

2012 No. 1410

**CHILDREN AND YOUNG PERSONS, ENGLAND AND
WALES**

**The Adoption Agencies (Panel and Consequential Amendments)
Regulations 2012**

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| <i>Made</i> | - - - - | <i>28th May 2012</i> |
| <i>Laid before Parliament</i> | | <i>1st June 2012</i> |
| <i>Coming into force</i> | - - | <i>1st September 2012</i> |

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by sections 9(1)(a), 84(3), 140(7) and (8), and 142(5) of the Adoption and Children Act 2002(a), and by section 1(1), (3)(a), (c) and (d), and (5) of the Adoption (Intercountry Aspects) Act 1999(b), and after consultation with Welsh Ministers(c).

Citation and commencement

1. These Regulations may be cited as the Adoption Agencies (Panel and Consequential Amendments) Regulations 2012 and come into force on 1st September 2012.

Amendment of the Adoption Agencies Regulations 2005

2. The Adoption Agencies Regulations 2005(d) (“the Principal Regulations”) are amended as follows.

3. In regulation 2(1) in the appropriate place insert—

“care order” has the meaning given in section 105(1) of the 1989 Act;”.

4. In regulation 12(1)(c), at the beginning, insert “where applicable,”.

5. In regulation 17—

(a) in the heading, omit “for the adoption panel”,

(b) for paragraphs (2) and (2A) substitute—

“(2) In a case where—

(a) the adoption agency is a local authority and is considering whether the child ought to be placed for adoption, and

(b) either paragraph (2A) or paragraph (2B) applies,

(a) 2002 c.38. For the definition of “regulations” see section 144(1).

(b) 1999 c.18. Section 1 is amended by paragraph 4 of Schedule 2 to S.I. 2011/1740.

(c) By section 16(1) of the Adoption (Intercountry Aspects) Act 1999, any function of the Secretary of State under section 1 of that Act is exercisable only after consultation with Welsh Ministers.

(d) S.I. 2005/389; amended by S.I. 2005/3482, 2007/603, 2009/1892, 2009/1895, 2010/1172 and 2011/589.

the adoption agency may not refer the case to the adoption panel.

(2A) This paragraph applies where—

- (a) the child is placed for adoption by the adoption agency or is being provided with accommodation by them,
- (b) no adoption agency is authorised to place the child for adoption, and
- (c) the child has no parent or guardian, or the agency consider that the conditions in section 31(2) of the 1989 Act^(a) are met in relation to the child.

(2B) This paragraph applies where—

- (a) an application has been made, and has not been disposed of, on which a care order might be made in respect of the child, or
- (b) the child is subject to a care order and the adoption agency are not authorised to place the child for adoption.

(2C) In a case not falling within paragraph (2), the adoption agency must send the information and reports referred to in paragraph (2D) to the adoption panel.

(2D) For the purposes of paragraph (2C) and regulation 19(1A) the information and reports are—

- (i) the child’s permanence report,
- (ii) the child’s health report and any other reports referred to in regulation 15, and
- (iii) the information relating to the health of each of the child’s natural parents,

except that, in a case falling within paragraph (2C), the adoption agency may only send to the adoption panel the documents referred to in subparagraphs (ii) and (iii) if the agency’s medical adviser advises it to do so.”.

6. In regulation 19—

- (a) in paragraph (1) at the start insert “In any case falling within regulation 17(2C)”,
- (b) after paragraph (1) insert—

“(1A) In any case falling within regulation 17(2) the adoption agency must take into account the information and reports referred to in regulation 17(2D), and any other relevant information, in coming to a decision about whether the child ought to be placed for adoption.”,

- (c) in paragraph (2) after “panel” insert “or person on the central list”.

Transitional provision

7.—(1) This regulation applies where—

- (a) an adoption agency has referred a case to the adoption panel prior to the coming into force of these Regulations, and
- (b) the case falls within regulation 17(2) of the Principal Regulations.

(2) In a case where the information and reports referred to in regulation 17(2D) of the Principal Regulations were sent to the adoption panel but the adoption panel has not met to consider the case prior to the coming into force of these Regulations, the adoption agency must withdraw the information and reports from the panel and proceed to make a decision in accordance with regulation 19(1A) of the Principal Regulations.

(3) In a case where the information and reports referred to in regulation 17(2D) of the Principal Regulations were sent to the adoption panel and the panel met to consider the case prior to the coming into force of these Regulations, and—

(a) 1989 c.41. That is, the matters about which the court must be satisfied before making a care order.

- (a) has decided what recommendation to make but has not communicated that recommendation to the adoption agency, or
- (b) is awaiting further information from the adoption agency pursuant to regulation 18(2)(b) of the Principal Regulations, or legal advice pursuant to regulation 18(2)(c) of the Principal Regulations,

the adoption panel must proceed to make its recommendation pursuant to regulation 18 of the Principal Regulations, and the adoption agency must take that recommendation into account pursuant to regulation 19(1) of the Principal Regulations, as if these Regulations had not been made.

(4) This regulation applies in relation to England only.

Amendment of the Adoptions with a Foreign Element Regulations 2005

8. The Adoptions with a Foreign Element Regulations 2005(a) are amended as follows.

9. In regulation 10(a)(ii)—

- (a) in paragraph (aa) for “17(2) and (3)” substitute “17(2D) and (3), as appropriate”, and
- (b) in paragraph (bb) after “(placing child for adoption)” insert “, where applicable,”.

10. In regulation 38—

- (a) in paragraph (2) at the start insert “In a case falling within regulation 17(2C) of the Agencies Regulations or the corresponding Welsh provision,”,
- (b) in paragraph (2) for “17(2)” substitute “17(2D)”, and
- (c) after paragraph (2) insert—

“(3) In a case falling within regulation 17(2) of the Agencies Regulations or the corresponding Welsh provision, the adoption agency must consider—

- (a) if received, the Article 15 Report; and
- (b) their observations on that Report together with the reports and information referred to in regulation 17(2D) of the Agencies Regulations or the corresponding Welsh provision

in deciding whether the child should be placed for adoption in accordance with the Convention.”.

11. In regulation 48(d)—

- (a) in sub-paragraph (i) for “17(1) and (2)” substitute “17(2D)”, and
- (b) in sub-paragraph (ii) after “18” insert “, where applicable,”.

28th May 2012

Timothy P Loughton
Parliamentary Under Secretary of State
Department for Education

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Adoption Agencies Regulations 2005 (“the Principal Regulations”), which make provision about the exercise by adoption agencies (that is, local authorities and

(a) S.I. 2005/392, amended by S.I. 2005/3482, S.I. 2009/2563 and S.I. 2010/1172.

registered adoption societies) of their functions in relation to adoption under the Adoption and Children Act 2002. They come into force on 1st September 2012.

The Principal Regulations require that, when an adoption agency is considering adoption for a child, the agency must refer the case to an adoption panel, which must then make a recommendation to the agency as to whether the child should be placed for adoption.

Section 22(1) and (2) of the Adoption and Children Act 2002 provides that, where an adoption agency is a local authority and decides that a child should be placed for adoption, and the criteria set out in either of those provisions are met, the local authority must then apply to the court for a placement order.

These Regulations change the process in cases where the adoption agency is considering whether the child ought to be placed for adoption in circumstances where, if they decide that the child should be so placed, section 22(1) or (2) will apply. In those cases the adoption agency is now prohibited from referring the case to the adoption panel before making its decision.

The Adoption Agencies (Wales) Regulations 2005 make provision in relation to Wales about the exercise of adoption agencies' functions in relation to adoption. Corresponding amendments will be made to those Regulations with effect from 1st September 2012.

As a result of changes to both the Principal Regulations and the Adoption Agencies (Wales) Regulations 2005, these Regulations also make consequential amendments to the Adoptions with a Foreign Element Regulations 2005, which extend to England and Wales and make provision about adoptions with a foreign element under the Adoption (Intercountry Aspects) Act 1999 and the Adoption and Children Act 2002.

An impact assessment has not been prepared for these Regulations because no impact on the private, voluntary or public sectors is foreseen.

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£4.00

E3573 06/2012 123573 19585

ISBN 978-0-11-152492-3



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