

2004 No. 1868

SOCIAL CARE, ENGLAND

CHILDREN AND YOUNG PERSONS, ENGLAND

The Independent Review of Determinations (Hague Convention Adoptions and Miscellaneous Amendments) Regulations 2004

<i>Made</i> - - - -	<i>19th July 2004</i>
<i>Laid before Parliament</i>	<i>26th July 2004</i>
<i>Coming into force</i> - -	<i>20th August 2004</i>

The Secretary of State, in exercise of the powers conferred upon him by sections 9(2) and (3), 9A(1) to (3) and 67(5) of the Adoption Act 1976(a), and all other powers enabling him in that behalf, hereby makes the following Regulations—

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Independent Review of Determinations (Hague Convention Adoptions and Miscellaneous Amendments) Regulations 2004 and shall come into force on 20th August 2004.

(2) These Regulations apply to England only.

(3) Regulation 2 of these Regulations shall apply to cases where the most recent consideration by an adoption panel of a prospective adopter's suitability to be an adoptive parent is under regulation 9(1) of the 2003 Regulations and takes place on or after 20th August 2004.

(4) In these Regulations, "the 2003 Regulations" means the Intercountry Adoption (Hague Convention) Regulations 2003(b).

Amendment of the 2003 Regulations

2.—(1) The 2003 Regulations shall be amended in accordance with the following paragraphs.

(2) In regulation 2 (interpretation) after the definition of "eligible to adopt" insert—

““independent review panel” means a panel constituted under section 9A of the 1976 Act;”.

(3) In regulation 10 (adoption agency decision and notification)—

(a) in paragraph (2) after "panel" insert "or an independent review panel";

(a) 1976 c.36. Section 9(2) of the Adoption Act 1976 ("the Act") was amended by section 116 of, and paragraph 5(6)(a) of Schedule 4 to, the Care Standards Act 2000 (c.14). Section 9A of the Act was inserted by section 139(2) of, and paragraph 5 of Schedule 4 to, the Adoption and Children Act 2002 (c.38) ("the 2002 Act"). These powers are exercisable by the appropriate Minister, who is defined in section 9(5) of the Act in relation to England as the Secretary of State. Section 9(5) of the Act was inserted by section 139(2) of, and paragraph 4(1)(b) of Schedule 4 to, the 2002 Act.

(b) S.I. 2003/118.

- (b) for paragraph (4)(c) substitute—
 - “(c) notify the prospective adopter in writing that within 28 days he may—
 - (i) submit any representations he wishes to make in writing to the adoption agency; or
 - (ii) apply to the Secretary of State for a review by an independent review panel of the adoption agency’s proposal not to approve him as suitable to be an adoptive parent (referred to in this regulation as a “qualifying determination”).”;
- (c) in paragraph (5) for “the prospective adopter has not made any representations” substitute “the prospective adopter has not applied to the Secretary of State for a review by an independent review panel of the qualifying determination or made any representations to the adoption agency”;
- (d) after paragraph (5) insert—
 - “(5A) If the adoption agency receives notification from the Secretary of State that a prospective adopter has applied to the Secretary of State for a review by an independent review panel of the qualifying determination, it shall within 7 days after the date of that notification submit to the Secretary of State—
 - (a) all of the documents and information which were passed to the adoption panel in accordance with regulation 8(6);
 - (b) any relevant information in relation to the prospective adopter which was obtained by the adoption agency after the date on which the documents and information referred to in sub-paragraph (a) were passed to the adoption panel; and
 - (c) the documents referred to in paragraph (4)(a) and (b).”;
- (e) for paragraph (8) substitute—
 - “(8) The adoption agency shall make a decision on the case and, in addition to the requirements of paragraph (1),—
 - (a) if the prospective adopter has applied to the Secretary of State for a review by an independent review panel of the qualifying determination, it shall make the decision only after taking into account any recommendation of that panel made in accordance with the Independent Review of Determinations (Adoption) Regulations 2004(a); or
 - (b) if the case has been referred to an adoption panel under paragraph (6), it shall make the decision only after taking into account any recommendation of the adoption panel made by virtue of paragraph (7).”;
- (f) in paragraph (9) for the words after “and” substitute “, if the case has been referred to an adoption panel under paragraph (6), of the adoption panel’s recommendation, if this is different from the adoption agency’s decision.”; and
- (g) after paragraph (9) insert—
 - “(10) In a case where an independent review panel has made a recommendation, the adoption agency shall send to the independent review panel a copy of the notification referred to in paragraph (9).”.

Amendment of the Independent Review of Determinations (Adoption) Regulations 2004

3.—(1) The Independent Review of Determinations (Adoption) Regulations 2004 shall be amended in accordance with the following paragraphs.

- (2) In regulation 1 (citation, commencement, application and interpretation)—
 - (a) for sub-paragraphs (a) and (b) of paragraph (3) substitute—

(a) S.I. 2004/190. Relevant amending instrument is S.I. 2004/1081.

“(a) is under regulation 10(1)(b) of the 1983 Regulations and takes place on or after 30th April 2004; or

(b) is under regulation 9(1) of the 2003 Regulations and takes place on or after 20th August 2004.”; and

(b) in paragraph (4)—

(i) after the definition of “the 1983 Regulations” insert—

““the 2003 Regulations” means the Intercountry Adoption (Hague Convention) Regulations 2003;” and

(ii) omit the definition of “prospective adopter”.

(3) In regulation 2 (qualifying determination) for “with regulation 11A of the 1983 Regulations, that” substitute—

“with—

(a) regulation 11A of the 1983 Regulations; or

(b) regulation 10 of the 2003 Regulations,

that”.

(4) In regulation 3(5)(a) (constitution and function of panels) for “with regulation 11A of the 1983 Regulations;” substitute—

“with, as the case may be—

(i) regulation 11A of the 1983 Regulations; or

(ii) regulation 10 of the 2003 Regulations;”.

Amendment of the Adoption Agencies Regulations 1983

4. In regulation 11A(4)(c)(ii) of the Adoption Agencies Regulations 1983 (adoption agency decisions and notifications – prospective adopters)(a), for “a prospective adopter” substitute “an adoptive parent”.

Signed by authority of the Secretary of State for Education and Skills

Margaret Hodge

Minister of State

Department for Education and Skills

19th July 2004

(a) S.I. 1983/1964. Relevant amending instruments are S.I. 1997/649 and 2004/190.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Adoption Act 1976. They apply to England only.

The Independent Review of Determinations (Adoption) Regulations 2004 (“the 2004 Regulations”) make provision for the review by an independent panel of a “qualifying determination”, being a determination made by an adoption agency under the Adoption Agencies Regulations 1983 (“the 1983 Regulations”) that it does not propose to approve a prospective adopter as suitable to be an adoptive parent. The Intercountry Adoption (Hague Convention) Regulations 2003 (“the 2003 Regulations”) make provision for, inter alia, an adoption agency to determine the suitability of a prospective adopter who is habitually resident in the British Islands to be an adoptive parent of a child who is habitually resident in a Convention country outside the British Islands.

Regulations 2 and 3 of these Regulations make amendments to the 2003 Regulations and to the 2004 Regulations to bring determinations on the suitability of a prospective adopter to be an adoptive parent made under the 2003 Regulations within the scope of the review mechanism provided for in the 2004 Regulations, where the adoption agency’s panel’s most recent consideration of the prospective adopter’s suitability to be an adoptive parent takes place on or after 20th August 2004.

Regulation 4 of these Regulations makes a minor amendment to regulation 11A of the 1983 Regulations.

The regulatory impact assessment prepared for the 2004 Regulations has been amended to include references to the 2003 Regulations. A copy has been placed in the library of each House of Parliament. Copies of the regulatory impact assessment can be obtained from the Adoption Team, Looked After Children Division, Area 104, Wellington House, 133-155 Waterloo Road, London, SE1 8UG, or viewed at <http://www.dfes.gov.uk/adoption/lawandguidance/index.shtml#ria> or www.dfes.gov.uk/ria.

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