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STATUTORY INSTRUMENTS

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**2005 No. 389**

**The Adoption Agencies Regulations 2005**

**PART 1**

**GENERAL**

**Citation, commencement and application**

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

(2) These Regulations apply to England only.

**Interpretation**

2.—(1) In these Regulations—

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

“the 1989 Act” means the Children Act 1989;

“adoption panel” means a panel established in accordance with regulation 3;

“adoption placement plan” has the meaning given in regulation 35(2);

“adoption placement report” means the report prepared by the adoption agency in accordance with regulation 31(2)(d);

“adoption support services” has the meaning given in section 2(6)(a) of the Act and in any regulations made under section 2(6)(b) of the Act;

“adoptive family” has the meaning given in regulation 31(2)(a);

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

“child’s case record” has the meaning given in regulation 12;

“child’s health report” means the report obtained in accordance with regulation 15(2)(b);

“child’s permanence report” means the report prepared by the adoption agency in accordance with regulation 17(1);

“independent member” in relation to an adoption panel has the meaning given in regulation 3(3)(e);

“independent review panel” means a panel constituted under section 12 of the Act;

“joint adoption panel” means an adoption panel established in accordance with regulation 3(5);

“medical adviser” means the person appointed as the medical adviser by the adoption agency in accordance with regulation 9(1);

“proposed placement” has the meaning given in regulation 31(1);

“prospective adopter’s case record” has the meaning given in regulation 22(1);

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

“prospective adopter’s report” means the report prepared by the adoption agency in accordance with regulation 25(5);

“prospective adopter’s review report” means the report prepared by the adoption agency in accordance with regulation 29(4)(a);

“qualifying determination” has the meaning given in regulation 27(4)(a);

“registration authority” means the Commission for Social Care Inspection(2);

“relevant foreign authority” 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(3) or to the functions of the Secretary of State in respect of adoptions with a foreign element;

“relevant post-qualifying experience” means post-qualifying experience in child care social work including direct experience in adoption work;

“section 83 case” means a case where a person who is habitually resident in the British Islands intends to bring, or to cause another to bring, a child into the United Kingdom in circumstances where section 83 of the Act (restriction on bringing children into the United Kingdom) applies;

“social worker” means a person who is registered as a social worker in a register maintained by the General Social Care Council or the Care Council for Wales under section 56 of the Care Standards Act 2000(4) or in a corresponding register maintained under the law of Scotland or Northern Ireland;

“vice chair” has the meaning given in regulation 3(4) or, as the case may be, (5)(c);

“working day” 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), an adoption agency must establish at least one panel, to be known as an adoption panel, in accordance with this regulation.

(2) The adoption agency must appoint to chair the panel a person, not being a disqualified person, who has the skills and experience necessary for chairing an adoption panel.

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

- (a) two social workers each with at least three years' relevant post-qualifying experience;
- (b) in the case of a registered adoption society(6), one person who is a director, manager or other officer and is concerned in the management of that society;
- (c) in the case of a local authority, one member of that authority;
- (d) the medical adviser to the adoption agency (or one of them if more than one medical adviser is appointed);

(2) See section 42 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43).

(3) See section 2(1) of the Act for the definition of adoption agency.

(4) 2000 c. 14.

(5) 1971 c. 80.

(6) See section 2(2) of the Act.

- (e) at least three other persons (in this regulation referred to as “independent members”) including where reasonably practicable at least two persons with personal experience of adoption.
- (4) The adoption agency must appoint one member of the adoption panel as vice chair (“vice chair”) who shall act as chair if the person appointed to chair the panel is absent or his office is vacant.
- (5) An adoption panel may be established jointly by any two or more local authorities (“joint adoption panel”) and if a joint adoption panel is established—
  - (a) the maximum number of members who may be appointed to that panel is eleven;
  - (b) by agreement between the local authorities there shall be appointed to that panel—
    - (i) a person to chair the panel, not being a disqualified person, who has the skills and experience necessary for chairing an adoption panel;
    - (ii) two social workers each with at least three years' relevant post-qualifying experience;
    - (iii) one member of any of the local authorities;
    - (iv) the medical adviser to one of the local authorities; and
    - (v) at least three independent members including where reasonably practicable at least two persons with personal experience of adoption;
  - (c) by agreement the local authorities must appoint one member of the panel as vice chair (“vice chair”) who shall act as chair if the person appointed to chair the panel is absent or his office is vacant.
- (6) A person shall not be appointed as an independent member of an adoption panel if—
  - (a) in the case of a registered adoption society, he is or has been within the last year a trustee or employee, or is related to an employee, of that society;
  - (b) in the case of a local authority, he—
    - (i) is or has been within the last year employed by that authority in their children and family social services;
    - (ii) is related to a person falling within head (i); or
    - (iii) is or has been within the last year a member of that authority; or
  - (c) he is the adoptive parent of a child who was—
    - (i) placed for adoption with him by the adoption agency (“agency A”); or
    - (ii) placed for adoption with him by another adoption agency where he had been approved as suitable to be an adoptive parent by agency A, unless at least twelve months has elapsed since the adoption order was made in respect of the child.
- (7) For the purposes of regulation 3(2) and (5)(b)(i) a person is a disqualified person if—
  - (a) in the case of a registered adoption society, he is or has been within the last year a trustee or employee, or is related to an employee, of that society; or
  - (b) in the case of a local authority, he is or has been within the last year a member or employee, or is related to an employee, of that authority.
- (8) For the purposes of paragraphs (6)(a) and (b)(ii) and (7) 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(7) of, person B;

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(7) For the definitions of “civil partner” and “civil partnership” see Schedule 1 to the Interpretation Act 1978 inserted by the Civil Partnership Act 2004 (c. 33), Schedule 27, paragraph 59.

- (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 an adoption panel shall hold office for a term not exceeding three years, and may not hold office for the adoption panel of the same adoption agency for more than three terms in total.

(2) The medical adviser member of the adoption panel shall hold office only for so long as he is the medical adviser.

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

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

(5) If the member whose appointment is to be terminated under paragraph (4) is a member of a joint adoption panel, his appointment may only be terminated with the agreement of all the local authorities whose panel it is.

#### **Meetings of adoption panel**

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

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

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

#### **Payment of fees to member of local authority adoption panel**

6. A local authority may pay to any member of their adoption panel such fee as they may determine, being a fee of a reasonable amount.

#### **Adoption agency arrangements for adoption work**

7. An 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 functions of the agency and the adoption panel in relation to adoption and such instructions shall be kept under review and, where appropriate, revised by the agency.

#### **Requirement to appoint an agency adviser to the adoption panel**

8.—(1) 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, (referred to in this regulation as the "agency adviser")—

- (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 liaison between the agency and the adoption panel, monitoring the performance of members of the adoption panel and the administration 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.

(2) The agency adviser must be a social worker and have at least five years' relevant post-qualifying experience and, in the opinion of the adoption agency, relevant management experience.

#### **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 medical adviser shall 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 30th December 2005 (referred to in this regulation as the “old adoption panel”) shall cease to hold office on that date.

(2) With effect from 30th December 2005 an adoption agency shall establish a new adoption panel in accordance with regulations 3 and 4.

(3) This paragraph applies where the term of office of a member of the old adoption panel was extended by the adoption agency in accordance with regulation 5A(1A) of the Adoption Agencies Regulations 1983<sup>(8)</sup>.

(4) This paragraph applies where a member of the old adoption panel was in his first term of office as a member of the old adoption panel.

(5) A member of the old adoption panel who holds office immediately before 30th December 2005 may not hold office as a member of the new adoption panel of the same adoption agency—

- (a) where paragraph (3) applies, for more than one term, not exceeding one year;
- (b) where paragraph (4) applies, for more than two terms, each term not exceeding three years;
- (c) in any other case, for more than one term, not exceeding three years.

## **PART 3**

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

#### **Application of regulations 11 to 17**

11. Regulations 11 to 17 apply where the adoption agency is considering adoption for a child.

#### **Requirement to open the child's case record**

12.—(1) The adoption agency must set up a case record (“the child's case record”) in respect of the child and place on it—

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<sup>(8)</sup> S.I.1983/1964. Regulation 5A(1A) was inserted in relation to England by the Adoption Agencies (Amendment) Regulations 2003 (S.I. 2003/2555).

- (a) the information and reports obtained by the agency by virtue of this Part;
- (b) the child's permanence report;
- (c) the written record of the proceedings of the adoption panel under regulation 18, its recommendation and the reasons for its recommendation and any advice given by the panel to the agency;
- (d) the record of the agency's decision and any notification of that decision under regulation 19;
- (e) any consent to placement for adoption under section 19 of the Act (placing children with parental consent);
- (f) any consent to the making of a future adoption order under section 20 of the Act (advance consent to adoption);
- (g) any form or notice withdrawing consent under section 19 or 20 of the Act or notice under section 20(4)(a) or (b) of the Act;
- (h) a copy of any placement order<sup>(9)</sup> in respect of the child; and
- (i) any other documents or information obtained by the agency which it considers should be included in that case record.

(2) Where an adoption agency places on the child's case record a notice under section 20(4)(a) or (b) of the Act, the agency must send a copy of that notice to a court which has given the agency notice of the issue of an application for an adoption order.

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

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

- (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, adoption for the child and provide him with appropriate written information about these matters; and
- (c) ascertain the child's wishes and feelings regarding—
  - (i) the possibility of placement for adoption with a new family and his adoption;
  - (ii) his religious and cultural upbringing; and
  - (iii) contact with his parent or guardian or other relative or with any other person the agency considers relevant.

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

**Requirement to provide counselling and information for, and ascertain 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 to him—
  - (i) the procedure in relation to both placement for adoption and adoption;
  - (ii) the legal implications of—

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(9) See section 21 of the Act.

- (aa) giving consent to placement for adoption under section 19 of the Act;
  - (bb) giving consent to the making of a future adoption order under section 20 of the Act; and
  - (cc) a placement order; and
  - (iii) the legal implications of adoption,
- and provide him with written information about these matters; and
- (c) ascertain the wishes and feelings of the parent or guardian of the child and, of any other person the agency considers relevant, regarding—
    - (i) the child;
    - (ii) the placement of the child for adoption and his adoption, including any wishes and feelings about the child’s religious and cultural upbringing; and
    - (iii) contact with the child if the child is authorised to be placed for adoption or the child is adopted.

(2) Paragraph (1) does not apply if the agency is satisfied that the requirements of that paragraph have been carried out in respect of the parent or guardian and any other person the agency considers relevant by another adoption agency.

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

(4) Where paragraph (3) 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 him unless the agency is satisfied that the requirements have been carried out in respect of the father by another agency; 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 by father)(10); 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 etc. with children in care).

### **Requirement to obtain information about the child**

**15.—**(1) The adoption agency must obtain, so far as is reasonably practicable, 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 (“the child’s health report”) on the state of the child’s health which shall include any treatment which the child is receiving, any need 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—

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

- (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) for written reports of such examinations and tests to be obtained.
- (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 about the child's family**

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

(2) The adoption agency must obtain, so far as is reasonably practicable, the information about the health of each of the child's natural parents and his brothers and sisters (of the full blood or half-blood) which is specified in Part 4 of Schedule 1.

#### **Requirement to prepare child's permanence report for the adoption panel**

17.—(1) The adoption agency must prepare a written report ("the child's permanence report") which shall include—

- (a) the information about the child and his family as specified in Parts 1 and 3 of Schedule 1;
- (b) a summary, written by the agency's medical adviser, of the state of the child's health, his 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(4)(a) applies, his 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 his parent or guardian or other relative or with any other person the agency considers relevant 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, where regulation 14(4)(a) applies, his 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—

- (a) the child's permanence report;
- (b) the child's health report and any other reports referred to in regulation 15; and
- (c) the information relating to the health of each of the child's natural parents,

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

(3) Where the adoption panel makes 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 which the agency proposes to make for allowing any person contact with the child; and
- (b) where the agency is a local authority, whether an application should be made by the authority for a placement order in respect of the child.

### **Adoption agency decision and notification**

**19.**—(1) The adoption agency must take into account the recommendation of the adoption panel in coming to a decision about whether the child should be placed for adoption.

(2) No member of the adoption panel shall 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 in writing the parent or guardian and, where regulation 14(3) applies and the agency considers it is appropriate, the father of the child of its decision.

### **Request to appoint an officer of the Service or a Welsh family proceedings officer**

**20.** 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 and, as the case may be, to consent to the making of a future adoption order under section 20 of the Act, the adoption agency must request the CAFCASS to appoint an officer of the Service<sup>(11)</sup> or the National Assembly for Wales to appoint a Welsh family proceedings officer<sup>(12)</sup> for the purposes of the signification by that officer of the consent to placement or to adoption by that parent or guardian and send with that request the information specified in Schedule 2.

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(11) See section 11(3) of the Criminal Justice and Courts Services Act 2000 (c. 43).

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

## PART 4

### DUTIES OF ADOPTION AGENCY IN RESPECT OF A PROSPECTIVE ADOPTER

#### **Requirement to provide counselling and information**

**21.**—(1) Where an 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 him the procedure in relation to, and the legal implications of, placement for adoption and adoption; and
- (d) provide him with written information about the matters referred to in sub-paragraph (b) or, as the case may be, (c).

(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.

#### **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 in the form provided by the agency from a prospective adopter for an assessment of his suitability to adopt a child, the agency must set up a case record in respect of that prospective adopter ("the prospective adopter's case record") and consider his 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) The adoption agency must place on the prospective adopter's case record—

- (a) the application by the prospective adopter for an assessment of his suitability to adopt a child referred to in paragraph (1);
- (b) the information and reports obtained by the agency by virtue of this Part;
- (c) the prospective adopter's report and his observations on that report;
- (d) the written record of the proceedings of the adoption panel under regulation 26 (and, where applicable, regulation 27(6)), its recommendation and the reasons for its recommendation and any advice given by the panel to the agency;
- (e) the record of the agency's decision under regulation 27(3), (5) or, as the case may be, (9);
- (f) where the prospective adopter applied to the Secretary of State for a review by an independent review panel the recommendation of that review panel;
- (g) where applicable, the prospective adopter's review report and his observations on that report; and
- (h) any other documents or information obtained by the agency which it considers should be included in that case record.

## Requirement to carry out police checks

23.—(1) An adoption agency must take steps to obtain—

- (a) in respect of the prospective adopter, an enhanced criminal record certificate within the meaning of section 115 of the Police Act 1997<sup>(13)</sup> including the matters specified in subsection (6A) of that section; and
- (b) in respect of any other member of his 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) An adoption agency may not consider a person suitable to adopt a child if he or any member of his 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, he 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<sup>(14)</sup> in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (prohibitions and restrictions relating to pornography)<sup>(15)</sup> 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<sup>(16)</sup> 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 suitable to adopt a child if he or any member of his 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.

(5) Where an adoption agency becomes aware that a prospective adopter or a member of his household falls within paragraph (2) or (4), the agency must notify the prospective adopter as soon as possible that he cannot be considered suitable to adopt a child.

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<sup>(13)</sup> 1997 c. 50. Section 115 was amended by section 328 of the Criminal Justice Act 2003 (c. 44) section 19 of 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 the Act, Schedule 2 to the National Health Service Reform and Health Care Professions Act 2002 (c. 17) and section 198 of and Schedule 6 to the Licensing Act 2003.

<sup>(14)</sup> 1979 c. 2.

<sup>(15)</sup> 1876 c. 36.

<sup>(16)</sup> 2000 c. 43. Schedule 4 to the 2000 Act was amended by the Sexual Offences Act 2003 (c. 42) and by the Asylum and Immigration (Treatment of Claimants) Act 2004 (c. 19).

**Requirement to provide preparation for adoption**

**24.**—(1) Where an adoption agency is considering a person’s suitability 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) In paragraph (1) “preparation for adoption” includes the provision of information to the prospective adopter about—

- (a) the age range, sex, likely needs and background of children who may be placed for adoption by the adoption agency;
- (b) the significance of adoption for a child and his family;
- (c) contact between a child and his parent or guardian or other relatives where a child is authorised to be placed for adoption or is adopted;
- (d) the skills which are necessary for an adoptive parent;
- (e) the adoption agency’s procedures in relation to the assessment of a prospective adopter and the placement of a child for adoption; and
- (f) the procedure in relation to placement for adoption and adoption.

(3) 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.

**Prospective adopter’s report**

**25.**—(1) This regulation applies where the adoption agency, following the procedures referred to in regulations 23 and 24, consider the prospective adopter may be suitable to adopt a child.

(2) The adoption agency must obtain the information about the prospective adopter which is specified 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 following a full examination which must include matters specified in Part 2 of Schedule 4 unless the agency has received advice from its medical adviser that such an examination and report is unnecessary; and
- (b) a written report of each of the interviews with the persons nominated by the prospective adopter to provide personal references for him.

(4) The adoption agency must ascertain whether the local authority in whose area the prospective adopter has his home have any information about the prospective adopter which may be relevant to the assessment and if so obtain from that authority a written report setting out that information.

(5) The adoption agency must prepare a written report (“the prospective adopter’s report”) which shall include—

- (a) the information about the prospective adopter and his family which is specified 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) any relevant information the agency obtains under paragraph (4);
- (d) any observations of the agency on the matters referred to in regulations 21, 23 and 24;
- (e) the agency’s assessment of the prospective adopter’s suitability to adopt a child; and
- (f) any other information which the agency considers to be relevant.

- (6) In a section 83 case, the prospective adopter's report shall also include—
- (a) the name of the country from which the prospective adopter wishes to adopt (“country of origin”);
  - (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.

(7) Where the adoption agency receives information under paragraph (2), (3) or (4) or other information in relation to the assessment of the prospective adopter and is of the opinion that a prospective adopter is unlikely to be considered suitable to adopt a child, it may make the prospective adopter's report under paragraph (5) notwithstanding that the agency may not have obtained all the information about the prospective adopter which may be required by this regulation.

(8) The adoption agency must notify the prospective adopter that his application is to be referred to the adoption panel and give him a copy of the prospective adopter's report, inviting him to send any observations in writing to the agency within 10 working days, beginning with the date on which the notification is sent.

(9) At the end of the period of 10 working days referred to in paragraph (8) (or earlier if any observations made by the prospective adopter are received before that period has expired) the adoption agency must send—

- (a) the prospective adopter's report and the prospective adopter's observations;
- (b) the written reports referred to in paragraphs (3) and (4); and
- (c) any other relevant information obtained by the agency,

to the adoption panel.

(10) 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**

**26.—**(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 the 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 the information and reports passed to it in accordance with regulation 25;
- (b) may request the adoption agency to obtain any other relevant information which the panel considers necessary; and
- (c) may obtain legal advice as it considers necessary in relation to the case.

(3) Where the adoption panel makes a recommendation to the adoption agency that the prospective adopter is suitable to adopt a child, the panel may consider and give advice to the agency about the number of children the prospective adopter may be suitable to adopt, their age range, sex, likely needs and background.

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

**Adoption agency decision and notification**

27.—(1) The adoption agency must make a decision about whether the prospective adopter is suitable to adopt a child.

(2) No member of the adoption panel shall 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 him 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 him 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 that recommendation is different;
- (c) advise the prospective adopter that within 40 working days beginning with the date on which the notification was sent he may—
  - (i) submit any representations he wishes to make to the agency; or
  - (ii) apply to the Secretary of State for a review by an independent review panel of the qualifying determination.

(5) If, within the period of 40 working days referred to in paragraph (4), the prospective adopter has not made any representations or applied to the Secretary of State for a review by an independent review panel, the adoption agency shall proceed to make its decision and shall notify the prospective adopter in writing of its decision together with the reasons for that decision.

(6) If, within the period of 40 working days referred to in paragraph (4), the adoption agency receives further representations from the prospective adopter, it may refer the case together with all the relevant information to the 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—

- (a) if the case has been referred to the adoption panel under paragraph (6), the agency must make the decision only after taking into account the recommendations of the adoption panel made under both paragraph (7) and regulation 26; or
- (b) if the prospective adopter has applied to the Secretary of State for a review by an independent review panel of the qualifying determination, the agency must make the decision only after taking into account the recommendation of the independent review panel and the recommendation of the adoption panel made under regulation 26.

(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 they do not consider the prospective adopter suitable to adopt a child, and of the adoption panel’s recommendation under paragraph (7), if this is different from the agency’s decision.

(10) In a case where an independent review panel has made a recommendation, the adoption agency shall send to the Secretary of State a copy of the notification referred to in paragraph (9).

**Information to be sent to the independent review panel**

28.—(1) If the adoption agency receives notification from the Secretary of State that a prospective adopter has applied for a review by an independent review panel of the qualifying determination, the

agency must, within 10 working days of receipt of that notification, send to the Secretary of State the information specified in paragraph (2).

- (2) The following information is specified for the purposes of paragraph (1)—
- (a) all of the documents and information which were passed to the adoption panel in accordance with regulation 25;
  - (b) any relevant information in relation to the prospective adopter which was obtained by the agency after the date on which the documents and information referred to in subparagraph (a) were passed to the adoption panel; and
  - (c) the documents referred to in regulation 27(4)(a) and (b).

### **Review and termination of approval**

**29.**—(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, a 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 one year after approval and thereafter at intervals of not more than a year.

(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 into account the views of the prospective adopter.

(4) If at the conclusion of the review, the adoption agency considers that the prospective adopter may no longer be suitable to adopt a child, it must—

- (a) prepare a written report (“the prospective adopter’s review report”) which shall include the agency’s reasons;
- (b) notify the prospective adopter that his case is to be referred to the adoption panel; and
- (c) give him a copy of the report inviting him to send any observations to the agency within 10 working days beginning with the date on which that report is sent.

(5) At the end of the period of 10 working days referred to in paragraph (4)(c) (or earlier if the prospective adopter’s comments are received before that period has expired), the adoption agency must send the prospective adopter’s review report together with the prospective adopter’s observations to the adoption panel.

(6) 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.

(7) The adoption panel must consider the prospective adopter’s review report, the prospective adopter’s observations and any other information passed to it by the adoption agency and make a recommendation to the agency as to whether the prospective adopter continues to be suitable to adopt a child.

(8) The adoption agency must make a decision as to whether the prospective adopter continues to be suitable to adopt a child and regulation 27(2) to (10) shall apply in relation to that decision by the agency.

**Duties of the adoption agency in a section 83 case**

**30.** 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 Secretary of State—

- (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, sex, likely needs and background;
- (b) all the documents and information which were passed to the adoption panel in accordance with regulation 25;
- (c) the record of the proceedings of the adoption panel, its recommendation and the reasons for its recommendation;
- (d) if the prospective adopter applied to the Secretary of State for a review by an independent review panel of a qualifying determination, the record of the proceedings of that panel, its recommendation and the reasons for its recommendation; and
- (e) any other information relating to the case which the Secretary of State 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**

**31.—**(1) Where an adoption agency is considering placing a child for adoption with a particular prospective adopter (“the proposed placement”) the agency must—

- (a) provide the prospective adopter with a copy of the child’s permanence report and any other information 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; and
  - (ii) the arrangements the agency proposes to make for allowing any person contact with the child; and
- (d) provide a counselling service for, and any further information to, the prospective adopter as may be required.

(2) 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 adopter and any children of the prospective adopter (“the adoptive family”) for adoption support services in accordance with regulations made under section 4(6) of the Act;
- (b) where the agency is a registered adoption society, notify the prospective adopter that he may request the local authority in whose area he has his home (“the relevant authority”) to carry out an assessment of his needs for adoption support services under section 4(1) of the Act and pass to the relevant authority, at their request, a copy of the child’s permanence report and a copy of the prospective adopter’s report;
- (c) consider the arrangements for allowing any person contact with the child; and



- (d) prepare a written report (“the adoption placement report”) which shall include—
  - (i) the agency’s reasons for proposing the placement;
  - (ii) the information obtained by the agency by virtue of paragraph (1);
  - (iii) where the agency is a local authority, their proposals for the provision of adoption support services for the adoptive family;
  - (iv) the arrangements the agency proposes to make for allowing any person contact with the child; and
  - (v) any other relevant information.

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

(4) At the end of the period of 10 working days referred to in paragraph (3) (or earlier if observations are received before the 10 working days has expired) the adoption agency must send—

- (a) the adoption placement report;
- (b) the child’s permanence report; and
- (c) the prospective adopter’s report and his observations,

to the adoption panel.

(5) 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.

(6) This paragraph applies where an adoption agency (“agency A”) intends to refer a proposed placement to the adoption panel and another agency (“agency B”) made the decision (in accordance with these Regulations) that—

- (a) the child should be placed for adoption; or
- (b) the prospective adopter is suitable to be an adoptive parent.

(7) Where paragraph (6) applies agency A may only refer the proposed placement to the adoption panel if it has consulted agency B about the proposed placement.

(8) Agency A must—

- (a) where paragraph (6)(a) applies, open a child’s case record; or
- (b) where paragraph (6)(b) applies, open a prospective adopter’s case record,

and place on the appropriate record, the information and documents received from agency B.

### **Function of the adoption panel in relation to proposed placement**

**32.**—(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 shall 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 31;
- (b) may request the agency to obtain any other relevant information which the panel considers necessary; and

- (c) may obtain legal advice as it considers necessary in relation to the case.
- (3) The adoption panel must consider—
  - (a) in a case where the adoption agency is a local authority, the authority’s proposals for the provision of adoption support services for the adoptive family;
  - (b) the arrangements the adoption agency proposes to make for allowing any person contact with the child; and
  - (c) whether the parental responsibility of any parent or guardian or the prospective adopter should be restricted and if so the extent of any such restriction.
- (4) Where the adoption panel makes a recommendation to the adoption agency that the child should be placed for adoption with the particular prospective adopter, the panel may at the same time give advice to the agency about any of the matters set out in paragraph (3).
- (5) An adoption panel may only make the recommendation referred to 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 already 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 27 that the prospective adopter is suitable to adopt a child.

### **Adoption agency decision in relation to proposed placement**

- 33.**—(1) The adoption agency must take into account the recommendation of the adoption panel 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 shall 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 in writing—
    - (a) the prospective adopter of its decision; and
    - (b) if their whereabouts are known to the agency, the parent or guardian and, where regulation 14(3) applies and the agency considers it is appropriate, the father of the child, of the fact that the child is to be placed for adoption.
  - (4) If the adoption agency decides that the proposed placement should proceed, the agency must, in an appropriate manner and having regard to the child’s age and understanding, explain its decision to the child.
  - (5) The adoption agency must place on the child’s case record—
    - (a) the prospective adopter’s report;
    - (b) the adoption placement report and the prospective adopter’s observations on that report;
    - (c) the written record of the proceedings of the adoption panel under regulation 32, its recommendation, the reasons for its recommendation and any advice given by the panel to the agency; and
    - (d) the record and notification of the agency’s decision under this regulation.

### **Function of the adoption agency in a section 83 case**

**34.**—(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.

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

## **PART 6**

### **PLACEMENT AND REVIEWS**

#### **Requirements imposed on the adoption agency before the child may be placed for adoption**

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

- (a) has decided in accordance with regulation 33 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 the placement of the child with him.

(2) Where paragraph (1) applies, the adoption agency must, as soon as possible, send the prospective adopter a placement plan in respect of the child which covers the matters specified in Schedule 5 (“the adoption placement plan”).

(3) Where the prospective adopter notifies the adoption agency that he wishes to proceed with the placement and the agency is authorised to place the child for adoption or, subject to paragraph (4), the child is less than 6 weeks old, the agency may place the child for adoption with the prospective adopter.

(4) Unless there is a placement order in respect of the child, the adoption agency may not place for adoption a child who is less than six weeks old unless the parent or guardian of the child has agreed in writing with the agency that the child may be placed for adoption.

(5) Where the child already has his home with the prospective adopter, the adoption agency must notify the prospective adopter in writing of the date on which the child is placed for adoption with him by that agency.

(6) The adoption agency must before the child is placed for adoption with the prospective adopter—

- (a) send to the prospective adopter’s general practitioner written notification of the proposed placement and send with that notification a written report of the child’s health history and current state of health;
- (b) send to the local authority (if that authority is not the adoption agency) and Primary Care Trust or Local Health Board (Wales)<sup>(17)</sup>, in whose area the prospective adopter has his home, written notification of the proposed placement; and

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(17) See sections 2 and 6 of the National Health Service Reform and Health Care Professions Act 2002 (c. 17).

- (c) where the child is of compulsory school age(**18**), send to the local education authority, in whose area the prospective adopter has his home, written notification of the proposed placement and information about the child's educational history and whether he has been or is likely to be assessed for special educational needs under the Education Act 1996.
- (7) The adoption agency must notify the prospective adopter in writing of any change to the adoption placement plan.
- (8) The adoption agency must place on the child's case record—
  - (a) in the case of a child who is less than 6 weeks old and in respect of whom there is no placement order, a copy of the agreement referred to in paragraph (4); and
  - (b) a copy of the adoption placement plan and any changes to that plan.

### Reviews

**36.**—(1) Where an adoption agency is authorised to place a child for adoption but the child is not for the time being placed for adoption the agency must carry out a review of the child's case—

- (a) not more than 3 months after the date on which the agency first has authority to place; and
- (b) thereafter not more than 6 months after the date of the previous review (“6 months review”),

until the child is placed for adoption.

(2) Paragraphs (3) and (4) apply where a child is placed for adoption.

(3) The adoption agency must carry out a review of the child's case—

- (a) not more than 4 weeks after the date on which the child is placed for adoption (“the first review”);
- (b) not more than 3 months after the first review; and
- (c) thereafter not more than 6 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.

(4) The adoption agency must—

- (a) ensure that 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 decides 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.

(5) When carrying out a review the adoption agency must consider each of the matters set out in paragraph (6) and must, so far as is reasonably practicable, ascertain the views of—

- (a) the child, having regard to his 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 such of the matters set out in paragraph (6) as the agency considers appropriate.

(6) The matters referred to in paragraph (5) are—

- (a) whether the adoption agency remains satisfied that the child should be placed for adoption;
- (b) the child's needs, welfare and development, and whether any changes need to be made to meet his needs or assist his development;

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(18) See section 8 of the Education Act 1996 (c. 56).

- (c) the existing arrangements for contact, and whether they should continue or be altered;
  - (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 altered;
  - (e) the arrangements for the provision of adoption support services for the adoptive family 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 and educational needs;
  - (g) subject to paragraphs (1) and (3), the frequency of the reviews.
- (7) Where the child is subject to a placement order and has not been placed for adoption at the time of the first 6 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) consider whether it remains satisfied that the child should be placed for adoption.
- (8) The adoption agency must, so far as is reasonably practicable, notify—
- (a) the child, where the agency considers he is of sufficient age and understanding;
  - (b) the prospective adopter; and
  - (c) any other person whom the agency considers relevant,
- of the outcome of a review and of any decision taken by the agency in consequence of that review.
- (9) The adoption agency must ensure that—
- (a) the information obtained in the course of a review or visit in respect of a child's case including the views expressed by the child;
  - (b) the details of the proceedings of any meeting arranged by the agency to consider any aspect of the review of the case; and
  - (c) details of any decision made in the course of or as a result of the review,
- are recorded in writing and placed on the child's case record.
- (10) 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 no earlier than 28 days, or later than 42 days, after the date on which the child is returned to the agency and when carrying out that review the agency must consider the matters set out in paragraph (6)(a), (b), (c) and (f).

### **Independent reviewing officers**

**37.**—(1) An adoption agency which is—

- (a) a local authority; or
- (b) a registered adoption society which is a voluntary organisation who provide 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 be registered as a social worker in a register maintained by the General Social Care Council or by the Care Council for Wales under section 56 of the Care Standards Act 2000 or in a corresponding register maintained under the law of Scotland or Northern Ireland.

(3) The independent reviewing officer must, in the opinion of the adoption agency, have sufficient relevant social work experience to undertake the functions referred to in paragraph (1) in relation to the case.

(4) A person who is an employee of the adoption agency may not be appointed as an independent reviewing officer in a case if he is involved in the management of the case or is 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.

(5) The independent reviewing officer must—

- (a) as far as is reasonably practicable attend any meeting held in connection with the review of the child's case; and
- (b) chair any such meeting that he attends.

(6) The independent reviewing officer must, as far as is reasonably practicable, take steps to ensure that the review is conducted in accordance with regulation 36 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 36 or to take proper steps to make the arrangements agreed at the review is brought to the attention of persons at an appropriate level of seniority within the adoption agency.

(7) If the child whose case is reviewed wishes to take proceedings 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.

(8) The adoption agency must inform the independent reviewing officer of—

- (a) any significant failure to make the arrangements agreed at a review; and
- (b) any significant change in the child's circumstances after a review.

### **Withdrawal of consent**

**38.**—(1) This paragraph applies where consent given under section 19 or 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 their decision to place the child for adoption and where, in accordance with section 22(1) to (3) of the Act, the authority decide to apply for a placement order in respect of the child, they must notify as soon as possible—

- (a) the parent or guardian of the child;
- (b) where regulation 14(3) applies and the agency considers it is appropriate, 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

### CASE RECORDS

#### **Storage of case records**

**39.** The adoption agency must ensure that the child's case record and the prospective adopter's case record and the contents of those case records 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**

**40.** An adoption agency must keep the child's case record and the prospective adopter's case record for such period as it considers appropriate.

#### **Confidentiality of case records**

**41.** Subject to regulation 42, the contents of the child's case record and the prospective adopter's case record shall be treated by the adoption agency as confidential.

#### **Access to case records and disclosure of information**

**42.—**(1) Subject to paragraph (3), an adoption agency shall 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 Secretary of State;
- (c) to the registration authority;
- (d) subject to the provisions of sections 29(7) and 32(3) of the Local Government Act 1974<sup>(19)</sup> (investigations and disclosure), to the Commission for Local Administration in England, for the purposes of any investigation conducted in accordance with Part 3 of that Act;
- (e) to any person appointed by the agency for the purposes of the consideration by the agency of any representations (including complaints);
- (f) by and to the extent specified in these Regulations;
- (g) to an officer of the Service or a Welsh family proceedings officer for the purposes of the discharge of his duties under the Act; and
- (h) to a court having power to make an order under the Act or the 1989 Act.

(2) Subject to paragraph (3), an 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.

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(19) 1974 c. 7.

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

#### **Transfer of case records**

**43.**—(1) An adoption agency may transfer a copy of a child’s case record or prospective adopter’s case record (or part of that record) to another adoption agency when it considers this to be in the interests of the child or prospective adopter to whom the record relates, and a written record shall be kept of any such transfer.

(2) Subject to paragraph (3), a registered adoption society which intends to cease to act or exist as such shall 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) An adoption agency to which case records are transferred by virtue of paragraph (2)(a) or (b) shall notify the registration authority in writing of such transfer.

#### **Application of regulations 40 to 42**

**44.** Nothing in this Part applies to the information which an adoption agency must keep in relation to an adopted person by virtue of regulations made under section 56 of the Act.

## **PART 8**

### **MISCELLANEOUS**

#### **Modification of 1989 Act in relation to adoption**

**45.**—(1) This paragraph applies where—

- (a) a local authority are authorised to place a child for adoption; or
- (b) a child who has been placed for adoption by a local authority is less than 6 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; and



- (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**

**46.**—(1) This paragraph applies where an adoption agency decides that a child should be placed for adoption.

(2) Where paragraph (1) applies and subject to paragraph (3), the adoption agency must consider what arrangements it should make for allowing any person contact with the child once the agency is authorised to place the child for adoption (“the contact arrangements”).

(3) The adoption agency must—

- (a) take into account the wishes and feelings of the parent or guardian of the child and, where regulation 14(3) applies and the agency considers it is appropriate, the father of the child;
- (b) take into account any advice given by the adoption panel in accordance with regulation 18(3); and
- (c) have regard to the considerations set out in section 1(2) and (4) of the Act,

in coming to a decision in relation to the contact arrangements.

(4) The adoption agency must notify—

- (a) the child, if the agency considers he is of sufficient age and understanding;
- (b) if their whereabouts are known to the agency, the parent or guardian, and, where regulation 14(3) applies and the agency considers it is appropriate, the father of the child;
- (c) any person in whose favour there was a provision for contact under the 1989 Act which ceased to have effect by virtue of section 26(1) of the Act<sup>(20)</sup>; and
- (d) any other person the agency considers relevant,

of the contact arrangements.

(5) Where an adoption agency decides that a child should be placed for adoption with a particular prospective adopter, the agency must review the contact arrangements in light of the views of the prospective adopter and any advice given by the adoption panel in accordance with regulation 32(3).

(6) If the adoption agency proposes to make any change to the contact arrangements which affects any person mentioned in paragraph (4), it must seek the views of that person and take those views into account in deciding what arrangements it should make for allowing any person contact with the child while he is placed for adoption with the prospective adopter.

(7) The adoption agency must—

- (a) set out the contact arrangements in the placement plan; and
- (b) keep the contact arrangements under review.

## **Contact: supplementary**

**47.**—(1) Where an 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, inform the persons specified in paragraph (3) and notify them of the decision, the date of the decision, the reasons for the decision and the duration of the period.

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(20) For the definition of “a provision for contact under the 1989 Act” see section 26(6) of the Act.

(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 subject to the following conditions—

- (a) where the child is of sufficient age and understanding, subject to his agreement;
- (b) where the child is placed for adoption, subject to consultation before the agreement is reached, with the prospective adopter with whom the child is placed for adoption; and
- (c) written confirmation by the agency to the persons specified in paragraph (3) of the terms of that agreement.

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

- (a) the child, if the adoption agency considers he is of sufficient age and understanding;
- (b) the person in whose favour the order under section 26 was made; and
- (c) if the child is placed for adoption, the prospective adopter.

23rd February 2005

*Filkin*  
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