

2004 No. 190

SOCIAL CARE, ENGLAND

CHILDREN AND YOUNG PERSONS, ENGLAND

**The Independent Review of Determinations (Adoption)
Regulations 2004**

<i>Made</i> - - - -	<i>2nd February 2004</i>
<i>Laid before Parliament</i>	<i>5th February 2004</i>
<i>Coming into force</i> - -	<i>30th April 2004</i>

ARRANGEMENT OF REGULATIONS

**PART 1
GENERAL**

1. Citation, commencement, application and interpretation
2. Qualifying determination

**PART 2
PANELS**

3. Constitution and functions of panels
4. Membership of panels
5. Chair and vice chair
6. Expenses of panel members
7. Meetings of panels
8. Records

**PART 3
PROCEDURE**

9. Application by prospective adopter for review of qualifying determination
10. Appointment of panel and conduct of review
11. Recommendation of panel
12. Order for payment of costs
13. Amendment of the 1983 Regulations

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

PART 1 GENERAL

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Independent Review of Determinations (Adoption) Regulations 2004 and shall come into force on 30th April 2004.

(2) These Regulations apply to England only.

(3) These Regulations shall apply to cases where the most recent consideration by an adoption panel of a prospective adopter's suitability to be an adoptive parent—

(a) is under regulation 10(1)(b) of the 1983 Regulations; and

(4) takes place on or after 30 April 2004.

(5) In these Regulations—

“the Act” means the Adoption Act 1976;

“the 1983 Regulations” means the Adoption Agencies Regulations 1983(b);

“adoption panel” means a panel established in accordance with regulation 5 of the 1983 Regulations;

“the central list” shall be construed in accordance with regulation 3(2);

“panel” means a panel constituted in accordance with regulation 3(1);

“prospective adopter” means a person who proposes to adopt a child;

“review meeting” means a meeting convened in accordance with regulation 10 for the purposes of reviewing a qualifying determination; and

“social worker” means a social worker within the meaning of Part IV of the Care Standards Act 2000(c).

Qualifying determination

2. For the purposes of section 9A(1) of the Act, a qualifying determination is a determination that has been made by an adoption agency in accordance with regulation 11A of the 1983 Regulations, that the adoption agency considers that a prospective adopter is not suitable to be an adoptive parent and does not propose to approve him as suitable to be an adoptive parent.

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

(b) S.I. 1983/1964. Relevant amending instruments are S.I. 1997/649 and 2308, 2001/2237, 2002/3220 and 2003/367.

(c) 2000 c.14. By virtue of section 55(2)(a) and (4) of the Care Standards Act 2000, a social worker for the purpose of Part IV of that Act is a person who engages in relevant social work that is required in connection with any health, education or social services provided by any person.

PART 2

PANELS

Constitution and functions of panels

3.—(1) The Secretary of State shall, on receipt of the application by a prospective adopter made in accordance with regulation 9, constitute a panel for the purpose of reviewing a qualifying determination.

(2) The members of the panel shall be appointed by the Secretary of State from a list of persons (in these Regulations referred to as “the central list”) kept by the Secretary of State.

(3) The members of the central list shall include—

- (a) social workers;
- (b) registered medical practitioners; and
- (c) other persons who are considered by the Secretary of State to be suitable as members, to include, where reasonably practicable—
 - (i) adopted persons who have reached the age of 18 years; and
 - (ii) adoptive parents.

(4) A panel established under paragraph (1) shall—

- (a) review the qualifying determination; and
- (b) make to the adoption agency which made the qualifying determination a recommendation as to whether or not a prospective adopter is suitable to be an adoptive parent.

(5) In considering what recommendation to make, the panel—

- (a) must consider and take into account all of the information passed to it in accordance with regulation 11A of the 1983 Regulations;
- (b) may request the adoption agency to obtain any other relevant information which the panel considers necessary or to provide such other assistance as the panel may request; and
- (c) may obtain such legal advice as it considers necessary in relation to the case.

Membership of panels

4.—(1) The maximum number of people who may be appointed to a panel is 10.

(2) The panel shall include at least—

- (a) two persons falling within regulation 3(3)(a);
- (b) one person falling within regulation 3(3)(b); and
- (c) in addition at least four other persons falling within regulation 3(3)(c).

(3) A person shall not be appointed to a panel if—

- (a) he or a member of his family was involved in the making of the qualifying determination in question;
- (b) he is employed by the adoption agency which made the qualifying determination in question or was employed by that agency within the period of two years prior to the date on which the qualifying determination was made;
- (c) where the adoption agency which made the qualifying determination is a local authority, he is an elected member of that local authority or was such a member within the period of two years prior to the date on which the qualifying determination was made;
- (d) where the adoption agency which made the qualifying determination is an appropriate voluntary organisation, he is concerned with the management of that agency or was so concerned within the period of two years prior to the date on which the qualifying determination was made;

- (e) he was approved as a prospective adopter by the adoption agency which made the qualifying determination in question;
 - (f) in the case of an adopted person, the adoption agency which made the qualifying determination in question was the adoption agency which arranged his adoption; or
 - (g) he knows, in a personal or professional capacity, the person making the application under regulation 9.
- (4) In this regulation—
- (a) “employed” includes employed whether or not for payment and whether under a contract of service or a contract for services or as a volunteer; and
 - (b) “a member of his family” means—
 - (i) his spouse;
 - (ii) a member of his household; or
 - (iii) a son, daughter, mother, father, sister or brother of his or of his spouse.

Chair and vice chair

5.—(1) The Secretary of State shall appoint to chair the panel a person who has expertise in adoption work and the skills and experience necessary for chairing a panel.

(2) The Secretary of State shall appoint one of the members of the panel as vice chair to act as chair if the person appointed to chair the panel is absent.

Expenses of panel members

6. The Secretary of State may pay to any member of a panel such sum in respect of expenses as the Secretary of State considers to be reasonable.

Meetings of panels

7. The proceedings of the panel will not be invalidated provided at least six of its members including the chair or vice chair and a social worker are present.

Records

8. The Secretary of State shall ensure that a written record of a panel’s review of a qualifying determination, including the reasons for its recommendation and whether the recommendation was unanimous or that of a majority, is retained—

- (a) for a period of 12 months from the date on which the recommendation is made; and
- (b) in conditions of appropriate security.

**PART 3
PROCEDURE**

Application by prospective adopter for review of qualifying determination

9. An application by a prospective adopter to the Secretary of State for a review of a qualifying determination made in his case must be in writing and include the grounds of the application.

Appointment of panel and conduct of review

10. Upon receipt of an application which has been made in accordance with regulation 9, the Secretary of State shall—

- (a) notify the adoption agency which made the qualifying determination that the application has been made by sending to the agency a copy of the application;
- (b) send a written acknowledgment of the application to the prospective adopter and notify him of the steps taken under sub-paragraph (a);
- (c) appoint a panel in accordance with regulations 3 and 4;
- (d) fix a date, time and venue for the panel to meet for the purposes of a review meeting;
- (e) after taking the steps prescribed in sub-paragraph (d), inform in writing the prospective adopter who made the application and the adoption agency which made the qualifying determination of—
 - (i) the appointment of the panel; and
 - (ii) the date, time and venue of the review meeting; and
- (f) inform the prospective adopter in writing that he may, if he wishes, provide to the panel further details of the grounds of his application in writing in the period up to two weeks before the review meeting and orally at the review meeting.

Recommendation of panel

11.—(1) The panel’s recommendation may be that of the majority.

(2) The recommendation and the reasons for it and whether it was unanimous or that of a majority must be recorded without delay in a document signed and dated by the chair.

(3) The panel must without delay send a copy of the recommendation and the reasons for it to the prospective adopter and to the adoption agency which made the qualifying determination.

Order for payment of costs

12. The panel may make an order for the payment by the adoption agency by which the qualifying determination reviewed was made of such costs as the adoption panel considers reasonable.

Amendment of the 1983 Regulations

13.—(1) The 1983 Regulations shall be amended in accordance with the following paragraphs.

(2) In regulation 1(3) (interpretation)—

(a) at the appropriate place insert—

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

(b) in the definition of “registration authority”, after the second “the” insert “2000”.

(3) In regulation 11A (adoption agency decisions and notifications- prospective adopters)—

(a) in paragraph (2), after “panel” insert “or an independent review panel”;

(b) for paragraph (4)(c) substitute—

“(c) notify the prospective adopter in writing that within 28 days—

(i) he may submit any representations he wishes to make in writing to the agency; or

(ii) he may apply to the Secretary of State for a review by an independent review panel of the agency’s proposal not to approve him as suitable to be a prospective adopter (referred to in this regulation as a “qualifying determination”).”;

(c) in paragraph (5) for “the prospective adopter has not made any representations” substitute “the prospective adopter has not applied to the Secretary of State for a review by an independent review panel of the qualifying determination or made any representations to the agency”;

- (d) after paragraph (5) insert—
- “(5A) If the agency receives notification from the Secretary of State that a prospective adopter has applied to the Secretary of State for a review by an independent review panel of the qualifying determination, it shall within 7 days after the date of that notification submit to the Secretary of State—
- (a) the written report in respect of the prospective adopter referred to in regulation 8(2)(g);
 - (b) any written representations made by the prospective adopter in accordance with regulation 8(2)(h);
 - (c) all of the information obtained by the agency in respect of the prospective adopter under regulation 8 or otherwise;
 - (d) the documents referred to in paragraph (4)(a) and (b).”;
- (e) for paragraph (8) substitute—
- “(8) The agency shall make a decision on the case and, in addition to the requirements of paragraph (1),—
- (a) if the prospective adopter has applied to the Secretary of State for a review by an independent review panel of the qualifying determination, it shall make the decision only after taking into account any recommendation of that panel made in accordance with the Independent Review of Determinations (Adoption) Regulations 2004; or
 - (b) if the case has been referred to an adoption panel under paragraph (6), it shall make the decision only after taking into account any recommendation of the adoption panel made by virtue of paragraph (7).”;
- (f) in paragraph (9) after “and” insert “, if the case has been referred to an adoption panel under paragraph (6),”; and
- (g) after paragraph (9) insert—
- “(9A) In a case where an independent review panel has made a recommendation, the agency shall send to the independent review panel a copy of the notification referred to in paragraph (9).”.

2nd February 2004

Margaret Hodge
Minister of State,
Department for Education and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Adoption Act 1976. They apply in respect of England only and in relation to specified cases only. They make provision for the review by an independent panel of a determination made by an adoption agency that it does not propose to approve a prospective adopter as suitable to be an adoptive parent.

Regulation 2 defines a “qualifying determination”. Part 2 makes provision for the constitution, functions, membership, payment of expenses, meetings and record keeping of the panels which are appointed by the Secretary of State to review qualifying determinations.

Part 3 makes provision for the procedure to be followed when a review of a qualifying determination by a panel constituted under Part 2 is sought by a prospective adopter and for the amendment of the Adoption Agencies Regulations 1983 to take account of this review procedure.

A regulatory impact assessment has been prepared for these Regulations and a copy has been placed in the library of each House of Parliament. Copies of the regulatory impact assessment can be obtained from the Adoption Team, Looked After Children Division, Area 104, Wellington House, 133-155 Waterloo Road, London, SE1 8UG. Alternatively it may be viewed on www.doh.gov.uk/adoption/law.htm#ria or the Department for Education and Skills’s website <http://www.dfes.gov.uk/ria/current.shtml>.

STATUTORY INSTRUMENTS

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