

**EXPLANATORY MEMORANDUM TO THE
ADOPTION SUPPORT SERVICES REGULATIONS 2005**

2005 No.691

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 Adoption Support Services Regulations 2005 prescribe the services which are adoption support services for the purposes of the Adoption and Children Act 2002 and specify the description of persons to whom such services must be extended by the local authority as part of their adoption service. They also prescribe which bodies other than local authorities can provide services on the local authority's behalf. The Regulations extend the right to an assessment of adoption support needs to further categories of persons affected by adoption. They set out how those assessments should be carried out and the steps a local authority must take following assessment to notify persons affected by adoption of the outcome of their assessment, and in relation to planning and review of service provision where appropriate.
- 2.2 The Regulations set out the criteria that must be met for financial support to be payable and the considerations that a local authority must have regard to when deciding on the amount of that financial support, including which types of payments require consideration of the financial resources and needs of the adoptive parents and child.
- 2.3 The regulations also include a requirement for every local authority to appoint an Adoption Support Services Advisor and set out the functions this person should perform and the knowledge and experience they must have.

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

- 3.1 None.

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 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 A phased approach has been taken to legislating on duties on local authorities in relation to adoption support. The Adoption Support Services Regulations

2005 replace the Adoption Support Services (Local Authorities) (England) Regulations 2003 made under the transitional powers of paragraph 3 of schedule 4 to the 2002 Act. The 2003 Regulations focused on adoptive children and their immediate circle, to give them the benefit of the new adoption support arrangements as quickly as possible.

- 4.3 The Adoption Support Services Regulations 2005 made under sections 2, 3 and 4 of the 2002 Act extend the adoption support framework to cover everybody affected by adoption and clarify which bodies other than local authorities can provide services on the local authority's behalf. The 2005 Regulations also widen the list of services to be made available by local authorities to explicitly include services in the event of a disruption to the adoption arrangement, and clarify more explicitly which services must be extended to which type of person, following an overarching principle of focusing resources on adoptive families where the child adopted was previously a looked after child.

5. Extent

- 5.1 These Regulations apply to England only.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 The PIU review of adoption in 2000 found that very little support was available for adoptive families once the child had been placed for adoption or had been adopted. The new national framework for adoption support services implemented under the Adoption Support Services Regulations aims to tackle current inconsistencies in provision and ensure that people affected by adoption have access to an assessment of their needs for services in order to ensure that more adoptions succeed and provide the safe and loving homes that vulnerable children deserve.

8. Impact

- 8.1 A Regulatory Impact Assessment is attached to this memorandum. The RIA explains the impact of these Regulations on the public sector.

9. Contact

9.1 Kathryn McManus at the Department for Education and Skills Tel: 0207 273 5223 or e-mail: Kathryn.mcmanus@dfes.gsi.gov.uk can answer any 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
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;

¹ 2002 c.38.

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

³ 1989 c.41.

- 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.

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.

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.

⁶ 1976 c.36.

⁷ SI 2003/118.

⁸ SI 2003/1173.

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.

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.

FULL REGULATORY IMPACT ASSESSMENT (RIA) FOR THE ADOPTION SUPPORT SERVICES REGULATIONS 2005

TITLE OF PROPOSAL

The Adoption Support Services Regulations 2005

PURPOSE AND INTENDED EFFECT OF MEASURE

Objective

The Adoption Support Services Regulations 2005 (the 2005 Regulations) replace the Adoption Support Services (Local Authorities)(England) Regulations 2003 (the 2003 Regulations).

The 2005 Regulations build on the provision of the 2003 Regulations to reflect full implementation of the adoption support services framework provided for by the Adoption and Children Act 2002 (the 2002 Act). The 2003 Regulations partially implement the framework, focusing on the adoptive child and their immediate circle, whereas the 2005 Regulations cover everybody affected by adoption. The 2005 Regulations also introduce some other new requirements to clarify the original policy intention and/or respond to feedback from the consultation on the draft 2005 Regulations.

The 2003 Regulations were made under the Adoption Act 1976 (using transitional powers in Schedule 3 Paragraph 4 of the 2002 Act) so a further set of Regulations is needed for technical as well as policy reasons to reflect full implementation of the 2002 Act and repeal of the 1976 Act.

The key new requirements in the 2005 Regulations:

- reflect the extension of a right to an assessment of needs for adoption support services to: those wishing to adopt a child; and to adopted adults, their parents, natural parents and former guardians (in line with full implementation of the 2002 Act);
- give birth siblings a right to an assessment of their needs;
- clarify the circumstances in which a local authority is responsible for assessments for persons living outside the area: to secure that looked after children adopted remain the responsibility of the placing authority for 3 years from the date of the adoption order and that on-going financial support agreed before the adoption order is made continues to be the responsibility of the placing authority for as long as that family continue to qualify;
- widen the list of services local authorities must maintain to explicitly include services to assist if disruption of the adoption placement/adoption has occurred or is in danger of occurring;
- clarify which services must be extended to which groups of people affected by adoption, in particular to clarify that therapeutic services and services to assist with the continuation of the adoptive relationship and in the event of disruption should be extended to intercountry adoptions;
- clarify the process of assessment of need for financial support;

- clarify which other bodies may provide adoption support services on the local authority's behalf;
- further clarify the adoption support services adviser's role.

Background

The 2002 Act

The 2002 Act overhauls and modernises the whole existing legal framework for adoption and legally underpins the changes in the White Paper *Adoption: a new approach*, published by the Department of Health in December 2000 (which followed the Review of Adoption commissioned by the Prime Minister in 2000).

The new measures in the 2002 Act include a duty on local authorities to make arrangements to provide adoption support services, including financial support, according to a framework to be set out in regulations and a new right to an assessment of needs for adoption support services for those affected by adoption.

The Adoption Support Services (Local Authorities) (England) Regulations 2003 (the 2003 Regulations)

The 2003 Regulations came into force in October 2003, partially implementing the new framework for adoption support set out in the 2002 Act. The 2003 Regulations set out the adoption support services local authorities are required to maintain and procedures for assessment, planning and review. They also require local authorities to appoint an adoption support services adviser.

The 2003 Regulations focus on the adoptive child and their immediate circle, limiting the right to an assessment to an adoptive parent, an adoptive child, or a child of an adoptive parent (and birth relatives or other persons with whom the child has a significant relationship in respect of their need for assistance to support contact arrangements).

The Adoption Support Services (Local Authorities) (England) Regulations 2005 (the 2005 Regulations)

The 2005 Regulations reflect the extension of a right to an assessment to all those affected by adoption on full implementation of the 2002 Act. While the provisions of the 2003 Regulations remain the core content of the 2005 Regulations, the 2005 Regulations build on these as detailed in the **Objective** section above.

Risk assessment

The adoption support services framework is designed to ensure that services are made available to support adoptive families and to equip adoptive parents emotionally and financially to meet the needs of the adoptive child to secure successful adoptions. The framework also provides for birth relatives to have access to the support they need when a child is adopted.

The 2003 Regulations implemented the core provisions of the framework of the 2002 Act. The 2005 Regulations build on that base as set out above to fully implement the framework.

The main risks of not making the 2005 Regulations and therefore not fully implementing the adoption support provisions of the 2002 Act is that some groups - birth families in particular -

will remain unsupported and those affected by adoption will not have access to the full range of support services they need.

OPTIONS

Option 1

Do nothing and rely on the partially implemented framework provided by the Adoption Support Services (Local Authorities) (England) Regulations 2003. This would mean re-making the 2003 Regulations under the 2002 Act, as they were originally made under the Adoption Act 1976.

Option 2

As Option 1 plus use statutory guidance to local authorities to make further recommendations on adoption support provision.

Option 3

Bring forward the 2005 Regulations to fully implement the adoption support provisions of the 2002 Act and make available a framework for adoption support services to cover everybody affected by adoption.

COSTS AND BENEFITS

Business sectors affected

150 Local authorities.

Benefits

Option 1

The 2003 Regulations introduced the key elements of the adoption support framework, to provide a level of consistency in the adoption support services provided by local authorities. This Option would have the advantage of not placing additional requirements on local authorities. However under the 2003 Regulations local authorities only have a duty to provide assessments of need for adoption support services to adoptive children and their adoptive families, (and some others in relation to contact as set out above). They do not bring birth families fully into scope.

The other desired developments to the framework set out above would not be implemented. This option would not therefore meet the policy objectives.

Option 2

Although statutory guidance could recommend that local authorities meet additional requirements and some local authorities might meet these in full and so those living in their area would benefit, there is a risk of guidance being interpreted differently in different areas and therefore being implemented differentially across local authorities (and even not being implemented at all in some areas). Given that one of the objectives of the framework is to provide for consistency in the support services made available to people affected by adoption, wherever they live, this option would not meet the policy objectives.

Option 3

This option would meet the policy objectives in full.

Costs

Option 1

As highlighted above, the main cost of this option would be to exclude important groups who are part of the adoption triangle from receiving assessments of need for adoption support services.

As this option would maintain the status quo it would not place any new financial burden on local authorities.

Option 2

The main cost of this option is that the consistency the 2003 Regulations sought to establish would be undermined. It is likely that some people affected by adoption would not receive a full adoption support service.

(If local authorities were to implement some or all of the recommendations the financial costs should be met by existing resources - see argument for Option 3 below).

Option 3

As set out above, duties under the 2003 Regulations mean that local authorities should have already introduced the greater part of the framework. The 2005 Regulations do place some additional duties on local authorities, and the new duties are important, but they do not represent a significant new burden (see argument below). In meeting the requirements of the 2003 Regulations, local authorities should have established a strong base on which to now build.

The extension of a right to an assessment of needs for adoption support services

Under the 2005 Regulations local authorities are required to undertake assessments for a wider group of people than they were under the 2003 Regulations. Local authorities are only required, however, to undertake assessments in relation to the type of service that must be extended to the type of person being assessed. Given that for the large part local authorities are only required to extend prescribed services to adoptive families (who were covered by the 2003 Regulations) - though they have discretion to extend them more widely as they think appropriate - the new right to an assessment should not be an onerous burden in practical terms.

Clarify the circumstances in which a local authority is responsible for assessments for persons living outside the area

The 2003 Regulations required that the placing authority remained responsible for the assessment of a child they placed for 3 years from the date of placement or until the adoption order is made, whichever was the longer. It was suggested to us that for the sake of clarity it would be better to count from the date of the order. This has the advantage of removing the risk of a sudden break in provision when the order is made without placing a significant added burden on placing authorities (any new burden for placing authorities is of course entirely offset by a reduction in the burden on receiving authorities).

That the local authority that placed the child should remain responsible for on-going financial support agreed before the order is made (whilst ever it is payable) reflects existing good practice and the current policy position - the inclusion of this provision in the regulations is to make the requirement explicit and ensure consistency across areas.

Widening the list of services local authorities must maintain to explicitly include services to assist if disruption of the adoption placement/ adoption has occurred or is in danger of occurring

The widening of the list of services to explicitly include services in the event of disruption should not present a significant new burden. In practice the Government would expect that most local authorities are already delivering these sorts of services as part of 'assistance for the purposes of ensuring the continuance of the adoptive relationship' under the 2003 Regulations. This has been made an explicit requirement to secure consistency across the country.

Clarify which services must be extended to which groups of people affected by adoption, in particular to clarify that therapeutic services and services to assist with the continuation of the adoptive relationship and in the event of disruption should be extended to intercountry adoptions

It is appropriate to include intercountry adoptions within the extension of these specific provisions because they are similar to agency adoptions - in that they generally represent stranger adoptions of a child who would otherwise be subject to care arrangements - and these services are key to supporting these types of adoptions. Given that the numbers of intercountry adoptions are low (around 300 each year) this should not represent any significant new burden for any individual authority.

In relation to all of the above new requirements it is important to note that the 2005 Regulations only compel authorities to assess eligible persons for their needs for adoption support services. The authority then have discretion to decide (acting reasonably) whether to provide a service following an assessment of need, taking into account the circumstances of the individual case and the resources available locally.

Clarify the processes of assessment of need for financial support

The main change here is to explicitly set out the circumstances in which local authorities must take into account the adoptive families financial means when considering providing financial support, when they may disregard those means and when they must disregard means.

The key issue in relation to costs is of course the prescription of circumstances in which local authorities must disregard the adoptive family's means. The provision the Government has made is that where a local authority are providing financial support in relation to legal costs (including court fees) in the adoption of an agency adoptive child (i.e. a child that was previously looked after by the local authority) or where they are introducing an agency adoptive child to his prospective adoptive parent, they must meet the associated costs in full.

In practice, the Government would expect most local authorities are meeting legal costs for agency adoptions already. The current statutory guidance on adoption support requires that local authorities should meet the legal costs of adoptions of children from the looked after system (unless the local authority oppose the order). Making this a requirement in 2005 Regulations has the benefit of securing consistency on this across the country.

Similarly, meeting the costs of introducing an agency adoptive child to his prospective adoptive parents would be current good practice and the Government would not anticipate significant new costs for local authorities arising from making this a requirement in the 2005 Regulations.

Clarifying which other bodies may provide adoption support services on the local authority's behalf

The 2005 Regulations prescribe which bodies local authorities may contract with to provide services on their behalf. The Government would not expect the local authority to incur any significant cost as a result of arranging for services to be provided by another body on their behalf. The Government would expect local authorities to secure provision in this way where it was a cost-effective option, so this position allows them flexibility.

Clarifying the adoption support services adviser (ASSA) role

There are a small number of additional functions prescribed for the ASSA in the 2005 Regulations. The additional functions are consistent, however, with the skills set the ASSA would need to meet the requirements of the 2003 Regulations, the additional functions listed are simply a further clarification of our expectations of the role. The Government would not therefore anticipate this creating any additional costs for local authorities.

Any financial cost associated with new requirements should be met from existing resources. The Government has provided ring-fenced funding over 3 years (for the period 2003-04 to 2005-06) to support the implementation of the framework for adoption and special guardianship support services. For 2005-06 this is just under £32million.

There is a 7.6% growth in total resources for children's social services (FSS and grants) between 2004-05 and 2005-06 with £4,284m available for services for children in 2005-06.

SMALL FIRMS' IMPACT TEST

There is no impact on small businesses. The 2005 Regulations will impact solely upon the 150 local authorities with social services responsibilities in England. The 2002 Act and 2005 Regulations do allow for local authorities to contract out the provision of adoption support services to external providers who are registered as adoption support agencies. The RIA accompanying the Adoption Support Agency Regulations 2005 will discuss the implications of this for the person(s) involved.

COMPETITION ASSESSMENT

As the 2005 Regulations affect only local authorities, there is no impact on competition between firms in the private sector.

ENFORCEMENT AND SANCTIONS

Local authorities will be required to comply with the 2005 Regulations. Compliance with the 2005 Regulations will be inspected as part of the local authority adoption service inspection by the Commission for Social Care Inspection (CSCI). If in practice the 2005 Regulations were not being met in a few respects, it is likely that CSCI would note this in its inspection report and send a written warning. If the 2005 Regulations were persistently flouted and/or substantially or seriously disregarded, CSCI may decide to take enforcement action either in terms of fines or through the courts in terms of a criminal prosecution.

Complaints from service users about adoption support services will be heard in the first instance through the local authority complaints procedures.

CONSULTATION

The Department for Education and Skills has consulted with other key Government interests including the National Assembly for Wales in the development of the 2005 Regulations.

Draft Adoption Support Services (Local Authorities) (England) Regulations and accompanying guidance were issued for full public consultation in May 2004 in accordance with the Cabinet Office guidelines on consultations. 75 written responses were received and feedback on the draft regulations was also provided at consultation events/ focus groups. 84% of those who provided a written response thought the prescribed list of adoption support services appropriate, 70% thought the prescribed bodies with which the local authority can contract to provide services on their behalf was right. Respondents also confirmed it was important that birth siblings be included in the framework and sought further clarification of the position of the different groups in terms of the extension of services (including in particular intercountry adoption) and regarding the role of the ASSA. The Government has tried to respond to these and other detailed points in finalising the 2005 Regulations.

SUMMARY AND RECOMMENDATION

Option 3 meets the objective of ensuring that adoption support services are consistently provided across the country for all those affected by adoption.

Although the 2005 Regulations may introduce some extra costs for local authorities, the Government has provided ring-fenced funding to support implementation of the new framework alongside existing allocated resources for maintaining an adoption service, of which adoption support services are a key part.

MINISTERIAL DECLARATION

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

Filkin..... Date.....13th March 2005

CONTACT POINT

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