
STATUTORY INSTRUMENTS

2005 No. 2897

**The Adoption and Children Act 2002 (Commencement
No. 10 Transitional and Savings Provisions) Order 2005**

PART 3

TRANSITIONAL ARRANGEMENTS

Cases in progress under the Agencies Regulations 1983 on the appointed day

3.—(1) In relation to a case that is still in progress on the appointed day, the general rule is that any action or decision taken before the appointed day under a provision of the Agencies Regulations 1983 shall, on or after the appointed day, be treated as if it were an action or decision under the corresponding provision of the Agencies Regulations 2005 or the Adoption Agencies (Wales) Regulations 2005⁽¹⁾.

(2) That rule is subject to the following exceptions.

(3) Where, before the appointed day, an adoption panel has considered—

- (a) whether adoption is in the best interests of the child;
- (b) whether a prospective adopter is suitable to adopt a child; or
- (c) whether a child should be placed for adoption with a particular prospective adopter,

and no decision on that question has been made by the adoption agency before the appointed day, the Agencies Regulations 1983 shall continue to apply for the purposes of making that decision.

(4) Where an adoption agency is minded to make a decision under the Agencies Regulations 1983 (whether before the appointed day or, by virtue of paragraph (3), on or after that day) as to whether a prospective adopter is suitable to adopt a child, the Agencies Regulations 1983 and the Independent Review of Determinations (Adoption) Regulations 2004⁽²⁾ shall continue to apply for the purposes of making representations or reviewing any qualifying determination in relation to that decision.

(5) Where paragraph (4) applies the periods of 28 days and 7 days specified in regulation 11A of the Agencies Regulations 1983 shall be increased to 40 working days and 10 working days respectively.

(6) Where an adoption agency has made a decision under the Agencies Regulations 1983 (whether before the appointed day or, by virtue of paragraph (3), on or after that day) that a prospective adopter is suitable to adopt a particular child—

- (a) the Agencies Regulations 1983 shall continue to apply for the purposes of placing the child with that prospective adopter and section 18 of the 2002 Act (placement for adoption by agencies) shall not apply to any such placement; and
- (b) any such placement shall be treated as if it were made under the Agencies Regulations 2005 or the Adoption Agencies (Wales) Regulations 2005.

⁽¹⁾ S.I.2005/1514 (W.95).

⁽²⁾ S.I. 2004/190, amended by S.I. 2004/1081 and S.I. 2004/1868.

(7) Where a child is placed for adoption by an adoption agency before the appointed day or paragraph (6) applies, section 22 of the 2002 Act (applications for placement orders) shall not apply.

Case of child free for adoption

4. Where on or after the appointed day a child is free for adoption by virtue of a freeing order made under section 18 of the 1976 Act (freeing child for adoption) but is not placed for adoption—

- (a) the adoption agency may place the child for adoption and sections 18 (placement for adoption by agencies) and 22 (applications for placement orders) of the 2002 Act shall not apply; and
- (b) regulation 36 of the Agencies Regulations 2005 (placement and reviews) or the corresponding Welsh provision shall apply as if—
 - (i) the adoption agency was authorised to place the child for adoption but the child is not for the time being placed for adoption; and
 - (ii) the child was subject to a placement order.

Child ceasing to be a protected child

5.—(1) This article applies where, in consequence of the repeal of sections 32 to 36 of the 1976 Act (protected children), a child ceases to be a protected child and becomes a privately fostered child within the meaning of section 66 of the Children Act 1989⁽³⁾.

(2) If the person who is fostering the child privately is disqualified from doing so by regulations under section 68 of that Act⁽⁴⁾, he shall be treated for the purposes of those regulations as having obtained the consent of the local authority until such time as the local authority notify him that such consent is refused.

(3) The person who is fostering the child privately shall not be taken to be in breach of regulation 5 of the Private Fostering Regulations (notification by person already fostering a child privately) or the corresponding Welsh provision if—

- (a) he has already provided the local authority with the information required under that regulation (whether by way of a notice of intention to adopt or otherwise); or
- (b) he has not provided that information, but does so no later than 30th January 2006.

(4) The local authority must, in so far as they have not already done so, discharge their functions under regulation 7 of the Private Fostering Regulations (action to be taken by local authority on receipt of notification about a child being fostered privately) or the corresponding Welsh provision no later than 7th February 2006.

(5) For the purposes of regulation 8 of the Private Fostering Regulations (subsequent visits) and the corresponding Welsh provision the private fostering arrangement shall be treated as beginning on the appointed day.

Hague Convention cases in progress on the appointed day

6.—(1) In relation to a case that is still in progress on the appointed day the general rule is that any action or decision taken before the appointed day under a provision of the Hague Convention Regulations shall, on or after the appointed day, be treated as if it were an action or decision taken under the corresponding provision of Part 3 of the Foreign Element Regulations.

(2) That rule is subject to the following exceptions.

(3) 1989 c. 41.

(4) See the Disqualification from Caring for Children (England) Regulations 2002, S.I. 2002/635 and the Disqualification from Caring for Children (Wales) Regulations 2004, S.I. 2004/2695 (W.235).

(3) Where, before the appointed day, an adoption panel has considered—

- (a) whether or not adoption by a person habitually resident in a Convention country⁽⁵⁾ outside the British Islands is in the best interests of the child; or
- (b) whether a prospective adopter is suitable to adopt a child,

and no decision on that question has been made by the adoption agency before the appointed day, the Hague Convention Regulations shall continue to apply for the purposes of making that decision.

(4) Where an adoption agency is minded to make a decision under the Hague Convention Regulations (whether before the appointed day or, by virtue of paragraph (3), on or after that day) as to whether a prospective adopter is suitable to adopt a child, the Hague Convention Regulations and the Independent Review of Determinations (Adoption) Regulations 2004 shall continue to apply for the purposes of making representations or reviewing any qualifying determination in relation to that decision and the periods of 28 days and 7 days specified in regulation 10 of the Hague Convention Regulations shall be increased to 40 working days and 10 working days respectively.

Non-Convention adoptions – conditions to be met by prospective adopters under section 83(5) of the 2002 Act

7.—(1) This paragraph applies in a case where, before the appointed day, the prospective adopter received notification from the Secretary of State that she had issued the certificate referred to in regulation 5(a) of the Adoption (Bringing Children into the United Kingdom) Regulations 2003⁽⁶⁾.

(2) Where paragraph (1) applies and the prospective adopter has visited the child but the child has not entered the United Kingdom before the appointed day, regulation 4(2)(b) to (d) of the Foreign Element Regulations shall not apply.

(3) Where paragraph (1) applies and the child has entered the United Kingdom but the prospective adopter had not, before the appointed day, given notice of intention to adopt pursuant to regulation 5(b) of the Adoption (Bringing Children into the United Kingdom) Regulations 2003, regulation 4(2)(b) to (d) and (3) of the Foreign Element Regulations shall not apply.

Non-Convention and Hague Convention cases – functions imposed on the local authority following receipt of notice of intention to adopt

8.—(1) In a case where notice of intention to adopt is given before the appointed day by a prospective adopter as a consequence of regulation 5(b) of the Adoption (Bringing Children into the United Kingdom) Regulations 2003 or regulation 15 of the Hague Convention Regulations, regulation 5 of the Foreign Element Regulations shall apply subject to paragraphs (2) and (3).

(2) Where the local authority have not visited the child and prospective adopter prior to the appointed day and more than one week has elapsed since the receipt of the notice of intention to adopt, 30th December 2005 shall be treated as the date of receipt of that notice for the purposes of regulation 5(1)(e) and (f) of the Foreign Element Regulations.

(3) Where the local authority have visited the child and prospective adopter prior to the appointed day—

- (a) the authority must, if they have not already done so, carry out the functions in respect of reviews and frequency of visits imposed by regulation 5(e) to (h) of the Foreign Element Regulations; and
- (b) in the case where the review considering the matters referred to in regulation 5(1)(g) of the Foreign Element Regulations has not taken place before the appointed day, 30th December

⁽⁵⁾ See section 144(1) of the 2002 Act.

⁽⁶⁾ S.I. [2003/1173](#).

2005 shall be treated as the date of receipt of the notice of intention to adopt for the purposes of regulation 5(1)(f).

Restrictions on removal of children – pending applications for adoption and freeing orders

9. Notwithstanding the repeal of the provisions in the 1976 Act set out in Schedule 5 to the 2002 Act, sections 27 and 29 of the 1976 Act shall continue to have effect where—

- (a) an application for an adoption order under section 12 of the 1976 Act (adoption orders); or
- (b) an application for an order under section 18 of the 1976 Act (freeing for adoption),

has been made and has not been disposed of immediately before the appointed day.

Pending applications for freeing orders

10. Nothing in the 2002 Act affects any application for an order under section 18 of the 1976 Act (freeing for adoption) where—

- (a) the application has been made and has not been disposed of immediately before the appointed day; and
- (b) the child in relation to whom the application is made is not immediately before the appointed day placed for adoption by the adoption agency.

Pending applications for adoption orders in non-agency cases

11. Nothing in the 2002 Act affects any application for an adoption order under section 12 of the 1976 Act (adoption orders) in relation to a child in respect of whom—

- (a) notice has been given to the local authority by virtue of section 22 of the 1976 Act; and
- (b) the application has been made and has not been disposed of immediately before the appointed day.

Pending applications under section 53 or 55 of the 1976 Act

12. Nothing in the 2002 Act affects any application under section 53 (annulment, etc. of overseas adoptions) or 55 (adoption of children abroad) of the 1976 Act, where the application has been made and has not been disposed of immediately before the appointed day.