

**2005 No. 3390**

**CHILDREN AND YOUNG PERSONS, ENGLAND  
SOCIAL CARE, ENGLAND**

**The Local Authority (Adoption) (Miscellaneous Provisions)  
Regulations 2005**

<i>Made</i> - - - -	<i>8th December 2005</i>
<i>Laid before Parliament</i>	<i>9th December 2005</i>
<i>Coming into force</i> - -	<i>30th December 2005</i>

The Secretary of State for Education and Skills, in exercise of the powers conferred by sections 3(4)(b), 9(1)(a), 11(2), 44(9), 140(7) and (8) and 144(2) of the Adoption and Children Act 2002(a) makes the following Regulations:—

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Local Authority (Adoption) (Miscellaneous Provisions) Regulations 2005 and come into force on 30th December 2005.

(2) These Regulations apply to England only.

**Interpretation**

2. In these Regulations—

“the Act” means the Adoption and Children Act 2002;

“the Agencies Regulations” means the Adoption Agencies Regulations 2005(b);

“the Foreign Element Regulations” means the Adoptions with a Foreign Element Regulations 2005(c);

“proposed adopter” has the same meaning as in section 44(1) of the Act; and

“social worker” means a person who is registered in—

- (a) the register for social workers maintained in accordance with section 56 of the Care Standards Act 2000(d);
- (b) the register maintained by the Scottish Social Services Council under section 44 of the Regulation of Care (Scotland) Act 2001(e); or

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(a) 2002 c.38.  
(b) S.I. 2005/389.  
(c) S.I. 2005/392.  
(d) 2000 c.14.  
(e) 2001 asp 8.

- (c) the register maintained by the Northern Ireland Social Care Council under section 3 of the Health and Personal Social Services Act (Northern Ireland) 2001(a).

### **Prescribed local authorities**

3.—(1) For the purposes of section 44(9)(a) of the Act, the following local authorities are prescribed in the following cases.

(2) In the case of the proposed adoption by one person who no longer has his home in England, the prescribed local authority is the local authority for the area in which that person's last home in England was situated.

(3) In the case of the proposed adoption by a couple who no longer have their home in England and who shared together the last home they had in England, the prescribed local authority is the local authority for the area in which that home in England was situated.

(4) In the case of the proposed adoption by a couple who no longer have their home in England and who did not share together the last home each had in England, the prescribed local authority is the local authority which the couple nominate, being the local authority for the area in which the last home in England of one of them was situated.

(5) In the case of the proposed adoption by a couple only one of whom ever had his home in England, the prescribed local authority is the local authority for the area in which that person's last home in England was situated.

### **Requirement to take steps to obtain police checks**

4. For the purposes of an investigation arranged under section 44(5) of the Act, the local authority must take steps to obtain in respect of—

- (a) the proposed adopters; and
- (b) any other member of their household aged 18 or over,

an enhanced criminal record certificate within the meaning of section 115 of the Police Act 1997(b) including the matters specified in subsection (6A) of that section.

### **Fees for facilities provided in connection with adoption with a foreign element**

5.—(1) For the purposes of section 11(2) of the Act (fees), the fee which may be charged by a local authority must be reasonable and not exceed the local authority's costs and expenses properly incurred in providing the facilities.

(2) The fee may not include any element in respect of costs and expenses incurred by the local authority in connection with—

- (a) a review of a qualifying determination within the meaning of section 12 of the Act; or
- (b) the receipt and consideration of representations made by a prospective adopter under regulation 27 of the Agencies Regulations.

(3) Each local authority must, at the reasonable request of the person charged a fee under section 11(2), provide details of the method by which the fee was calculated.

(4) For the purposes of section 11(2) of the Act, prescribed facilities are facilities provided by local authorities—

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(a) 2001 c.3.

(b) 1997 c.50. Section 115 was amended by Schedule 35 to the Criminal Justice Act 2003 (c.44), section 19 of, and Schedule 6 to, the Health and Social Care Act 2001 (c. 15), sections 90, 102, 104 and 116 of, and Schedule 4 to, the Care Standards Act 2000 (c.14), sections 152 and 215 of, and Schedules 13, 21 and 22 to, the Education Act 2002 (c.32), section 8 of the Protection of Children Act 1999 (c.14), section 135 of, and Schedule 3 to, the Act, Schedule 2 to the National Health Service Reform and Health Care Professions Act 2002 (c.17) and Schedule 6 to the Licensing Act 2003 (c.17). Subsection (6A) was inserted by section 8 of the Protection of Children Act 1999 and was amended by sections 102, 104 and 116 of, and Schedule 4 to, the Care Standards Act 2000 and by section 135 of the Act.

- (a) in the discharge by them of any function imposed on them under Part 4 of the Agencies Regulations (duties of adoption agency in respect of a prospective adopter), save for facilities provided under regulation 21 of those Regulations (requirement to provide counselling and information) or under regulations 15, 16 and 17 of the Foreign Element Regulations (assessment of prospective adopters – adoptions under the Convention); and
  - (b) in relation to the preparation of—
    - (i) pre-adoption reports; and
    - (ii) post-adoption reports.
- (5) In this regulation—

“post-adoption report” means a report prepared otherwise than in accordance with the Agencies Regulations at the request of a relevant foreign authority following the adoption of a child from the country in which that authority performs its functions;

“pre-adoption report” means a report prepared otherwise than in accordance with the Agencies Regulations at the request of a relevant foreign authority following the placement for adoption of a child from the country in which that authority performs its functions and prior to that child’s adoption but does not include a report prepared in accordance with regulation 29(2) of the Foreign Element Regulations or a report required before an overseas adoption(a) is effected; and

“relevant foreign authority” has the meaning given in regulation 2 of the Foreign Element Regulations.

#### **Local authority provision of facilities**

6. For the purposes of section 3(4)(b) of the Act (maintenance of adoption service) a local authority may provide any of the requisite facilities by securing their provision by a social worker who has at least three years’ post-qualifying experience in child care social work, including direct experience of adoption work.

8th December 2005

*Maria Eagle*  
Parliamentary Under Secretary of State  
Department for Education and Skills

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(a) For the meaning of “overseas adoption” see section 87(1) of the Act.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for when people wish to adopt a child who is not placed for adoption with them by an adoption agency, and enable local authorities to charge for services provided in connection with adoptions with a foreign element and to use people who are not their employees in the exercise of their functions.

These Regulations apply to England only and come into force on 30th December 2005.

Regulation 3 prescribes, for the purposes of section 44 of the Adoption and Children Act 2002 (“the Act”), the appropriate local authority where the proposed adopters are living overseas and wish to give notice of intention to apply for an adoption order. In four cases it prescribes the local authority to which proposed adopters have to give notice of intention to adopt and which has other functions under section 44 of the Act.

Regulation 4 requires the local authority, for the purposes of the investigation which it is required to arrange under section 44(5) of the Act, to take steps to obtain enhanced criminal record certificates in respect of both the proposed adopters and other members of their household who are aged 18 or over.

Regulation 5 prescribes the facilities for which a local authority may charge, and the level of the fee, where the facilities are provided in connection with the adoption of a child brought into the United Kingdom for the purpose of adoption, or in connection with an adoption under the Hague Convention, an overseas adoption or an adoption effected under the law of a country outside the British Islands.

Regulation 6 allows local authorities to provide any of the requisite facilities for the purpose of maintaining an Adoption Service through an independent social worker who has the prescribed qualifications and experience.

**£3.00**

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E1763 12/2005 151763T 19585