

**EXPLANATORY MEMORANDUM TO THE
ADOPTION AGENCIES REGULATIONS 2005**

2005 No. 389

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 The Adoption Agencies Regulations 2005 govern how adoption agencies (local authorities and registered adoption societies) exercise their functions in relation to adoption under the Adoption and Children Act 2002 (“the 2002 Act”). The Regulations provide a series of checks and balances to ensure that in coming to a decision relating to the adoption of a child, the child’s welfare is the paramount consideration and that the rights of the child’s parents and those of prospective adopters are respected. The Regulations require adoption agencies to make arrangements for adoption work including the establishment of adoption panels; to counsel and support the child and his parents; to assess the child’s needs; to consider and decide whether the child should be placed for adoption; to assess and decide whether prospective adopters should be approved as suitable to adopt a child; to match and place a child with approved prospective adopters; and to visit the child and review the child’s placement for adoption.

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

- 3.1 The Adoption Agencies Regulations also make provision for the collection of information which will be needed by adoption agencies for the purposes of the Suitability of Adopters Regulations 2005 (affirmative), which will prescribe the matters which must be taken into account by an adoption agency in preparing reports on and determining the suitability of a person wishing to adopt a child.
- 3.2 The repeal of regulations, transitional and consequential provisions will be addressed by another statutory instrument dealing with these issues arising from the implementation of the 2002 Act.

4. **Legislative Background**

- 4.1 The 2002 Act modernises entirely the existing legal framework for domestic and intercountry adoption. This statutory instrument is one of a series of statutory instruments to be laid to implement the core provisions of the 2002 Act. The legislative and policy background for the core provisions of the 2002 Act are set out in the overarching explanatory memorandum on the implementation of the 2002 Act that was laid before Parliament on 2 March 2005. A copy of this memorandum is attached.

- 4.2 The Adoption Agencies Regulations 2005 are made under the powers provided by the following sections of the 2002 Act: section 9(1)(a) (general power to regulate adoption etc. agencies); section 11(1)(b) (fees); section 27(3) (contact: supplementary); section 53(1) to (3) (modification of Children Act 1989 in relation to adoption); and section 54 (disclosing information during adoption process) and in relation to the appointment of independent reviewing officers (regulation 37) under sections 26(1) to (2B) and 59(4)(a) and 104(5) of the Children Act 1989.
- 4.3 The Adoption Agencies Regulations set out the duties of adoption agencies in relation to each stage of the adoption process. Responses to the consultation process (see paragraph 7.4) show that this has been welcomed by adoption agencies, with many commenting that the regulations are clear and clarify the processes.
- 4.4 The Regulations provide for the arrangements that adoption agencies need to put in place for the conduct of adoption work, such as establishing an adoption panel and formulating policies and procedures based on the Regulations (Part 2). The role of the adoption panel is to consider the case of each child, prospective adopter and the placement of a particular child with particular prospective adopters and make a recommendation to the adoption agency which then makes the decision. (The current Adoption Agencies Regulations 1983 made under the Adoption Act 1976 make similar provision in relation to adoption panels). The Regulations also provide for:
- i. where a child is being considered for adoption, counselling the child and his parents, preparing the report for the adoption panel, the panel's recommendation and the agency decision on whether the child should be placed for adoption (Part 3);
 - ii. where the agency is considering whether persons maybe suitable to be adoptive parents, conducting checks and references, and collecting other information, in relation to the prospective adopters, submitting a report to the adoption panel, the panel's recommendation and the agency's decision on whether to approve them as suitable to adopt (Part 4);
 - iii. where the agency is considering matching and placing a child with prospective adopters, fully informing the prospective adopters about the child's needs and seeking their views, assessing the needs of the adoptive family for adoption support services for the placement, the panel's recommendation and the agency's decision about whether the placement should proceed (Part 5);
 - iv. placement of the child, providing the prospective adopters with a placement plan and reviewing the child's case including where the child is placed for adopting (Part 6);
 - v. arrangements for storing, safeguarding, accessing and transferring confidential adoption case records (Part 7); and
 - vi. modifications to the Children Act 1989 and arrangements for contact (Part 8).

5. Extent

- 5.1 These Regulations apply to England only.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 When the 2002 Act was passing through Parliament, Ministers promised to bring forward regulations to put in place vital safeguards needed to protect the welfare of the child and to protect the rights of the child's natural parents and the rights of the prospective adopters. These Regulations fulfil an essential part of that commitment.

7.2 A number of policy aims underpin the Adoption Agencies Regulations 2005. These are to:

- i) replace current Adoption Agencies Regulations 1983 that mostly date back twenty years;
- ii) modernise and improve adoption law and practice under the 2002 Act, including providing for the new system of placing children for adoption under the 2002 Act;
- iii) govern the arrangements that adoption agencies are responsible for making.

7.3 Ministers also made commitments that there would be extensive consultation with adoption agencies and other stakeholders on the regulations and guidance needed to implement the Act.

7.4 The Adoption Agencies Regulations were issued for full public consultation for over seven months and 114 written responses were received. A key part of that consultation were two-day workshops and single day focus groups to look in depth at key issues with representative groups and adoption agencies. These consultation events played a central role in the helping the Department to identify problems and develop improvements in the regulations and guidance, including new flexibilities for adoption agencies.

7.5 The Department for Education and Skills has also consulted with the Department for Constitutional Affairs and the National Assembly for Wales in relation to the development of the Regulations.

8. Impact

8.1 A Regulatory Impact Assessment (RIA) is attached to this memorandum. The RIA also explains the impact on the public sector.

9. Contact

Brendan Clark at the Department for Education and Skills Tel: 020 7273 5221 or e-mail: Brendan.clark@dfes.gsi.gov.uk can answer queries regarding the instrument.

EXPLANATORY MEMORANDUM ON THE IMPLEMENTATION OF THE ADOPTION AND CHILDREN ACT 2002

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is submitted voluntarily.

Description

2. This is an overarching explanatory memorandum which explains the context of the Adoption and Children Act 2002¹ (“the 2002 Act”), and relates to a series of Statutory Instruments, as set out in paragraphs 14 and 15, which are intended to be made and laid during 2005 to implement the 2002 Act.

Matters of special interest to the Joint Committee on Statutory Instruments

3. Three of these Statutory Instruments will be subject to the affirmative resolution procedure. These are The Restriction on the Preparation of Adoption Reports Regulations 2005, The Suitability of Adopters Regulations 2005 and an Order to be made under section 142 of the 2002 Act to amend the statutory adoption pay provisions as a consequence of unmarried couples being able to apply to adopt jointly.

Legislative background

4. Following a review of adoption law carried out by the Department of Health between 1991 and 1993, a draft Adoption Bill was published in 1996. The Bill was generally well received, but was never introduced into Parliament. In February 2000, the Prime Minister announced that he would lead a thorough review of adoption policy. He commissioned the Performance and Innovation Unit (PIU) to carry out a review of adoption and make recommendations to the Government for future action. The PIU review reported in July 2000 and made a number of recommendations to Government, including several related to changes in adoption legislation.
5. In December 2000, the Department of Health published a White Paper *Adoption: a new approach*, which took on board many of the PIU recommendations. The Government made a commitment to legislate in 2001 to ‘overhaul and modernise the legal framework for adoption.’²

¹ 2002 c.38.

² *Adoption: a new approach*, White Paper, December 2000, p.25.

6. The Adoption and Children Bill was subsequently introduced in 2001, and received Royal Assent in November 2002. The 2002 Act:

- aligns adoption law with the relevant provisions of the Children Act 1989³ to ensure that the child's welfare is the paramount consideration in all decisions relating to adoption;
- places a duty on local authorities to maintain an adoption service, including arrangements for the provision of adoption support services;
- provides a new right to an assessment of needs for adoption support services for adoptive families and others;
- sets out a new regulatory structure for adoption support agencies (requiring them to be registered under the Care Standards Act 2000⁴);
- enables the appropriate Minister to establish an independent review mechanism in relation to qualifying determinations made by an adoption agency;
- makes provision for the process of adoption including new measures for placement for adoption with consent and placement orders;
- provides for adoption orders to be made in favour of single people, married couples and, for the first time, unmarried couples (amended by the Civil Partnership Act);⁵
- provides for a new framework designed to ensure a more consistent approach by adoption agencies in respect of access to information held about adoptions which take place after the 2002 Act comes into force;
- provides for a new regulatory framework within which intermediary agencies (registered adoption support agencies or adoption agencies) will be able to assist adopted adults to obtain information about their adoption and facilitate contact between them and their adult birth relatives, where the person was adopted before the 2002 Act came into force;
- provides additional restrictions on bringing a child into the UK in connection with adoption;
- provides for restrictions on arranging adoptions and advertising children for adoption other than through adoption agencies;
- makes provision enabling the Secretary of State to establish a statutory Adoption and Children Act Register to suggest matches between children waiting to be adopted and approve prospective adopters; and
- amends the Children Act 1989 to introduce a new special guardianship order, intended to provide permanence for children for whom adoption is not appropriate.

7. The 2002 Act provides the framework for the new approach to adoption, which is to be complemented by secondary legislation.

³ 1989 c.41.

⁴ 2000 c.14.

⁵ The definition of couple in section 144(4) of the 2002 Act has been amended by the Civil Partnership Act 2004 (2004 c.33) to include a civil partnership.

Early implementation

8. In accordance with commitments made by Ministers during the passage of the 2002 Act through Parliament, the 2002 Act included provisions to amend the existing Adoption Act 1976⁶ to enable important elements of the new adoption framework to be implemented in advance of the full implementation of the 2002 Act (see Schedule 4 of the 2002 Act).
9. In June 2003 the Intercountry Adoption (Hague Convention) Regulations 2003⁷ and Adoption (Bringing Children into the United Kingdom) Regulations 2003⁸ came into force. These Regulations put in place the necessary provisions to give effect to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption concluded at the Hague on the 29 May 1993 (“the Hague Convention”) and provide an increased level of protection to children coming into the UK from other countries.
10. The first phase of the adoption support services framework was implemented on 30 October 2003 when the Adoption Support Services (Local Authorities) (England) Regulations 2003⁹ came into force. These Regulations give adoptive families an entitlement to receive an assessment of their adoption support needs and give birth relatives an entitlement to receive an assessment in relation to support for contact arrangements. They also require local authorities to make arrangements for the provision of a range of adoption support services, including financial support, and to appoint an adoption support services adviser to act as a first port of call for enquiries and signpost families to services.
11. The independent review mechanism in respect of qualifying determinations made by adoption agencies, where they consider that a prospective adopter is not suitable to be an adoptive parent and does not propose to approve him as suitable to be an adoptive parent was introduced in April 2004 when the Independent Review of Determinations (Adoption) Regulations 2004¹⁰ came into force.
12. As the early implementation relates to the current Adoption Act 1976 scheme for adoption, similar provision in secondary legislation needs to be made in the context of the 2002 Act scheme for adoption in respect of those elements of the Act which have been implemented early.
13. The annex summarises the position regarding implementation of amendments to the Children Act 1989 made by the 2002 Act which relate to areas other than adoption and special guardianship.

⁶ 1976 c.36.

⁷ SI 2003/118.

⁸ SI 2003/1173.

⁹ SI 2003/1348.

¹⁰ SI 2004/190 as corrected, and as amended by SI 2004/1081 and 2004/1868.

Implementation

14. The statutory instruments necessary to implement the 2002 Act are to be made in two main stages. The first series of statutory instruments will be as follows, and each will be accompanied by an individual explanatory memorandum setting out the detail of the SI, and a regulatory impact assessment:
- **The Adoption Agencies Regulations 2005** will provide for the duties agencies will have in relation to arranging adoptions under the 2002 Act, including agency arrangements for adoption work, considering whether a child should be placed for adoption, approval of prospective adopters and whether a particular child should be placed with prospective adopters.
 - **The Adoptions with a Foreign Element Regulations 2005** will provide additional requirements for, and set out additional procedures in relation to, the adoption of children from abroad by British residents and the adoption of children in England and Wales by persons resident abroad. This includes adoptions falling within the scope of the Hague Convention and non-Convention adoptions.
 - **The Suitability of Adopters Regulations 2005 (affirmative)** will prescribe the matters which must be taken into account by an adoption agency in preparing reports on and determining the suitability of a person wishing to adopt a child.
 - **The Restriction on the Preparation of Adoption Reports Regulations 2005 (affirmative)** will specify who may prepare reports in specified circumstances in connection with adoption.
 - **The Adoption Support Services Regulations 2005** will build on the framework established through the 2003 Regulations, widening the pool of people entitled to an assessment of their need for adoption support services and extending the list of adoption support services that local authorities are required to maintain to explicitly include services to assist with disruption. The 2005 Regulations also further refine the process for assessment of need and for the planning and review of service provision as well as further clarifying the role of the adoption support services adviser.
 - **The Adoption Support Agencies Regulations 2005** together with accompanying national minimum standards issued under section 23 of the Care Standards Act 2000 will govern the management and general operation of adoption support agencies, including making provision for their registration.
 - **The Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005** will apply to adoptions made after the 2002 Act came into force and will provide adoption agencies with a framework within which they are required to consider certain issues, such as the adopted person's welfare, before making a determination as to whether to disclose sensitive identifying information which would identify persons affected by an adoption.

- **The Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005** will enable registered adoption support agencies and adoption agencies to operate a regulated intermediary service so that adults adopted before the 2002 Act comes into force can obtain information about their adoption and contact between adopted adults and their adult birth relatives can be facilitated where appropriate.
- **The Adopted Children and Adoption Contact Registers Regulations 2005** will prescribe the form of entry in the Adopted Children Register, requirements etc. in relation to registrable foreign adoptions, information for the purposes of the Adoption Contact Register and for obtaining information from the registers and information about adopted persons and their relatives for the purposes of the Adoption Contact Register.
- **The Special Guardianship Regulations 2005** will prescribe the list of special guardianship support services which local authorities are required to maintain, the process for assessing special guardianship support needs, and requirements in respect of the planning, delivery and review of special guardianship support services. The Regulations will also prescribe the matters that local authorities are required to include in the report that the court must receive before it can make a special guardianship order.

15.

The second series of statutory instruments will be as follows:

- **The Independent Review of Determinations (Adoption) Regulations 2005** will provide for the continued operation of an independent review mechanism in respect of qualifying determinations made by adoption agencies under the new scheme for adoption.
- **Adoption Agencies (Prescribed Fees) (England) Regulations 2005** will provide that fees may be charged by adoption agencies for their services in certain circumstances, for example, fees local authorities may charge for the preparation and assessment of prospective adopters who wish to adopt a child who is not resident in this country.
- Regulations made under section 108 of the 2002 Act regarding corresponding provisions in the Channel Islands and the Isle of Man. This will allow us to make the new adoption system work with the adoption system in the Channel Islands and the Isle of Man, for example in terms of mutual recognition of orders.
- Regulations made under section 87 of the 2002 Act prescribing the requirements that ought to be met by an adoption for it to be an “overseas adoption”. An overseas adoption is an adoption of a description specified in an order (to be made under section 87), being a description of an adoption effected under the law of any country or territory outside the British Islands. The status of children adopted under an overseas adoption is recognised by virtue of section 66 of the 2002 Act.
- **Non-Agency Adoptions Regulations 2005** will prescribe the local authority responsible for assessing the suitability of prospective adopters and providing a report to the court where the child is already living with the applicants and they give notice of their intention to apply for an adoption order, such as foster carers or relatives of the child and require the local authority to carry out CRB checks in respect of the applicants.

- Regulations making provision for any necessary consequential and transitional provisions.
- Regulations under section 2(2) of the European Communities Act 1972 to ensure the 2002 Act is consistent with Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services.
- An order (affirmative) made under section 142 of the 2002 Act will amend the statutory adoption pay provisions as a consequence of unmarried couples being able to apply to adopt jointly.

16. The intention is that all of the SIs set out in paragraphs 14 and 15 above will come into force on 30 December 2005.

17. As noted above, the White Paper recommended the establishment of a statutory adoption register – the Adoption and Children Act Register – for which provision was made in the 2002 Act. This provision is not being implemented at present. Ministers have decided to continue with a non-statutory register for the next three years. This will give a stronger evidence base on which to assess the effectiveness of a non-statutory register and the desirability of moving to a statutory register.

Extent

18. Regulations will apply either in England only or in England and Wales. Each individual explanatory memorandum will set out the application of each statutory instrument.

Policy background

19. The total number of adoption orders made in England has declined from 5,657 in the year ending 31 December 2001, to 4,479 in 2003. At the same time, the number of adoptions in respect of looked after children in England has increased from 3,400 in the year ending 31 March 2002, to 3,700 in 2004. The number of applications to adopt a child from overseas processed by the DfES has remained relatively steady at around 300 each year (330 in year ending 31 December 2004).

20. The PIU review of adoption in 2000 and the White Paper *Adoption: a new approach* identified some key problems which meant the needs of looked after children were not consistently being met, including:

- wide variation by councils in the use and practice of adoption;
- to the detriment of children, the adoption process was widely seen as prone to delay, with clear concerns over the consistency, quality and clarity of the process;
- a lack of consistency in the law;
- the review mechanism for those applying to adopt was seen as unfair and not impartial;
- little support was available for adopters; and
- delays in the court processes over adoption.

21. Implementation of the 2002 Act will fulfil the Government's intention to reform adoption law and implement the proposals in the 2000 White Paper which require legislation. The overriding aim of improving the adoption service and promoting greater use of adoption will be furthered by the implementation of the SIs.

Public Consultation

22. There has been extensive public consultation upon the adoption procedures set out in the regulations. The explanatory memorandum to accompany each statutory instrument will give further details of the public consultations.
23. Five consultation packages on draft regulations and draft guidance to be made under the 2002 Act were published in 2003 and 2004. A further consultation document will be issued in early 2005 to cover the key draft SIs in the second series set out in paragraph 15 above which introduce the final changes. The numbers of respondents for each package are listed below. The overall number of written responses was 422.
- Arranging Adoptions and Assessing Prospective Adopters – (115 responses)
 - Adoption Reports and Adoptions with a Foreign Element – (50 responses)
 - Access to Information (including the Registrar General's functions) – (124 responses)
 - Adoption Support and Adoption Support Agencies (75 responses)
 - Care Planning and Special Guardianship (58 responses)
24. The responses to these documents together with the information gathered at 14 regional consultation events and 15 focus groups and numerous other meetings held earlier in the year have informed the development of the Regulations and implementation arrangements. The explanatory memorandum in relation to the individual SIs will provide more detail.

Impact

25. Each Statutory Instrument will have a regulatory impact assessment attached.

Contact

26. Helen Steele, Head of Adoption, 4th Floor, Caxton House, Tothill Street, London, SW1H 9NA.

Annex: Implementation of amendments to the Children Act 1989 that are not adoption or special guardianship related

The Government has already implemented the following key provisions of the Adoption and Children Act 2002:

- On Royal Assent (7 November 2002): provision in respect of local authorities' power to provide accommodation for children in need under section 17 of the Children Act 1989.
- 1 December 2003: parental responsibility for unmarried fathers who jointly register the birth of their child with the mother.
- 1 April 2004: advocacy services for children and young people. Amendment and widening of the application of, the procedure for making representations under that Act and to impose a duty on local authorities to make arrangements for the provision of advocacy services to children or young people making or intending to make representations.
- 27 September 2004: Independent Reviewing Officers, responsible for chairing statutory reviews of all looked after children.
- 31 January 2005: Amendment to the definition of 'harm' in the 1989 Act to make clear that harm includes any impairment of the child's health or development as a result of witnessing the ill treatment of another person.

The remaining provisions will be implemented as follows:

- 30 December 2005: Amendment enabling the acquisition of parental responsibility by a step-parent either by agreement of both parents or a court order.
- 30 December 2005: Amendment enabling local authority foster carers to seek leave of the court to apply for an order under section 8 of the 1989 Act (including a residence order) if the child has been living with them for one year, rather than the current three years.
- 30 December 2005: Amendment enabling courts to make residence orders that have effect until the child reaches the age of 18.
- DfES have consulted on the draft Regulations required to implement the provisions in respect of inquiries by local authorities into representations. Ministers are considering the timetable for implementation in the light of the responses to that consultation.

FULL REGULATORY IMPACT ASSESSMENT (RIA) FOR THE ADOPTION AGENCIES REGULATIONS 2005

TITLE OF PROPOSAL

The Adoption Agencies Regulations 2005

PURPOSE AND INTENDED EFFECT OF MEASURE

Objective

The regulations make clear to adoption agencies their duties in respect of arranging adoptions under the Adoption and Children Act 2002. The regulations provide an essential framework within which adoption agencies are required to take certain steps before making fundamental decisions about individual adoption cases. The regulatory framework is designed to safeguard the welfare of each child and protect the rights of their parents and adopters by providing for a more rigorous decision making process.

These regulations set out duties for adoption agencies to counsel the child, seek and record their views, assess the child's needs, protect the rights of the child's parents, and ensure that agencies gather sufficient information to assess prospective adopters and give them as much information as possible before the child is placed with them.

The Adoption Agencies Regulations 2005 replace the Adoption Agencies Regulations 1983.

Background

This RIA assesses the impact on adoption agencies of the Adoption Agencies Regulations, which set out:

- the arrangements that adoption agencies need to put in place, such as establishing an adoption panel, and formulating policies and procedures based on these regulations;
- and, the significant duties adoption agencies will have:
 - where a child is being considered for adoption, counselling the child and their parents, preparing the report for the adoption panel, the panel's recommendation and the agency decision on whether the child should be placed for adoption;
 - where the agency is considering applicants as prospective adopters, conducting checks and references and collecting other information, submitting a report to the adoption panel, the panel's recommendation, and the agency's decision on whether to approve them as suitable to adopt;
 - where the agency is considering matching and placing a child with prospective adopters, fully informing the prospective adopters about the child's needs and seeking their views, assessing adoption support for the placement, the panel's recommendation, and the agency's decision

about whether the placement should proceed;

- where the child is about to be placed, providing the approved prospective adopters with a placement plan;
- reviewing the child's case, including where the child is placed;
- arrangements for recording, storing, safeguarding, accessing and transferring confidential adoption case records;
- arrangements for contact, and deciding on the parental responsibility of the child's parents and prospective adopters during the adoption process.

The regulations are made under the Adoption and Children Act 2002, which replaced the Adoption Act 1976 and modernised entirely the existing legal framework for domestic and intercountry adoption. The Adoption and Children Act 2002 legally underpins a number of the new policies for adoption set out in the White Paper *Adoption: a new approach*, published in December 2000, which stemmed from the Review of Adoption commissioned by the Prime Minister in 2000. The Adoption Review by the Performance and Innovation Unit recommended a number of measures, including a substantial increase in adoptions from care, National Adoption Standards, and new adoption legislation to modernise the adoption system.

The new Act:

- aligns adoption law with the relevant provisions of the Children Act 1989, to ensure that the child's welfare is the paramount consideration in all decisions to do with adoption;
- replaces the now dated process of 'freeing' children for adoption with new measures for addressing the issue of parental consent, including placement orders;
- places a duty on local authorities to make arrangements to provide adoption support services, including financial support, according to a framework to be set out in regulations;
- provides a new right to an assessment of needs for adoption support services;
- requires adoption support agencies to register with the registration authority under Part 2 of the Care Standards Act 2000 to ensure that services are provided to a high standard;
- extends eligibility to apply to adopt jointly to unmarried couples;
- provides for independent reviews of determinations by adoption agencies that prospective adopters are not suitable to adopt;
- provides for a more consistent system for access to information for adopted people about their background and their adoption, and for the disclosure of protected information by adoption agencies;

- incorporates the majority of the Adoption (Intercountry Aspects) Act 1999 with legislation on domestic adoption to create a single consolidated legal framework for adoption;
- strengthens the safeguards within the adoption system by improving the legal controls on intercountry adoption and advertising children for adoption, and making clear the steps in relation to adoption which may only be taken by adoption agencies;
- legally underpins the Adoption Register to suggest matches between children waiting to be adopted, and approved adoptive families waiting to adopt;
- the obligation for courts to fix and monitor timetables in adoption cases so that they are dealt with at the appropriate speed, and to support better case management;
- a new 'Special Guardianship' order to provide permanence for children for whom adoption is not a suitable option.

In delivering these reforms, the Adoption and Children Act 2002 takes forward many of the provisions set out in the draft Adoption Bill published for consultation by the Department of Health in March 1996 and developed as a result of the Review of Adoption Law, 1991-1993.

The regulations for adoption agencies fall into three categories:

- regulations that replicate satisfactory current requirements into the new legislative framework;
- regulations that modify and improve current requirements, some substantially; and,
- regulations that implement completely new requirements.

All three categories fit together to provide for a new, coherent system. The first category – those regulations that simply transfer current requirements over to the new legislation – are not described in this RIA, as they have no new impact.

All the regulations will apply to all adoption agencies – 150 local authorities and 32 voluntary adoption agencies (VAAs) – in England. Most of the requirements in the regulations will have no impact on the voluntary business sectors, and there will be no impact on the business sector. Some new obligations will affect all adoption agencies.

Risk assessment

A decision that a child should be adopted is one of the most fundamental decisions that may be taken for a child. It is also a fundamental decision for the child's parents, as an adoption order removes their parental responsibility and gives full parental responsibility to the adopters. Such radical changes to people's lives require that the risk of making the wrong decision should be kept to the absolute minimum, and that other options for the child are properly explored first. Thus, checks and balances are required to safeguard the welfare of the child and protect the rights of parents and adopters.

The regulations are designed to reduce the risk of current problems continuing to occur under the new legislation. These include:

- inadequate collection, provision and assessment of information essential to decisions made by adoption panels and adoption agencies. Where such decisions are based on inadequate information and assessment there is a significant risk that the wrong decision could be made about whether a child should be placed for adoption, whether prospective adopters should be approved as suitable to adopt, whether a child should be placed with particular prospective adopters, and whether adoption continues to be in the child's interests. The consequences for the individuals concerned of a flawed decision in adoption are often traumatic and far reaching. Examples include prospective adopters being approved who lack the capacity to care for children, of adoption placements disrupting, and even of children being placed with prospective adopters who have caused them serious harm.
- poor counselling of and information for the child's parents and prospective adopters. Where the child's parents are not provided with proper counselling and information they are unlikely to be aware of their rights and of the consequences of their child being placed for adoption. Prospective adopters may likewise be unaware of their rights, the commitment they are about to undertake and the difficulties they may face in adopting a child from care. For both groups, this leaves them at far greater risk of making decisions that they may later deeply regret, such as the parents giving consent to their child being placed for adoption and the prospective adopters agreeing to have a child placed with them. For the child this could mean that they are given up for adoption when they might have been placed with another member of their wider family or that their placement with prospective adopters disrupts and they need to be placed with other carers, leading to further delay in providing them with a loving, caring family.
- deficient monitoring of adoption placements. Some adoption agencies have failed to monitor the child's placement properly by visiting the adoptive family, gathering information from the child and others, and carrying out formal reviews. This leaves adoption placements more vulnerable to disruption and breakdown, which might otherwise be avoided if problems had been identified in time for support to be provided.

Within the framework set down by primary legislation, the current regulations govern much of the process and provide checks and balances. But the primary legislation dates back to 1976, when the majority of children available for adoption were relinquished for adoption when they were babies or infants. And the regulations date back to 1983, as amended by later regulations made in 1997. Adoption has changed, and most children are adopted from care, many without the consent of their parents.

With the wholesale reform of primary adoption legislation by the Adoption and Children Act 2002 comes the need to reform the secondary legislation so that it keeps in step with the new Act and provides for the particular safeguards necessary within the new legislative framework. The primary and secondary legislation are interdependent. Without new regulations, the new Act cannot be implemented, and essential reforms in law and practice will be halted. These include, for example, establishing new legal processes for placing a child for adoption through an adoption agency. The Act provides two routes: a local authority may secure a placement order from the court, authorising it to place a child with adopters whom the authority

selects; or, the child's parents may give consent to placement.

While the 2002 Act provides for the way a placement will work, the new regulations are needed to ensure that adoption agencies will carry out specific duties necessary to comply with the new placement process. For example, the adoption agencies regulations require the adoption agency to ascertain whether or not the child's parents consent to the child being placed for adoption and, if so, to notify the Children and Family Court Advisory Support Service (CAFCASS) so that a CAFCASS officer may formally witness the parents' consent.

OPTIONS

Option 1

Do nothing and rely on current arrangements. The Adoption Act 1976 is an outdated piece of legislation. The Adoption and Children Act 2002 has already been passed, and now needs to be implemented through regulations if Parliament's intentions are to be delivered.

Option 2

Bring forward regulations for England under the Adoption and Children Act 2002 that are less prescriptive than drafted, supported by new guidance. The risk with this option is that a simpler set of regulations would not deliver the fundamental improvements identified by a number of reviews, requested during a number of consultations, and promised by Ministers in Parliament. Improved statutory guidance alone could not fill the gaps left by a simpler set of regulations. On essential matters there would be inadequate legal foundation for key parts of any new guidance.

Option 3

Bring forward regulations for England under the Adoption and Children Act 2002 as drafted, which implement a significant part of the Act's intentions. This will deliver Ministerial commitments to Parliament, and ensure that the range of problems identified within the Adoption Act 1976 and Adoption Agencies Regulations 1983 are tackled.

As a consequence of recent consultation workshops, and the written consultation responses, new flexibilities and options have been introduced without undermining any of the essential safeguards. Some of these new regulations will involve additional burdens and costs for local authorities and voluntary adoption agencies (VAAs), but the regulations have been designed to minimise burdens while ensuring that essential functions are conducted properly, consistently, and within the framework provided by the 2002 Act. Where a VAA is providing a service as part of the local adoption service it will be able to recover reasonable costs from the local authority.

COSTS AND BENEFITS

Business sectors affected

The regulations will affect 150 local authorities and 32 VAAs in England.

Benefits

Option 1

None.

Option 2

The only benefit of this option is a reduction in duties and their related safeguards. A simple set of regulations would give adoption agencies wide discretion and allow unwelcome variation on such significant matters as informing the child's parents, and helping to ensure that vital assessments are properly conducted.

Option 3

The regulations being put forward have been carefully and clearly drafted, and helpfully follow the chronological process of adoption. The consultation draft of the adoption agencies regulations was broadly welcomed by adoption stakeholders, with 90 per cent of respondents to a specific question saying that the regulations and guidance together make clear what duties adoption agencies have, and the actions they must take. Option 3 meets the fundamental principles set out in the Act. It provides safeguards for helping to ensure that children adopted in England are only adopted if this is found to be in their best interests, and that prospective adopters are approved as suitable to be adoptive parents only after a rigorous assessment process.

Some particular benefits arising from the new regulations - due to entirely new duties or re-definition of existing ones with the intention of improvements in performance - are listed below.

New duties and their benefits

Regulation 3(3)(a): appointments to the adoption panel: two social workers each with at least 3 years' relevant post-qualifying experience. This provides more flexibility for the adoption agency as the social workers will not have to be in its employment, as currently required. Subject to the social workers having the post-qualifying experience, the agency will be able to appoint them if it considers they have the skills needed for the task. The agency will be able to appoint retired social workers or social workers who also work for other agencies, for example.

Regulation 3(5): an adoption panel may be established jointly by any two or more local authorities. Current regulations only permit two or three local authorities to establish a joint adoption panel. Lifting this restriction provides more flexibility, and is intended to help small local authorities, such as unitary authorities, who reported in their consultation responses that they often struggle to find the resources and members for an adoption panel. There will of course be some logistical and geographical constraints on the number of local authorities who may wish to establish a joint panel, but this change provides scope for local authorities to share a resource, and so reduce their own costs. These will vary around the country. However, local authorities are best placed to decide whether it is in their interests to establish a joint adoption panel, so the regulation sets no ceiling on the number of local authorities. Appointments to the joint panel will be made by agreement between the authorities that established the panel.

Regulation 4(1): panel tenure: adoption panel members shall be appointed for up to three terms, each term being up to three years. This provides flexibility over the

current regulation which restricts panel tenure to two terms of three years each. This additional flexibility stems from the need to help agencies who wish to retain experienced panel members, while still retaining a ceiling to ensure that panels benefit from both experienced and new members.

Regulation 8: appoint an agency adviser to the adoption panel. This will require the provision of personnel, recruitment and training support to adoption panels, helping agencies to maintain panels, and monitor their performance. Many agencies already provide this role as a matter of good practice; this regulation is designed to ensure that all agencies will.

Regulation 13(1)(c): ascertain the child's wishes and feelings. To be carried out as far as is reasonably practicable, this is an important measure to help put children's interests at the heart of the process by ensuring that their views are listened to and taken into account. It reflects existing best practice in applying current legislation, and ensures that this will be implemented across the board.

Regulation 14(1)(b)(ii)(aa): counselling on consent to placement for adoption; regulation 14(1)(b)(ii)(bb): counselling on consent to future adoption order; and, regulation 14(1)(b)(ii)(cc): counselling on a placement order. Provides a safeguard to ensure that when parents or guardians are making difficult and fundamental decisions about a child's adoption they are properly informed about the consequences of the new adoption process and their views are sought.

Regulation 18(2) and regulation 32(2): adoption panel to have regard to section 1 of the Act. This emphasises the most fundamental provision in the Act. In this example, it requires the adoption panel – when considering whether to recommend that a child should be placed for adoption or that a particular child should be placed for adoption with particular prospective adopters – to have regard to the duties imposed by Section 1 on the adoption agency. These are that the agency must have as its paramount consideration the welfare of the child, throughout its life. Section 1 also incorporates a welfare checklist that the agency, and the Court, must have regard to, including issues such as the child's wishes; needs and characteristics, including race and religious persuasion; and their relationships with relatives.

Regulation 20: appointment of an officer of CAFCASS. Following extensive consultation, the Adoption and Children Act 2002 incorporated provisions that provide for the placement of children for adoption where the parents give their full and signed consent. This removes the need for a placement order, which will help to avoid delays in cases where the child's parents consent to adoption. The Adoption and Children Act 2002 provides specific safeguards to protect the rights of birth parents who give consent. One key safeguard is that for consent to be effective, the birth parents must give their consent by signing a prescribed form in the presence of an independent officer. This regulation requires the adoption agency to notify CAFCASS that the child's parents wish to give consent. Under the 2002 Act and court rules, CAFCASS will be required to appoint an officer who will have a duty to satisfy himself that the parents give their consent in the full knowledge of its implications and that they do so unconditionally. If the CAFCASS officer is not satisfied that this is so, or considers that they are not competent to give consent, they must inform the agency that consent is not given, and the agency will not have the authority to place the child for adoption under section 19 of the 2002 Act.

Regulation 28: information to be sent to the Independent Review Panel. This ensures that the new independent review panel - which deals with requests for reviews from

prospective adopters where an agency is minded to reject their application - receives all necessary information.

Regulation 31(1)(a): provide prospective adopters with the child's permanence plan where the agency is considering placing the child with them. The placement plan provides information about the child's background, emotional and developmental needs, health and education needs. This will help prospective adopters to decide whether they want to be matched with the child for a placement.

Regulation 31(3): notify the prospective adopters that the proposed placement is to be referred to the adoption panel and send them a copy of the adoption placement report and invite them to send any observations on the report to the agency within ten working days. This is to enable the prospective adopters to consider the proposed placement and to comments. Their comments would then be considered alongside the report by the adoption panel.

Regulations 35(1) and 35(2): where the agency has decided to place the child with the prospective adopters and met with them to consider the placement arrangements, it is to send them a placement plan. The placement plan provides prospective adopters with clarity about the process for meeting the child, and placing the child with the prospective adopters, as well as key information about the placement arrangements, such as reviews, visits, contact arrangements and adoption support.

Regulation 38: the steps the agency should take where the parent or guardian withdraws consent. This provides an important safeguard where the child's parents have exercised their right under the 2002 Act and withdrawn their consent for placement for adoption. The regulation requires the adoption agency to review its decision to place the child for adoption. If the adoption agency is a local authority, it may have a duty to apply for a placement order. If the local authority considers that the child is likely to suffer significant harm if returned to their parents, and that it is satisfied that the child should be placed for adoption, it will then have a duty under the 2002 Act to apply for a placement order. Regulation 38 also provides for cases where the adoption agency is a VAA; VAAs may not apply for placement orders. This regulation requires the VAA to consider immediately whether to inform the local authority in the area where the child is living about the case, and if the local authority had concerns, it could apply for a placement order, or an order made under the Children Act 1989.

This regulation requires the adoption agency to swiftly consider the child's case as the 2002 Act provides that the child is to be returned within 14 days or 7 days, depending on whether placed with prospective adopters or in the care of the adoption agency, to the parents if consent is withdrawn before an application is made for an adoption order.

Re-defining and extending of existing duties to provide improvements

Regulation 17(1): this extends the current duty to prepare a report for the adoption panel. The current regulation provides scope for inadequate and incomplete reports. Consequently, there is a risk of fundamental decisions about a child being based on inadequate information, with far reaching effects on the child's well-being, and unnecessary costs for adoption agencies. The new regulation therefore sets out the information that should be included in the report, in a logical sequence. It requires, for example: details about the child; a summary of their history; the child's wishes and

feelings; specialised information about their current and future health and educational needs; an assessment of the child's emotional and behavioural development and any related needs; and assessment of the parenting capacity of the child's parents or guardian; a chronology of the actions and decisions taken by the agency; and, an essential analysis of the options for the child's care and an explanation of why adoption is the preferred option for the child.

Regulation 21(1): providing counselling and information to prospective adopters. This requires adoption agencies to provide prospective adopters with counselling and information about the procedures for and legal implications of adoption. It is essential that agencies help prospective adopters understand the process of adoption before they commit themselves to their part in it. This is not a new burden, as a duty already exists to explain the adoption process; this regulation helps ensure that a comprehensive explanation is given which also covers intercountry adoptions.

Regulation 25: prospective adopter's report. This is more extensive than the current regulation, and sets requirements to ensure that a full picture is gained of prospective adopters by adoption agencies. It also halves the maximum time that can be taken from an agency presenting the report to the prospective adopter for comment, to the agency considering any response, and then presenting the report to the adoption panel – thereby reducing a potential delay in the adoption process. This reduction was welcomed by respondents to the consultation draft, with 95 per cent endorsing the change.

Regulation 28: the agency decision on whether to approve the prospective adopters and notification. This is more extensive than current regulations, as it provides for the prospective adopters to ask for a review where the adoption agency proposes not to approve them as suitable to be adoptive parents. The right for such prospective adopters to ask for a review by the new independent review panel is an important measure to increase the confidence of prospective adopters in the fairness of the agency's decision making and was promised by Ministers when the Act was passing through Parliament.

Regulation 31: proposed placement. This is more extensive than the current regulation, which requires the agency to give the prospective adopters written information about the child only after the agency's decision to place the child has taken place. The ruling in *A and B v Essex County Council* illustrated the need to provide prospective adopters with detailed and accurate information about a child where a match is proposed. Prospective adopters need to know about the child's needs, background, and behaviour, to help them decide whether they want to be considered as potential adoptive parents for the child.

The new regulation provides that where the adoption agency is considering placing the child with approved prospective adopters, it is to provide them with the child's permanence report, as set out in regulation 17.

Regulation 36: reviews of the placement. This is more extensive than current regulations, now requiring that matters such as ascertaining the child's views where practicable, and adoption support for the placement, are also part of the review. It also aligns the Adoption Agencies Regulations with regulations issued for the review of children's cases under the Children Act 1989. This will ensure consistency where a child's care plan becomes one for adoption. The Independent Reviewing Officer will have a duty to chair reviews where the child is subsequently placed for adoption, as provided for by regulation 37.

Quantifying and valuing the benefits

When children cannot live with their parents, adoption is one possible option for providing them with the permanence and stability that comes from being cared for in a loving family. Quantifying the benefits that adoption brings the individual child, and the wider community, is clearly difficult, other than in a generalised way. Some of these are set out below. It follows that it is difficult to quantify the benefits that these regulations will bring in monetary terms.

The new regulations have been structured and designed thematically to set out the whole adoption process for which the adoption agency is responsible for arranging. Responses to the consultation show that this has been welcomed, with many commenting that the regulations are clear, and clarify the processes. This should, in turn, avoid confusion and ambiguity, and help to ensure that the regulations are more closely adhered to than current, truncated regulations. As agencies implement the new regulations, there should be an improvement in local practice. Changes made as a result of the consultation will also provide agencies with new flexibilities and options – potentially helping them to achieve efficiency savings – without any adverse consequences for the necessary safeguards.

Benefits which should stem from the new regulations include:

- clarity about the role of the adoption panel, with provisions setting out the recommendations and the advice the panel may make and give, respectively;
- flexibility on joint adoption panels, enabling local authorities to share the resourcing of adoption panels, which play a central role in the adoption process;
- flexibility on the appointment of social workers to the adoption panel, allowing agencies to appoint recently retired social workers or social workers from other agencies;
- enhancement of the role of the agency adviser to the adoption panel, including recruiting and training new panel members;
- integration of adoption support within the arrangements that an agency will make when matching approved prospective adopters with the child, and clarity about how the agency should consider and make arrangements for contact between the child and others, particularly relatives, as the adoption process develops;
- a more structured and clearer process for planning the placement of a child with prospective adopters;
- clarity on the various reports and other documents that are necessary for informing the recommendations made by adoption panels, and also in assisting prospective adopters to decide whether to be matched with a particular child; and,
- more focused and structured reviews of, and visits to, an adoption placement.

With greater clarity about the duties of an adoption agency, and with processes operating in a more coherent way, it is reasonable to expect that there will be some

reduction in delays and drift. These regulations may also contribute to, and help sustain, the increased number of adoptions, which has in recent years been increasing towards the Government's adoption target of a rise of 40% in the number of looked after children who are adopted by the year ending March 2005, up from 2700 in 1999/00.

The primary and secondary legislation should help adoption agencies to optimise their functions, and allow appropriate local flexibility, and so contribute to adoptions reaching a sustainable level that is consistent with the needs of the children for whom adoption is the right option.

Year	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Adoptions of looked after children	2000	1900	1900	2100	2200	2700	3067	3400	3500	3700
Total of adoption orders	5797	5962	5307	4387	4316	4942	5382	5459	n/a	n/a

It is reasonable to expect all children affected by the adoption process in the period post the implementation of the 2002 Act, and these regulations, to benefit from the improvements they should help deliver. Prospective adopters, and adoptive parents, will also benefit from a system that has more clarity, consistency and support, for them, and the child placed for adoption.

Any increase in the number of adoptions will have two financial consequences for local authorities: a reduction in expenditure on care provision; and, an increase in expenditure on adoption support services. In the long term, expenditure on adoption support is likely to be less than care provision. The Government has provided £70m in ring-fenced funding for local authority adoption support services from 2003 to 2006. This financial investment was based on assumptions that local authorities will in future provide an improved range of support services, including intensive and specialised support that helps to address complex needs. As yet, the Government is not able to provide a figure for the overall saving, although research has been commissioned.

Society and adopted children themselves will undoubtedly benefit from the better life chances gained when children are provided with loving care, permanence and stability. It is known that the outcomes for children who remain looked after are significantly lower than for other children:

- 70% of young people leave care without having gained any GCSE or GNVQ qualifications;
- 25% of looked after children aged 14-16 do not attend school regularly, and many have been excluded and have no regular educational placement; and,
- on leaving care, they are 60 times more likely to be homeless.

In comparison, the outcomes for adopted children are considerably better, being closer to the population average.

As some of these regulations explicitly set out new requirements for information gathering and assessment, they will require some more work and therefore entail some additional costs for adoption agencies. However, this should reduce the risk of fundamental recommendations and decisions being made on the basis of poor and

inadequate information. In adoption, decisions made on unsound foundations may have a high human and monetary cost. The benefits of comprehensive information in adoption are threefold: the needs of the child are much more likely to be met; individual human rights should be better protected; and, mistakes and consequential delays will be reduced. More thorough work at the appropriate point in the adoption process should save time and money.

One such example is *regulation 31: placement proposal*. Under this regulation, the cost of preparing a fuller report and providing it earlier in the matching and placement process should help to ensure only feasible matches are pursued. Overall this should benefit the child, the prospective adopters, and the adoption agency. In a worst case scenario, the failure to make prospective adopters aware early on of the needs of the child to be placed with them could lead to a mismatch and disruption, with all of the costs this entails.

Costs

There is no impact on businesses. The proposals would impact solely on local authorities and the 32 VAAs that currently carry out adoption work.

Option 1

None.

Option 2

As this would entail minimal change to the current system, few new costs would be involved. The main source of expenditure would arise if new guidance was issued and adoption agencies needed to familiarise staff with it, and ensure on an ongoing basis that it was being applied. However, this option would not provide for the provisions in the 2002 Act nor meet the commitments made by Ministers in Parliament.

Option 3

The potential costs of each set of regulations are outlined broadly below. A paucity of data on adoption service provision costs hampers serious attempts to forecast the financial implications of the 2002 Act and the new regulations. This should be partially alleviated by a new research project, the Adoption Research Initiative, which will fund research to measure the effect of the 2002 Act on outcomes for children and prospective adopters. Some of this research is expected to run for up to five years after the Act is implemented.

Many of the new Adoption Agencies Regulations are based on current best practice or are strengthening existing requirements on VAAs and local authorities. The new regulations are more detailed than the current regulations, and compliance with them may involve extra costs for those agencies not already applying best practice. There may also be some additional cost where the regulations provide new duties which are necessary for adoption agencies to comply with the 2002 Act, and so meet the needs of vulnerable children, their parents and prospective adopters. However, there should also be savings for agencies where the regulations have introduced new flexibilities.

Other key considerations

Clearly there will be a need to ensure agencies and their staff are informed and prepared for the implementation of new regulations; the Government is now planning a programme of training to support implementation of the Adoption and Children Act 2002 by providing training materials and learning opportunities.

If extra work, and therefore costs, arise from these regulations, VAAs should be able to recover their costs from local authorities via the inter-agency fees that they charge them.

If there is a rise in VAA costs due to these regulations, the fees could rise to cover the extra cost as it is unlikely that VAAs would be able to use any of their voluntary funds to subsidise a fee increase that related to their statutory duties.

Costs to government

Where these regulations require a level of performance beyond that already achieved by existing best practice, or in order to provide safeguards required under the primary legislation, there could be some additional costs to local authorities, which fund their own adoption agencies and also pay the inter-agency fee to VAAs. However, this needs to be considered in the light of increased government funding for adoption.

Local authorities have received an overall 42.9% total increase in children's social services resources between 1996-97 and 2003-04. This includes £66.5m over the three years 2001-02 to 2003-04 delivered mainly through the Quality Protects grant to secure sustained improvements in adoption services, fund the White Paper implementation agenda, and meet the costs of implementing the National Adoption Standards. This funding has been mainstreamed from 2004-05 into the children's services baseline. The extra £70m for adoption support and special guardianship support services from 2003-04 to 2005-06 has been ring-fenced and is only intended to cover new support service demands on local authorities.

Costs to others

In the case of inter-country adoptions, adoption agencies have the discretion to charge the adopter for their services, and usually do so. Therefore any rise in these charges is likely to be passed directly to the prospective adopter.

SMALL FIRMS' IMPACT TEST

There is no impact on small businesses. Vulnerable children and others involved in adoption need to be protected. Domestic and international laws seek to protect the rights of children and reduce the risk of child trafficking. The Adoption and Children Act 2002 replicates the Adoption Act 1976 in preventing any organisation making arrangements for adoption from making a profit. To be approved as a VAA, the organisation must be a not-for-profit incorporated body.

However, the Government has considered the impact on small VAAs. They will be in a position to recover any increase in costs that do occur, via the inter-agency fee.

COMPETITION ASSESSMENT

The Government has considered the market for VAAs and found that there are 32

VAAAs in England. In addition, 150 local authorities with social service responsibilities have a duty to provide adoption services. As these regulations are deemed to be cost neutral, and VAAAs may (and do) charge fees to cover their costs in any case, but as they are not permitted to make a profit from this work competition is not affected.

ENFORCEMENT AND SANCTIONS

Local authorities and VAAAs will be required to comply with these regulations. The Care Standards Act 2000 established the National Care Standards Commission (NCSC) and the Welsh Assembly as the registration authorities. The NCSC was an independent and non-departmental public body. From 30 April 2003 the registration authorities assumed responsibility for the inspection and registration of VAAAs, and the inspection of local authority adoption services in England and Wales. The new Commission for Social Care Inspection, which merged the relevant functions of the NCSC with the Social Services Inspectorate, has carried out these duties since April 2004.

The Government is not anticipating that any significant extra work for the regulating authorities will ensue from these regulations; as such, it is not expected that these regulations will result in an increase in the fees charged by the regulators to those they regulate.

The current registration and annual CSCI fees are subsidised by way of a transitional period for those regulated. For a VAA, the registration fees are £1,100 or £300 depending on the size of the principal office; if they have other branches, these each pay either £1,100 or £300, again depending on their size. Annual fees are £500 or £250 depending on the size of the principal offices, with a further £500 or £250 payable for each branch, depending on its size. Local authority adoption agencies do not need to register, but pay an annual £500 fee. There will be a rise in these fees due to the fact that the CSCI is intended to be self-financing in due course and will therefore need to gradually increase fees until it reaches full cost recovery.

Where increases in the regulatory fees for VAAAs are considered to be directly attributable to these regulations, VAAAs should be able to recover these costs through the inter-agency fee. The NCSC Frequencies of Inspection and Regulatory Fees consultation document, published in 2001, stated that the Government expects funding authorities to pay higher commissioning fees for social care as service providers recover the cost of increases in regulatory fees.

If these regulations are considered to have been breached, the registration authority will decide what action to take. If the breach was considered to be minor, it is likely the registration authority would note this in its inspection report and send a written warning. If the regulations had been persistently flouted, or the breach was substantial or serious, the registration authority will be able to take enforcement action which it considers to be proportionate to the offence, such as seeking to have a fine imposed, cancellation of registration, or seeking to bring a criminal prosecution.

In addition, the Adoption and Children Act 2002 provides powers for Ministers to intervene in certain circumstances: the appropriate Minister may make an order containing directions to ensure that the local authority complies with the duty within the period specified in the order. Ministers will receive information about the failure of local authorities through a variety of sources, one of which is the CSCI. Others are the comprehensive performance assessment system for social services, the performance assessment framework, based on in-year and end-year monitoring, performance indicators and a range of inspection reports.

These regulations are to be made several months in advance of coming into force. This should provide ample time for adoption agencies to prepare for the new requirements, and so reduce the risk of the agencies being in breach of new requirements.

CONSULTATION

The Department for Education and Skills has consulted with other key government interests, including the Department for Constitutional Affairs and the National Assembly for Wales in its development of the regulations.

These regulations were issued for full public consultation for over seven months and 114 written responses were received. A key part of the consultation with agencies were three workshops, each run over two days, either side of an interval of six weeks. This new consultation model allowed managers and staff time to consider the details from the first day, consult colleagues not able to attend, and return on the second day to share the views of their agencies with the Department. Eight single day focus groups to look in depth at key issues were also held for representative groups and agencies. These consultation events played a central role in helping the Government to identify problems and develop improvements in the regulations and guidance, and new flexibilities for adoption agencies.

The consultation document posed a number of questions in relation to the RIA. Of the 68 responses to a question which asked whether respondents agreed with the assessment of the likely impact of the draft regulations, 19% agreed, 6% thought the assessment too high, 50% thought the assessment too low and 25% expressed no view.

Of the 78 responses to a question which asked whether there would be more work for adoption agencies under the draft regulations and guidance than under the current regulations and guidance, 5% thought about the same amount of work, 53% thought more work and 42% thought significantly more.

However, the answers to the questions on impact and levels of work need to be seen in their context. The majority of the concerns stem from the level of detail in the draft non-statutory practice guidance for the assessment of prospective adopters, rather than to the Adoption Agencies Regulations. Moreover, respondents used this question to voice their concerns about other matters which are not provided for in these regulations, such as the primary legislation or adoption support and special guardianship support requirements. Where specific concerns were expressed about the draft regulations, these have been carefully considered.

Many other respondents used the question on work levels to voice their concerns about the training necessary to implement the 2002 Act, again an issue that was not explained in the consultation document and one which is broader than the regulations. It is a key issue. Ample time has been set aside for preparation and training, and this is expected to run for seven months from April to October 2005. The Department is currently drawing up plans for a comprehensive training programme to support adoption agencies and their staff as they prepare for the implementation of the 2002 Act. The training programme will also cover the training needs of agency staff who will be required to comply with these regulations.

Of the 67 responses to a question about the assessment of the costs of the draft

regulations, 24% thought it was about right and 76% too low. Most respondents suggested there could be additional significant costs to VAAs for carrying out additional checks and references, though this has now been addressed, and the level of statutory checks and references will now remain the same. Others were concerned about the potential increase in costs for paying fees to panel members, though this is not a requirement of the regulations as this will be at the discretion of adoption agencies. Other respondents considered that there would be additional costs for training specialist adoption workers to conduct assessments under the assessment framework; again, this is not a requirement of the regulations, but is set out in the non-statutory practice guidance.

In answer to a question about the assessment of the benefits of the draft Regulations, there were 66 responses, and of these 15% thought too positive, 83% thought about right, and 2% thought too negative.

Almost 50 changes have been made to the regulations as a result of the consultation work and written responses, many of them introducing new provisions which clarify the adoption process, reinforce essential safeguards and provide adoption agencies with new options in the way that they may resource their adoption panels, which play a key role in the adoption process.

In finalising the regulations the Department conducted another short informal consultation at the end of November 2004 with adoption stakeholders who had attended the focus groups. Many detailed responses were received, and another 50 changes have been made to refine and improve the regulations.

SUMMARY AND RECOMMENDATION

When the Adoption and Children Act 2002 was passing through Parliament, Ministers promised to bring forward regulations to put in place the vital safeguards needed to protect the welfare of the child and the rights of parents and prospective adopters. These regulations form the core of that commitment.

The Government considers that, as drafted, these regulations will meet the objectives, which are to govern the essential work of adoption agencies as they arrange adoptions for thousands of children and their adoptive parents. They are intended to replace current regulations that mostly date back twenty years, and are central to modernising and improving secondary legislation for domestic adoptions.

Together, the regulations for adoption agencies, and the regulations for assessing the suitability of prospective adopters, provide vital safeguards for the adoption process, and Option 3 provides the best prospect of delivering the promised reforms to secondary adoption legislation. The regulations set out the duties of adoption agencies in a systematic and logical manner. They have been designed to assist agencies in meeting their duties.

The new regulations are based on current best practice to help ensure that a quality service is provided for children, parents and prospective adopters, which they are entitled to expect. The extensive and in-depth consultation has helped the Government to strike the appropriate balance between regulation to provide reasonable, proportionate safeguards and flexibility to allow more discretion for adoption agencies on the appointments of panel members to adoption panels. Where it has been necessary to provide additional safeguards in order to ensure the secondary legislation is consistent with the 2002 Act, every effort has been made to

ensure the additional duties are reasonable and consistent with the Act. Overall, these regulations should not impose significant net extra costs. Moreover, VAAs are able - through the inter-agency fee - to recover any new costs that do arise from local authorities.

During debates while the Adoption and Children Act was passing through Parliament, adoption agencies and other stakeholder groups endorsed the Government’s radical reform programme for adoption legislation. The Adoption and Children Act 2002 was influenced and developed through many consultations with key adoption stakeholders, including VAAs and representatives of local government.

MINISTERIAL DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Filkin

23rd February 2005

..... Date.....

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