parent in accordance with the Adoption Agencies Regulations 1983;

“area authority” means the local authority in whose area the child is placed for adoption;

“placing agency” means the adoption agency that placed the child for adoption with the prospective adopter;

“Primary Care Trust” means the Primary Care Trust in whose area the child is placed for adoption by the agency; and

“Local Health Board” means the Local Health Board in whose area the child is placed for adoption by the agency.

#### **Financial position**

**20.**—(1) The registered provider shall carry on the agency in such a manner as is likely to ensure that it will be financially viable for the purpose of achieving the aims and objectives set out in its statement of purpose.

(2) The registered provider shall, if the registration authority so requests, provide the authority with such information and documents as it may require for the purpose of considering the financial viability of the agency, including—

- (a) the annual accounts of the agency certified by an accountant; and
- (b) a certificate of insurance for the registered provider in respect of liability which may be incurred by him in relation to the agency in respect of death, injury, public liability, damage or other loss.



## **Notice of absence**

**21.**—(1) Where—

- (a) the manager proposes to be absent from the agency; or
- (b) the branch manager proposes to be absent from the branch of the agency,

for a continuous period of 28 days or more, the registered provider and the manager shall give notice in writing to the registration authority of the proposed absence.

(2) Except in the case of an emergency, the notice referred to in paragraph (1) shall be given no later than one month before the proposed absence is to start, or within such shorter period as may be agreed with the registration authority, and the notice shall specify—

- (a) the length or expected length of the proposed absence;
- (b) the reason for the proposed absence;
- (c) the arrangements which have been made for the running of the agency or (as the case may be) branch during that absence;
- (d) the name, address and qualifications of the person who will be responsible for the management of the agency or (as the case may be) branch during the absence; and
- (e) the arrangements that have been made or are proposed to be made for appointing another person to manage the agency or (as the case may be) branch during the absence, including the proposed date by which the appointment is to start.

(3) Where the absence arises as a result of an emergency, the registered provider and the manager shall give notice of the absence within one week of its occurrence, specifying the matters mentioned in paragraph (2)(a) to (e).

(4) Where the manager or branch manager has been absent from the agency or (as the case may be) branch for a continuous period of 28 days or more, and the registration authority has not been given notice of the absence, the registered provider and the manager shall without delay give notice in writing to the authority specifying the matters mentioned in paragraph (2)(a) to (e).

(5) The registered provider and the manager shall notify the registration authority of the return to duty of the manager or branch manager not later than 7 days after the date of his return.

## **Notice of changes**

**22.**—(1) The registered provider and the manager shall give notice in writing to the registration authority as soon as it is practicable to do so if any of the following events takes place or is proposed to take place—

- (a) a person other than the registered provider carries on the agency;
- (b) a person ceases to manage the agency;
- (c) the name or address of the registered provider is changed;
- (d) there is any change of trustee, or director, manager, secretary, or other similar officer, of the registered provider;
- (e) there is to be any change in the identity of the responsible individual;
- (f) a receiver, manager, liquidator or provisional liquidator is appointed in respect of the registered provider; or
- (g) the agency intends to cease to act or exist as such.

(2) The registered provider shall notify the registration authority in writing and without delay of the death of the responsible individual, the manager or branch manager (if any).

### **Appointment of liquidators etc.**

- 23.**—(1) Any person to whom paragraph (2) applies shall—
- (a) forthwith notify the registration authority of his appointment indicating the reasons for it;
  - (b) appoint a manager to take full-time day to day control of the agency in any case where there is no manager; and
  - (c) not more than 28 days after his appointment notify the registration authority of his intentions regarding the future operation of the agency.
- (2) This paragraph applies to any person appointed as—
- (a) the receiver or manager of the property of a registered provider;
  - (b) the liquidator or provisional liquidator of a registered provider.

### **Compliance with regulations**

**24.** Where anything is required under these Regulations to be done by more than one person, it shall, if done by one of those persons, not be required to be done by the other person or, as the case may be, persons.

## **PART V**

### **MISCELLANEOUS**

#### **Amendments to the Adoption Agencies Regulations 1983**

**25.**—(1) The Adoption Agencies Regulations 1983 shall be amended in accordance with the following provisions of this regulation.

- (2) In regulation 1(3) (interpretation)—
- (a) at the appropriate place there shall be inserted the following definition—
    - ““the 2000 Act” means the Care Standards Act 2000;”;
  - (b) in the definition of “adoption agency” for the words “an approved adoption society” there shall be substituted the words “an appropriate voluntary organisation”(6); and
  - (c) at the appropriate place there shall be inserted the following definition—
    - ““registration authority” means, in relation to an agency, the registration authority which may exercise, in relation to that agency, functions to which section 36A of the Act applies;”.
- (3) Regulations 2 and 3 shall be omitted.
- (4) In regulation 6 (adoption agency arrangements for adoption work)—
- (a) in paragraph (1) for the words “reviewed by the agency not less than once every three years” there shall be substituted the words “kept under review and, where appropriate, revised by the agency”; and
  - (b) paragraph (3) shall be omitted.
- (5) In regulation 15 (access to case records and disclosure of information) in paragraph (1) after sub-paragraph (b) there shall be inserted the following sub-paragraph—
- “(bb) the registration authority.”.

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(6) See section 1(5) of the 1976 Act inserted by section 116 of, and paragraph 5(3) of Schedule 4 to, the Act.

- (6) In regulation 16 (transfer of case records)—
- (a) for paragraph (2) there shall be substituted the following paragraph—
- “(2) An appropriate voluntary organisation which intends to cease to act or exist as such shall forthwith either transfer its case records to another adoption agency having first obtained the registration authority’s approval for such transfer, or transfer its case records—
- (a) to the local authority in whose area the organisation’s principal office is situated; or
- (b) in the case of an organisation that amalgamates with another approved voluntary organisation to form a new approved voluntary organisation, to the new organisation.”; and
- (b) in paragraph (3) for the words “Secretary of State” there shall be substituted the words “registration authority”.

Signed by the authority of the Secretary of State for Health

*Jacqui Smith*  
Minister of State,  
Department of Health

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

*Daffyd Elis-Thomas*  
Presiding Officer, National Assembly for Wales