

EXPLANATORY MEMORANDUM TO
THE SUITABILITY OF ADOPTERS REGULATIONS 2005

2005 No.

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 The Suitability of Adopters Regulations 2005 (“the Suitability Regulations”) set out the matters to be taken into account by an adoption agency when determining or making any report about the suitability of people to adopt a child. Section 49 of the Adoption and Children Act 2002 (the 2002 Act) provides that an application to adopt may be made by one person or a couple, which means a married couple, or two people (whether of different sexes or the same sex) living as partners in an enduring family relationship. Where a couple have applied to adopt a child jointly, the Suitability Regulations provide that in determining whether or not the couple are suitable to adopt, due regard must be paid to the stability and permanence of their relationship.

2.2 The Suitability Regulations need to be read with the Adoption Agencies Regulations 2005 and the Adoptions with a Foreign Element Regulations 2005. The Adoption Agencies Regulations make provision relating to the exercise by adoption agencies of their functions in relation to adoption. In particular, the Adoption Agencies Regulations set out the procedure to be followed in respect of the assessment of prospective adopters including obtaining information and various reports. The Adoptions with a Foreign Element Regulations set out the additional procedural requirements to be followed in respect of the assessment of prospective adopters who are habitually resident in England and Wales and wish to adopt a child who is habitually resident outside the British Islands.

3. **Matters of special interest to the Joint Committee on Statutory Instruments.**

3.1 The Suitability Regulations are made under powers conferred by sections 9 and 45 of the 2002 Act. Section 140(3)(a) of the 2002 Act provides that regulations made under section 9, which include provisions made by virtue of section 45(2), are subject to approval under the affirmative resolution procedure. These Regulations are affirmative because of regulation 4(2) and include material which, if regulation 4(2) were not included, would be subject to the negative procedure. This is the first time that the powers in section 45(2) have been used.

4. **Legislative Background**

4.1 The 2002 Act modernises entirely the existing legal framework for domestic and intercountry adoption. This statutory instrument is one of a series of statutory instruments to be laid to implement the core provisions of the 2002 Act. The legislative and policy background for the core provisions of the 2002 Act are set out in

the overarching explanatory memorandum on the implementation of the 2002 Act that was laid before Parliament on 2 March 2005. A copy of this memorandum is attached.

4.2 In order to be able to adopt a child through an adoption agency, a person has to be both eligible and assessed as suitable to adopt. Eligibility to adopt is defined on the face of the 2002 Act, which sets out the minimum requirements in terms of domicile, habitual residence and minimum age.

4.3 Section 45 enables regulations to make provision as to the matters to be taken into account by an adoption agency in determining, or making any report in respect of, the suitability of any persons to adopt a child. It also enables regulations to make provision for the purpose of securing that proper regard is had to the need for stability and permanence in a couple's relationship.

4.4 There are three main stages in relation to the assessment of suitability of adopters. The first stage is the obtaining and gathering of specified information about the prospective adopters. This is provided for in the Adoption Agency Regulations and the Adoptions with a Foreign Element Regulations. The second stage is the preparation of reports about the prospective adopters which will be considered by the adoption panel. The Suitability Regulations set out what matters must be taken into account when preparing those reports. The third stage is the decision making stage. The Suitability Regulations set out what matters must be taken into account when making any decision about the suitability of prospective adopters.

4.5 Regulation 3 sets out the matters to be taken into account by an adoption agency when making any report in respect of the suitability of any person to adopt a child, by reference to the requirement to obtain such information in accordance with the Adoption Agencies Regulations and the Foreign Element Regulations.

4.6 Regulation 4 sets out the matters to be taken into account by an adoption agency when making a decision as to whether a person or couple are suitable to adopt. An adoption agency is required to take into account various information and reports that were obtained as a consequence of the Adoption Agencies Regulations and the Foreign Element Regulations and, in determining the suitability of a couple to adopt a child, to have regard to the need for stability and permanence in their relationship.

4.7 Regulation 5 deals with cases in which a person is unlikely to be suitable to adopt a child because particular information becomes available to the agency at an early stage in the assessment process. Regulation 5 allows that a 'report' can be prepared and a decision can be made on the basis of limited information.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 Lord Filkin, Parliamentary Under-Secretary of State, Department for Education and Skills, has made the following statement regarding Human Rights:

In my view the provisions of the Suitability of Adopters Regulations 2005 are compatible with the Convention rights.

7. Policy background

7.1 The 2002 Act will, for the first time, allow couples who are not married (whether of the same sex or different sexes) to apply to adopt a child jointly. Currently, under the Adoption Act 1976, only married couples may adopt children jointly. Single people may adopt as individuals, regardless of their sexual orientation. Some of those single people who adopt will be in a long-term, stable relationship, whether heterosexual or homosexual. If a person in such a relationship applies to adopt, the couple are currently assessed jointly. However, only one person may adopt the child. The other person may seek a residence order, but while the holder of a residence order may exercise parental responsibility, he or she does not become the child's legal parent. The 2002 Act will enable a child adopted by an unmarried couple to have the permanence and security of having two legal parents.

7.2 When the 2002 Act was passing through Parliament, concerns were expressed about the stability and permanence of such relationships as compared to couples who are married, and how to ensure that they provide a sound basis for the life-long challenge of adoption. Ministers made a commitment to bring forward regulations which would require adoption agencies to have proper regard for the stability and permanence of the relationship between a couple, whether they are married or unmarried, as part of the adopter assessment process. This is in the context of broader changes designed to encourage more people to come forward to adopt by ensuring that the process of assessment of suitability is clear, transparent and consistent across the country. These regulations fulfil that commitment.

7.3 Ministers also made commitments that there would be extensive consultation with adoption agencies and other stakeholders on the regulations and guidance needed to implement the 2002 Act.

7.4 The Suitability Regulations were issued, alongside the Adoption Agencies Regulations, for a public consultation for over seven months and 114 written responses were received to the consultation document as a whole. A number of two-day workshops and single day focus groups to look in depth at key issues with representative groups and adoption agencies also formed part of the consultation process. The consultation helped the Department to identify problems and develop improvements in the regulations and guidance. While there were no written consultation responses that dealt specifically with the draft Suitability Regulations, comments were received on the draft non-statutory good practice guidance on the assessment of adopters which also formed a part of the consultation document. These comments will inform the preparation of the final version of this guidance.

7.5 The Department for Education and Skills has also consulted with the Department for Constitutional Affairs in its development of the regulations.

8. Impact

8.1 A Regulatory Impact Assessment (RIA) is attached to this memorandum. The RIA also explains the impact on the public sector.

9. Contact

Jenny Gwilt at the Department for Education and Skills Tel: 020 7273 5889 or e-mail: jenny.gwilt@dfes.gsi.gov.uk can answer queries regarding the instrument.

EXPLANATORY MEMORANDUM ON THE IMPLEMENTATION OF THE ADOPTION AND CHILDREN ACT 2002

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is submitted voluntarily.

Description

2. This is an overarching explanatory memorandum which explains the context of the Adoption and Children Act 2002¹ (“the 2002 Act”), and relates to a series of Statutory Instruments, as set out in paragraphs 14 and 15, which are intended to be made and laid during 2005 to implement the 2002 Act.

Matters of special interest to the Joint Committee on Statutory Instruments

3. Three of these Statutory Instruments will be subject to the affirmative resolution procedure. These are The Restriction on the Preparation of Adoption Reports Regulations 2005, The Suitability of Adopters Regulations 2005 and an Order to be made under section 142 of the 2002 Act to amend the statutory adoption pay provisions as a consequence of unmarried couples being able to apply to adopt jointly.

Legislative background

4. Following a review of adoption law carried out by the Department of Health between 1991 and 1993, a draft Adoption Bill was published in 1996. The Bill was generally well received, but was never introduced into Parliament. In February 2000, the Prime Minister announced that he would lead a thorough review of adoption policy. He commissioned the Performance and Innovation Unit (PIU) to carry out a review of adoption and make recommendations to the Government for future action. The PIU review reported in July 2000 and made a number of recommendations to Government, including several related to changes in adoption legislation.
5. In December 2000, the Department of Health published a White Paper *Adoption: a new approach*, which took on board many of the PIU recommendations. The Government made a commitment to legislate in 2001 to ‘overhaul and modernise the legal framework for adoption.’²

¹ 2002 c.38.

² *Adoption: a new approach*, White Paper, December 2000, p.25.

6. The Adoption and Children Bill was subsequently introduced in 2001, and received Royal Assent in November 2002. The 2002 Act:

- aligns adoption law with the relevant provisions of the Children Act 1989³ to ensure that the child's welfare is the paramount consideration in all decisions relating to adoption;
- places a duty on local authorities to maintain an adoption service, including arrangements for the provision of adoption support services;
- provides a new right to an assessment of needs for adoption support services for adoptive families and others;
- sets out a new regulatory structure for adoption support agencies (requiring them to be registered under the Care Standards Act 2000⁴);
- enables the appropriate Minister to establish an independent review mechanism in relation to qualifying determinations made by an adoption agency;
- makes provision for the process of adoption including new measures for placement for adoption with consent and placement orders;
- provides for adoption orders to be made in favour of single people, married couples and, for the first time, unmarried couples (amended by the Civil Partnership Act);⁵
- provides for a new framework designed to ensure a more consistent approach by adoption agencies in respect of access to information held about adoptions which take place after the 2002 Act comes into force;
- provides for a new regulatory framework within which intermediary agencies (registered adoption support agencies or adoption agencies) will be able to assist adopted adults to obtain information about their adoption and facilitate contact between them and their adult birth relatives, where the person was adopted before the 2002 Act came into force;
- provides additional restrictions on bringing a child into the UK in connection with adoption;
- provides for restrictions on arranging adoptions and advertising children for adoption other than through adoption agencies;
- makes provision enabling the Secretary of State to establish a statutory Adoption and Children Act Register to suggest matches between children waiting to be adopted and approve prospective adopters; and
- amends the Children Act 1989 to introduce a new special guardianship order, intended to provide permanence for children for whom adoption is not appropriate.

7. The 2002 Act provides the framework for the new approach to adoption, which is to be complemented by secondary legislation.

³ 1989 c.41.

⁴ 2000 c.14.

⁵ The definition of couple in section 144(4) of the 2002 Act has been amended by the Civil Partnership Act 2004 (2004 c.33) to include a civil partnership.

Early implementation

8. In accordance with commitments made by Ministers during the passage of the 2002 Act through Parliament, the 2002 Act included provisions to amend the existing Adoption Act 1976⁶ to enable important elements of the new adoption framework to be implemented in advance of the full implementation of the 2002 Act (see Schedule 4 of the 2002 Act).
9. In June 2003 the Intercountry Adoption (Hague Convention) Regulations 2003⁷ and Adoption (Bringing Children into the United Kingdom) Regulations 2003⁸ came into force. These Regulations put in place the necessary provisions to give effect to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption concluded at the Hague on the 29 May 1993 (“the Hague Convention”) and provide an increased level of protection to children coming into the UK from other countries.
10. The first phase of the adoption support services framework was implemented on 30 October 2003 when the Adoption Support Services (Local Authorities) (England) Regulations 2003⁹ came into force. These Regulations give adoptive families an entitlement to receive an assessment of their adoption support needs and give birth relatives an entitlement to receive an assessment in relation to support for contact arrangements. They also require local authorities to make arrangements for the provision of a range of adoption support services, including financial support, and to appoint an adoption support services adviser to act as a first port of call for enquiries and signpost families to services.
11. The independent review mechanism in respect of qualifying determinations made by adoption agencies, where they consider 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 was introduced in April 2004 when the Independent Review of Determinations (Adoption) Regulations 2004¹⁰ came into force.
12. As the early implementation relates to the current Adoption Act 1976 scheme for adoption, similar provision in secondary legislation needs to be made in the context of the 2002 Act scheme for adoption in respect of those elements of the Act which have been implemented early.
13. The annex summarises the position regarding implementation of amendments to the Children Act 1989 made by the 2002 Act which relate to areas other than adoption and special guardianship.

⁶ 1976 c.36.

⁷ SI 2003/118.

⁸ SI 2003/1173.

⁹ SI 2003/1348.

¹⁰ SI 2004/190 as corrected, and as amended by SI 2004/1081 and 2004/1868.

Implementation

14. The statutory instruments necessary to implement the 2002 Act are to be made in two main stages. The first series of statutory instruments will be as follows, and each will be accompanied by an individual explanatory memorandum setting out the detail of the SI, and a regulatory impact assessment:

- **The Adoption Agencies Regulations 2005** will provide for the duties agencies will have in relation to arranging adoptions under the 2002 Act, including agency arrangements for adoption work, considering whether a child should be placed for adoption, approval of prospective adopters and whether a particular child should be placed with prospective adopters.
- **The Adoptions with a Foreign Element Regulations 2005** will provide additional requirements for, and set out additional procedures in relation to, the adoption of children from abroad by British residents and the adoption of children in England and Wales by persons resident abroad. This includes adoptions falling within the scope of the Hague Convention and non-Convention adoptions.
- **The Suitability of Adopters Regulations 2005 (affirmative)** will prescribe the matters which must be taken into account by an adoption agency in preparing reports on and determining the suitability of a person wishing to adopt a child.
- **The Restriction on the Preparation of Adoption Reports Regulations 2005 (affirmative)** will specify who may prepare reports in specified circumstances in connection with adoption.
- **The Adoption Support Services Regulations 2005** will build on the framework established through the 2003 Regulations, widening the pool of people entitled to an assessment of their need for adoption support services and extending the list of adoption support services that local authorities are required to maintain to explicitly include services to assist with disruption. The 2005 Regulations also further refine the process for assessment of need and for the planning and review of service provision as well as further clarifying the role of the adoption support services adviser.
- **The Adoption Support Agencies Regulations 2005** together with accompanying national minimum standards issued under section 23 of the Care Standards Act 2000 will govern the management and general operation of adoption support agencies, including making provision for their registration.
- **The Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005** will apply to adoptions made after the 2002 Act came into force and will provide adoption agencies with a framework within which they are required to consider certain issues, such as the adopted person's welfare, before making a determination as to whether to disclose sensitive identifying information which would identify persons affected by an adoption.

- **The Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005** will enable registered adoption support agencies and adoption agencies to operate a regulated intermediary service so that adults adopted before the 2002 Act comes into force can obtain information about their adoption and contact between adopted adults and their adult birth relatives can be facilitated where appropriate.
- **The Adopted Children and Adoption Contact Registers Regulations 2005** will prescribe the form of entry in the Adopted Children Register, requirements etc. in relation to registrable foreign adoptions, information for the purposes of the Adoption Contact Register and for obtaining information from the registers and information about adopted persons and their relatives for the purposes of the Adoption Contact Register.
- **The Special Guardianship Regulations 2005** will prescribe the list of special guardianship support services which local authorities are required to maintain, the process for assessing special guardianship support needs, and requirements in respect of the planning, delivery and review of special guardianship support services. The Regulations will also prescribe the matters that local authorities are required to include in the report that the court must receive before it can make a special guardianship order.

15.

The second series of statutory instruments will be as follows:

- **The Independent Review of Determinations (Adoption) Regulations 2005** will provide for the continued operation of an independent review mechanism in respect of qualifying determinations made by adoption agencies under the new scheme for adoption.
- **Adoption Agencies (Prescribed Fees) (England) Regulations 2005** will provide that fees may be charged by adoption agencies for their services in certain circumstances, for example, fees local authorities may charge for the preparation and assessment of prospective adopters who wish to adopt a child who is not resident in this country.
- Regulations made under section 108 of the 2002 Act regarding corresponding provisions in the Channel Islands and the Isle of Man. This will allow us to make the new adoption system work with the adoption system in the Channel Islands and the Isle of Man, for example in terms of mutual recognition of orders.
- Regulations made under section 87 of the 2002 Act prescribing the requirements that ought to be met by an adoption for it to be an “overseas adoption”. An overseas adoption is an adoption of a description specified in an order (to be made under section 87), being a description of an adoption effected under the law of any country or territory outside the British Islands. The status of children adopted under an overseas adoption is recognised by virtue of section 66 of the 2002 Act.
- **Non-Agency Adoptions Regulations 2005** will prescribe the local authority responsible for assessing the suitability of prospective adopters and providing a report to the court where the child is already living with the applicants and they give notice of their intention to apply for an adoption order, such as foster carers or relatives of the child and require the local authority to carry out CRB checks in respect of the applicants.

- Regulations making provision for any necessary consequential and transitional provisions.
- Regulations under section 2(2) of the European Communities Act 1972 to ensure the 2002 Act is consistent with Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services.
- An order (affirmative) made under section 142 of the 2002 Act will amend the statutory adoption pay provisions as a consequence of unmarried couples being able to apply to adopt jointly.

16. The intention is that all of the SIs set out in paragraphs 14 and 15 above will come into force on 30 December 2005.

17. As noted above, the White Paper recommended the establishment of a statutory adoption register – the Adoption and Children Act Register – for which provision was made in the 2002 Act. This provision is not being implemented at present. Ministers have decided to continue with a non-statutory register for the next three years. This will give a stronger evidence base on which to assess the effectiveness of a non-statutory register and the desirability of moving to a statutory register.

Extent

18. Regulations will apply either in England only or in England and Wales. Each individual explanatory memorandum will set out the application of each statutory instrument.

Policy background

19. The total number of adoption orders made in England has declined from 5,657 in the year ending 31 December 2001, to 4,479 in 2003. At the same time, the number of adoptions in respect of looked after children in England has increased from 3,400 in the year ending 31 March 2002, to 3,700 in 2004. The number of applications to adopt a child from overseas processed by the DfES has remained relatively steady at around 300 each year (330 in year ending 31 December 2004).

20. The PIU review of adoption in 2000 and the White Paper *Adoption: a new approach* identified some key problems which meant the needs of looked after children were not consistently being met, including:

- wide variation by councils in the use and practice of adoption;
- to the detriment of children, the adoption process was widely seen as prone to delay, with clear concerns over the consistency, quality and clarity of the process;
- a lack of consistency in the law;
- the review mechanism for those applying to adopt was seen as unfair and not impartial;
- little support was available for adopters; and
- delays in the court processes over adoption.

21. Implementation of the 2002 Act will fulfil the Government's intention to reform adoption law and implement the proposals in the 2000 White Paper which require legislation. The overriding aim of improving the adoption service and promoting greater use of adoption will be furthered by the implementation of the SIs.

Public Consultation

22. There has been extensive public consultation upon the adoption procedures set out in the regulations. The explanatory memorandum to accompany each statutory instrument will give further details of the public consultations.
23. Five consultation packages on draft regulations and draft guidance to be made under the 2002 Act were published in 2003 and 2004. A further consultation document will be issued in early 2005 to cover the key draft SIs in the second series set out in paragraph 15 above which introduce the final changes. The numbers of respondents for each package are listed below. The overall number of written responses was 422.
- Arranging Adoptions and Assessing Prospective Adopters – (115 responses)
 - Adoption Reports and Adoptions with a Foreign Element – (50 responses)
 - Access to Information (including the Registrar General's functions) – (124 responses)
 - Adoption Support and Adoption Support Agencies (75 responses)
 - Care Planning and Special Guardianship (58 responses)
24. The responses to these documents together with the information gathered at 14 regional consultation events and 15 focus groups and numerous other meetings held earlier in the year have informed the development of the Regulations and implementation arrangements. The explanatory memorandum in relation to the individual SIs will provide more detail.

Impact

25. Each Statutory Instrument will have a regulatory impact assessment attached.

Contact

26. Helen Steele, Head of Adoption, 4th Floor, Caxton House, Tothill Street, London, SW1H 9NA.

Annex: Implementation of amendments to the Children Act 1989 that are not adoption or special guardianship related

The Government has already implemented the following key provisions of the Adoption and Children Act 2002:

- On Royal Assent (7 November 2002): provision in respect of local authorities' power to provide accommodation for children in need under section 17 of the Children Act 1989.
- 1 December 2003: parental responsibility for unmarried fathers who jointly register the birth of their child with the mother.
- 1 April 2004: advocacy services for children and young people. Amendment and widening of the application of, the procedure for making representations under that Act and to impose a duty on local authorities to make arrangements for the provision of advocacy services to children or young people making or intending to make representations.
- 27 September 2004: Independent Reviewing Officers, responsible for chairing statutory reviews of all looked after children.
- 31 January 2005: Amendment to the definition of 'harm' in the 1989 Act to make clear that harm includes any impairment of the child's health or development as a result of witnessing the ill treatment of another person.

The remaining provisions will be implemented as follows:

- 30 December 2005: Amendment enabling the acquisition of parental responsibility by a step-parent either by agreement of both parents or a court order.
- 30 December 2005: Amendment enabling local authority foster carers to seek leave of the court to apply for an order under section 8 of the 1989 Act (including a residence order) if the child has been living with them for one year, rather than the current three years.
- 30 December 2005: Amendment enabling courts to make residence orders that have effect until the child reaches the age of 18.
- DfES have consulted on the draft Regulations required to implement the provisions in respect of inquiries by local authorities into representations. Ministers are considering the timetable for implementation in the light of the responses to that consultation.

FULL REGULATORY IMPACT ASSESSMENT (RIA) FOR THE SUITABILITY OF ADOPTERS REGULATIONS 2005

TITLE OF PROPOSAL

The Suitability of Adopters Regulations 2005

PURPOSE AND INTENDED EFFECT OF MEASURE

Objective

The objective of the regulations is to make clear to adoption agencies their duties in relation to what they need to consider when determining the suitability of people to become adoptive parents. They should be applied in conjunction with the Adoption Agency Regulations with which they are closely linked.

During the passage of the Adoption and Children Act through Parliament, considerable concern was expressed about what qualities were or were not fundamental to suitability to adopt and the fact that many adoption agencies were seen to operate 'blanket bans' on groups of people, without considering their individual circumstances. In addition, because the Act allows unmarried couples to apply jointly to adopt for the first time, there was considerable debate about how to ensure that adoption agencies would have due regard to the need for stability and permanence in such couple relationships.

The regulatory framework is designed to safeguard the welfare of children and protect the rights of prospective adopters, by providing for rigour and clarity in determinations of suitability to adopt. The regulations will improve the quality and consistency of the assessment of adopters through a thorough but fair assessment process. This should ensure that unsuitable people are not approved to adopt, suitable people are not 'lost to the system' and that better information gained from the assessment will facilitate better matching for children. It is hoped therefore that this will help to keep children safe and promote confidence in the adoption process, encouraging more prospective adopters to come forward.

The existing regulations about the suitability of adopters form a part of the 1983 Adoption Agency Regulations. These now require updating in terms of policy context, current adoption practice and language used.

Background

This RIA assesses the impact on adoption agencies of the Suitability of Adopters Regulations (the suitability regulations). In order to do this it is necessary to clarify the relationship between the Suitability of Adopters Regulations and the Adoption Agency Regulations.

There are three main stages in relation to the assessment of suitability of adopters. The first stage is the obtaining and gathering of information about the prospective adopters. This is provided for in the Adoption Agency Regulations. The second stage is the preparation of reports which will be considered by the adoption panel. The suitability regulations set out what matters must be taken into account when preparing reports. The third stage is the decision making stage and the suitability regulations set out what must be taken into account when making any decision about

the suitability of prospective adopters.

In particular, the suitability regulations require agencies to have due regard to the need for permanence and stability in couple relationships. The information to be gathered to enable an assessment of this to take place is set out in the Adoption Agency Regulations. The suitability regulations apply to both domestic adoptions and adoptions with a foreign element.

The regulations are made under the Adoption and Children Act 2002, which replaced the Adoption Act 1976 and modernised entirely the existing legal framework for domestic and intercountry adoption.

The regulations will apply to all adoption agencies – 150 local authorities and 32 voluntary adoption agencies in England.

Risk Assessment

A decision to approve someone as a prospective adoptive parent is fundamental to the adoption process and it is therefore essential to ensure, as far as possible, that those who are approved as suitable can keep children safe and have the capacity to meet the often very complex needs of vulnerable children. The need for new regulations, consequent on the Adoption and Children Act, must be seen in historical context. The current regulations governing suitability date back to 1983 but the primary legislation is the 1976 Adoption Act. At that time the majority of children placed for adoption were infants relinquished by unmarried mothers who gave their consent to adoption.

Adoption has changed enormously in the interim; most adoptions now are of children from the looked after system who have been abused or neglected and whose birth parents do not consent. In addition, a small percentage of adoptions each year are of children brought here for adoption from abroad; these children are also extremely vulnerable with many having significant health problems, little information about their history or origins and no family to return to in their country of origin if the adoption does not work out.

In consequence, many children adopted now have complex needs. These may include emotional and behavioural problems, attachment difficulties, special educational needs and health problems.

The challenges they present mean that prospective adoptive parents must have parenting capacity over and above what is generally needed for parenting birth children and even greater care is needed in assessing the suitability of people to undertake this task. The risks consequent on inadequate assessment of suitability are significant. In extreme cases injury or even death of the adoptive children concerned could be the result. About 10% of adoption placements disrupt before or after the adoption order is made with often severe consequences for the children (and the adoptive parents) involved.

In order to widen the pool of prospective adopters available so that there will be more choice of matches for children, the new Act will create a situation where single people, married couples and unmarried couples of the same sex or different sexes can all apply for adoption orders. The Act recognises that adopting children with complex needs will put a strain on relationships of all sorts. It is therefore imperative to place a clear duty on adoption agencies to pay particular attention to the stability and permanence of couple relationships as part of the assessment process.

OPTIONS

Option 1

Do nothing and rely on current arrangements. The current primary and secondary legislation is outdated and dealt with a very different population of children and adoptive parents. It is no longer 'fit for purpose'. The Adoption and Children Act has been passed and needs to be implemented through regulation to deliver Parliament's intentions.

Option 2

Bring forward regulations for England that are less prescriptive, supported by new guidance. Simpler regulations would not deliver the fundamental improvements identified by a number of reviews, requested during an extensive stakeholder consultation process and committed to by Ministers in Parliament. The suitability regulations are very short but provide absolute clarity and consistency for agencies in what they must take into account when determining suitability to adopt.

Option 3

Bring forward regulations for England under the Adoption and Children Act as drafted which will ensure that the new concept of 'suitability' reflects the reality of adoption today. Recent consultation workshops and written responses to consultation have helped to refine what is needed, minimising new burdens without compromising essential safeguards.

COSTS AND BENEFITS

Business sectors affected

The regulations will affect 150 local authorities and 32 voluntary adoption agencies (VAAs) in England.

Benefits

Option 1 – none.

Option 2 – slight reduction in duties and related safeguards. Allowing more discretion on matters such as what to assess in relation to suitability to adopt might lead to unwelcome variation with some agencies cutting corners], approving people who are not suitable and adding to possible risk to children.

Option 3 – the regulations being put forward have been carefully drafted and were broadly welcomed by agencies during the stakeholder consultation process. Option 3 meets one of the fundamental principles of the Act by ensuring that prospective adopters are only approved as suitable after a rigorous but fair, consistent and transparent assessment process. This is in the best interests of both children who need an adoptive home and prospective adoptive parents. It would be quite wrong to approve people as suitable who do not have the capacity to meet the complex needs of children and who will not find that adoptive parenting meets their need to be parents.

New duties and their benefits

Regulation 3 sets out the matters to be taken into account when making reports about suitability in connection with the prospective adopter's report (report to the adoption panel making a recommendation about suitability) and the review report (report to the adoption panel reviewing the suitability of the prospective adopter). Both these reports are new reports clearly structured to give the adoption panel an analysis of aspects of suitability and to give the panel information about changes in the circumstances of adopters which may indicate the need for de-approval.

Regulation 3(a) requires the agency to take into account information derived from the counselling of prospective adopters. This should ensure that those who make formal application to adopt after they have been counselled are really motivated and committed to the task ahead.

Regulation 3(b) requires the agency to take into account information obtained as a consequence of the prospective adopters having undertaken a 'preparation for adoption' process; usually a set of experiential group learning sessions. This should mean that those who continue after the preparation are more likely to complete the assessment process and be equipped to care for children.

Regulation 3(d) requires the agency to take into account all the information specified in Part 1 of Schedule 5 to the Adoption Agency Regulations. The schedule has been completely rewritten to ensure that the information collected about prospective adopters gives the adoption panel a very full picture of prospective adopters, including their strengths and weaknesses, thus enabling them to make a better informed recommendation about suitability.

Regulation 3(e) requires the agency to take into account information about the capacity of prospective adopters to care for a child from a foreign country. It is vital that intercountry adopters understand fully the implications of adopting from abroad.

Regulation 4(1) sets out the matters to be taken into account in determining (or making a decision about) suitability; some of these are new.

Regulation 4(1)(a) requires the agency to take into account the prospective adopter's report. This is a new report in terms of its content, more clearly reflecting the qualities that prospective adopters need nowadays to care for abused or neglected children from the looked after system.

Regulation 4(1)(e) requires the agency to take into account, in the case of adoptions arranged under the Hague Convention, all the information which would be required if the applicants were undertaking domestic adoption. In addition, the prospective adopter report to the panel must advise from which convention country the person wishes to adopt, their eligibility to adopt from that country, additional information which that country may require and an assessment of the suitability of that person to adopt a child from that country.

Regulation 4(2) requires the agency, when determining the suitability of a couple to adopt, to have proper regard for the stability and permanence of their relationship. This will highlight for agencies the fact that any couple relationship, whether people are married or not, will come under intense pressure when an adoptive child joins the family. The most careful assessment of the strength of that relationship is required to ensure that it can withstand the stress of adoption and that the parties will support

each other to give the child the extra parenting that will be required.

Regulation 5 enables the agency to take into account, when making a report or determining suitability, a limited set of information about the prospective adopters in circumstances where the agency has reason to believe that the prospective adopter is unlikely to be suitable to be an adoptive parent. These 'brief assessments' will save much unnecessary work.

Quantifying and valuing the benefits

The benefits of protecting children who may be considered suitable for adoption and of ensuring that all those who wish to adopt are assessed fairly and openly will largely not manifest themselves in monetary terms. The value will be seen in improving the quality of assessments for suitability for adoption and the accountability of decision-making in the adoption process, thus ensuring the safety and welfare of children who are adopted.

In the longer term, there are clearly benefits to ensuring that adoptions succeed and the preparation and accurate assessment of adopters plays a vital role in this. Expenditure on supporting adoptive families is likely to be significantly less than the care provision which would be necessary if an adoption disrupted.

Costs

There is no impact on businesses. The proposals would impact solely on local authorities and the 32 voluntary adoption agencies that currently carry out adoption work. VAAs should be able to recover any additional marginal costs resulting from these regulations from local authorities via the inter-agency fee. In relation to assessments of suitability for intercountry adoption, the present regulations allow adoption agencies to charge 'reasonable' fees to the prospective adopters to cover the cost of the work and the Government understands that most agencies do charge. The average cost of such an assessment is currently about £4000. The fees regulations planned under the new Act will not change this position.

Option 1

None

Option 2

As this would entail minimal change to the current system, few new costs would be involved. However, this option would not provide for the provisions in the 2002 Act nor meet the commitments made by Ministers in Parliament.

Option 3

Most of the suitability regulations are based on current best practice or are strengthening existing requirements on VAAs and local authorities. Our intention through regulation is to ensure that all adoption agencies follow best practice. The new suitability regulations are more detailed than the current regulations and compliance with them may involve some extra costs for those agencies not already applying best practice.

Other key considerations

Clearly there will be a need to ensure agencies and their staff are informed and prepared for the implementation of new regulations; the Government is now planning a programme of training to support implementation of the Adoption and Children Act 2002 by providing training materials and learning opportunities.

Costs to government

Where these regulations require a level of performance beyond that already achieved by existing best practice, or in order to provide safeguards required under the primary legislation, there could be some additional costs to local authorities, which fund their own adoption costs and also pay the inter-agency fee to VAAs. However, this needs to be considered in the light of increased government funding for adoption.

Local authorities have received an overall 42.9% total increase in children's social services resources between 1996-97 and 2003-04. This includes £66.5m over the three years 2001-02 to 2003-04 to secure sustained improvements in adoption services, fund the White Paper implementation agenda and meet the costs of implementing the National Adoption Standards. This funding has been mainstreamed from 2004-05 into the children's services baseline budgets. An additional £70m has been made available from 2003-04 to 2005-06 to fund enhanced adoption support and special guardianship support services.

Costs to others

In the case of inter-country adoptions, adoption agencies have the discretion to charge the adopter for their services, and usually do so. Therefore any rise in these charges is likely to be passed directly to the prospective adopter.

SMALL FIRMS' IMPACT TEST

There is no impact on small businesses. The Government has considered the impact on small VAAs. They will be in a position to recover any increase in costs that do occur, via the inter-agency fee.

COMPETITION ASSESSMENT

As these regulations do not affect private businesses, there are no competition issues.

MONITORING AND REVIEW

Local authorities and VAAs will be required to comply with these regulations. The Care Standards Act 2000 established the National Care Standards Commission (NCSC) and the Welsh Assembly as the registration authorities. The NCSC was an independent and non-departmental public body. From 30 April 2003 the registration authorities assumed responsibility for the inspection and registration of VAAs and the inspection of local authority adoption services in England and Wales. The new Commission for Social Care Inspection (CSCI), which merged the relevant functions of the NCSC, the Social Services Inspectorate and the Joint Review, has carried out these duties since April 2004.

The Government is not anticipating that any significant extra work for the regulating

authorities will ensue from these regulations; as such, it is not expected that these regulations will result in an increase in the fees charged by the regulators to those they regulate. There will be rises in these fees due to the fact that the CSCI is intended to be self-financing in due course; it will therefore need to gradually increase fees until it reaches full cost recovery.

ENFORCEMENT AND SANCTIONS

If these regulations are considered to have been breached, the registration authority will decide what action to take. If the breach was considered to be minor, it is likely the registration authority would note this in its inspection report and send a written warning. If the regulations had been persistently flouted, or the breach was substantial or serious, the registration authority will be able to take enforcement action which it considers to be proportionate to the offence, such as seeking to have a fine imposed, cancellation of registration, or seeking to bring a criminal prosecution.

In addition, the Adoption and Children Act 2002 provides powers for Ministers to intervene in certain circumstances: the appropriate Minister may make an order containing directions to ensure that the local authority complies with the duty within the period specified in the order. Ministers will receive information about the failure of local authorities through a variety of sources, including CSCI. Others are the Comprehensive Performance Assessment system for councils (including their social services functions), the performance assessment framework, based on in-year and end-year monitoring, performance indicators and a range of inspection reports.

These regulations are to be made several months in advance of coming into force. This should provide ample time for adoption agencies to prepare and so reduce the risk of the agencies being in breach of new requirements.

CONSULTATION

The Department for Education and Skills has consulted with other key government interests, including the Department for Constitutional Affairs and the National Assembly for Wales in its development of the regulations.

The suitability regulations were issued for full public consultation together with the Adoption Agency Regulations, with which they are interdependent, for six months. 114 written responses were received. A series of related consultation events played a key role in helping the Government to identify problems and develop improvements in the regulations and guidance.

SUMMARY AND RECOMMENDATION

When the Adoption and Children Act 2002 was passing through Parliament, Ministers committed to bringing forward regulations to put in place the vital safeguards needed to protect the welfare of the child and the rights of parents and prospective adopters. These suitability regulations form part of that commitment.

Together, the regulations for adoption agencies and the regulations for assessing the suitability of prospective adopters provide vital safeguards for the adoption process and Option 3 provides the best prospect of delivering the promised reforms to secondary adoption legislation.

The new regulations are based on current best practice to help ensure that a quality

and consistent service is provided both for children for whom adoption is the plan and for prospective adopters. The extensive and in-depth consultation has helped the Government to strike the appropriate balance between regulation to provide reasonable, proportionate safeguards and appropriate discretion. Overall, these regulations should not impose significant net extra costs. Moreover, VAAs are able - through the inter-agency fee - to recover any new costs that do arise.

MINISTERIAL DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Filkin

25 February 05

..... Date.....

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