
WELSH STATUTORY INSTRUMENTS

2005 No. 1313

The Adoption Agencies (Wales) Regulations 2005

PART 1
GENERAL

Citation, commencement and application

1.—(1) These Regulations may be cited as the Adoption Agencies (Wales) Regulations 2005 and come into force on 30 December 2005.

(2) These Regulations apply to Wales.

Interpretation

2. In these Regulations —

“the Act” (“*y Ddeddf*”) means the Adoption and Children Act 2002;

“the 1989 Act” (“*Deddf 1989*”) means the Children Act 1989;

“adoption agency” (“*asiantaeth fabwysiadu*”) has the meaning given in section 2(1) of the Act;

“adoption panel” (“*panel mabwysiadu*”) means a panel established in accordance with regulation 3;

“adoption placement plan” (“*cynllun lleoliad mabwysiadu*”) has the meaning given in regulation 36;

“adoption service” (“*gwasanaeth mabwysiadu*”) has the meaning given in section 2(1) of the Act;

“adoption support services” (“*gwasanaethau cymorth mabwysiadu*”) has the meaning given in section 2(6) of the Act and in regulations made under section 2(6)(b) of the Act;

“agency adviser” (“*cyngorydd asiantaeth*”) has the meaning given in regulation 8;

“CAFCASS” means the Children and Family Court Advisory and Support Service⁽¹⁾;

“employed” (“*cyflogi/cyflogaeth*”) in these regulations includes employment under a contract of service or a contract for services, or otherwise than under a contract and whether or not for payment;

“independent person” (“*person annibynnol*”) in relation to an adoption panel has the meaning given in regulation 3;

“independent review panel” (“*panel adolygu annibynnol*”) means the panel constituted under section 12 of the Act;

“joint adoption panel” (“*panel mabwysiadu ar y cyd*”) means an adoption panel established in accordance with regulation 3(5);

(1) See section 11 of the Criminal Justice and Court Services Act 2000 c. 43.

“medical adviser” (“*cyngorydd meddygol*”) means the person appointed as the medical adviser by the adoption agency in accordance with regulation 9;

“National Assembly” (“*Cynulliad Cenedlaethol*”) means the National Assembly for Wales;

“notify” (“*hysbysu*”) means notify in writing;

“parent” (“*rhiant*”) means, in relation to a child, any parent who has parental responsibility for the child under the 1989 Act;

“placement plan” (“*cynllun lleoliad*”) has the meaning given in regulation 36(2);

“proposed placement” (“*lleoliad arfaethedig*”) has the meaning given in regulation 32(1);

“qualifying determination” (“*dyfarniad cymwys*”) has the meaning given in regulation 28(4)(a);

“registered adoption society” (“*cymdeithas fabwysiadu gofrestredig*”) has the meaning given in section 2(2) of the Act;

“registration authority” (“*awdurdod cofrestru*”) means the National Assembly for Wales⁽²⁾;

“relevant foreign authority” (“*awdurdod tramor perthnasol*”) means a person, outside the British Islands performing functions in the country in which the child is, or in which the prospective adopter is habitually resident, which correspond to the functions of an adoption agency or to the functions of the Secretary of State in respect of adoptions with a foreign element;

“section 83 case” (“*achos adran 83*”) means a case where a person intends to bring, or to cause another to bring, a child into the United Kingdom in circumstances where section 83 of the Act (restrictions on bringing children into the United Kingdom) applies;

“social worker” (“*gweithiwr cymdeithasol*”) means a person who is registered as a social worker in a register maintained by the Care Council for Wales or the General Social Care Council under section 56 of the Care Standards Act 2000⁽³⁾ or in a corresponding register maintained under the law of Scotland or Northern Ireland;

“social services functions” (“*swyddogaethau gwasanaethau cymdeithasol*”) has the meaning given in section 1A of the Local Authority Social Services Act 1970;

“Welsh family proceedings officer” (“*swyddog achosion teuluol ar gyfer Cymru*”) has the meaning given in section 35(4) of the Children Act 2004 ⁽⁴⁾; and

“working day” (“*diwrnod gwaith*”) means any day other than a Saturday, Sunday, Christmas day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971⁽⁵⁾.

PART 2

ADOPTION AGENCY — ARRANGEMENTS FOR ADOPTION WORK

Establishment of adoption panel

3.—(1) Subject to paragraph (5), the adoption agency must establish at least one panel, to be known as the adoption panel, in accordance with this regulation.

(2) See section 5 of the Care Standards Act 2000 c. 14.

(3) 2000 c. 14.

(4) 2004 c. 31.

(5) 1971 c. 80.

(2) The adoption agency must appoint to chair the panel a person, not being a person who has been an elected member, trustee, director or employee of the agency within the last 12 months, who has the skills and experience necessary for chairing the adoption panel.

(3) Subject to paragraph (5), the adoption panel must consist of no more than ten members, including the person appointed under paragraph (2), and must include —

- (a) two social workers;
- (b) in the case of a registered adoption society a person who is a director, manager or other officer of the agency and is concerned in the management of the agency;
- (c) in the case of a local authority, one elected member of the authority;
- (d) the person appointed as the medical adviser to the agency in accordance with regulation 9, (or one of them if more than one medical adviser is appointed), for so long as that person is the medical adviser;
- (e) at least three other persons (in this regulation referred to as “independent persons”) including where reasonably practicable at least two persons with personal experience of adoption.

(4) The adoption agency must appoint two members of the adoption panel either of whom will act as chair if the person appointed to chair the panel is absent or their office is vacant (“the vice chair”).

(5) The adoption panel may be established jointly by any two but not more than three local authorities (“joint adoption panel”) and where a joint adoption panel is established—

- (a) the maximum number of persons who may be appointed to that panel is eleven;
- (b) each local authority must appoint two persons to the panel, one of whom must be a social worker and the other who must be an elected member of that authority;
- (c) by agreement between the local authorities there must be appointed —
 - (i) a person to chair the panel who is not an elected member of any of the local authorities whose panel it is and who has the skills and experience necessary for chairing the adoption panel;
 - (ii) at least three independent members including where reasonably practicable at least two persons with personal experience of adoption;
 - (iii) two members of the panel either of whom will act as chair if the person appointed to chair the panel is absent or their office is vacant (“the vice chair”).
 - (iv) the medical adviser to one of the authorities.

(6) A person must not be appointed as an independent person on the adoption panel if that person—

- (a) is or has been within the last year employed —
 - (i) in the case of a registered adoption society, by that agency; or
 - (ii) in the case of a local authority, by that authority to carry out any of the social services functions of that authority;
- (b) is or has been within the last year in the case of a local authority an elected member of that authority;
- (c) is or has been within the last year in the case of a registered adoption society a trustee or concerned in the management of that agency;
- (d) is an adoptive parent with whom the agency has placed a child for adoption or whom the agency have approved as suitable to be an adoptive parent unless at least two years have elapsed since the adoption order was made in respect of the child;
- (e) is related —

- (i) in the case of a registered adoption society, to a person employed by that agency ; or
- (ii) in the case of a local authority, to a person employed by that authority to carry out any of the social services functions of that authority.

(7) For the purposes of paragraph (6)(e) a person (“person A”) is related to another person (“person B”) if person A is —

- (a) a member of the household of, or married to or the civil partner of, person B;
- (b) the son, daughter, mother, father, sister or brother of person B; or
- (c) the son, daughter, mother, father, sister or brother of the person to whom person B is married or with whom B has formed a civil partnership.

Tenure of office of members of the adoption panel

4.—(1) Subject to the provisions of this regulation and regulation 10, a member of the adoption panel must not hold office for a term exceeding 5 years, and may not hold office for the adoption panel of the same adoption agency for more than two consecutive terms without an intervening period of at least three years.

(2) The medical adviser member of the adoption panel must hold office only for so long as their appointment under regulation 9.

(3) A member of the adoption panel may resign office at any time by giving one month’s notice in writing to the adoption agency.

(4) Where the adoption agency is of the opinion that any member of the adoption panel is unsuitable or unable to remain in office, their office may be terminated at any time by giving that member notice in writing with reasons.

(5) Termination of the appointment of a member of a joint adoption panel under paragraph (4) must have the agreement of all the local authorities whose panel it is.

Meetings of adoption panel

5.—(1) Subject to paragraph (2), no business is to be conducted by the adoption panel unless at least five of its members, including the person appointed to chair the panel or one of the vice chairs, and at least one of the social workers and at least one of the independent persons, meet as the panel.

(2) In the case of a joint adoption panel, no business is to be conducted unless at least six of its members, including the person appointed to chair the panel or one of the vice chairs, and at least one social worker, and at least one of the independent persons, meet as the panel.

(3) The adoption panel must make a written record of its proceedings, its recommendations and the reason for its recommendations.

Payment of fees — chair or independent person on local authority adoption panel

6. A local authority may pay to a person appointed to chair, or to any independent person on, their adoption panel or joint adoption panel such fee as that local authority may determine, being a fee of a reasonable amount.

Adoption agency arrangements for adoption work

7. The adoption agency must, in consultation with the adoption panel and, to the extent specified in regulation 9(2), with the agency’s medical adviser, prepare and implement written policy and procedural instructions governing the exercise of the agency’s and the panel’s functions in relation

to adoption and such instructions must be kept under review and, where appropriate, revised by the agency.

Requirement to appoint an agency adviser to the adoption panel

8. The adoption agency must appoint a senior member of staff, or in the case of a joint adoption panel the local authorities whose panel it is must by agreement appoint a senior member of staff of one of them, (to be known as the “agency adviser”) with such qualifications, skills and experience as the agency considers appropriate —

- (a) to assist the agency with the appointment (including re-appointment), termination and review of appointment of members of the adoption panel;
- (b) to be responsible for the induction and training of members of the adoption panel;
- (c) to be responsible for the administration of the adoption panel including assisting with liaison between the agency and the adoption panel and monitoring the performance of members of the adoption panel; and
- (d) to give such advice to the adoption panel as the panel may request in relation to any case or generally.

Requirement to appoint a medical adviser

9.—(1) The adoption agency must appoint at least one registered medical practitioner to be the agency’s medical adviser.

(2) The adoption agency’s medical adviser must be consulted in relation to the arrangements for, access to, and disclosure of, health information which is required or permitted by virtue of these Regulations.

Establishment of new adoption panels on 30 December 2005

10.—(1) All members of an adoption panel established before 30 December 2005 (referred to in this regulation as the “old adoption panel”) will cease to hold office on that date.

(2) With effect from 30 December 2005, the adoption agency must establish a new adoption panel in accordance with regulations 3 and 4.

(3) Where a member of an old adoption panel ceases to hold office under paragraph (1) and whether that member’s term of office was extended by the adoption agency in accordance with regulation 5A(1A) of the Adoption Agencies Regulations 1983⁽⁶⁾ or in any other case, that member may be appointed as a member of a new adoption panel of the same adoption agency save that their term of office on the new adoption panel must not exceed that permitted by regulation 4 taking account of the term they have already served as a member of the old adoption panel.

PART 3

DUTIES OF ADOPTION AGENCY WHERE THE AGENCY IS CONSIDERING ADOPTION FOR A CHILD

Application of regulations 11 to 20

11. Regulations 11 to 20 apply where the adoption agency is considering adoption for a child.

(6) [S.I.1983/1964](#). Regulation 5A(1A) was inserted by the Adoption (Agencies) Regulations 2003 (S.I.2003/3223).

Requirement to open child's case record

12.—(1) The adoption agency must set up a case record in respect of the child and place on it any information obtained and any report, recommendation or decision made by virtue of these Regulations.

(2) Where the child —

(a) is looked after; or

(b) is provided with accommodation under section 59(1) of the 1989 Act (provision of accommodation by voluntary organisations),

the local authority or, as the case may be, the registered adoption society must obtain any information which is required to be obtained by the agency by virtue of this Part, from the records maintained with respect to the child under the 1989 Act, and place that information on the case record referred to in paragraph (1).

Requirement to provide counselling and information for, and ascertain the wishes and feelings of, the child

13.—(1) The adoption agency must, so far as is reasonably practicable and in the light of the child's age and understanding—

(a) provide a counselling service for the child;

(b) explain to the child in an appropriate manner the procedure in relation to, and the legal implications of, their adoption and provide the child with appropriate written information about these matters; and

(c) ascertain the child's wishes and feelings in relation to—

(i) the possibility of placement with a new family and their adoption;

(ii) their religious and cultural upbringing; and

(iii) contact with their parent, guardian, relative or other significant person.

Requirement to provide counselling and information for, and ascertain the wishes and feelings of, the parent or guardian of the child and others —

14.—(1) The adoption agency must, so far as is reasonably practicable —

(a) provide a counselling service for the parent or guardian of the child;

(b) explain and provide written information to the child's parent or guardian on the following matters—

(i) the procedure in relation to both placement for adoption and adoption;

(ii) the legal implications of—

(aa) giving consent to placement for adoption under section 19 of the Act (placing children with parental consent);

(bb) giving consent to the making of a future adoption order under section 20 of the Act (advance consent to adoption);

(cc) a placement order; and

(iii) the legal implications of adoption; and

(c) ascertain the wishes and feelings of the parent or guardian of the child and of any other significant person the agency considers relevant in relation to —

(i) the matters set out in section 1(4)(f)(ii) and (iii) of the Act (matters the agency must have regard to);

- (ii) the placement of the child for adoption and their adoption, including any wishes and feelings about the child's religious and cultural upbringing; and
- (iii) contact with the child if the agency is authorised to place the child for adoption or the child is adopted.

(2) This paragraph applies where the father of a child does not have parental responsibility for the child and the father's identity is known to the agency.

(3) Where paragraph (2) applies and the adoption agency is satisfied it is appropriate to do so the agency must—

- (a) carry out in respect of the father the requirements of paragraph (1)(a), (b)(i), and (iii) and (c) as if they applied to the father and
- (b) ascertain so far as possible whether the father—
 - (i) wishes to acquire parental responsibility for the child under section 4 of the 1989 Act (acquisition of parental responsibility)(7); or
 - (ii) intends to apply for a residence order or contact order with respect to the child under section 8 of the 1989 Act (residence, contact and other orders with respect to children) or where the child is subject to a care order, an order under section 34 of the 1989 Act (parental contact with children in care).

Requirement to obtain information (including health information) about the child

15.—(1) The adoption agency must, so far as is reasonably practicable, obtain the information about the child which is specified in Part 1 of Schedule 1.

(2) Subject to paragraph (4), the adoption agency must —

- (a) make arrangements for the child to be examined by a registered medical practitioner; and
- (b) obtain from that practitioner a written report on the state of the child's health which must include any treatment which the child is receiving, the child's needs for health care and the matters specified in Part 2 of Schedule 1,

unless the agency has received advice from the medical adviser that such an examination and report is unnecessary.

(3) Subject to paragraph (4), the adoption agency must make arrangements —

- (a) for such other medical and psychiatric examinations of, and other tests on, the child to be carried out as are recommended by the agency's medical adviser; and
- (b) to obtain written reports of such examinations and tests.

(4) Paragraphs (2) and (3) do not apply if the child is of sufficient understanding to make an informed decision and refuses to submit to the examinations or other tests.

Requirement to obtain information (including health information) about the child's family

16.—(1) The adoption agency must, so far as is reasonably practicable, obtain the information about the child's family which is specified in Parts 3 and 4 of Schedule 1.

(2) The adoption agency must, so far as is reasonably practicable, obtain the information about the health of each of the child's natural parents and brothers and sisters which is specified in Part 5 of Schedule 1.

(7) Section 4 was amended by section 111 of the Act.

Requirement to prepare a written report for the adoption panel

17.—(1) Where the adoption agency consider in light of all the information obtained by virtue of regulations 12 to 16 that adoption is the preferred option for permanence for the child, the agency must prepare a written report which must include —

- (a) the information about the child and the child's family as specified in Parts 1, 3 and 4 of Schedule 1;
- (b) a summary, written by the agency's medical adviser, of the child's state of health, the child's health history and any need for health care which might arise in the future;
- (c) the wishes and feelings of the child regarding the matters set out in regulation 13(1)(c);
- (d) the wishes and feelings of the child's parent or guardian, and where regulation 14(2) applies, the child's father, and any other person the agency considers relevant, regarding the matters set out in regulation 14(1)(c);
- (e) the views of the agency about the child's need for contact with the child's parent or guardian or other relative or with any other person the agency considers relevant (including the child's father where regulation 14(2) applies) and the arrangements the agency proposes to make for allowing any person contact with the child;
- (f) an assessment of the child's emotional and behavioural development and any related needs;
- (g) an assessment of the parenting capacity of the child's parent or guardian, and if regulation 14(2) applies, the child's father;
- (h) a chronology of the decisions and actions taken by the agency with respect to the child;
- (i) an analysis of the options for the future care of the child which have been considered by the agency and why placement for adoption is considered the preferred option; and
- (j) any other information which the agency considers relevant.

(2) The adoption agency must send the written report together with the other reports required by virtue of regulations 15 and 16 to the adoption panel.

(3) The adoption agency must obtain, so far as is reasonably practicable, any other relevant information which may be requested by the adoption panel and send that information to the panel.

Function of the adoption panel in relation to a child referred by the adoption agency

18.—(1) The adoption panel must consider the case of every child referred to it by the adoption agency and make a recommendation to that agency as to whether the child should be placed for adoption.

(2) In considering what recommendation to make the adoption panel must have regard to the duties imposed on the adoption agency under section 1(2), (4), (5) and (6) of the Act (considerations applying to the exercise of powers in relation to the adoption of a child) and —

- (a) must consider and take into account all the information and reports passed to it in accordance with regulation 17;
- (b) may request the agency to obtain any other relevant information which the panel considers necessary;
- (c) must obtain legal advice as it considers necessary in relation to the case.

(3) Where the adoption panel make a recommendation to the adoption agency that the child should be placed for adoption it must consider and may at the same time give advice to the agency about —

- (a) the arrangements the agency proposes to make for allowing any person contact with the child;

- (b) where the adoption agency is a local authority, whether an application should be made for a placement order in respect of the child.

Adoption agency decision and notification

19.—(1) The adoption agency must —

- (a) take into account the recommendation of the adoption panel;
- (b) take into account any advice given by the adoption panel in accordance with regulation 18(3); and
- (c) have regard to the consideration set out in section 1(2) of the Act

in coming to a decision about whether the child should be placed for adoption.

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

(3) The adoption agency must, if their whereabouts are known to the agency, notify its decision about whether the child should be placed for adoption and any decision in relation to contact arrangements in writing to—

- (a) the parent or guardian of the child;
- (b) any relative or other significant person whom the agency consulted under regulation 14(1) including any person in whose favour a contact order under section 8 of the 1989 Act or an order under section 34 of the 1989 Act (parental contact with children in care) may be in force immediately before the agency is authorised to place the child for adoption; and
- (c) where regulation 14(2) applies, the father; and
- (d) the agency must in an appropriate manner and in the light of the child's age and understanding explain its decision to the child.

(4) Unless either an application has been made on which a care order might be made in respect of the child which has not been disposed of, or the child is less than 6 weeks old, the agency must ascertain whether the parent or guardian of the child is prepared —

- (a) to consent under section 19 of the Act (placing children with parental consent) to the child being placed for adoption with prospective adopters identified in the consent or being placed for adoption with any prospective adopters who may be chosen by the agency; and
- (b) at the same time to consent to the making of a future adoption order under section 20 of the Act (advance consent to adoption).

(5) Where the parent or guardian of the child is prepared to consent to the making of a future adoption order under section 20 of the Act, the agency must explain and confirm in writing to the parent or guardian of the child that —

- (a) any consent given under section 20 of the Act may be withdrawn but that the withdrawal of consent is ineffective if it is given after an application for an adoption order is made;
- (b) notice given to the agency may at the same or any subsequent time state their wish not to be informed of any application for an adoption order; and
- (c) such a statement may be withdrawn.

Request to appoint a Welsh family proceedings officer or an officer of CAFCASS

20.—(1) Where the parent or guardian of the child is prepared to consent to the placement of the child for adoption under section 19 of the Act (placing children with parental consent) and, as the case may be, to consent to the making of a future adoption order under section 20 of the Act (advance consent to adoption), the adoption agency must request the National Assembly to appoint

one of its Welsh family proceedings officers⁽⁸⁾ or, where the child is ordinarily resident in England, the CAFCASS to appoint one of its officers for the purposes of their signification of the consent to placement or adoption and send with that request the information specified in Schedule 2.

(2) The adoption agency must keep on the case record with respect to the child maintained in accordance with regulation 12 —

- (a) the consent form duly signed by the parent or guardian and witnessed by the Welsh family proceedings officer or the officer of CAFCASS;
- (b) any notice given to the agency under section 20(4)(a) of the Act (statement of a wish not to be informed of any application for an adoption order); and
- (c) the withdrawal of any consent or statement given under sections 19 or 20 of the Act.

PART 4

DUTIES OF ADOPTION AGENCY IN RESPECT OF A PROSPECTIVE ADOPTER

Requirement to provide counselling and information

21. Where the adoption agency is considering a person's suitability to adopt a child, the agency must —

- (a) provide a counselling service for the prospective adopter;
- (b) in a section 83 case, explain to the prospective adopter the procedure in relation to, and the legal implications of, adopting a child from the country from which the prospective adopter wishes to adopt;
- (c) in any other case explain to the prospective adopter the procedure in relation to, and the legal implications of, placement for adoption (including placement by consent under section 19 of the Act, consent to the making of a future adoption order under section 20 of the Act, restriction of parental responsibility and placement orders) and adoption; and
- (d) provide the prospective adopter with written information about the matters referred to in sub-paragraph (b) or, as the case may be, (c).

Requirement to consider application for an assessment of suitability to adopt a child

22.—(1) Where the adoption agency, following the procedures referred to in regulation 21, receives an application in writing from a prospective adopter for an assessment of their suitability to adopt a child, the agency must set up a case record in respect of that prospective adopter and consider that person's suitability to adopt a child.

(2) The adoption agency may ask the prospective adopter to provide any further information in writing the agency may reasonably require.

(3) Where paragraph (1) applies in relation to a couple, the assessment of their suitability to adopt a child will be considered jointly and the agency will set up a single case record.

Requirement to carry out police checks

23.—(1) The adoption agency must obtain —

(8) See section 35(4) of the Children Act 2004 c. 31.

- (a) in respect of the prospective adopter, an enhanced criminal record certificate within the meaning of section 115 of the Police Act 1997⁽⁹⁾ including the matters specified in subsection (6A) of that section; and
 - (b) in respect of any other member of the prospective adopter’s household aged 18 or over, an enhanced criminal record certificate under section 115 of that Act including the matters specified in subsection (6A) of that section.
- (2) The adoption agency must not consider a person suitable to adopt a child or, as the case may be, must consider a person no longer suitable to adopt a child, if the person or any member of the person’s household aged 18 or over —
- (a) has been convicted of a specified offence committed at the age of 18 or over; or
 - (b) has been cautioned by a constable in respect of any such offence which, at the time the caution was given, the person admitted.
- (3) In paragraph (2) “specified offence” means —
- (a) an offence against a child;
 - (b) an offence specified in Part 1 of Schedule 3;
 - (c) an offence contrary to section 170 of the Customs and Excise Management Act 1979⁽¹⁰⁾ in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (prohibitions and restrictions relating to pornography)⁽¹¹⁾ where the prohibited goods included indecent photographs of children under the age of 16;
 - (d) any other offence involving bodily injury to a child, other than an offence of common assault or battery,
- and the expression “offence against a child” has the meaning given to it by section 26(1) of the Criminal Justice and Court Services Act 2000⁽¹²⁾ except that it does not include an offence contrary to section 9 of the Sexual Offences Act 2003 (sexual activity with a child) in a case where the offender was under the age of 20 and the child was aged 13 or over at the time the offence was committed.
- (4) An adoption agency may not consider a person to be suitable to adopt a child or, as the case may be, must consider a person no longer suitable to adopt a child, if that person or any member of that person’s household aged 18 or over—
- (a) has been convicted of an offence specified in paragraph 1 of Part 2 of Schedule 3 committed at the age of 18 or over or has been cautioned by a constable in respect of any such offence which, at the time the caution was given, was admitted; or
 - (b) falls within paragraph 2 or 3 of Part 2 of Schedule 3,
- notwithstanding that the statutory offences specified in Part 2 of Schedule 3 have been repealed.

Requirement to notify

24. The adoption agency must notify the prospective adopter in writing as soon as possible after becoming aware that the person is not suitable, or as the case may be, is no longer suitable, to adopt a child by virtue of regulation 23 (2) to (4).

⁽⁹⁾ 1997 c. 50. Section 115 was amended by section 328 of the Criminal Justice Act 2003, section 19 of the Health and Social Care Act 2001, sections 90, 103, 104 and 116 of the Care Standards Act 2000, section 152 of and Schedules 21 and 22 to the Education Act 2002, section 8 of the Protection of Children Act 1999, section 135 of the Act, section 2 and Schedule 2 to the National Health Service Reform and Health Care Professions Act 2002 and section 115 of the Licensing Act 2003.

⁽¹⁰⁾ 1979 c. 2.

⁽¹¹⁾ 1876 c. 36.

⁽¹²⁾ 2000 c. 43. Schedule 4 to the 2000 Act was amended by the Sexual Offences Act 2003 c. 42.

Requirement to provide preparation for adoption

25.—(1) Where the adoption agency is considering whether a person may be suitable to adopt a child, the agency must make arrangements for the prospective adopter to receive such preparation for adoption as the agency considers appropriate.

(2) Paragraph (1) does not apply if the adoption agency is satisfied that the requirements set out in that paragraph have been carried out in respect of the prospective adopter by another adoption agency.

(3) Where the prospective adopter is not prepared to undertake the preparation for adoption which the adoption agency considers appropriate in their case, the agency may refuse to proceed further with the prospective adopter's application for an assessment of their suitability to adopt.

(4) In paragraph (1) "preparation for adoption" includes the provision of information to the prospective adopter about —

- (a) the age range, gender and likely needs and background of children who may be placed for adoption by the adoption agency;
- (b) the significance and legal implications of adoption for a child and his family;
- (c) contact between a child and his natural parents and other relatives where a child is authorised to be placed for adoption or the child is adopted;
- (d) the skills needed to be an adoptive parent;
- (e) the perspective of the child and the child's family;
- (f) the adoption agency's procedures in relation to assessment of prospective adopters and placement of a child for adoption; and
- (g) the procedure in relation to placement for adoption and adoption.

Procedure in respect of carrying out an assessment

26.—(1) Where the adoption agency, after having followed the procedures referred to in regulations 23 and 25, consider the prospective adopter may be suitable to be an adoptive parent, it must carry out an assessment in accordance with this regulation.

(2) The adoption agency must obtain such particulars about the prospective adopter as are referred to in Part 1 of Schedule 4.

(3) The adoption agency must obtain —

- (a) a written report from a registered medical practitioner about the health of the prospective adopter which must deal with the matters specified in Part 2 of Schedule 4 unless such a report has been made within 6 months of the panel's consideration of the case under regulation 27 and is available to the agency;
- (b) a written report of each of the interviews with the persons nominated by the prospective adopter as personal referees; and
- (c) a written report from the local authority in whose area the prospective adopter lives, and where the prospective adopter has lived in that area for a period of less than twelve months the agency must obtain a written report also from the local authority in whose area the prospective adopter lived previously.

(4) The adoption agency must prepare a written report which must include —

- (a) the details of the prospective adopter as set out in Part 1 of Schedule 4;
- (b) a summary, written by the agency's medical adviser, of the state of health of the prospective adopter;

- (c) the agency’s assessment of the prospective adopter’s suitability to adopt a child, and in determining the suitability of a couple to adopt a child the agency must have proper regard to the need for stability and permanence in their relationship;
 - (d) any relevant information the agency obtains under paragraph (3)(c);
 - (e) any observations of the agency on the matters referred to in regulations 22, 23, and 25;
 - (f) any other information which the agency considers relevant.
- (5) In a section 83 case the report must include —
- (a) the name of the country (“country of origin”) from which the prospective adopter wishes to adopt;
 - (b) confirmation that the prospective adopter meets the eligibility requirements to adopt from the country of origin;
 - (c) additional information obtained as a consequence of the requirements of the country of origin; and
 - (d) the agency’s assessment of the prospective adopter’s suitability to adopt a child who is habitually resident outside the British Islands.
- (6) The adoption agency must notify the prospective adopter their application is to be referred to the adoption panel and at the same time send the prospective adopter a copy of the agency’s report referred to in paragraph (4), and invite any observations on the report to be sent in writing to the agency within 10 working days, beginning with the date on which the notification was sent.
- (7) At the end of the period of 10 working days referred to in paragraph (6) (or earlier if any observations made by the prospective adopter are received before the 10 working days have expired) the adoption agency must send —
- (a) the report referred to in paragraph (4), together with any observations provided by the prospective adopter under paragraph (6);
 - (b) the written reports referred to in paragraph (3); and
 - (c) any other relevant information obtained by the agency under this regulation
- to the adoption panel.
- (8) The adoption agency must obtain, so far as is reasonably practicable, any other relevant information which may be required by the adoption panel and send that information to the panel.

Function of the adoption panel

27.—(1) Subject to paragraph (2), the adoption panel must consider the case of the prospective adopter referred to it by the adoption agency and make a recommendation to that agency as to whether the prospective adopter is suitable to adopt a child.

- (2) In considering what recommendation to make, the adoption panel —
- (a) must consider and take into account all information and reports passed to it in accordance with regulation 26;
 - (b) may request the adoption agency to obtain any other relevant information which the panel considers necessary; and
 - (c) must obtain legal advice as it considers necessary in relation to the case.
- (3) Where the adoption panel make a recommendation to the adoption agency that the prospective adopter is suitable to adopt a child, it may consider and at the same time give advice to the agency about the number of children the prospective adopter may be suitable to adopt, their age range, gender and characteristics (health and social).

(4) Before making any recommendation, the adoption panel must invite the prospective adopters to attend the panel meeting.

Adoption agency decision and notification

28.—(1) The adoption agency must take into account the recommendation of the adoption panel in coming to a decision about whether the prospective adopter is suitable to adopt a child.

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

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

(4) Where the adoption agency considers that the prospective adopter is not suitable to adopt a child, it must —

- (a) notify the prospective adopter in writing that it proposes not to approve the prospective adopter as suitable to adopt a child (“qualifying determination”);
- (b) send with that notification its reasons together with a copy of the recommendation of the adoption panel, if different;
- (c) advise the prospective adopter that within 20 working days beginning with the date on which the notification was sent the prospective adopter may —
 - (i) submit any representations to the agency, or
 - (ii) apply to the independent review panel for a review of the qualifying determination.

(5) If, within the period of 20 working days referred to in paragraph (4), the prospective adopter has not made any representations or applied to the independent review panel, the adoption agency must proceed to make its decision and must notify the prospective adopter in writing of its decision together with the reasons for that decision.

(6) If, within the period of 20 working days referred to in paragraph (4), the adoption agency receive further representations from the prospective adopter, it may refer the case together with all the relevant information back to their adoption panel for further consideration.

(7) The adoption panel must consider any case referred to it under paragraph (6) and make a fresh recommendation to the adoption agency as to whether the prospective adopter is suitable to adopt a child.

(8) The adoption agency must make a decision on the case but if the case has been referred to the adoption panel under paragraph (6) or the prospective adopter has applied to the independent review panel for a review of the qualifying determination it must make the decision only after taking into account any recommendation of the adoption panel made under paragraph (7) and regulation 27 or, as the case may be, of the independent review panel.

(9) As soon as possible after making its decision under paragraph (8), the adoption agency must notify the prospective adopter in writing of its decision, stating its reasons for that decision if it does not consider the prospective adopter to be suitable to adopt a child, and of the adoption panel’s recommendation under paragraph (7), if this is different from the adoption agency’s decision.

Information to be sent to the independent review panel

29.—(1) Where the adoption agency receives notification from the independent review panel that a prospective adopter has applied for a review of the qualifying determination, the agency must,

within 10 working days of receipt of that notification, send to the independent review panel the information specified in paragraph (2)(13).

- (2) The following information is specified for the purposes of paragraph (1) —
- (a) all the reports and information which were sent to the adoption panel in accordance with regulation 26;
 - (b) any written representations made by the prospective adopter in accordance with regulation 26(6);
 - (c) any other reports or information sent by the adoption agency to the adoption panel;
 - (d) the record of the proceedings of the adoption panel, its recommendations and the reasons for its recommendations;
 - (e) the notification, together with reasons sent by the adoption agency to the prospective adopter in accordance with 28(4)(a) and (b).

Reviews and termination of approval

30.—(1) The adoption agency must review the approval of each prospective adopter in accordance with this regulation, unless—

- (a) in a section 83 case, the prospective adopter has visited the child in the country in which the child is habitually resident and has confirmed in writing that he wishes to proceed with the adoption; and
 - (b) in any other case, the child is placed for adoption with the prospective adopter.
- (2) A review must take place whenever the adoption agency considers it necessary but otherwise not more than two years after approval and thereafter at intervals of not more than two years.
- (3) When undertaking such a review the adoption agency must —
- (a) make such enquiries and obtain such information as it considers necessary in order to review whether the prospective adopter continues to be suitable to adopt a child; and
 - (b) seek and take account of the views of the prospective adopter.
- (4) As a part of each review the adoption agency must consider —
- (a) why no child has yet been placed with the prospective adopter;
 - (b) any arrangements for the provision of adoption support services and whether they should continue or be modified;
 - (c) where a child is returned to the adoption agency in accordance with section 35(1) or (2) of the Act, the reasons for the child’s return; and
 - (d) whether the prospective adopter is still suitable to adopt a child.
- (5) The adoption agency must —
- (a) set out in writing the arrangements governing the manner in which the review of a prospective adopter is to be carried out and must draw the written arrangements to the attention of —
 - (i) the prospective adopter; and
 - (ii) any other person the agency considers relevant.
 - (b) ensure that —
 - (i) the information obtained in respect of the prospective adopter;

(13) The operation and procedure of the independent review panel is to be prescribed in further regulations made under section 9 of the Act.

- (ii) details of the proceedings at any meeting arranged by the agency to consider any aspect of the review; and
 - (iii) details of any decision made in the course of or as a result of the review, are recorded in writing and placed on the prospective adopter's case record.
- (6) If at the conclusion of the review, the adoption agency considers the prospective adopter may no longer be suitable to be an adoptive parent, it must prepare a written report which must include —
- (a) the information obtained on the matters referred to in paragraphs (3) and (4);
 - (b) the agency's reasons; and
 - (c) any other information which the agency considers relevant.
- (7) The adoption agency must notify the prospective adopter that the report referred to in paragraph (6) is to be referred to the adoption panel and give the prospective adopter a copy of that report and invite any observations on the report to be sent in writing to the agency within 10 working days, beginning with the date on which the notification was sent.
- (8) At the end of the period of 10 working days referred to in paragraph (7) (or earlier if the prospective adopter's comments are received before the 10 working days have expired), the adoption agency must send a copy of the report referred to in paragraph (6) together with the prospective adopter's observations and the report prepared for panel under regulation 26(4).
- (9) The adoption agency must obtain, so far as is reasonably practicable, any other relevant information which may be required by the adoption panel and send that information to the adoption panel.
- (10) The adoption panel must consider the report and any other information passed to it by the adoption agency under this regulation and make a recommendation to the agency as to whether the prospective adopter continues to be suitable to adopt a child.
- (11) Regulation 28 will apply in relation to the decision by the adoption agency about whether a prospective adopter continues to be suitable to adopt a child as it applies in relation to the decision by the agency about whether the prospective adopter is suitable to adopt a child.

Duties of the adoption agency in a section 83 case following approval of prospective adopter

- 31.** Where the adoption agency decides in a section 83 case to approve a prospective adopter as suitable to adopt a child, the agency must send to the National Assembly —
- (a) written confirmation of the decision and any recommendation the agency may make in relation to the number of children the prospective adopter may be suitable to adopt, their age range, gender, likely needs and background;
 - (b) all of the documents and information which were passed to the adoption panel in accordance with regulation 26;
 - (c) the record of the proceedings of the adoption panel, its recommendations and the reasons for its recommendations;
 - (d) if the prospective adopter had applied for a review by an independent panel of a qualifying determination, the record of the proceedings of that panel, its recommendations and the reasons for its recommendations; and
 - (e) any other information relating to the case which the National Assembly or the relevant foreign authority may require.

PART 5

DUTIES OF ADOPTION AGENCY IN RESPECT OF PROPOSED PLACEMENT OF CHILD WITH PROSPECTIVE ADOPTER

Proposed placement

32.—(1) Where the adoption agency is considering placing a child for adoption with a particular prospective adopter (in this regulation referred to as “the proposed placement”) the agency must —

- (a) provide the prospective adopter with a report about the child which must include the information set out in Schedule 5 and any other information which the agency considers relevant;
- (b) meet with the prospective adopter to discuss the proposed placement;
- (c) ascertain the views of the prospective adopter about —
 - (i) the proposed placement;
 - (ii) the child’s assessed needs for adoption support services and the adoption support plan;
 - (iii) the arrangements the agency proposes to make for allowing any person contact with the child; and

where applicable, any restriction in the exercise of their parental responsibility.

- (d) provide a counselling service for, and any further information to, the prospective adopter as may be required.

(2) Where the procedures set out in paragraph (1) have been followed and the prospective adopter has confirmed to the agency in writing their agreement to the proposed placement, the agency must, in such cases as it considers appropriate and so far as is reasonably practicable in the light of the child’s age and understanding, counsel the child and tell the child about the prospective adopters, their family circumstances and home environment and ascertain the child’s views about the proposed placement, contact arrangements and any restriction of the prospective adopter’s parental responsibility.

(3) Where the adoption agency considers that the proposed placement should proceed the agency must —

- (a) where the agency is a local authority, carry out an assessment of the needs of the child and the prospective adoptive family for adoption support services in accordance with regulations made under section 4(6) of the Act;
- (b) consider the arrangements for allowing any person contact with the child;
- (c) consider whether the parental responsibility of any parent or guardian, or of prospective adopters, is to be restricted to any extent;
- (d) prepare a written report which must include —
 - (i) the agency’s reasons for proposing the placement;
 - (ii) the information obtained by virtue of paragraphs (1) and (2);
 - (iii) where the agency is a local authority, its proposals for the provision of adoption support services, if any, in accordance with regulations made under section 4(6) of the Act;
 - (iv) the arrangements the agency propose to make for allowing any person contact with the child;

- (v) the agency's proposals for restricting the parental responsibility of any parent or guardian, or prospective adopter; and
- (vi) any other information relevant to the proposed placement.

(4) The adoption agency must notify the prospective adopter that the proposed placement is to be referred to the adoption panel and send the prospective adopter a copy of the agency's report referred to in paragraph (3) and invite any observations on the report to be sent in writing to the agency within 10 working days, beginning with the date on which the notification was sent.

(5) At the end of the period of 10 working days referred to in paragraph (4) (or earlier if observations are received before the 10 working days have expired) the adoption agency must send —

- (a) the report referred to in paragraph (3);
- (b) the report referred to in regulation 17;
- (c) the report referred to in regulation 26 and any observations made by the prospective adopter on that report;
- (d) any other relevant information obtained by the agency under this regulation

to the adoption panel.

(6) The adoption agency may only refer to the adoption panel its proposal to place a child for adoption with a particular prospective adopter if any other adoption agency which has made a decision in accordance with these Regulations that the child should be placed for adoption, or that the prospective adopter is suitable to adopt a child, has been consulted about the proposed placement.

(7) Where the adoption agency proposes to place a child for adoption with a particular prospective adopter the agency must set up case records in any case where it has not already set up such records and place on the appropriate record any information, report, recommendation or decision referred to it by another adoption agency together with any other information to be sent to the adoption panel by virtue of this regulation in respect of them.

(8) The adoption agency must obtain so far as is reasonably practicable any other relevant information which may be requested by the adoption panel in connection with the proposed placement and send that information to the panel.

Function of the adoption panel in relation to the proposed placement

33.—(1) The adoption panel must consider the proposed placement referred to it by the adoption agency and make a recommendation to the agency as to whether the child should be placed for adoption with that particular prospective adopter.

(2) In considering what recommendation to make the adoption panel must have regard to the duties imposed on the adoption agency under section 1(2), (4) and (5) of the Act (considerations applying to the exercise of powers in relation to the adoption of a child) and —

- (a) must consider and take into account all information and the reports passed to it in accordance with regulation 32;
- (b) may request the adoption agency to obtain any other relevant information which the panel considers necessary; and
- (c) must obtain legal advice as it considers necessary in relation to the case.

(3) The adoption panel must also consider and, where the panel makes a recommendation to the agency that the child should be placed for adoption with that particular prospective adopter, the panel may consider and at the same time give advice to the adoption agency about —

- (i) where the adoption agency is a local authority, the authority's proposals for the provision of adoption support services;

- (ii) the arrangements the adoption agency proposes to make for allowing any person contact with the child;
 - (iii) whether an application should be made for a placement order; and
 - (iv) where the agency is authorised to place the child for adoption whether it considers any person's parental responsibility should be restricted and, if so, the extent of any such restriction.
- (4) The adoption panel may only make the recommendation in paragraph (1) if —
- (a) that recommendation is to be made at the same meeting of the adoption panel at which a recommendation has been made that the child should be placed for adoption; or
 - (b) the adoption agency or another adoption agency has made a decision in accordance with regulation 19 that the child should be placed for adoption;

and in either case that recommendation is to be made at the same meeting of the panel at which a recommendation has been made that the prospective adopter is suitable to adopt a child or the adoption agency, or another adoption agency, has made a decision in accordance with regulation 28 that the prospective adopter is suitable to adopt a child.

Adoption agency's decision in relation to the proposed placement

34.—(1) The adoption agency must —

- (a) take into account the recommendation of the adoption panel;
- (b) take into account any advice given by the adoption panel in accordance with regulation 33(3); and
- (c) have regard to the consideration set out in section 1(2) of the Act,

in coming to a decision about whether the child should be placed for adoption with the particular prospective adopter.

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

(3) As soon as possible after making its decision the adoption agency must notify the prospective adopter in writing of its decision about the proposed placement, contact arrangements and the restriction of any person's parental responsibility.

(4) As soon as possible after making its decision, the agency must notify in writing —

- (a) the parent or guardian, if their whereabouts are known to the agency; and
- (b) where regulation 14(2) applies, the father of the child,

of its decision.

(5) Where the adoption agency decides the proposed placement should proceed the agency must, in an appropriate manner and in the light of the child's age and understanding, explain its decision to the child.

Function of the adoption agency in a section 83 case

35.—(1) This paragraph applies where in a section 83 case the adoption agency receives from the relevant foreign authority information about a child to be adopted by a prospective adopter whom the agency has approved as suitable to adopt a child.

(2) Where paragraph (1) applies, the adoption agency must —

- (a) send a copy of the information referred to in paragraph (1) to the prospective adopter unless it is aware that the prospective adopter has received a copy;
- (b) consider that information;

- (c) meet with the prospective adopter to discuss the information; and
- (d) if appropriate, provide a counselling service for, and any further information to, the prospective adopter as may be required.

PART 6

PLACEMENTS AND REVIEWS

Requirements imposed on the adoption agency before the child is placed for adoption with prospective adopter

36.—(1) This paragraph applies where the adoption agency —

- (a) has decided in accordance with regulation 34 to place a child for adoption with a particular prospective adopter; and
- (b) has met with the prospective adopter to consider the arrangements it proposes to make for placing the child with him.

(2) Where paragraph (1) applies, the adoption agency must, at least 7 days before the child is placed with the prospective adopter, provide the prospective adopter with a placement plan in respect of the child which covers the matters specified in Schedule 6 (“the placement plan”).

(3) Where paragraph (1) applies and the child already lives with the prospective adopter, the adoption agency must provide the prospective adopter with the placement plan in respect of the child within 7 days of its decision to place the child for adoption with the prospective adopter.

(4) Where paragraph (1) applies, the adoption agency must, before the child is placed for adoption with the prospective adopter—

- (a) notify the prospective adopter’s general practitioner in writing of the proposed placement and send with that notification a written report of the child’s health history and current state of health;
- (b) notify the local authority (if that authority is not the adoption agency) and Local Health Board or Primary Care Trust (England) in whose area the prospective adopter resides in writing of the proposed placement;
- (c) notify the local education authority in whose area the prospective adopter resides in writing of the proposed placement and information about the child’s educational history and whether the child has been or is likely to be assessed for special educational needs under the Education Act 1996.

(5) The adoption agency must notify the prospective adopter in writing of any change to the placement plan.

(6) Where paragraph (1) applies the adoption agency must, before the child is placed for adoption with the prospective adopter, arrange for the prospective adopter to meet the child and following that meeting counsel the prospective adopter and, so far as is reasonably practicable in the light of the child’s age and understanding, the child about the prospective placement.

(7) Where, following the procedures referred to in paragraph (6) the prospective adopter confirms in writing their wish to proceed with the placement and the agency is authorised to place the child for adoption or the child is less than 6 weeks old, the adoption agency may place the child for adoption with the prospective adopter.

(8) Where the child already lives with the prospective adopter, the adoption agency must notify the prospective adopter in writing of the date on which the child is placed there for adoption by the agency.

Reviews

37.—(1) This paragraph applies where the adoption agency is authorised to place a child for adoption but the child has not been placed for adoption.

(2) This paragraph applies where a child is placed for adoption.

(3) Where paragraph (1) applies, the adoption agency must carry out a review of the child's case —

- (a) not more than three months after the date on which the agency first has authority to place; and
- (b) thereafter not more than six months after the date of the previous review (“six months review”),

until the child is placed for adoption.

(4) Where paragraph (2) applies, the adoption agency must carry out a review of the child's case —

- (a) not more than four weeks after the date on which the child is placed for adoption (“the first review”);
- (b) no more than three months after the first review; and
- (c) thereafter not more than six months after the date of the previous review,

unless the child is returned to the agency by the prospective adopter or an adoption order is made.

(5) Where paragraph (2) applies, the adoption agency must —

- (a) ensure the child and the prospective adopter are visited within one week of the placement and thereafter at least once a week until the first review and thereafter at such frequency as the agency decide at each review;
- (b) ensure that written reports are made of such visits; and
- (c) provide such advice and assistance to the prospective adopter as the agency considers necessary.

(6) When carrying out a review the adoption agency must visit the child and so far as reasonably practicable ascertain the views of —

- (a) the child in the light of the child's age and understanding;
- (b) if the child is placed for adoption, the prospective adopter; and
- (c) any other person the agency considers relevant,

in relation to each of the matters set out in paragraph (7)(a) to (f).

(7) As part of each review the adoption agency must consider—

- (a) whether placed or not, whether the adoption agency remain satisfied that the child should still be placed for adoption;
- (b) the child's needs, welfare, progress and development, and whether any changes need to be made to meet the child's needs or assist the child's development;
- (c) the existing arrangements for contact, and whether they should continue or be modified;
- (d) where the child is placed for adoption the arrangements in relation to the exercise of parental responsibility for the child, and whether they should continue or be modified;
- (e) the existing arrangements for the provision of adoption support services and whether there should be any re-assessment of the need for those services;
- (f) in consultation with the appropriate agencies, the arrangements for assessing and meeting the child's health care needs and educational needs;

- (g) subject to paragraphs (3) and (4) the frequency of the reviews.
- (8) Where the child is subject to a placement order and has not been placed for adoption at the time of the first six months review, the local authority must at that review —
 - (a) establish why the child has not been placed for adoption and consider what further steps the authority should take in relation to the placement of the child for adoption; and
 - (b) in light of that, consider whether it remains satisfied that the child should be placed for adoption.
- (9) The adoption agency must —
 - (a) set out in writing the arrangements governing the manner in which the case of each child is to be reviewed and must draw the written arrangements to the attention of —
 - (i) the child where reasonably practicable in the light of the child’s age and understanding;
 - (ii) the prospective adopter; and
 - (iii) any other person the agency considers relevant.
 - (b) ensure that —
 - (i) the information obtained in respect of a child’s case including the ascertainable wishes and feelings of the child;
 - (ii) details of the proceedings at any meeting arranged by the agency to consider any aspect of the review of the case; and
 - (iii) details of any decision made in the course of or as a result of the review (including as to frequency of visits),
 are recorded in writing and placed on the child’s case record.
- (10) The adoption agency must, so far as is reasonably practicable, notify —
 - (a) the child where it considers the child is of sufficient age and understanding;
 - (b) the prospective adopter; and
 - (c) any other person whom it considers ought to be notified
 of the outcome of the review and of any decision taken by it in consequence of the review.
- (11) Where the child is returned to the adoption agency in accordance with section 35(1) or (2) of the Act, the agency must conduct a review of the child’s case as soon as reasonably practicable and in any event no later than 28 days after the date on which the child is returned to the agency.

Independent reviewing officers

38.—(1) An adoption agency which is a local authority or a registered adoption society which is a voluntary organisation which provides accommodation for a child, must appoint a person (“the independent reviewing officer”) in respect of the case of each child authorised to be placed for adoption by the agency to carry out the functions mentioned in section 26(2A) of the 1989 Act.

(2) The independent reviewing officer must have significant experience in social work and hold a Diploma in Social Work or a Social Work Degree or an equivalent qualification recognised by the Care Council for Wales.

(3) Where the independent reviewing officer is an employee of the adoption agency the independent reviewing officer’s post within that agency must not be under the direct management of —

- (a) a person involved in the management of the case;

- (b) a person with management responsibilities in relation to a person mentioned in subparagraph (a); or
 - (c) a person with control over the resources allocated to the case.
- (4) The independent reviewing officer must, as far as reasonably practicable chair any meeting held in connection with the review of the child's case.
- (5) The independent reviewing officer must, as far as is reasonably practicable, take steps to ensure that the review is conducted in accordance with regulation 37 and in particular to ensure —
- (a) that the child's views are understood and taken into account;
 - (b) that the persons responsible for implementing any decision taken in consequence of the review are identified; and
 - (c) that any failure to review the case in accordance with regulation 37 or to take proper steps to make or carry out arrangements agreed at the review is brought to the attention of persons at an appropriate level of seniority within the agency.
- (6) If the child whose case is reviewed wishes to take proceedings under the Act on his own account, for example, to apply to the court for revocation of a placement order, it is the function of the independent reviewing officer—
- (a) to assist the child to obtain legal advice; or
 - (b) to establish whether an appropriate adult is able and willing to provide such assistance or bring the proceedings on the child's behalf.
- (7) The adoption agency must inform the independent reviewing officer of—
- (a) any significant failure to make or to carry out arrangements in accordance with a review;
 - (b) any significant change of circumstances occurring after the review that affects those arrangements.

Withdrawal of consent

39.—(1) This paragraph applies where consent under section 19, or section 19 and 20, of the Act in respect of a child is withdrawn in accordance with section 52(8) of the Act.

(2) Where paragraph (1) applies and the adoption agency is a local authority, on receipt of the form or notice given in accordance with section 52(8) of the Act, the authority must immediately review its decision to place the child for adoption and where, in accordance with section 22(1) or (2) of the Act, the authority decides to apply for a placement order in respect of the child, it must immediately notify —

- (a) the parent or guardian;
- (b) if regulation 14(2) applies, the child's father; and
- (c) if the child is placed for adoption, the prospective adopter with whom the child is placed.

(3) Where paragraph (1) applies and the adoption agency is a registered adoption society, the agency must immediately consider whether it is appropriate to inform the local authority in whose area the child is living.

PART 7

RECORDS

Storage of case records

40. The adoption agency must ensure that the case record set up in accordance with regulation 12 or 22 in respect of a child or prospective adopter and the contents of that case record are at all times kept in secure conditions and in particular that all appropriate measures are taken to prevent the theft, unauthorised disclosure, loss or destruction of, or damage to, the case record or its contents.

Preservation of case records

41. Where an adoption order is made in relation to a child the adoption agency must keep all case records set up in accordance with regulations 12 or 22 for at least 100 years. In any other case the agency must keep the case records for such period as it considers appropriate.

Confidentiality of case records

42. Subject to regulation 43, any information obtained or reports, recommendations or decisions made by virtue of these Regulations must be treated by the adoption agency as confidential.

Access to case records and disclosure of information

43.—(1) Subject to paragraph (3), the adoption agency must provide such access to its case records and disclose such information in its possession, as may be required —

- (a) to those holding an inquiry under section 81 of the 1989 Act (inquiries) or section 17 of the Act (inquiries) for the purposes of such an inquiry;
- (b) to the National Assembly for Wales;
- (c) subject to the provisions of section 74(5) of the Care Standards Act 2000 (disclosure), to the Children’s Commissioner for Wales for the purposes of any examination conducted in accordance with Part V of that Act;
- (d) subject to the provisions of sections 29(7) and 32(3) of the Local Government Act 1974 (investigations and disclosure), to the Commission for Local Administration in Wales, for the purposes of any investigation conducted in accordance with Part III of that Act;
- (e) to any person appointed by the adoption agency for the purposes of the consideration by the agency of any representations (including complaints);
- (f) to the persons and authorities by and to the extent specified in these Regulations;
- (g) to a Welsh family proceedings officer or an officer of the CAFCASS for the purposes of the discharge of the officer’s duties under the Act;
- (h) to a court having power to make an order under the Act or the 1989 Act.

(2) Subject to paragraph (3), the adoption agency may provide such access to its case records and disclose such information in its possession as it thinks fit for the purposes of carrying out its functions as an adoption agency.

(3) A written record must be kept by the adoption agency of any access provided or disclosure made by virtue of this regulation.

Transfer of case records

44.—(1) Subject to paragraph (4), the adoption agency may transfer a copy of a case record (or part thereof) to another adoption agency when it considers this to be in the interests of a child or prospective adopter to whom the record relates, and a written record must be kept of any such transfer.

(2) Subject to paragraph (4) a registered adoption society which intends to cease to act or exist as such must 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 society's principal office is situated; or
- (b) in the case of a society which amalgamates with another registered adoption society to form a new registered adoption society, to the new body.

(3) Where a registered adoption society intends to cease to provide for the adoption of children but is registered to provide adoption support services it may retain all its case records having first obtained the registration authority's approval in writing for such retention.

(4) The adoption agency to which case records are transferred by virtue of paragraph (2)(a) or (b) must notify the registration authority in writing of such transfer.

Application of regulations 41 to 43

45. Regulations 41 to 43 do not apply to case records which are subject to the regulations made under sections 56 to 68 of the Act.

PART 8

MISCELLANEOUS

Modification of the 1989 Act in relation to adoption

46.—(1) This paragraph applies where —

- (a) a local authority is authorised to place a child for adoption; or
- (b) a child who has been placed for adoption by a local authority is less than six weeks old.

(2) Where paragraph (1) applies —

- (a) section 22(4)(b) of the 1989 Act shall not apply;
- (b) section 22(4)(c) of the 1989 Act shall apply as if for that sub-paragraph there were inserted “(c) any prospective adopter with whom the local authority has placed the child for adoption.”;
- (c) section 22(5)(b) of the 1989 Act shall apply as if for the words “(4)(b) to (d)” there were inserted “(4)(c) and (d)”;
- (d) paragraphs 15 and 21 of Schedule 2 to the 1989 Act shall not apply.

(3) This paragraph applies where a registered adoption society is authorised to place a child for adoption or a child who has been placed for adoption by a registered adoption society is less than 6 weeks old.

(4) Where paragraph (3) applies —

- (a) section 61(2)(a) of the 1989 Act is to have effect in relation to the child whether or not he is accommodated by or on behalf of the society;
- (b) section 61(2)(b) of the 1989 Act shall not apply;

- (c) section 61(2)(c) of the 1989 Act shall apply as if for that sub-paragraph there were inserted “(c) any prospective adopter with whom the registered adoption society has placed the child for adoption.”.

Contact

47.—(1) Where the adoption agency has decided under section 27(2) of the Act to refuse to allow the contact that would otherwise be required by virtue of an order under section 26 of the Act, the agency must, as soon as the decision is made, notify the persons specified in paragraph (4) in writing of those parts of the information specified in paragraph (5) as the agency considers those persons need to know.

(2) The terms of an order under section 26 of the Act may be departed from by agreement between the adoption agency and any person for whose contact with the child the order provides in the following circumstances and subject to the following conditions —

- (a) where the child is of sufficient age and understanding, subject to the child’s agreement;
- (b) where the child is placed for adoption, subject to prior consultation with the prospective adopter with whom the child is placed for adoption; and
- (c) written notification by the agency to the persons specified in paragraph (4) of those parts of the information specified in paragraph (5) as the agency considers those persons need to know, within seven days of the agreement to depart from the terms of the order.

(3) Where the adoption agency varies or suspends any arrangements made (otherwise than under an order under section 26 of the Act) with a view to allowing any person contact with the child, the agency must notify the persons specified in paragraph (4) in writing of those parts of the information specified in paragraph (5) as the agency considers those persons need to know.

(4) The following persons are specified for the purposes of paragraphs (1) and (2) —

- (a) the child, if the adoption agency considers the child is of sufficient age and understanding;
- (b) the child’s parents;
- (c) any guardian of the child;
- (d) any person for whose contact with the child the order under section 26 of the Act provides;
- (e) any person the agency allowed contact with the child;
- (f) if the child is placed for adoption, the prospective adopter;
- (g) any other person whose wishes and feelings the agency consider to be relevant.

(5) The following information is specified for the purposes of paragraphs 1, 2 and 3 —

- (a) adoption agency’s decision;
- (b) date of the decision;
- (c) reasons for the decision;
- (d) duration (if applicable).

Revocation

48. The Adoption of Children from Overseas (Wales) Regulations 2001(**14**), the Adoption of Children from Overseas (Wales) (Amendment) Regulations 2003(**15**) and The Adoption Agencies (Amendment) (Wales) Regulations 2003(**16**) are hereby revoked.

(14) [SI 2001/1272 \(W.71\)](#)

(15) [SI 2003/1634 \(W.176\)](#)

(16) [SI 2003/3223 \(W.306\)](#)

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(17)

10 May 2005

D. Elis Thomas
The Presiding Officer of the National Assembly