

# Adoption Guidance

Adoption and Children Act 2002

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## Foreword

We all know that children thrive and are happiest when they live as part of a stable family. When it is not possible for a looked after child to return to live with their birth parents, even with support, they need an alternative that is right for them.

One of the most successful ways in which those children can achieve stability, love and support is through adoption. We know that in the vast majority of cases adoption works. Education and health outcomes are as good as for children growing up with their birth parents.

It is therefore very disappointing that fewer children for whom adoption is the right plan are currently being found new families. I fear that after improvement following the 2002 Adoption and Children Act we are losing momentum.

I want to raise the profile of adoption and to help remove obstacles, whether real or perceived, so that children who would benefit from an adoptive family can experience a happier childhood and loving family. That is why I have set up a Ministerial Advisory Group on Adoption to provide expert advice on a range of practical proposals to improve and share good practice.

I have also written to directors of children's services and lead members to emphasise the importance of adoption and to ask them to do everything possible to increase the number of children appropriately placed for adoption, and to improve the speed with which decisions are made. I am not talking about the old "numbers game", but reassessing whether adoption would be right for children who they may have overlooked in the past, such as children who have been in care for a long time, older children and children with disabilities.

I want local authorities to see adoption as one of the possible permanence options for many more children as soon as it is decided that a child will probably not return to their birth parents. And I want them to look hard at how they deal with people who enquire about adoption. We cannot afford to lose potentially suitable parents simply because they are not needed by the particular agency they approach. These people should be directed instead to another agency, so that across the country we can increase the pool of prospective adopters. It is also essential that agencies do not reject people before their suitability to adopt is assessed because they are, for example, single, older or not of the same ethnicity as the children needing adoptive families.

I want to move away from the situation where children are kept in care for a long time simply to find a family of the same ethnicity when a suitable family of a different ethnic background is available who can meet their other needs. To say the obvious, parents from one particular background can be loving, sensitive and successful

adoptive parents for children from very different backgrounds and that must be our primary consideration. Local authorities must consider all of the child's needs and not place the issue of ethnicity above everything else, though this must be taken into account. I know that children tend to do well when placed with a family who shares their ethnic or cultural background, but I know also that delay can have a very detrimental effect. It reduces the child's chances of finding a family and has negative consequences on their future development. If there can be an ethnic match that's an advantage, possibly a very significant one. But, it should never be a "deal-breaker".

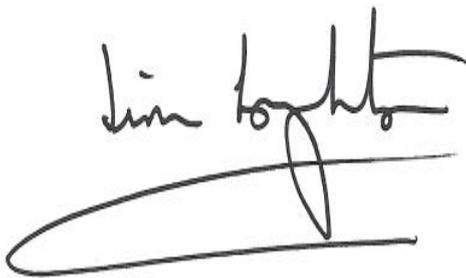
There are many dedicated and effective professionals working in the adoption sector, and much good practice. I want to see all local authorities delivering to the standard of the best, with good practice shared widely, to help benefit more children. This should include making full and effective use of the voluntary sector, adoption consortia and the Adoption Register. Many voluntary adoption agencies specialise, and are successful, in finding families for children who are perceived as difficult to place. These can include black and minority ethnic children, older children, children in sibling groups and those with disabilities. And there is clear evidence that there is little difference in the cost of placing a child with the local authority's own adopters and adopters from a voluntary adoption agency. In many cases, it will yield savings for the local authority and free up a fostering placement, whilst providing an appropriate and timely permanent placement for the child.

For the large majority of children their adoption is a success, but I recognise that for some children this is not the case and they return to care. It is vital that everything possible is done to increase the likelihood of adoptions succeeding. Local authorities need to consider carefully the support children and families need.

Finally, I want adoption agencies and adoption support agencies to continue providing a good service to adopted adults who want to find out more about their past, and to provide a sympathetic intermediary service to them and their birth families.

I recognise that improving the adoption service goes beyond the work of adoption agencies. The Government is currently conducting a review of the family justice system to examine its effectiveness and see what improvements need to be made. We have also asked Professor Eileen Munroe to look at the whole issue of child protection, with a focus on strengthening the social work profession by enabling them to make well-informed judgments. These may have implications for adoption in the future.

I am also pleased to be able to publish updated statutory guidance that reflects the findings of the *Adoption Research Initiative* and advice from the courts. The guidance is an important element in our programme of work to support adoption agencies continually to improve services for adopted children and children who would benefit from adoption.

A handwritten signature in black ink, appearing to read 'Tim Loughton', with a large, sweeping underline stroke.

Tim Loughton, MP  
Parliamentary Under-Secretary of State for Children  
22 February 2011



## Introduction

1. The importance of family life to a child cannot be overstated. It is the fundamental right of every child to belong to a family; this principle underpins the 1989 United Nations Convention on the Rights of the Child which the United Kingdom ratified in 1991. Where children cannot live with their birth parents for whatever reason, society has a duty to provide them with a stable, safe and loving alternative family.
2. It is important to remember that delay can have a significant effect on achieving permanence for children. That is why the legislation makes clear that delay in coming to decisions, and in the subsequent stages of the process, is likely to prejudice the child's welfare. Research<sup>1</sup> shows that delay in the adoption process can have negative consequences for the child's psychosocial outcomes and reduces the likelihood of finding an adoptive family.
3. Improving the adoption service means, as part of this, improving the family justice system. The Government has agreed to continue the Family Justice Review to examine the effectiveness of the family justice system. It has also asked the Munro review to look at the whole issue of safeguarding, with a focus on strengthening the social work profession, to allow them to make well-informed judgments.
4. This refreshed and improved statutory guidance is another important element in the Government's programme of reform to support adoption agencies to remove barriers to adoption and reduce delay, and continually to improve their adoption services

### Making the adoption process work well

5. We know how successful adoptions can be. Experience and research has made clear the factors that make the adoption process work well for the child, birth parents and adoptive parents:
  - actively promote adoption. The local authorities that are most successful in finding adoptive families for looked after children will generally be those with a very clear care planning process that always considers adoption as a possible permanence option and not an option of last resort;
  - encouraging people to come forward to adopt. Prospective adopters are important and they must feel valued, respected and supported;

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<sup>1</sup> Selwyn, J., Sturgess, W., Quinton, D., and Baxter, K. (2006) Costs and outcomes of non-infant adoptions, London BAAF.

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- avoiding delay in the adoption process, including starting the family finding process as soon as adoption becomes the plan following a statutory review. Any delay which prevents the needs of the child from being met is unacceptable. Legislation makes clear that delays in coming to a decision, and in the subsequent stages of the adoption process, are likely to prejudice the child's welfare. Chapters 2-5 and 8 of this guidance are particularly relevant;
- taking the fullest account of the views and wishes of the child. This is covered in detail in chapter 2;
- placing a child with a prospective adopter who can meet most or all of the child's identified needs. Any practice that effectively stops a child from being adopted because the child and prospective adopter do not share the same racial or cultural background is not child-centred and is unacceptable;
- providing an effective adoption support service;
- effective collaboration with the local authority's other social services and with voluntary adoption agencies so that services may be given in a co-ordinated manner. This avoids delay and duplication;
- developing and sustaining constructive links between adoption and looked after children's teams and the courts in order to minimise delays in court proceedings;
- a practical and balanced understanding of the circumstances in which special guardianship may be more appropriate than adoption and how to manage the different processes and legal requirements.

## The Legislative Framework

6. The Adoption and Children Act 2002 (the Act) is the principle piece of legislation governing adoption in England and Wales. It has been in force since 30 December 2005, and has been amended by other legislation since 2002. While the Children Act 1989 sets the general framework for the support of children in need and planning for their future if they become looked after, the Act provides the framework for implementing plans for adoption. Much of the detail of the adoption system is set out in regulations; a list is on the National Archives Legislation website and the Department for Education website.

### Needs and welfare of the child

7. Section 1 of the Act places the needs and welfare of the child at the centre of the adoption process. It makes the welfare of the child the paramount consideration for a court or adoption agency in all decisions relating to adoption, including whether to dispense with a parent's consent to adoption. It provides under section 1(4) a welfare checklist that must be applied by a court or adoption agency.

8. Section 1(2) sets out the general and overriding duty on a court or adoption agency: that in coming to any decision relating to the adoption of a child the paramount consideration should be the welfare of the child, throughout their life. Adoption agencies must be very aware of where delays may occur and ensure that their own internal procedures do not inadvertently contribute to this. A day here and a day there may not mean, in themselves, very much in terms of delay, but added together the time lost can be substantial. It must be remembered that time is not on the side of the child.

9. It is therefore essential that an adoption agency, insofar as is reasonably practicable, involves and consults the child at all stages of the adoption process, ascertaining and taking into account their views in a way which is sensitive to, and consistent with, their age and understanding. Section 1(4)(a) of the Act places a duty on a court or adoption agency to have regard to the child's ascertainable wishes and feelings about adoption (considered in the light of the child's age and understanding).

### The provision of an adoption service

10. Section 3 of the Act places a duty on local authorities to maintain an adoption service within their area, and sets out the minimum facilities that must be made available in the provision of the service. The local authority is not obliged to provide all the facilities itself but may make use of services provided by voluntary adoption agencies and adoption support agencies, or other suitable service providers who are permitted to provide the service in question.

11. This guidance, particularly in chapters 1 and 9, sets out some of the matters that a local authority will need to consider in planning its strategy for delivering an adoption service. The local authority's staffing and budgetary plans will need to take account of the duties imposed on it by the legislation, regulations, statutory guidance and the National Minimum Standards for Adoption.

### Offences

12. As part of the framework for safeguarding children in the context of adoption, the Act restricts who can lawfully arrange adoptions, and advertise about adoption. It also imposes restrictions on the preparation of adoption reports, provides safeguards to the confidentiality of adoption records, prohibits certain payments or rewards in connection with adoption, and restricts the bringing of children into the UK and taking of children out of the UK for adoption. It makes provision for the protection of adoptive placements from interruption and the recovery of children unlawfully removed from placement. The Act creates a number of offences in connection with this framework, particulars of which are set out in Annex A. It is important that staff working in adoption agencies, adoption support agencies and children's services departments are aware of the procedures to be followed if they become aware that an offence may have been committed or is likely to be committed.

### Statutory guidance

13. This statutory guidance explains the content of regulations made under the Act, and the duties and responsibilities that they place on adoption agencies. It is issued under section 7 of the Local Authority Social Services Act 1970. This requires local authorities in their social services functions to act under the general guidance of the Secretary of State. As such, the document does not have the full force of statute, but should be complied with unless local circumstances indicate exceptional reasons which justify a variation. The guidance applies to England only and should be read by *everyone* involved in the adoption of children - especially children's social workers - and those who work with adopted adults and birth families.

### Changes to the previous guidance

14. Since the original guidance was published in 2005, there have been no substantial legislative changes, but there are planned changes to adoption panels (see chapter 1). However, there have been changes in case law and the completion of the *Adoption Research Initiative*. This revised guidance benefits from the knowledge and expertise of both Deborah Cullen, who was the principal drafter of this revised guidance, and a wide range of stakeholders representing local authorities, voluntary adoptions agencies, adoption support agencies, the courts, CAFCASS and others. We are very grateful for the time and energy they have given to making this guidance as accurate and helpful as possible to practitioners who will use it on a regular basis.

15. The main changes are:

- a reorganisation of the guidance. Most of the information from the annexes have been incorporated into the main chapters, and the guidance on domestic and intercountry adoption has been separated into two volumes. The intercountry adoption guidance is being revised and will be issued later. In the meantime, the 2005 statutory guidance on intercountry adoption remains in force;
- a new chapter on court proceedings (chapter 8);
- new guidance relating to adoption panels with effect from 1 April 2011. Please note that these changes are subject to Parliamentary approval of the amendments to the Adoption Agencies Regulations 2005;
- updated guidance to take account of recent case law and key messages from the *Adoption Research Initiative*. We have incorporated current circulars into this guidance so that all statutory adoption guidance is in one place;
- a summary of offences and penalties;
- there is no longer guidance on adoption pay and leave, social security benefits and tax credits, but instead hyperlinks to relevant websites e.g. Direct Gov.

### Coverage of the statutory guidance

16. Chapter 1 describes the structures needed by adoption agencies in terms of the establishment of an adoption panel, the appointment of an adviser to the panel and a medical adviser to the agency, who may write adoption reports, the responsibilities of the agency's designated decision-maker and how they should approach a case. It also explains the responsibilities of the adoption agency in dealing with the independent review mechanism (IRM).

17. Chapters 2–5 of the guidance broadly follows the path of a looked after child through to an adoptive placement.

18. Chapter 2 explains the duties of an adoption agency where the agency is considering adoption for a child, including babies relinquished for adoption. It makes clear the importance of keeping to the court timetable so that there is no delay for the child. This chapter also includes guidance around concurrent planning.

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19. Chapter 3 explains the duties of an adoption agency towards prospective adopters, both before and after approval, but before the placement of a child with them. It requires an adoption agency to direct potential adopters to other adoption agencies when they are not needed by that agency, so that nationally we can increase the number of prospective adopters. This chapter requires adoption agencies to ensure that their recruitment strategies do not overlook potential adopters who are older or when their ethnicity and culture is not shared with those of the children waiting to be placed with adoptive parents.

20. Chapter 4 explains the duties of an adoption agency when it proposes to place a child with an adoptive family. It includes guidance on matching arrangements, the use of the Adoption Register, and the importance of minimising delay. It reminds agencies that a child's ethnicity is not the primary consideration in deciding the type of adoptive family for the child; adoption agencies must give *due consideration* to the child's religious persuasion, racial origin and cultural and linguistic background, but should not delay placing a child if an otherwise suitable adoptive family is available.

21. Chapter 5 explains the duties of an adoption agency where it places a child for adoption; when it reviews the child's case; where consent to placement is withdrawn; where a placement is terminated; and in preparing the life story book and later life letter.

22. The remaining chapters cover a range of issues that may arise during and after the adoption process.

23. Chapter 6 contains guidance on the storage of and access to adoption records both before and after adoption, but further detailed guidance on access to adoption records after adoption is contained in chapter 11.

24. Chapter 7 contains guidance on contact issues.

25. Chapter 8 provides guidance on court proceedings for placement and adoption orders, and on the writing of court reports for adoption cases, including non-agency adoptions.

26. Chapter 9 sets out the duties of local authorities for the provision of adoption support services, including assessment for adoption support services and financial support, and the making of an adoption support plan.

27. Chapter 10 explains the regulations with regard to access to information and intermediary services in respect of adoptions which took place before 30 December 2005, when the Act came into force.

28. Chapter 11 contains guidance on the provisions regarding the management and disclosure of adoption information in respect of adoptions where the order was made on or after 30 December 2005.

29. Chapter 12 explains the Registrar General's role in respect of the Adopted Children and Adoption Contact Registers, and provides guidance on agencies' duties in respect of the provision of counselling for those seeking intermediary services or access to information post adoption.

30. Annex A lists offences and penalties under the Act and regulations.

### Practice guidance

31. Practice guidance and tools are available on a range of topics relating to adoption. Although not under a statutory duty to follow practice guidance, we recommend that the materials be used to help adoption agencies and adoption support agencies to improve their practice in adoption.

- *Preparing and assessing prospective adopters (2006)*

This practice guidance is for practitioners assessing the suitability of prospective adopters.

- *Practice guidance on Assessing the Support Needs of Adoptive Families (2008)*

This practice guidance is for practitioners who need to assess the support needs of people affected by adoption.

- *Adoption: Access to information and intermediary services (2008)*

This practice guidance is for practitioners working with adopted adults and birth relatives who wish to find out about an adoption, and who may wish to trace and establish contact with their birth relatives through the provision of intermediary services.

### Adoption Research Initiative (ARi)

32. Over the years, there has been a wealth of research conducted on adoption. In 2004, the Department for Education and Skills commissioned further research through the *Adoption Research Initiative*. The research evaluates the implementation of the Act and its impact on outcomes for children. The seven research studies, outlined below, focused on permanence planning and decision-making, linking and matching, adoption support and adoption costs.

#### *The characteristics, outcomes and meanings of four types of permanent placement*

This study compared four types of permanent placement for looked-after children: carer adoption, stranger adoption, long-term foster care and Special Guardianship. It also investigated the outcome of placements for children for these various types of placements, except those for Special Guardianship. The research provided new data on which children, in which circumstances, may benefit from each type of placement.

#### *Protecting and promoting the well-being of very young children.*

This study explored whether very young children with similar needs or at similar risk of significant harm were looked after by some authorities, but remained at home with family support in others. It examined the reasons for variations found.

#### *An investigation of linking and matching in adoption*

This study mapped adoption agencies' policies and approaches to linking and matching children to prospective adopters. It described and classified agencies' current approaches and compared their relative effectiveness, outcomes and costs. In addition, the study identified the indicators of a good match and suggested ways in which matching can be improved

#### *Pathways to permanence for children of black, Asian and mixed ethnicity*

This was a comparative study of planning and decision-making by professionals as it affects the progress of black and minority ethnic (BME) children, and non-BME children, towards permanent placements. The outcomes of placements for children were compared.

### *Researching adoption support*

This study mapped, costed and evaluated services that support face-to-face contact after adoption, and those that support the birth parents and families of adopted children. The study explored the possible links between outcomes for service users, and service provision, service costs and case factors.

### *Enhancing adoptive parenting*

This study explored which programme was more effective at enhancing adoptive parenting - either a cognitive behavioural parenting programme or an educational programme about parenting special needs children when added to the standard service.

### *Adoption and the interagency fee*

This study explored the costs for local authorities and voluntary adoption agencies of recruiting and preparing prospective adopters, and placing children in adoptive families. It also looked at the costs of providing adoption support and the overheads for adoption agencies.

### Cancellation of statutory guidance and circulars

33. The following statutory guidance and circulars are now cancelled:

- Adoption and Children Act 2002 statutory adoption guidance (in respect of domestic adoption) published by the Department of Health in 2005
- LAC(2004)27: *The Adoption Register for England And Wales: New Arrangements* - dated 22 November 2004
- LAC(98)20: *Achieving the Right Balance* – dated 28 August 1998
- CI(99)6: Care Proceedings: Amendment to LAC(98)20 – dated 25 June 1999

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## Chapter 1: Adoption agency arrangements

**This part of the guidance explains the duties of adoption agencies for establishing and operating its adoption panel and other procedural requirements.**

### Agency policies and procedures

1. The adoption agency is required by Regulation 7 of the Adoption Agencies Regulations 2005 (AAR) to prepare and implement a written policy and procedural instructions which govern the agency's and the adoption panel's functions. It is important that these accurately reflect the agency's statement of purpose. In preparing these instructions, the agency is to consult the panel and, in respect of arrangements for access to, and disclosure of, health information, the agency's medical adviser as required by AAR 9.2. The agency is also required to keep its policies and procedures under review and to revise them, where appropriate.

2. The agency should provide its staff with opportunities to contribute to the drafting of its written policy and procedures. It should ensure that its staff and the adoption panel are provided with the policy and procedures documents that govern their responsibilities.

3. It is recommended that the policy and procedures document for the adoption panel include:

- details of recruitment, induction, training and performance review of panel members;
- a panel membership agreement. That is a signed document which sets out the mutual commitments of the adoption panel members and the agency;
- arrangements for informing the prospective adopter, the birth parents and, where appropriate, the child, of the panel's recommendations;
- details of how the panel will monitor and report on its work to the agency and others;
- arrangements and timescales for passing the panel's recommendations and minutes to the decision-maker.

4. Parents, prospective adopters and the child, where the agency considers the child is of sufficient age and understanding, should be offered a copy of the agency's

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statement of purpose. All children for whom a local authority has identified adoption as the plan should be provided with a copy of the children's guide to adoption. Local authorities and those voluntary adoption agencies which provide adoption support services to children will also need to provide a copy of the children's guide to those services to any child of sufficient age and understanding.

5. There will need to be a process in place to enable users to make complaints. In the case of voluntary adoption agencies the requirements are governed by regulations 11 and 12 of the Voluntary Adoption Agencies and Adoption Agencies (Miscellaneous Amendments) Regulations and the National Minimum Standards for Adoption. In the case of local authorities their usual complaints procedures will apply to their adoption functions also, and regulation 17 of the Local Authority Adoption Service (England) Regulations 2003 requires records of complaints to be kept.

### **Medical adviser: AAR 9**

6. The agency is required to appoint at least one registered medical practitioner to be the agency's medical adviser. AAR 9 also stipulates that the medical adviser is to be consulted about the arrangements for accessing and disclosing health information, as required or permitted by the AAR.

7. The medical adviser should be consulted where the agency:

- arranges for the child to be examined and obtains a report or reports on the child's health (AAR 15 and AAR Part 2 of Schedule 1);
- arranges for health information to be obtained about the child's parents and siblings (AAR 16 and AAR Part 4 of Schedule 1);
- prepares the child's permanence report for the adoption panel, which is to include a comprehensive summary written by the medical adviser on the child's health (AAR 17);
- obtains a report about the health of the prospective adopter (AAR 25 and AAR Part 2 of Schedule 4);
- prepares the prospective adopter's report for the adoption panel, which is to include a comprehensive summary written by the medical adviser on the prospective adopter's health (AAR 25);

- prepares the adoption placement report for the adoption panel (AAR 31);
- prepares a report to the court where there has been an application for a placement order, as the agency is required to provide a summary written by the medical adviser on the health of the child;
- reviews the child's case, including reviewing the arrangements for assessing and meeting the child's health care needs (AAR 36);
- prepares a report to the court where there has been an application for an adoption order or section 84 order, as the agency is required to provide summaries written by the medical adviser on the health of the child and the prospective adopter.

8. It is recommended that the agency make arrangements for the appointment of its medical adviser with a local primary care trust's<sup>1</sup> (PCT) designated doctor for looked after children. Each PCT should appoint such a designated doctor to assist it to fulfil its responsibilities as a commissioner of services to improve the health of looked after children. The designated doctor is likely to be a senior paediatrician with substantial clinical experience of the health needs of looked after children. In some circumstances, the designated doctor may also be able to fulfil the role of the medical adviser. Alternatively, the designated doctor should be able to recommend another doctor to become the agency's medical adviser. A voluntary adoption agency (VAA) may seek advice from a PCT's designated doctor on arrangements for the appointment of a medical adviser. Chapter 2 provides guidance on access to health information.

### Adoption reports

9. Reports, such as the child's permanence report and the prospective adopter's report, are essential to the fundamental decisions that are made at key points during the adoption process. Such adoption reports should be objective and should be prepared only by individuals who either have the necessary qualifications and experience or are supervised by a person who has. Because of the importance of

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<sup>1</sup> The Coalition Government proposes to replace Primary Care Trusts with GP consortia by April 2012 with GP consortia taking full responsibility for commissioning by April 2013. The White Paper *Equity and excellence: Liberating the NHS (July 2010)* set out the Coalition Government's reforms to the NHS.

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these reports, section 94 of the Adoption and Children Act 2002 (the Act) prohibits the writing or commissioning of reports by someone who does not meet the requirements set out in the Restriction on the Preparation of Adoption Reports Regulations 2005 (ARR).

10. The ARR defines those persons who may prepare or supervise the preparation of adoption reports (ARR 3) and list the reports which fall within the definition of 'adoption reports' (ARR 4).

11. Individuals who do not meet the requirements of ARR 3 and prepare any of the reports set out in ARR 4 would, if convicted, be liable to imprisonment of up to six months, or a fine, or both. It is also a contravention and an offence to ask someone to prepare a report where they would not fall within the prescribed description, or to submit a report by a person who does not fall within the prescribed description. See Annex A and section 94 of the Act for the full details.

12. ARR 3 provides that only persons who fall within one of three categories of the prescribed description may prepare adoption reports. These are:

- a social worker, employed by the agency, who either has the necessary experience or is supervised by a social worker, employed by the agency, who has the necessary experience;
- an independent social worker acting on behalf of the agency who has the necessary experience and is supervised by a social worker employed by the agency who has the necessary experience; or
- a student social worker on an approved course supervised by a social worker employed by the agency who has the necessary experience.

13. The necessary experience is at least three years' post-qualifying experience in childcare social work, including direct experience of adoption work. While the ARR do not define 'direct experience of adoption', this should be experience as:

- a social worker responsible for a child where the agency has decided that the child should be placed for adoption and the social worker has been personally involved in considering whether the child should be placed for adoption, the matching, placement and review stages of the adoption process; and/or

- a social worker responsible for the recruitment, preparation, assessment and support of adoptive families.

14. The social worker who knows the child best should, wherever possible, prepare the report about the child, or those parts of a report that are about the child.

15. For those individuals who are being supervised, their work should be supervised in accordance with their particular skills, experience and development needs. It is not necessary for the supervised social worker to be under the direct line management of the supervising social worker.

16. Where reports are being prepared by social work students, independent social workers or social workers who do not have the necessary experience, the draft report should be considered and discussed during supervision and signed off by a social worker with the necessary experience before the report is submitted to the adoption panel, another agency, or the court.

17. Reports should be legible, clearly expressed and non-stigmatising. The information should be accurate and based on evidence that distinguishes between fact, opinion and third party information. The information should be checked to ensure that it is accurate and up to date before it is submitted to the adoption panel.

18. The person who prepares the report should sign and date it and indicate how they meet the requirements of the ARR. Where the person has been working under the supervision of a suitably qualified social worker, that social worker should sign the report as well, indicating the capacity they are working in and how they meet the requirements of the ARR. Where another worker has also contributed to the report, they do not need to sign it, but the person responsible for the report should indicate what role the other person has played and why they were involved in contributing to the report.

### **Adoption panels**

19. Changes to adoption panels are planned from 1 April 2011, subject to Parliamentary approval. Paragraphs 32, 36 and 45 reflect the planned changes. However, until those changes have been approved the AAR continue to apply. It is intended that there will no longer be fixed panel membership, maximum number of members, tenure of office nor a requirement to have an elected member of the local authority or VAA management representative to act as a panel member. Agencies will be able to appoint more than one vice chair and will be able to retain panel members for as long as they continue to be able to carry out their duties as a panel member.

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20. Local authorities, particularly those dealing with a relatively small number of adoption cases, may continue to establish a joint panel. This ensures that decisions relating to children and prospective adopters are not delayed as the joint panel will meet more often and at a lower cost to the individual local authority.

### **Frequency of panel meetings**

21. Adoption panels must not be the “bottleneck” in the decision-making process. They must meet frequently and be able to meet at short notice before the next scheduled meeting to deal with urgent cases. Where a local authority has difficulties in arranging frequent panel meetings, it should consider setting up a joint adoption panel with one or more other local authorities.

22. Panel clerks and the children’s social workers should liaise closely to identify those children for whom adoption is the plan. Early notification will then allow the clerk to arrange an early panel meeting. This is particularly important where the child is subject to care proceedings since the timing of the panel meeting must dovetail with the court’s timetable. The Family Justice Council issued a guidance paper in July 2008 to assist all those involved in such proceedings to cooperate in order to avoid delay. Similarly, the panel clerk should liaise with the adoption team in respect of prospective adopters and the matching of children and prospective adopters to ensure that there is no delay in panel consideration of these cases.

### **The function of an adoption panel**

23. The adoption panel which each agency must establish performs an important role in assisting the agency to reach the best possible decision in respect of:

- whether a child should be placed for adoption,
- the suitability of prospective adopters, and
- whether a child should be placed with a specific prospective adopter.

They are multi-disciplinary bodies and are intended to have a considerable element of independence from the agency, including (whenever possible) members who have personal experience of adoption. This independence means that they cannot themselves make the decisions, which is the responsibility of the agency; they make recommendations in respect of the three decisions listed above, and the agency’s decision-maker makes the decision after considering the panel’s recommendation. When considering the suitability of a prospective adopter, the decision-maker must also consider the recommendation of an independent review panel.

24. The AAR provide for reports to be supplied to the panel in order for it to make a recommendation. Where the information provided is incomplete, the panel should request the agency to provide additional information. It should not make ‘in principle’

recommendations. The panel can give *advice* to the agency (but it is not required to do so) on:

- contact arrangements;
- whether an application for a placement order should be made;
- the number of children the prospective adopter may be suitable to adopt, their age range, sex, likely needs and background; and
- the provision of adoption support.

25. Courts as well as adoption agencies make decisions in respect of adoption (see chapter 8) so that the agency will have its plans scrutinised by both the panel and the court. Courts do not have any statutory role either in approving prospective adopters or in choosing the adoptive family with whom a child should be placed, but they do make both the decision on whether a child should be made the subject of a placement order and the final decision as to whether an adoption order should be made. A local authority may not apply for a placement order until it has made a decision that a child should be placed for adoption following consideration of the panel's recommendation. Since this decision may often need to be made during the course of care proceedings, the agency and its panel will need to timetable their recommendation and decision to dovetail with the court's own timetable. See paragraphs 21-22 and chapters 2 and 8.

### **Adoption and Permanence panels**

26. Regulations for adoption and fostering make no particular provision for the establishment of 'adoption and permanence' panels. The following is intended to assist where the agency is considering setting up such a panel. If the agency decides to do so, it will need to ensure that the adoption and permanence panel complies with the requirements of the AAR and the Fostering Services Regulations 2011.

27. Under the Fostering Services Regulations, a fostering panel is required to consider and make a recommendation on the suitability of a person to be a foster carer. There is no requirement for the panel to consider and recommend on either the foster plan for a child or a foster match and placement. However, given the significance of long-term fostering many agencies have established adoption and permanence panels, which combine knowledge and experience of adoption and fostering and enable these two permanence options to be considered by one panel.

28. Although it may be clear that a child needs permanence in a new family, the options for achieving this need careful scrutiny and for some children it may be very

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difficult to find a permanent new family. An adoption and permanence panel would be well placed to consider adoption or long-term foster care. It may recommend that the child should be placed for adoption or, if it considers that adoption would not best meet the child's needs, it could advise that the child should be placed into long-term foster care. This reduces the time needed to identify the type of placement that is most likely to meet the child's needs by avoiding consideration of adoption or fostering at separate panel meetings.

### Establishment of an adoption panel: AAR 3

29. Each agency is required to establish at least one adoption panel, except that two or more local authorities may establish a joint panel. There is no provision for VAAs to share panels, but different branches of the same VAA may share a panel.

30. The duty to establish a panel does not apply to VAAs, such as the British Association for Adoption and Fostering (BAAF), which are allowed by AAR 3A to operate without having to establish an adoption panel, since the agency does not make any of the decisions listed in paragraph 23 above.

### Membership of adoption panel

31. AAR 3 stipulates the maximum membership of a panel (10, except in the case of a joint panel, which may have 11 members) and sets out the characteristics and qualifications of eight of the panel members, leaving it to the agency to exercise its discretion in appointing other members up to the maximum number. There is no provision for the appointment of substitutes or alternate members. A new member may only be appointed if there is a vacancy.

32. From 1 April 2011: When setting up an adoption panel the agency must draw the members from a list of persons ("the central list") whom it considers have the appropriate qualifications and/or experience to consider the cases submitted to the adoption panel for its consideration. There is no limit to the number of people on the central list and the same people do not have to be appointed to every panel meeting. It is for the agency to decide how many panel members should sit at each panel meeting, subject to the panel meeting being quorate. But the agency must ensure that the panel is not too large as to make it difficult to chair and intimidating to prospective adopters who attend the meeting. The members of the central list must include (in addition to the independent chair):

- adoption social workers with at least three years' relevant post qualifying experience in child care social work, including direct experience in adoption work. The adoption social workers do not need to be employed by the agency.

- the medical adviser to the adoption agency. Where the agency has more than one medical adviser then all of them may be members of the panel.
- other persons. These will be persons whom the agency consider suitable, including those not employed by the agency to reflect the independent nature of the panel. Suitable members could include specialists in education, child and adolescent mental health, race and culture; and those who have personal experience of adoption. Social workers who do not have experience of adoption may be members of the panel, but they would be in addition to the required adoption social worker.

### The panel chair

33. To strengthen the independence of the panel, the chair must be independent of the agency. AAR 3.7 sets out who is a disqualified person for the appointment as the chair of an adoption panel.

34. The most significant qualities that a panel chair should have are:

- the authority and competence to chair a panel
- the ability to analyse and explain complex information
- the ability to identify key issues, problems and solutions
- excellent interpersonal, oral and written communication skills.

35. The panel chair should have a sound understanding of the adoption process. If they do not possess this knowledge but possess all the other qualities, they may be appointed provided the agency considers that they will quickly develop an understanding of the adoption process and the agency ensures that the panel chair receives appropriate training before taking up their appointment.

### The vice chair

36. AAR 3.4 requires that the agency appoint one member of the panel as vice chair. The vice chair has responsibility for acting as the panel's chair if that person is absent or the appointment is vacant. The vice chair should have the skills and experience necessary to deputise for the chair. These should be similar to the qualities for the panel chair. Unlike the panel chair, there is no requirement for the vice chair to be independent of the agency though this would be preferable where feasible. From 1 April 2011 the agency may appoint a second vice chair.

### Recruitment and performance of panel members

37. The agency should plan and manage the turnover of its panel members. However the agency chooses to organise the departure of panel members and the arrival of new panel members, it should seek to avoid having to replace a large proportion of the panel members in any one year.

38. Before appointing any panel member, the agency should inform them in writing of their performance objectives, which should include participation in induction and training, and safeguarding the confidentiality of records and information submitted to the panel. Panel members should sign an acceptance form to record their agreement to these objectives.

39. Each panel member's performance, including the chair, is to be reviewed annually against agreed performance objectives. The agency's decision-maker should review the performance of the panel chair, and may attend a proportion of panel meetings but only as an observer. Views about the chair's performance should be sought from other panel members, and from those who attend panel meetings, such as prospective adopters and social workers. For all other panel members, the agency adviser to the panel and the panel chair should conduct the performance review.

40. Where an agency identifies that a panel member is not performing to the required standard, perhaps as part of the review process, it should ensure that this is discussed promptly with the panel member with the aim of addressing any development needs through advice and training. If, however, the panel member's performance remains below the required standard and the agency considers that they are unsuitable to remain a panel member, it should inform them that their services are no longer required. The agency must give the panel member written notice of termination, and provide its reasons. In the case of a joint panel, the termination must be with the agreement of all the local authorities whose panel it is.

41. Panel members who wish to resign should be encouraged to give the agency as much notice as possible although one month's written notice is required.

### Adoption panel fees: AAR 6

42. AAR 6 provides that a local authority may pay any member of its adoption panel a fee that the authority considers is a reasonable amount. Although it is not provided for by the AAR, a VAA may pay a fee to any member of its adoption panel.

43. Fees may be paid in proportion to the number of panel meetings that the panel member attends or as an annual fee. The authority may pay a fee to panel

members for the time that they prepare for panel meetings and it may also reimburse them for the expenses they incur in travelling to and from panel meetings.

### **Adoption panel meetings: AAR 5**

44. The panel's business can only be conducted if there are at least five members (six for joint panels) are present, including the chair or vice chair, the adoption social worker and one independent member.

45. From 1 April 2011: The panel's business can only be conducted if there are at least five members (six for joint panels) are present, including the chair or vice chair and the adoption social worker are present. Where the vice-chair has to chair the meeting, and is not an independent member, at least one independent member will need to be present for the panel to be quorate.

46. The panel chair should make it clear that every member's view is as valid as others' and encourage them to participate and contribute to the panel's recommendations.

47. The panel must keep minutes of its meetings and a written record of its recommendations and reasons. The panel chair is responsible for ensuring the accuracy of the panel's minutes, recommendations and reasons. The chair must also make sure that a person who is not a member of the panel fulfils the task of writing these documents.

48. It is important that the panel minutes carefully record the names of panel members attending the meeting, and the names and roles of any other people present at the meeting. The minutes must accurately reflect the discussion and cover the key issues, rather than be a verbatim record of the meeting. Where panel members have serious reservations the panel chair must ensure these are recorded in the minutes and are attached to the panel's recommendation. If the panel cannot reach a consensus on its recommendation, the panel chair has the casting vote. The panel's minutes should clearly set out the reasons why the panel chair had to use the casting vote. The final minutes must be produced promptly and agreed by the panel members and then sent to the agency's decision-maker to allow the decision to be made within seven working days of the panel's recommendation.

49. It should be borne in mind that, for example, the notification of any qualifying determination to prospective adopters (see chapter 3) must be accompanied by full reasons for the decision, and should make clear whether or not the decision-maker's decision is in accordance with the panel's recommendation. In *Hofstetter v London Borough of Barnet and IRM* [2009] EWHC 3282 (Admin) paragraph 133, the court was critical of the agency's practice of telling the prospective adopters that they would be informed of the reasons for the qualifying determination as and when the

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minutes had been prepared. The decision-maker needs to be clear as to whether or not they agree with all or some of the reasons for the panel's recommendation as expressed in the minutes.

50. Arrangements should be made by the agency adviser to the panel for the safekeeping of the minutes and the record. Panel minutes, like other parts of adoption case records, are exempt from the subject access provisions of the Data Protection Act 1998 (ie the person to whom they relate does not have a statutory right of access to the information they contain). For more details, see chapter 6.

### **Notification of the panel's recommendation**

51. Prospective adopters, children and birth parents should be told the panel's recommendation and its reasons immediately after the meeting. However, it must be made clear that the final decision is made by the agency's decision-maker.

### **Agency adviser to the panel: AAR 8**

52. Each agency must appoint at least one agency adviser to the adoption panel, whose duties and qualifications are set out in AAR 8. Where the adoption panel is a joint panel, the local authorities concerned will need to appoint by agreement a senior member of staff of one of the authorities. By agreement, the position may be rotated over time between the participating authorities. The person appointed should be someone with experience as an adoption team leader or someone who has more senior management experience and who has experience of adoption.

53. The agency adviser is not a panel member and cannot take part in the decision-making process. They should attend panel meetings as its adviser. They should be able to contribute to panel meetings by raising issues and providing advice, for example about the agency's procedures and practices. Arrangements should be made for another agency adviser to deputise as necessary.

54. The agency adviser should maintain an overview of the quality of the agency's reports to the panel and liaise with team managers to quality assure the child's permanence report, the prospective adopter's report and the adoption placement report. Where there are concerns about a report, the agency adviser and the panel chair should consider whether it is adequate for submission to the panel.

55. The agency adviser should also update the panel on the general progress of cases it has considered. This is particularly important where the panel's recommendation or advice was not accepted.

## Agency decision-maker

56. The adoption panel makes recommendations to the agency - and not decisions - in respect of the cases referred to it. It is the role of the agency to make a decision and for this purpose it is necessary for the agency to appoint a decision-maker.

57. The agency's decision-maker is a senior person within the adoption agency. VAAs may also appoint a trustee or director. National Minimum Standards 23.17 sets out the qualifications, knowledge and experience decision-maker must have. The person does not have direct management responsibility for the adoption panel but has the authority to make decisions on its behalf as to whether:

- a child should be placed for adoption (AAR 19 );
- prospective adopters are suitable to adopt a child (AAR 27);
- a child should be placed for adoption with a specific prospective adopter (AAR 33); and
- to disclose protected information about adults under section 61 of the Act and regulation 15 of the Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005 (AIR) when determining an application.

There may be more than one decision-maker in an agency. The decision-maker may not delegate their authority to another person.

58. AAR 19.2, 27.1 and 33.2 make it clear that when making a decision no member of the panel may take part in the agency decision following the recommendation of the adoption panel or independent review panel.

59. In reaching a decision the decision-maker will need to consider:

- the exercise of powers under section 1 of the Act;
- all the information surrounding the case including the reports submitted to the adoption panel;
- that the author(s) of the reports comply with the ARRs;
- the stability and permanence of the relationship of any couple under consideration (regulation 4 of the Suitability of Adopters Regulations 2005
- the recommendation and reasons of the adoption panel and the independent review panel; and
- the final minutes of the adoption panel including any minutes from adjourned panel meetings and the independent review panel

before making a considered and professional decision .

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60. The decision-maker must make the decision within seven working days of the recommendation of the adoption panel or independent review panel. The child's parents or guardian and prospective adopter should be informed orally of the agency's decision within two working days and written confirmation should be sent to them within five working days. Where the case had been reviewed by the independent review panel, a copy of the decision must be sent to the contract manager of the independent review mechanism.

61. Where the decision-maker makes a qualifying determination on the suitability of prospective adopters, the letter in chapter 3 must be used.

62. In *Hofstetter v LB Barnet and IRM* [2009] EWCA 3282 (Admin) the court set out guidance for the way in which the decision-maker should approach a case, whether it is a decision based on the agency's own panel's recommendation or one of an independent review panel's recommendation. The court said that it would be good discipline and appropriate for the decision-maker to:

- list the material taken into account in reaching the decision;
- identify key arguments;
- ask whether they agree with the process and approach of the relevant panel(s) and are satisfied as to its fairness and that the panel(s) has properly addressed the arguments;
- consider whether any additional information now available to them that was not before the panel has an impact on its reasons or recommendation;
- identify the reasons given for the relevant recommendation that they do or do not wish to adopt; and
- state (a) the adopted reasons by cross reference or otherwise and (b) any further reasons for their decision.

63. Where the decision-maker is minded not to accept the recommendation of the adoption panel or independent review panel, the decision-maker should discuss the case with another senior person in the agency who is not a member of the adoption panel or independent review panel. The outcome of that discussion, as well as the decision itself and its reasons must be recorded on the prospective adopters' case record and, in respect of a placement case, the child's case record too.

### The independent review mechanism

64. The independent review mechanism (IRM) is a review process that can be used when an adoption agency has made a *qualifying determination*. The Independent Review of Determinations (Adoption and Fostering) Regulations 2009 and the AIR define qualifying determinations as:

- a qualifying determination made under AAR 27.4 is a determination made by the agency's decision-maker when they do not propose to approve the prospective adopter as suitable to adopt a child. A qualifying determination may be given in respect of an application to adopt a child from the United Kingdom or from outside the British Islands after either a brief or full prospective adopter's report has been prepared and considered by the adoption panel and agency or where the agency decides to change an earlier decision to approve the prospective adopter and that too has been considered by the adoption panel and agency;
- a qualifying determination made under AIR 15.1 is a determination made by the appropriate adoption agency's decision-maker in relation to an application under section 61 of the Act:
  - (a) not to proceed with an application from any person for disclosure of protected information;
  - (b) to disclose information against the express views of the person the information is about; or
  - (c) not to disclose information about a person to the applicant where that person has expressed the view that the information should be disclosed.

A review panel whose members are independent of agencies conduct the review process.

### **Liaison officer**

65. Each agency should appoint a liaison officer. Their role is to serve as the main contact between the agency and the IRM. The liaison officer sends to the IRM administrator all the appropriate documentation and ensures the case is referred to the agency's decision-maker after the IRM has made its recommendation. The liaison officer must ensure swift action is taken on requests made by the review panel, for example a request for a specialist medical report and give the IRM notification of the agency's decision.

### Contact details

66. All correspondence and documents must be sent to the IRM's contract manager:

Contact details  
Independent Review Mechanism  
Unit 4  
Pavilion Business Park  
Royds Hall Road  
Wortley  
LEEDS  
LS12 6AJ

Telephone: 0845 450 3956

Fax: 0845 450 3957

Email: [irm@baaf.org.uk](mailto:irm@baaf.org.uk)

Website: <http://www.independentreviewmechanism.org.uk>

The website provides additional information about the IRM.

### Cost of a review

67. There is no cost to prospective adopters applying to the IRM but the agency will pay a contribution towards the cost of the review. The contribution is not subject to VAT and will be reviewed annually. The agency will receive an invoice from the British Association for Adoption and Fostering, the organisation operating the IRM on behalf of the Secretary of State for Education.

### Function of the review panel

68. The IRM is not an appeal process and the review panel is not a higher appellate authority. The function of the review panel is to consider a case anew and to give the agency a fresh recommendation.

### Suitability to adopt a child

69. When reviewing a qualifying determination on the suitability of a prospective adopter, the review panel will consider and take into account:

- the agency's determination, its reasons and, if different to the agency's determination, the adoption panel's recommendation;
- information that was before the adoption panel and any relevant information that arrived after that hearing;
- the prospective adopter's grounds for review and any extra information submitted by the prospective adopter.

There may be occasions when the review panel needs more information or assistance.

70. The review panel has wide powers and may ask the agency to provide, without charge, specific information or to provide assistance to the review panel. For example, the review panel may need a specialist medical report. In such cases, the review panel administrator will pass the request to the agency's liaison officer who is to arrange for the agency's medical adviser to liaise with the review panel's medical practitioner. Where legal advice is required, the review panel will not approach the agency but will seek its own legal advice.

71. The review panel may make a recommendation on whether or not the applicant is suitable to adopt a child. Where a brief prospective adopter's report has been made the review panel may recommend that the agency prepares a full prospective adopter's report in accordance with AAR 25.5 or that the applicant is not suitable to adopt a child.

72. The review panel does not have the legal power to consider the recommendation of an adoption panel on a proposed placement as to whether the child should be placed for adoption with that particular prospective adopter. (AAR 32.1). Where the suitability of the prospective adopter to adopt a specific child was considered by an adoption panel and a qualifying determination made, the review panel will be able to consider and make a recommendation only on the prospective adopter's suitability to adopt *a child* and not *the specific child* in mind.

73. The review panel cannot consider complaints about the adoption agency; these should be considered through the agency's complaints procedure.

### **Disclosure of protected information**

74. When reviewing a qualifying determination on the disclosure of protected information, the review panel will consider and take into account all of the information passed to the agency in accordance with AIR 15.3. There may be occasions when

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the review panel needs more information or assistance. The review panel has wide powers and may ask the agency to provide, without charge, specific information or to provide assistance to the review panel. In such cases, the review panel administrator will pass the request to the agency's liaison officer.

### **Notification of application**

75. The IRM administrator will send a written acknowledgement to the applicant and will seek their consent to the disclosure of all papers including medical information. The applicant will send their consent to the liaison officer.

76. On being notified by the IRM administrator that the applicant has applied for an independent review, the agency must send the documents set out in AAR28/AIR 15 to the IRM administrator, within 10 working days of receiving the notification. No minutes of any adoption panel meeting must be sent to the IRM administrator. This is so that the review panel can consider the case without being influenced by the thinking of the original adoption panel, although of course they will know the reason for the decision-maker's qualifying determination.

77. The IRM administrator will send a copy of the papers to the applicant and will send copies of any additional information provided by the applicant before the review panel meeting to the agency's liaison officer. The exception to this is confidential third party information, such as references, which cannot be shared with the applicant, unless the referees have given their consent.

### **Attending the review panel meeting**

78. The review panel administrator will invite the applicants to attend the review panel meeting and advise them that they may bring a friend or interpreter with them. The role of the friend is to give moral support to the applicant; it is not the role of the friend to speak on their behalf or to act as an advocate. The applicants will be able to ask the review panel questions and to respond to questions posed by the review panel.

79. The review panel administrator will invite the agency to send up to two representatives to the review panel meeting. Whenever possible the original assessing social worker should attend the meeting. This is because the review panel's questioning is likely to focus on information obtained during the assessment. A second representative could be the team manager although some agencies may choose to send a senior manager. It is not appropriate for the decision-maker to attend as it will be their responsibility to make the final decision following the review panel's recommendation. It is important that in these situations that the independence of the review panel is not affected by any discussion of the decision making of the original adoption panel or agency.

80. The review panel will not pay expenses to applicants, their friend/interpreter or to the agency's representatives who attend the review panel meeting.

### **Review panel's recommendation**

81. The review panel will make a written recommendation about the prospective adopter's suitability to adopt a child or, in respect of disclosure of information cases, whether or not the agency should proceed with its original determination. The IRM administrator will send a copy of the review panel's recommendation, its reasons and minutes to both the applicant and agency.



## Chapter 2: Considering and deciding whether a child should be placed for adoption

**This part of the guidance explains the duties of an adoption agency where the agency is considering adoption for a child.**

### Introduction

1. This part of the guidance deals with the duties of the adoption agency when it is considering whether a child should be placed for adoption. In the majority of cases this will involve a local authority making plans for a looked after child and many of the steps that need to be taken will be the same as those involved in planning for any looked after child (see Children Act 1989 Guidance and Regulations: Volume 2: Care Planning, Placement and Case Review particularly chapter 2). In a minority of cases a birth parent or parents will ask a local authority or a voluntary adoption agency (VAA) – possibly before the birth of a baby – to place the child for adoption.

2. The following timescales should generally be adhered to during this part of the adoption process, unless the agency considers that in a particular case complying with a timescale would not be in the child's interests – the paramount consideration must always be the welfare of the child:

- the child's need for a permanent home should be addressed and a permanence plan made at the four month review;
- the adoption panel should receive all necessary information from the agency within six weeks of the completion of the child's permanence report (CPR); and
- the adoption panel's recommendation on whether the child should be placed for adoption should be made within two months of a review where adoption has been identified as the permanence plan.

Where the agency is unable to comply with a timescale or decides not to, it should record the reasons on the child's case record.

3. The agency should monitor its performance against these timescales and make this information available in its six-monthly reports under the National Minimum Standards 25.6.

### Planning for permanence

4. A local authority will need to consider a child's needs for permanence when that child is about to be relinquished for adoption or who is looked after, either because the child is being voluntarily accommodated, is the subject of an interim care order under the Children Act 1989 (the 1989 Act), or care proceedings have been initiated. An appropriate permanence plan should be identified no later than at the second statutory review – the four-month review. This review should consider all the options for best meeting the child's welfare, including the child's needs for permanence – see the Care Planning, Placement and Case Review (England) Regulations 2010 and associated guidance.

### Concurrent planning

5. Concurrent planning is a form of contingency planning first used in England in the late 1990s. This involves placing a looked after child with approved foster carers who, as well as providing temporary care for the child, bring them to regular supervised contact sessions with their parents and other relatives. In addition, the carer spends time with the parents at both ends of contact sessions to update them on the child's progress. This enables a relationship to develop which is supportive to the parents. The agency provides focussed support via a contact supervisor whose role is to advise the parents to help them to change their lifestyle and improve their parenting skills with the aim of enabling their child to return home to them. If this is the outcome, the child will have maintained contact with their parents and have sustained their attachment because of the regular contact visits. But the carers are also approved as adopters so that if the parents' rehabilitation plan is not successful, the child is placed with the carers for adoption, ensuring a continuity of attachment.

6. Concurrent planning is not the same as parallel or twin track planning. In these cases the child remains with their parents or is placed with temporary foster carers while a rehabilitation plan is implemented. At the same time an alternative plan for permanence is developed, which would usually involve a different set of carers, to ensure that it is available as soon as it is clear that rehabilitation is not going to be achieved.

7. Concurrent planning is usually most appropriate when the child is under-two. There is substantial evidence<sup>1</sup> of the serious long-term effects on children under-two who from birth did not receive sensitive, committed and stable care from their primary carer. It is not the right option for all children, for example, those who are already in a stable foster placement but for whom adoption subsequently becomes their plan, or where the need for care is to be short-term, and older children. But it should always be considered, in the context of care planning as a whole, as one of the possible options for achieving permanence for a child.

8. Local authorities should actively consider the advantages of concurrent planning and integrate the approach into their permanency planning arrangements delivered in-house or commissioned from another adoption agency. This may mean:

- training and supporting permanency planning teams and fostering and adoption panels to use the model;
- integrating concurrent planning into care planning protocols;
- dually preparing, supporting and approving foster carers/prospective adopters;
- agreeing local court protocols to support concurrent planning; and
- making support and rehabilitation services available in a timely way for parents.

### Considering adoption for a child

9. Where the first or second review (or any subsequent review) decides that adoption is the preferred option for permanence, an adoption plan must be commenced and the information on the care plan be transferred to the adoption plan. It is at this point that regulation 11 of the Adoption Agencies Regulations 2005 (AAR) provides that AAR 12 to 17 apply, as the agency is clearly considering adoption for the child.

10. Because adoption, unlike any other permanence option, involves the ending of a child's legal relationship with their parents and family and the creation of a

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<sup>1</sup> Monck, E. (2001). *Work in progress: concurrent planning in the adoption of children under eight years*.

Monck, E., J. Reynolds, et al. (2003). *The role of concurrent planning : making permanent placements for young children*. London, BAAF.

Monck, E., J. Reynolds, et al. (2004). *Using concurrent planning to establish permanency for looked after young children*. *Child & Family Social Work* 9(4): 321-331.

Monck, E. R., J. Wigfall, V. (2005). *The Role of Contact in Concurrent Planning: The Experiences of Birth Parents and Carers*. *Adoption Quarterly* 9(9): 13-34.

Ward, H., Brown, R., et al (2010). *Infants suffering, or likely to suffer, significant harm: A prospective longitudinal study*. Adoption Research Initiative study.

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lifelong relationship with new parents, the Adoption and Children Act 2002 (the Act) and the AAR lay down particular procedures to be followed. Not only does the Act require the court to finalise the adoption process through the making of an adoption order (if that is the right decision for the child), but AAR 19 also requires the local authority's decision-maker to decide whether the child should be placed for adoption after the procedures set out in AAR12-18 have been complied with. A decision at the child's statutory review that adoption should be the plan for the child is therefore only the first of many steps in the adoption process, which will lead – subject to the scrutiny of the plan in accordance with the AAR – to a formal ratification of the plan for adoption under AAR 19.

11. These procedures constitute a safeguard for both the child and the parents, but it is important that compliance with them does not lead to unnecessary delay in securing the child's future. The steps that have to be taken in accordance with AAR 12-19 and this part of the guidance should not be considered in isolation, or as sequential steps. The key duties of the adoption agency under AAR 12-19 consist of:

- providing information and counselling to the child and parents (and other family members as appropriate);
- gathering information (including on the wishes and feelings of the child and parents) needed to complete the CPR;
- presenting the report to panel; and
- making a decision following the panel's recommendation.

12. The first two of these duties will be part of a continuous process. The possibility of adoption will not arise suddenly and unexpectedly; in many cases during the early stages of the local authority's involvement there will be a need for 'twin-track' or parallel planning, including concurrent planning. In any case where there is a possibility that adoption may become the plan, it is incumbent on the local authority to ensure that the parents are aware of this possibility and provided with information about its significance, and information about the support available. Thus some of the duties laid out in AAR 14 (counselling and information for parents) will have been carried out before the review at which adoption is identified as the plan for the child, but further counselling will be needed after that point.

13. Likewise, the work that needs to be done in gathering information (AAR15) will have begun from the time of the initial assessment, and will continue with the core assessment and further assessments as part of the review process. This should mean that the compilation of the CPR itself is not a fresh piece of work, but for the most part a bringing together of information that has been gathered already over a period of, probably, several months at least.

14. In many cases, adoption may be identified as a possible permanence option during the course of, or sometimes before the commencement of, care proceedings. It is important that social workers give early notice to the adoption panel clerk for a provisional booking for the adoption panel to consider the case, to the agency's medical adviser where a new health assessment is needed or updated, and to their legal advisers that a placement order may be required. It is vital that the preparation of the CPR and the meeting of the adoption panel dovetail with the court timetable so that there is no delay for the child. In some cases, the referral of the case to the adoption panel may need to await the completion of further assessments ordered by the court. These may be of the parents' capacity to parent their child or assessments of family members' capacity to parent the child. Agreement should be obtained with those involved as to which assessments are to be completed before the case can be referred to the adoption panel.

### **The child's adoption case record: AAR 12**

15. The agency is formally considering adoption for a child once a decision has been made at the child's statutory review or, in the case of a child relinquished for adoption, as soon as the local authority or VAA is considering the parent's request that an adoption plan be followed. Once the decision is made an adoption case record is to be set up and the documents listed in AAR 12 will form part of this record.

16. Adoption case records have a special status under AAR 39-43 and the Disclosure of Adoption Information (Post-Commencement) Regulations 2005. Consequently, a distinction is made between this record and the 'looked after child' case record kept under the 1989 Act or the equivalent record kept by a voluntary agency accommodating a child under section 59(1) of the 1989 Act. This is despite the fact that the information contained in the latter will form the first documents included within the adoption case record.

### **Counselling and informing the child: AAR 13**

17. As far as is reasonably practicable – which will of course be influenced by the age and understanding of the child – the agency must ensure that the child is provided with counselling and information about adoption (including written information) in accordance with AAR 13. This details particular aspects that must be considered with the child. Local authorities are required by regulation 3 of the Local Authority Adoption Service (England) Regulations 2003 to have a Children's Guide which will be useful for this purpose.

18. Counselling should help a child – subject to age, background and development – to understand over time what adoption would mean for them now and

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in the longer term. The child should be helped to understand why the agency considers they should not stay with their own family or current carer and why adoption is the preferred option for their permanence. They also need to know about the implications adoption may have for contact with their parents, brothers and sisters, wider family members and others.

19. English will not be the first language for some children, while others may have communication or learning impairments. Agencies must ensure that someone who can communicate easily with the child provides the counselling. Counselling also needs to be given in a way that is sensitive to the child's religious beliefs or other values and in an environment where the child is able to talk and ask questions in a way that enables them to gain an understanding of their situation.

20. In seeking the child's views, the agency should not give the child the impression that they are being asked to bear the weight of the decision that needs to be made about their adoption. The child should be helped to understand that their wishes and feelings will be listened to and taken into account. The child's views should be recorded. Where the agency is unable to ascertain the child's views, the reasons for this should be recorded on the child's case record. The provision of counselling for the child is a continuing duty on the agency and so, as the child's needs develop over time, it will be necessary to consider the manner and content of further counselling and information as appropriate to the child's needs.

21. In cases where another adoption agency has already carried out some of the duties set out in AAR 13, the agency should take this into account in continuing the child's counselling and should involve the child's former social worker, as appropriate. The agency may consider that it is in the child's interests for certain members of their family to play a part in their counselling. Whatever the involvement of others, the agency remains responsible for ensuring that the counselling meets the child's needs as they develop over time and is given in a way that is sensitive and appropriate to their background, age and understanding.

### **Counselling and informing the child's family and others: AAR 14**

22. As with any other type of planning for a child, it is essential to involve the parents and others who are important to the child. In addition to the consultation that is required under the 1989 Act, AAR 14 imposes a particular duty in respect of counselling and the provision of information when adoption is being considered. Although the Act does not require the formal consent of the child's father (where he does not have parental responsibility) to adoption or placement for adoption, if it is practicable and consistent with the child's welfare, the agency must provide the father with counselling and information. Where the father's identity and whereabouts can be ascertained it should be rare for the agency to decline to offer him information and counselling. See paragraphs 34-43 for those cases where a mother wishes to

conceal from the father the child's birth, or her desire for adoption. In addition, it will be important for the sake of the child's future to have gathered as much information as possible, from both sides of the family.

23. The information to be provided to parents under AAR 14 includes written information, and information about the legal implications of adoption, and the processes involved. Agencies should give the parents opportunities to discuss and to ask questions. It is important that social workers help parents to understand that information they can provide about the child's and their own background and history will be valuable to the child as they grow up. It would be ideal if their consent can be obtained to the sharing of information with the child in the future, eg when they seek information from the agency after reaching adulthood (see chapter 11). The parent's independent support worker also has a role to play in encouraging the parents to provide information for the benefit of the child.

24. As well as explaining the matters set out in AAR 14, the agency needs to be clear about why it considers the child should not be returned to the parent or guardian and should be placed for adoption. The consequences of the adoption process for parental responsibility, for contact with the child and how this will change if the agency is given authority to place the child for adoption should also be made clear.

25. The agency's counselling should include an explanation that the 1989 Act contact obligations would be replaced by the contact arrangements provided for under the Act and by the AAR if the agency obtains authority to place the child. The agency should also explain the right that the parent or guardian and others have to apply for a contact order under section 26(2) and 26(3) of the Act.

26. The agency should offer the parents the services of an independent support worker – someone who can provide advice and support and is either from another adoption agency or adoption support agency or, at least, not a member of the team of social workers who are responsible for the child's case. Where the parents are opposed to the idea of adoption they may refuse to accept counselling from the local authority that is proposing this plan. In such cases the agency should offer to arrange counselling through another agency, and should also encourage the parents to consult their own solicitor as soon as possible. Where the parents have declined to accept counselling the agency should record this, and details of any offers of counselling it has made, on the child's case record. The agency should also ensure that the parents' legal advisers and/or independent support worker are aware of the situation.

27. In many circumstances, parents (and some of their family members) whose children are being considered for adoption may be hard to reach or to engage with because of their own additional needs, including learning difficulties, mental health

problems, or drug or alcohol misuse<sup>1</sup>. Agencies should consider, perhaps in conjunction with specialist services provided for people with these difficulties, imaginative ways of engaging with 'hard to reach' parents.

28. It may be that at a later stage in the process the parents will come to accept the need for their child to be placed for adoption, or their opposition may be modified at least to the extent that they are prepared to discuss the issue. The agency should make every effort to maintain contact with the parents throughout the adoption process, through their solicitor if necessary, and should be ready to offer counselling at any time, even if this has previously been rejected. This is appropriate not only for the parents' sake, but will also assist the agency in being able to provide the child and their adoptive parents with up to date information about the parents and, where appropriate, to consider future contact plans. In due course, if the child is placed for adoption, and an adoption application is made to the court, the parents will (unless they have already given consent and explicitly stated that they wish not to be involved) receive notice of the court hearing. At this point it will be helpful for the adoptive parents and the child to know whether it is likely that the parents will wish to apply to the court for leave to oppose the adoption order.

29. The parents' counselling should be sensitive to their ethnic origins and religious beliefs. English will not be the first language for some parents while others may have communication or learning impairments. Agencies must ensure that someone who can easily communicate with the parents provides the counselling. Agencies may wish to consider collaborating with each other to commission translations of written information appropriate to children and parents within their local community. Any learning disability/sensory impairment should also be recognised and counselling must be sensitive to it.

30. The wishes and feelings of the child's parent, guardian or others should be recorded on the child's case record as this information will need to be included in the CPR and be taken into account during the matching process. This would include:

- where the parent or guardian is willing to consent to the child being placed for adoption and whether their consent would relate to an identified prospective adopter or would be general consent to placement with any prospective adopter chosen by the agency;
- where the parent or guardian rejects the agency's adoption proposal for the child and suggests alternative care arrangements.

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<sup>1</sup> Neil, E., Young, Julie., Cossar, J., Jones, C. and Lorgelly, P. (2010) Supporting direct contact after adoption, Adoption Research Initiative study.

It is important to explain to the parent why it will be necessary to ask them for information about themselves and the child, including health and family health information. The social worker should emphasise how important this knowledge will be to provide current health care, and to enable plans to be made for the child now and in the future, and to satisfy the child's needs for information throughout their life.

32. The agency should explain that any information obtained will be safeguarded, and the circumstances in which it will be shared with others, including the adoption panel, prospective adopter when the child is placed, the court, and, at the appropriate time, the child. The parent should be given information about the provisions of the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005 (AIR) and the child's right to request information when they reach eighteen, and encouraged to consider what information, mementoes and photographs they might wish to leave with the agency to be passed on to the child in the future (see chapter 11).

33. The duty to ascertain and record the wishes and feelings of those close to the child applies to any other person the agency considers relevant. This will include relatives, particularly grandparents and siblings of the child, and current or past carers and other people important to the child. Although AAR 14 does not explicitly require that they be offered counselling, it will be important to ensure that they understand what is proposed, and the implications of adoption. If they wish to be considered themselves as future carers of the child, they should be advised to make this clear as soon as possible, so that an assessment of their suitability can be carried out without delay. If they do not wish themselves to care for the child, but do wish to maintain contact, it is important that their wishes are recorded, and they are informed of their rights to request continuing contact, and to apply to the court if this is not agreed.

34. Where the parents wish to conceal from members of their family the fact of the child's existence, or the fact that they are seeking their adoption, the agency will be faced with a conflict between the parents' right to privacy and the child's right to know, and perhaps the chance of being brought up by their extended family. Where the agency considers that it is likely to be in the child's interests to be given this opportunity, it should encourage the parents to consider the matter from the point of view of the child. Generally, the courts have been reluctant to override a parent's determination for the extended family not to be informed but as with fathers without parental responsibility, agencies should avoid giving parents any undertaking that the birth or the proposed adoption will be kept secret. Each case will have to be considered on its own facts. See the cases of *Z County Council v R* [2001] 1 FLR 365 and *Re C (A child) v XYZ County Council* [2007] EWCA Civ 1206.

### Counselling fathers without parental responsibility

35. The difficulties faced by agencies in counselling fathers without parental responsibility for the child were underscored by the cases of *Re H* and *Re G* (Adoption: Consultation of Unmarried Fathers) [2001] 1FLR 646. In each case the mother wished her baby to be adopted and did not want to disclose the identity of the father without parental responsibility to the local authority. Since implementation of the Act, this question has also been considered by the courts in the case of *Re C* (A child) v XYZ County Council.

36. The court in the case of *Re C* confirmed that the Act does not impose any duty on an adoption agency to make enquiries of a father without parental responsibility, or his family, unless this is in the best interests of the child. The adoption agency, or the courts, has the discretion whether to contact a father without parental responsibility where the mother does not want to disclose his identity. In exercising this discretion, an adoption agency should consider the nature of the child's relationship with the father and the nature and extent of the father's relationship with the child's mother and any siblings of the child. It must also consider whether it would be contrary to Article 8 of the Convention to prevent disclosure of the birth of a child to the child's father. Article 8 guarantees respect for private and family life.

37. In the case of *Re H* the parents had had a relationship: they had lived together and their relationship lasted several years. The father had shown continuing commitment to the elder sibling of the child. The father was entitled to respect for family life with the younger child under Article 8 and to place the child without notice would be a breach of that right. In accordance with the court rules<sup>1</sup> the court held that the father should be given notice and made a respondent with an opportunity to be heard.

38. In the case of *Re G* the parents had never lived together and their relationship did not show de facto family ties and did not come within the concept of family life: the father had no right to respect for family life. It was therefore not necessary for him to be given notice or joined as a party to the proceedings.

39. Whether or not the father without parental responsibility enjoys a right to family life under Article 8 will depend on the facts of the case. As part of its counselling of the mother, the agency should explain its obligations under Article 8 towards a father without parental responsibility in relation to counselling and seeking his views. In *Re C*, the court emphasised the fact that the adoption agency cannot

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<sup>1</sup> The case was heard under the 1976 Act and the Adoption Rules 1984. The Family Procedure Rules 2010 allows the court to direct that any person be made a respondent to proceedings.

simply act on the information given by the mother; it must critically examine what she says and it will be a question of judgment as to whether this needs to be checked or corroborated. It is important that the agency make it clear to the mother that disclosure is a matter for the agency's or court's discretion and therefore that agency must be careful not to give any undertakings as to whether or not the father will need to be notified of adoption proceedings.

40. The paramount consideration for the agency must be the child's welfare. Where the agency considers that it is appropriate – i.e. that it is in the child's best interests - the agency must take all reasonable steps to trace and counsel the child's unmarried father, if his identity is known. In the case of *Re C*, the Court of Appeal held that it was not automatically 'appropriate' for the agency to seek to make contact with the father solely in order to obtain background information.

41. If the father's identity cannot be established, the agency should seek legal advice. Each individual case will need to be considered and legal advice sought. One option would be to seek a direction from the court on whether it is lawful to place the child for adoption without consulting the father. Another option, available only to local authorities, is to apply for a placement order where the local authority considers that the requirements for section 31 of the 1989 Act are met (conditions for making a care order threshold criteria). The latter approach has the merit of enabling the court to consider the circumstances of the case and reach a decision on whether the child should be placed for adoption. Where a VAA is approached in such a case, where there may be grounds for an application for a placement order, it should notify the local authority. If the local authority considers that the child should be placed for adoption, (and the section 31 requirements are met) it should apply for a placement order.

42. If the agency is working with a father who does not have parental responsibility it will be important to ensure that he is aware of his rights to apply for parental responsibility and/or a residence or contact order, and understands the importance of taking action without delay if he wishes to make any application. He should be encouraged to seek legal advice if he is in any doubt about his position.

43. Where the mother gives consent to placement for adoption, or advance consent to adoption, and subsequently marries the child's father, the father would acquire parental responsibility and thus become a parent within the meaning of the 1989 Act. However, sections 52(9) and 52(10) of the Act provide that, if the child is placed, the father is deemed to have given his consent, although he may of course later withdraw it, provided he does so before an application has been made to court for an adoption order. Unless such a father withdraws his deemed consent, the adoption process should continue.

### Relinquishment for adoption of children aged less than six weeks

44. Where a pregnant woman approaches the agency and indicates that her intention is to relinquish the child for adoption, the agency should provide her with pre-birth counselling. This counselling should include explaining the options for the child's future care:

- staying with the parent or parents, with close support where possible. Where the baby and mother are accommodated with foster carers, trained to care for the baby and support the mother, the intention is to help the mother overcome her anxiety and develop her parenting skills and confidence so that she is able to care for the child;
- short-term foster care, with the aim of returning the child with support;
- long-term placement within the child's wider family; or
- placement for adoption.

45. The mother should be given an explanation of the procedures for both placing her child for adoption and the adoption, and the legal implications of adoption. This must include that her consent to her child's adoption will not be effective until six weeks after the child's birth. See paragraphs 88-92 for the consent procedures in such cases. The agency should ascertain and record her wishes and feelings.

46. The agency should also provide pre-birth counselling and ascertain the wishes and feelings of the expected child's father. Where the agency knows the father's identity and is satisfied it is appropriate to do so, the agency should also counsel him and any other person the agency considers relevant to the child, and it should ascertain their wishes and feelings. AAR 14 should be followed, where it is reasonably practicable for the agency to do so.

47. The agency should consider the care options for the child, and where it considers that adoption is the preferred option it should:

- commence the CPR and the health report; and
- arrange for the agency medical adviser and adoption panel to be ready to consider the case as soon as possible after the child is born. In some cases it may be feasible with enough preparation for the adoption panel to be ready to consider the case within a day or so of the birth and the agency decision-maker to make the decision the same day.

48. When the child is born, the agency should counsel the mother, and where it is reasonably practicable and the agency considers it appropriate, the child's father, to ascertain whether they still wish to relinquish the child for adoption. If they do, the agency should as quickly as possible complete the reports needed for the adoption panel to consider whether the child should be placed for adoption and, where this is the case, whether the child should be placed with particular adopters.

### **Obtaining information about the child and the child's family: AAR 15 and 16**

49. AAR 15 and Parts 1 and 2 of Schedule 1 set out the agency's duties in respect of gathering and recording information about the child, and AAR 16 and Part 3 of Schedule 1 do so in respect of information about the child's family. As mentioned in paragraph 13 above, in the case of a child who is already looked after, much of the information that will be needed will already have been gathered, so that it should be possible to comply with the recommended time scale set out in paragraph 2.

### **Health assessment**

50. If the child is already looked after, there will have been a health assessment under regulation 7.1 of the Care Planning, Placement and Case Review (England) Regulations 2010 and a report of this assessment in accordance with those regulations. Once the agency is considering adoption for the child, it should immediately consult its medical adviser to ascertain whether the health information already obtained is sufficient, and sufficiently up to date, to fulfil the requirements of the regulations and the need for full information for the child, the adoption panel and the prospective adopter.

51. Where a new health assessment is needed, this should be organised in sufficient time to allow the medical adviser to complete their part of the CPR. Delay in commissioning any necessary examination and further report could make it impossible to comply with the timescales for the completion of the CPR. If the agency does not have parental responsibility for the child, and the child is too young to consent on their own behalf to a health assessment, the consent of a parent or guardian will be needed. The cooperation of parents will also be needed to obtain the fullest possible information about the health history of the child (including prenatal and neo-natal health) and family. AAR 15.4 provides that if the child is of sufficient understanding and refuses to submit to medical examinations or tests the adoption agency is not obliged to make arrangements for these.

### Access to health information

52. The primary legislation that governs access to health information is the Data Protection Act 1998 (the 1998 Act). This Act and its regulations provide that an application for access to medical health records may be made to the family doctor, for example, by:

- the patient
- a person authorised in writing to make the application on the patient's behalf
- a person having parental responsibility for the patient, where the record is held in England or Wales and the patient is a child.

The latter would include an agency where it has acquired parental responsibility for the child, such as with an interim care order, care order or placement order.

53. The 1998 Act also provides that access shall not be given to the health record that, in the opinion of the record holder, would disclose:

- information likely to cause serious harm to the physical or mental health of the patient, or of any other individual. See the Data Protection (Subject Access Modification) (Health) Order 2000; or
- information relating to or provided by an individual, other than the patient, who could be identified from that information and who has not consented to the disclosure. See section 7(4) of the 1998 Act.

The Department of Health<sup>1</sup> and the British Medical Association<sup>2</sup> have issued guidance on confidentiality and disclosure.

54. As part of their counselling, the agency should explain to the child's parents why it needs access both to the child's medical records and to their medical records and why further examinations or tests could be beneficial. While the parents retain sole parental responsibility for the child, the agency will need their written, informed consent to apply for access to the child's medical records and their written consent to apply for access to their medical records. Health information about the birth parents, their children and other third parties cannot be recorded or shared without explicit consent and there is no secure basis in law for overriding a refusal to give consent.

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<sup>1</sup> Confidentiality: NHS Code of Practice

<sup>2</sup> Confidentiality and disclosure of health information tool kit

55. Where the agency is seeking to obtain the parent's written consent, the agency should emphasise the importance of health information and the central role it plays in anticipating and providing for the child's current and future health needs. The agency should also provide the parents or guardian with reassurances that any information obtained about them will be safeguarded to protect its confidentiality, including written information about its arrangements for protecting information. The 1998 Act requires that data subjects are provided with 'fair processing information'. This consists of information on who holds the data, to whom it will be disclosed, how long it will be held for, what it will be used for, and any other information which may be relevant.

56. Where a parent lacks the capacity to give consent to disclosure of health information about themselves or the child, reference should be made to the code of practice issued under the Mental Capacity Act 2005.

57. In planning arrangements for accessing and disclosing health information, the agency should consult its medical and legal advisers in advance, as they can help to ensure the agency's policies and procedures accord with the 1998 Act and the medical profession's ethical guidelines and practice. The agency should also ensure that it complies with the NHS Confidentiality Code of Practice, which is based on the common law of confidentiality, the 1998 Act, and other areas of law surrounding confidentiality.

### **Child's permanence report: AAR 17**

58. The CPR is prepared for the adoption panel where the agency considers, in the light of all the information it has gathered, that adoption is the preferred option for the child's permanence. This report is one of those identified in the Restriction on the Preparation of Adoption Reports Regulations 2005 (ARR) as demanding particular qualifications and experience of its writer. Guidance about the ARR is given in chapter 1. The social worker, who knows the child best, where possible, should compile the report. However, where they do not have the necessary qualifications or experience to satisfy the ARR, the compilation of the report must be supervised by a social worker with the necessary qualifications, who will also need to countersign the report before it is submitted to the adoption panel.

59. The CPR must include all the information about the child and their family and a summary by the agency's medical adviser on the state of the child's current physical and mental health and behaviour and, if age appropriate, a developmental assessment, their health history and current and future health care needs. The detailed health reports are only submitted to the adoption panel if the medical adviser considers that this is necessary.

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60. The accuracy of this report is essential, since it will not only form the basis on which the panel will make its recommendation but will also assist the agency in matching the child with an appropriate prospective adopter, and will be the source of the information about the child on which the prospective adopter will rely. In due course the child, on reaching adulthood, will be able to request a copy of the report under the AIR and may have to rely on this document as the principal source of information about their pre-adoption history.

61. It is important therefore that the information contained in the report is checked against the original sources of information. Those parts of the report that contain factual information about the birth family should be shared with the relevant family members to enable them to confirm their accuracy and agree to it being passed on to the child in due course. Any such agreement should be clearly recorded on the child's case record. Each of the child's parents should also be shown those parts of the report which set out their views and wishes, and given the opportunity, if they so wish, to express these in their own words. Where writing is not their preferred means of communication, they could be assisted to express their wishes by other means such as an audio-recording. Where the child is old enough, they should also be encouraged to confirm that their views have been accurately stated. The report should make it clear whether the parents have seen the report, or parts of it, and include any comments they have expressed on it.

62. The report must contain an analysis of the options that have been considered by the agency for the future care of the child, and explain why adoption is considered the preferred option. In some cases, particularly those involving older children who may have experienced many problems, it may be that the best chance of finding a satisfactory long-term placement for a child is to keep open the options of placement with either adoptive parents or with long-term foster carers, so that the net may be cast as wide as possible. In the case of *SB v a County Council, Re P* [2008] EWCA Civ 535, the court confirmed that it is permissible for the agency to pursue a dual or parallel plan. This is to be distinguished from concurrent planning. This enables the agency, where it considers the child should be placed for adoption, to start seeking adoptive and foster parents at the same time. In this case the adoption panel will recommend that the child should be placed for adoption while, at the same time, acknowledging that the fostering plan may be pursued.

63. AAR 16, as well as listing the items of information to be included in the report, requires that it contain any other information which the agency considers relevant and helpful. The social worker will need to think carefully about which documents should be sent to the adoption panel. It is not necessarily helpful to the adoption panel to receive hundreds of pages through which they have to sift to find the important information, so a summary of the information, agreed by all parties, should be provided to the adoption panel.

64. Where court proceedings are taking place, it is important that the children's guardian's views are conveyed to the adoption panel, particularly if these differ from those of the local authority. There may also be expert reports available which have been prepared in connection with the court proceedings. Although this may sometimes give rise to difficulties of timing, it is essential that these or a summary (agreed between the local authority's legal adviser and the other parties to the proceedings) be made available to the panel. The advice to agencies set out in the case of *Re B (expert medical reports)* [2008] EWCA Civ 835 is reproduced below. Failure to provide complete information to the panel may result in delay for the child, if the panel is required to adjourn its deliberations in order to receive these.

(1) expert reports which have been filed and served in care proceedings and which address the present and future needs of the subject child (including, but not exclusively, dealing with placement issues) should be provided to members of an adoption panel in advance of the relevant meeting and to decision-makers for pre-reading;

(2) where such reports are voluminous, as a minimum those sections of the reports setting out the experts' opinion, conclusions and/or recommendations should be provided in advance to the members of the panel and to the decision-maker;

(3) a summary of the expert(s)' opinions should only be provided to the panel members and the decision-maker in substitution for the reports if:

- (a) the summary is in writing;
- (b) all parties to the care proceedings agree in writing that the summary is fair and accurate and should be provided to the panel and the decision-maker in substitution for the reports; and

(c) copies of the reports are available at the meeting for the members of the panel and the decision-maker to consult if desired;

(4) a clear, full and accurate minute of the panel meeting should be made during the meeting with particular attention given to:

(a) recording the documentation considered by the members of the panel; and

(b) the questions asked by members of the panel and the answers given by the social worker(s) present; and

(5) the social workers who attend the panel meeting to present the child's case should be invited to approve the record of the note of the questions asked of and answers given by them during the meeting.

### The adoption panel: AAR 18

65. Following referral of a case the adoption panel is required to consider it and make a recommendation on whether the child should be placed for adoption. Where it considers that it has insufficient information it should request the agency to obtain further information and the agency must comply with this request. The panel must also obtain legal advice in relation to the case. This is likely to be particularly important in cases which are already subject to court proceedings, and/or where it is known or expected that the parents will oppose placement for adoption, or where there may be questions about the intentions of a father without parental responsibility or other family members. Advice to the panel may be given orally and in writing. As well as legal advice, the panel may wish to call for advice from those with relevant knowledge, such as the CAFCASS children's guardian if care proceedings are ongoing, or specialists in education or child and adolescent mental health. To reduce delay the agency should liaise with the panel to ascertain what information it is likely to need in advance of the panel meeting.

66. If the adoption panel does recommend that the child should be placed for adoption, it must also consider and may give advice to the agency about:

- the arrangements that the agency proposes in respect of contact; and
- whether an application should be made for a placement order (where the agency is a local authority).

67. As explained below, if the decision-maker accepts the recommendation that the child should be placed for adoption and the conditions in section 22(1) or (2) of the Act apply, the local authority will be required to apply for a placement order. There may be some cases, however, where the local authority has discretion under section 22(3) of the Act whether or not to apply for a placement order and the adoption panel's advice will be valuable here. Section 22(3) provides that if a child is subject to a care order and the local authority is authorised to place for adoption under section 19, then the local authority can opt to apply for a placement order. However, there is no duty on the local authority to do so, unlike cases where there is no parental consent. In some cases, e.g. where the local authority fear parental consent may be withdrawn, the local authority may wish to apply for a placement order.

### Agency decision: AAR 19

68. The agency's decision-maker must make a considered and professional decision as to whether the child should be placed for adoption within seven working days of the adoption panel's recommendation. The decision-maker may express a view on any advice given by the panel with regard to contact or the application for a

placement order, with any views expressed recorded on the child's case record. See chapter 1 for guidance on the action the decision-maker must take in making the decision.

69. If the decision (whether in line with the adoption panel's recommendation or not) is that the child should not be placed for adoption, but the child's review had proposed adoption as the care plan, this will be a reason to convene an urgent review to consider alternative plans.

70. If the decision is that the child should be placed for adoption, the child's social worker should alert the family finding team so that they can step up their search for adoptive parents and the local authority's legal advisers if a placement order is required. Local authorities should not wait until a placement order is made before starting their family finding work. To do so would cause unnecessary delay for the child.

### Adoption Register

71. Agencies are required to refer children to the Adoption Register when they are not actively considering a local match for the child, i.e. being in the process of exploring a potential match with a named prospective adopter. Referrals can be made either when the agency's decision-maker has decided that the child should be placed for adoption or after three months of that decision during which the agency had unsuccessfully sought a local or consortium match. If legal proceedings are ongoing at this stage, and the child is subject to an interim care order, referral to the Adoption Register can be made provided the necessary consents and the court's agreement have been obtained. See the case of *Re K (Child) (Adoption: Permission to advertise)* [2007] EWHC (Fam) 544.

72. Agencies must ensure that the information the Adoption Register holds on the children is up to date. Any change in the child's circumstances must be notified to the Register.

### Application for a placement order

73. An application for a placement order **must** be made:

- if the child is accommodated but no adoption agency is authorised to place the child for adoption;
- if there are care proceedings in train (whether or not the parents are prepared to consent to placement for adoption);

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- if a care order is in existence but the local authority is not authorised to place the child for adoption (section 22(2) of the Act); or
- the parents are not, or one of them is not, prepared to consent to the child being placed for adoption and the local authority considers that the requirements for section 31 of the 1989 Act are met (conditions for making a care order threshold criteria).

The local authority **may** apply for a placement order if there is a care order and it is authorised to place the child for adoption by the consent of the parents under section 19 of the Act. It is important that the local authority's legal team is notified at an early stage to ensure that they dovetail the necessary action with the court's timetable so that there is no delay for the child.

74. If the parents are prepared to consent to the child's placement for adoption, AAR 20 sets out the steps to be taken in obtaining consent, except in cases where the child is under six weeks old, where the procedure set out in paragraphs 88-92 should be followed.

### Consent to placement for adoption

75. Section 19 of the Act provides that a parent may consent to the placement for adoption of their child, and that this consent may be to placement with any prospective adopter chosen by the agency, or to a specific prospective adopter. In the latter case, the consent may (but is not required to) provide that, in the event of the placement with a specific prospective adopter being terminated before an adoption order is made, the agency may place the child with a prospective adopter of its own choosing.

76. Section 20 of the Act provides that a parent, who gives consent to the child being placed for adoption, may also give their advance consent to the making of an adoption order. At the same time they will have the option of making a statement that they do not wish to be informed of any application for an adoption order (although they may retract such a statement later). This situation could arise where a parent has requested their child be adopted and is clear that they wish to have no further involvement with the plans for the child. If such a statement is made, AAR 12 requires that this is recorded on the child's adoption record and at the same time file a copy at court.

77. The agency must explain to the parent the consequences of giving consent to placement, in particular the fact that a withdrawal of their consent will be ineffective once an application has been made for an adoption order (which could be made any time after the child has lived with the prospective adopter for 10 weeks). They should

also ensure that the parent understands the position about contact and the provisions of section 26 of the Act.

78. Where a parent wishes to give consent to the placement of their child with a specific prospective adopter, that person must be identified in the form of consent. There may however be some cases where the prospective adopter's identity is to remain anonymous. That prospective adopter will make use of the procedure in the court rules for using a serial number rather than their name on any notice of the application sent to the parents. In such a case, the characteristics and circumstances of the prospective adopter will have been described to the parents, and it is important that the agency is able to identify them by means of a file reference which is provided to the person responsible for witnessing consent.

79. The agency should explain to the parent the procedure for the formal witnessing of consent. They should provide the parent with contact details for the social worker and any support worker to enable the parent to get in touch if they have any queries, or if they are considering withdrawing their consent. They should also emphasise to the parents the importance of their keeping the agency informed about their own whereabouts. This will benefit not only the parent receiving information about their child's progress, but also the child as it will help avoid possible delays in notifying the parent when the adoption application is made to court.

80. Consent is given on one of the forms A100 to A103 under the Family Procedure Rules 2010 and must be witnessed in accordance with those Rules. Where the parent or guardian who is willing to consent is resident in England or Wales, the provisions of AAR 20 apply, and a CAFCASS officer (if the child lives in England) or Welsh family proceedings officer appointed by the National Assembly for Wales (if the child lives in Wales) will witness consent.

81. AAR 20 requires the agency to request that CAFCASS appoint an officer, or to request that the National Assembly for Wales appoint a Welsh family proceedings officer, to witness the parent's or guardian's consent to placement or to adoption, prior to court proceedings. AAR 20 also stipulates that the agency send with that request the information specified in Schedule 2. The Association of Directors of Children's Services and CAFCASS have agreed a protocol for dealing with consent (Protocol for Children relinquished for Adoption: August 2007).

82. In making the request for a CAFCASS officer to witness consent, the agency should write to the CAFCASS office that is nearest to the parent's or guardian's address.

83. For consent to be effective, the CAFCASS officer will need to be satisfied that the parent or guardian fully understands the consequences of giving consent and

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that they are willing to do so unconditionally (section 52(5) of the Act). The CAFCASS officer will then need to witness the formal signing by the parent or guardian of the consent to placement form, sign the form themselves and then notify the agency in writing, including the consent form with the notification. The CAFCASS officer must keep a copy of the original form.

84. The agency must place the original consent form on the child's adoption case record, and must be ready to provide it to the court - delivering it by hand or sending it by recorded delivery - when the prospective adopter make their application to the court for an adoption order. A copy of the consent form will not be acceptable. Any notice that the parent does not wish to be informed of an application for an adoption order, or withdrawal of such a statement, must also be kept on the child's case record.

85. Where the CAFCASS officer is not satisfied that the parents wish to give their full consent, or has doubts that they fully understand its implications, or considers that they are not competent to give consent, they will be directed by CAFCASS guidance to notify the agency. In these circumstances consent cannot be given, and it will be necessary to make an application for a placement order.

86. Where a parent or guardian lives outside England and Wales and is prepared to give their consent, the agency is required by AAR 20A.1 to arrange for an 'authorised person' to witness the consent. The agency is also required to send to that person the information specified in Schedule 2. AAR 20A.2 stipulates that an authorised person is:

- in Scotland, a Justice of the Peace or a Sheriff
- in Northern Ireland, a Justice of the Peace
- outside the United Kingdom:
  - any person authorised by law in the place where the consent is given to administer an oath for any judicial or other legal purpose
  - a British consular officer
  - a public notary or
  - an officer holding a commission in any of the regular armed forces of the Crown.

87. Once formal witnessed consent is given, the agency is authorised to place the child for adoption. Once the procedures set out in chapter 4 have been complied

with, it will therefore be possible to place the child with a prospective adopter. Even if consent is given, the agency should consider whether it can rely on the parent's consent remaining in place. If there is a question of placing the child outside the British Islands, the procedures set out in the Adoptions with a Foreign Element Regulations 2005 and the guidance on intercountry adoption must be followed.

### **'Consent' where the child is under six weeks old**

88. Section 52(3) of the Act makes it clear that any consent to adoption given by a mother before her child is six weeks old is ineffective. Special provision is therefore made for those cases where it is desirable to place a child as soon as possible, but formal consent to adoption must not be sought before the child is 6 weeks old.

89. Where the agency decision-maker decides that the child should be placed for adoption and the parent has been notified, the agency must not seek at this stage to obtain the formal consents to placement for adoption or to adoption using the prescribed forms under sections 19 and 20 of the Act. But the agency is permitted to ascertain, after careful counselling, whether the parent is prepared to agree to the child being placed for adoption with a prospective adopter identified in any agreement, or with any prospective adopter who may be chosen by the agency, and to enter into an agreement with the agency in the form set out below, see AAR 35.4. This would not apply to any case where care proceedings were in train. In the case of *A Local Authority v GC* [2008] EWHC 2555 (Fam), the court found that a mother who signs an agreement to placement during the 6 week period and then changes her mind, does not need leave to oppose the adoption. A CAFCASS officer should not be asked to witness a consent during the six week period.

90. The agency should provide additional counselling for the parent or guardian where it is seeking to obtain their signed agreement to the placement for adoption of their child aged under six weeks. The agency should make it clear orally and in writing that:

- the parent or guardian retains full parental responsibility until:
  - they give their consent under section 19 of the Act, after the child reaches the age of six weeks
  - a placement order is made or
  - an adoption order is made,
- the parent or guardian may only have contact with the child by agreement with the agency or by order of the court;

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- if the parent or guardian asks for the child to be returned, the child must be returned by the agency unless any of the following orders are applied for or made in relation to the child:
  - an emergency protection order or a care order under the 1989 Act
  - a placement order or an adoption order under the Act,
- after the child is six weeks old, the agency will seek to arrange for them to give their formal consent to the child being placed for adoption.

91. Subject to the agreement being signed, the agency may now place the child. It should seek to maintain contact for the child with the parents and ascertain, when the child reaches the age of six weeks, whether they are prepared to consent to:

- placement of the child for adoption under section 19 of the Act with a prospective adopter identified in the consent, or with any prospective adopter who may be chosen by the agency; or
- placement of the child for adoption under section 19 of the Act, as above, and to the making of a future adoption order under section 20 of the Act.

92. If they are, then the steps set out in paragraph 49 onwards will need to be followed. If they are not, and they request that the child be returned to them, the agency must comply with that request unless there are grounds for seeking a placement order, or instituting other proceedings.

## AGREEMENT TO PLACE A CHILD FOR ADOPTION WHERE THE CHILD IS LESS THAN 6 WEEKS OLD

Child's name [ ]

Child's date of birth [ ]

I, [ ]

of, [ ]

as the parent or guardian of the child state that:

I agree to the adoption agency placing the child for adoption with:

(a) the following prospective adopter(s):

name (or agency reference) [ ] (and)

name (or agency reference) [ ]; **or**

(b) any prospective adopters who may be chosen by the agency.

I understand that:

- I may inform the adoption agency that I wish to withdraw my agreement and ask for my child to be returned to me. If I do so, I may not myself remove my child from the prospective adopters as this would be the responsibility of the agency, which must comply with my request within seven days, unless any of the following orders are applied for or made in respect of the child:
  - an emergency protection order or a care order under the Children Act 1989;
  - a placement order or an adoption order under the Adoption and Children Act 2002.
- I retain parental responsibility for the child.
- I may only have contact with the child by agreement with the agency or by order of the court.
- After the child is six weeks old, the agency will seek my/our formal

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consent to the child being placed for adoption.

Name and address of the adoption agency [ ]

Name of the adoption agency social worker and contact details [ ]

If you are in any doubt about your legal rights, you should obtain legal advice before signing this form. <sup>1</sup>

Signed .....

Date .....

Witnessed .....

Date .....

<sup>1</sup> Publicly funded legal advice may be available from the Community Legal Service. You can get information about this or find a solicitor through CLS Direct on [www.clsdirect.org.uk](http://www.clsdirect.org.uk) or by telephoning 0845 345 4345.

## Chapter 3: Preparing, assessing and approving prospective adopters

**This part of the guidance explains the duties of an adoption agency in respect of prospective adopters.**

### Timescales

1. The following timescales should generally be adhered to during this part of the adoption process:

- written information about the adoption process should be sent within five working days to the enquirers in response to their enquiry;
- the enquirers should be invited to an adoption information meeting or be offered an individual interview by the agency within two months of their enquiry;
- the adoption panel should receive all necessary information about the prospective adopter from the agency within six weeks of the completion of the prospective adopter's report; and
- the adoption panel's recommendation about the suitability of the prospective adopter to adopt a child should be made within eight months of the receipt of their formal application.

2. Where the agency is unable to comply with a timescale, or decides not to, it should record the reasons on the prospective adopter's case record. This might occur, for example, where information needed by the agency is delayed, or where the prospective adopter and the agency agree that more time is needed to complete preparation or an assessment.

3. The agency should monitor its performance and provide reports to its trustees or board members if it is a voluntary adoption agency (VAA) or the executive side of the local authority every six months about children who are in the care of their local authority and who are waiting to be placed with new families. These reports should include:

- the number, type and age of the children waiting for an adoptive placement and length of time they have been waiting;
- the agency's performance against the timescales set out in paragraph 1 above and chapter 1;

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- progress in the recruitment of suitable adoptive families;
- the number of children placed for adoption and adopted since the last report; and
- the number of children whose placement has disrupted or where there has been a change of plan and the child is no longer to be placed for adoption.

### Eligibility criteria

4. A person or couple cannot apply for an assessment of their suitability to adopt unless they meet, or would meet, the eligibility criteria to apply for an adoption order. The criteria is:

- the prospective adopter(s) is single, married, in a civil partnership or are an unmarried couple (same sex or opposite sex) and 21 years old;
- the prospective adopter or one of the prospective adopters is domiciled in the British Islands and have been habitually resident in the British Islands for at least a year before they apply to the court for an adoption order; and
- neither prospective adopter(s) nor an adult member of their household has been convicted or cautioned in respect of a specified offence.

### Establishing Domicile and Habitual Residence Status

5. Domicile and habitual residence are legal concepts that are undefined and subject to case law. Whether someone is domiciled or habitually resident in the UK will depend upon all the circumstances and facts of an individual case. Wherever there is an issue about the domicile and habitual residence status of an individual, they should seek their own independent legal advice. The adoption agency may also wish to seek legal advice.

6. A person is domiciled in the country in which they either have or are deemed to have their permanent home. In law, everyone must have a domicile, and can only have one domicile at any time. A person receives at birth a domicile of origin which remains their domicile, wherever they go, unless and until they acquire a new domicile (a domicile of choice). A person may acquire a domicile of choice by residing in a country other than their domicile of origin with the intention of continuing to reside there indefinitely. The intention that must be shown is the quality of residence. It is not sufficient for there to be an intention to reside in a country for a fixed period of time or until some clearly foreseen and reasonably anticipated event happens.

7. Whether or not a person is habitually resident in the UK will depend on the circumstances of their particular case and all facts must be considered. Habitual residence will not solely be determined by the place where a person is living at the time. The term indicates the quality of residence rather than mere duration and requires an element of intention. The term suggests that personal presence must continue for some time. Many factors must be taken into account, including bringing possessions, doing everything necessary to establish residence before coming, having a right of abode, seeking to bring family, and “durable ties” with the country.

8. There is no requisite period of residence. Someone who leaves the UK in order to take up employment elsewhere may well acquire habitual residence in another country. However, they may well retain habitual residence in the British Islands because of the type of links they have maintained.

9. It is also possible to be habitually resident in two countries at the same time. Factors such as possession of a property, type of employment contract, financial arrangements and location of bank accounts, and local connections are just some of the many factors that may be relevant to any question relating to habitual residence.

### **Recruitment**

10. The agency should develop a plan for recruiting and preparing sufficient prospective adopters who can meet the needs of children waiting for adoption. In developing this plan the agency should take into account past trends, anticipated needs, local consortia plans and information from research and the Adoption Register. The plan should help the agency focus its recruitment on groups of prospective adopters and to prioritise applications according to the needs of children waiting for adoption.

11. The work of recruiting suitable parents for older children, disabled children, black and minority ethnic (BME) children and children in sibling groups is an on-going task of adoption agencies. Agencies should make good use of other adoption agencies – local authorities and VAAs - consortia and the Adoption Register (see chapter 4).

12. Programmes specifically aimed at developing and sustaining recruitment of prospective adopters from minority ethnic backgrounds will need to be part of the recruitment strategy of the local authority adoption service. Local authorities with small numbers of BME children may well find it better use of their resources to commission a VAA to find families for these children.

13. Building and maintaining links with communities, some of which do not have a tradition of parents adopting children unrelated to them, may help to increase the

number of prospective adopters from a wide range of minority ethnic backgrounds. The importance of increasing the recruitment of BME prospective adopters is underlined by Selwyn et al (2008). Their study<sup>1</sup> of the care pathways of white and BME children showed that age and ethnicity are the two major determinants of adoptive placements. BME children had fewer prospective adopters showing interest in them and, if no placement could be found, their plans tended to be changed away from adoption at an earlier point than for their white counterparts.

### Informing and counselling: AAR 21

14. Potential adopters should be made to feel that their enquiry is welcome. When a couple or individual contact the agency and indicate an interest in adopting a child, the agency should respond impartially and provide them, within five working days, with general information about adoption, the eligibility criteria, children who need adoptive families, the agency's expectations of adopters, and where to obtain further information. Prospective adopters must not be automatically excluded on the grounds of, for example, their ethnicity, age, health (including whether they smoke or are overweight), sexual orientation, religious beliefs or because they do not share the same ethnicity, culture or religious beliefs with the children waiting for an adoptive family. Prospective adopters may only be excluded if they do not meet the criteria set out in paragraph 4. See also the practice guidance *Preparing and assessing prospective adopters*.

15. Where the agency is not recruiting or knows that it will not have the capacity to undertake assessments in the immediate future it should refer enquirers to another agency which is recruiting or tell them when it will be possible to proceed with the assessment. Agencies will need to keep in touch with each other so that the enquirer does not become demoralised because of the apparent lack of progress and become "lost to adoption".

16. Agencies must not turn away potential adopters whose ethnicity and culture is not shared with those of the children waiting to be placed with adoptive parents. While children do tend to do better if adopted by a family who shares their ethnic origin or cultural group, these are just one of many considerations and must not be the primary consideration. A prospective adopter is able to parent a child with whom they do not share the same ethnicity, provided they can meet the child's other identified needs. The agency must provide them with flexible and creative support. This applies equally whether a child is placed with a black or minority ethnic family, a white family, or a family which includes members of different ethnic origins. **It is unacceptable for a child to be denied adoptive parents solely on the grounds**

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<sup>1</sup> Selwyn, J., David Quinton, D., Harris, P., Wijedasa, D., Nawaz, S., Wood, M., (2008) Pathways to permanence for children of black, Asian and mixed ethnicity: dilemmas, decision-making and outcomes

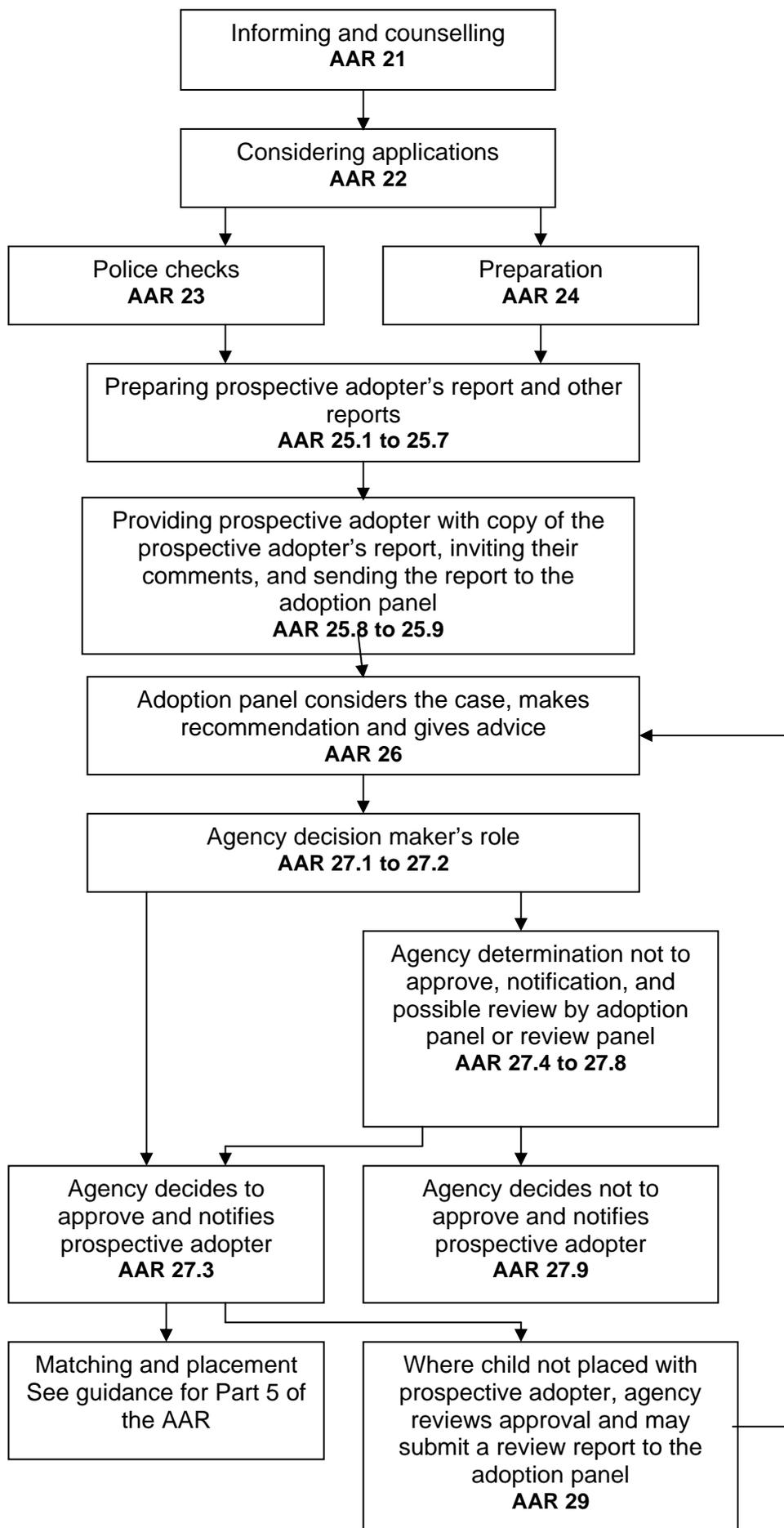
**that the child and prospective adopter do not share the same racial or cultural background.** See chapter 4 for further information on matching considerations.

17. Agencies must not turn away potential adopters because of their age. **There is no upper age restriction on applying to become adoptive parents, but there is a minimum age of 21 years.** Age is one consideration among many to be taken into account in assessing the suitability of prospective adopters. Older and more experienced people could take on the care of older children, provided they enjoy sufficient health and vigour to meet the child's varied demands. The more mature person has a greater experience of life; some may be established in their careers and others may have already brought up children of their own and have developed good parenting skills.

18. Age is also necessarily linked to general health, fitness and emotional wellbeing. Some older people may score higher in this regard than some younger ones. Adoption agencies are expected to recruit adoptive parents who will have the health and vigour to meet the many and varied demands of children in their growing years and be there for them into adulthood. The agency's medical adviser should investigate and obtain relevant information about a prospective adopter's health in order to be satisfied that they are able to take on the task of adopting a child and has the expectation of caring for the child through childhood and into adulthood.

19. Where the enquiry is about intercountry adoption the agency should try to find out why they have not considered adopting a looked after child. Many people believe that they would not be able to adopt a child in this country. It is important that agencies dispel the many myths around domestic adoption. While intercountry adoption is permitted, the agency's primary role is to find adoptive families for the looked after children in England. People whom the agency feel may be unsuitable to adopt looked after children the agency is responsible for should not be advised to apply to adopt a child from overseas.

**PREPARING AND ASSESSING PROSPECTIVE ADOPTERS**



20. If after receiving initial information the enquirers wish to proceed the agency must provide further information and counselling. See the practice guidance *Preparing and assessing prospective adopters*. They should be invited to participate in group information meetings to hear from and talk to adopters about their experiences of parenting a child and the adoption process. They should then have a much better idea of their potential and may broaden the range of children they feel able to consider once they have a greater understanding of what is involved.

21. Counselling should enable the prospective adopter to consider whether they do want to adopt a child and to reflect on the parenting needs of children the agency has placed for adoption or of children who need adoption. It will also enable the prospective adopter to consider their expectations of adoption and the consequences for them and their family of caring for an adopted child who may have a range of complex needs.

22. The agency should provide the following information to the prospective adopter during the counselling, both orally and in writing:

- general details of children the agency has placed for adoption or of children who need adoption, such as their age ranges, backgrounds and characteristics;
- how to apply to the agency for an assessment of their suitability to adopt;
- what happens when an application is accepted by the agency, including an explanation of why checks, references and full health information are needed;
- the decision-making process and their rights to make representations to the agency or apply for an independent review if they are considered unsuitable to adopt;
- adoption support and the matching process including the use of the Adoption Register.

23. The agency should explain the importance of openness and full disclosure by the prospective adopter at all times - that matters they perhaps consider unimportant may be of greater significance than they realise, and that it is therefore important that they are willing to share everything. Nevertheless, the agency should not assume that a failure to disclose information that it considers relevant automatically implies that the prospective adopter is unsuitable. It will be necessary to discuss the matter and the reasons for non-disclosure. See *Hofstetter v London Borough of Barnet and IRM* [2009] EWHC 3282 (Admin).

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24. Foster carers who express an interest in adopting children in their care or prospective adopters expressing an interest in a specific child should be given advice about the fact that the adoption procedures apply in their case as in any other. Biehal et al<sup>1</sup> found that outcomes for foster carer adoptions were, on the whole, positive. Although foster carers have a legal right to institute their own adoption application, the local authority should encourage them to participate in the adoption agency process.

25. The foster carer needs to be aware about eligibility for adoption support, i.e. if the foster carer applies direct to the court for an adoption order and the local authority opposes the application, they and the child will be eligible under the Adoption Support Services Regulations 2005 for counselling, advice and information only. However, if the local authority supports the application to the court for an adoption order, they and the child will be eligible for assessment of their adoption support needs as the child is a looked after child. The agency's duties in respect of the provision of information and counselling and the application of timescales will be the same as for other prospective adopters. It should be made clear to foster carers, or those who apply to be approved for specific children, that their assessment will be in respect of their suitability as adopters generally and that, if they are approved, their suitability to adopt a specific child or children will be addressed separately as part of the matching process.

26. At an early stage, the prospective adopter should be given an explanation of the need for the agency to conduct checks into their backgrounds and into the backgrounds of any other adult members of their household. The agency should make it clear that the prospective adopter cannot be considered suitable to adopt where police checks – also known as enhanced CRB checks - identify them or an adult member of their household as having been convicted of a specified offence or police caution.

27. Some prospective adopters may have already been given information and counselling. Even though the duty to provide information and counselling does not apply if the agency is satisfied that another agency has fulfilled the requirements set out in regulation 21 of the Adoption Agencies Regulations 2005 (AAR), the agency should ensure that it provides information about its own policies and procedures.

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<sup>1</sup> Biehal, N., Elison, S., Baker, C., and Sinclair I. (2009) Adoption Research Initiative study Characteristics, Outcomes and Meanings of Three Types of Permanent Placements - Adoption by Strangers, Adoption by Carers and Long-Term Foster Care.

## Considering applications and the prospective adopter's case record: AAR 22

28. The agency cannot initiate police checks under AAR 23, adoption preparation under AAR 24 or the preparation of the prospective adopter's report (including health and other checks) under AAR 25, until it has provided the prospective adopter with the agency's application form and accepted the completed form. In deciding whether to supply the application form, the agency should consider whether the prospective adopter has been sufficiently counselled and informed. Once the application form has been submitted, any determination by the agency not to approve the prospective adopter, whether after submission of a full or brief prospective adopter's report, may be challenged by them by either making representations to the agency or applying for an independent review.

29. Where the agency has complied with its duties under AAR 21 and received the completed application form from the prospective adopter, it must set up a case record in respect of the prospective adopter ("the prospective adopter's case record") and consider their suitability to adopt a child. The application form itself will be part of this case record. AAR 22 sets out the other contents of this record. AAR 39-43 and chapter 6 of this guidance deal with the confidentiality and preservation of this and other adoption case records.

### Police checks: AAR 23

30. The safety and welfare of the child are paramount and it is vital that the agency conducts police checks into the background of the prospective adopter and any adult members of their household. Ideally, these are to be completed before the agency commences the preparation and assessment of the prospective adopter. Where the agency is aware of delays in obtaining the police checks they should not delay the assessment but proceed in parallel with other checks and references, and with the provision of preparation. However, the assessment cannot be concluded and the prospective adopter's report finalised until the police checks have been completed, see AAR 25.7A.

31. Where an agency is not reasonably able to conduct police and other background checks on the prospective adopter, for example, where they have lived abroad for an extended period, it must decide whether it should carry out any other checks or take up additional references. It should then decide whether it has sufficient information to justify proceeding with the prospective adopter's application. If it decides not to proceed with the application, the agency should counsel the prospective adopter with a view to them withdrawing their application.

32. An agency may not consider a person suitable to adopt a child if they or any adult member of their household has been convicted of a specified offence

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committed at 18 or over, or has received a police caution in respect of a specified offence which they admitted at the time the caution was given.

33. A “specified offence” means:

- an offence against a child;<sup>1</sup>
- an offence specified in AAR, Schedule 3 Parts 1 and 2 (Part 2 lists statutory offences which have now been repealed);
- an offence contrary to section 170 of the Customs and Excise Management Act 1979. This relates to goods which are prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (prohibitions and restrictions relating to pornography) where the prohibited goods included indecent photographs of children under the age of 16; or
- any other offence involving bodily injury to a child, other than an offence of common assault or battery.

34. Where an agency becomes aware that, because of an offence by a prospective adopter or any adult member of their household, the prospective adopter cannot be considered suitable to adopt a child, the agency must notify them as soon as possible.

35. Information relevant to the prospective adopter’s application which the agency has obtained from the Criminal Record Bureau may be retained by the agency on the prospective adopter’s case record for a limited time only. This information should be destroyed when the agency decides that the prospective adopter is suitable to adopt a child, see AAR 27.3 and 27.8. The agency should note on the prospective adopter’s case record that it has destroyed the CRB information and that this information had led the agency to form a particular view, without citing the information itself.

36. Where the police checks result in previous convictions or cautions for non-specified offences coming to light, the agency may consider that the prospective adopter is not suitable to adopt. Examples of some of these are set out in the practice guidance *Preparing and assessing prospective adopters*. In these circumstances, the agency must exercise its discretion and decide whether to

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<sup>1</sup> Within the meaning of section 26(1) of the Criminal Justice and Court Services Act 2000. However, it does not include an offence that is contrary to section 9 of the Sexual Offences Act 2003 (sexual activity with a child) where the offender was under the age of 20 and the child was aged 13 or over at the time the offence was committed.

proceed with a prospective adopter's application. If it decides not to proceed, a brief report should be prepared.

37. In circumstances where the application is a joint application, the agency may only inform the prospective adopter who is the convicted or cautioned individual of the specific reason for terminating the application. The social worker should explain to that person that the agency may not inform the other person of the conviction or caution but will inform them that because of information obtained from the checks the joint application cannot proceed. However, in counselling the person with the conviction or caution, the agency may consider it appropriate to suggest that they consider disclosing their conviction or caution to the other person so that that person has a clear understanding of why the joint application cannot proceed.

38. Likewise, where the checks reveal information about another adult member of the household that indicates that the agency should terminate the application, the agency is restricted from disclosing the conviction or caution that prevents the application proceeding. It may inform that other adult member of the household and suggest that they inform the prospective adopter but it may not do so itself. In such a case, the agency should counsel the prospective adopter that its checks indicate that the agency should not proceed with their application.

### **Preparation, other checks and assessment: AAR 24 and 25**

39. AAR 24 requires the agency to provide preparation for the prospective adopter, and AAR 25 sets out the information that must be gathered – including other checks - to enable the agency to complete the prospective adopter's report. Some flexibility is allowed about the sequence of tasks to be undertaken, but AAR 25.7A provides that the report cannot be completed until the police checks required by AAR 23 and the preparation required by AAR 24 have been carried out.

40. AAR 24 requires the agency to make arrangements for the prospective adopter to be given adoption preparation, unless it is satisfied that another agency has fulfilled the requirements of this regulation. Some prospective adopters may already have recent experience of caring for a child, as parents, foster carers or child minders. Some may be applying to adopt for a second time. This regulation allows the agency to decide the nature of the preparation that is most appropriate for the prospective adopter. Adoption preparation may be provided by the agency itself or by arrangement with another agency or adoption support agency. In order to maximize the use of resources, and to avoid unnecessary delay, agencies should consider whether they can make arrangements with neighbouring agencies to provide joint preparation groups.

41. All prospective adopters will need some form of adoption preparation. The agency will need to decide its form and substance, using the Standard Curriculum in

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the practice guidance *Preparing and assessing prospective adopters*. The agency will also need to arrange preparation that takes into account the prospective adopter's circumstances. While group preparation should be the standard method there may need to be some form of individual preparation for some prospective adopters. Preparation should be designed to draw out their strengths – to discover the qualities they have to offer a child and build on those strengths in working with them. The preparation sessions should give encouragement to prospective adopters, showing them the positive aspects of parenting a child as well as helping them to understand, for example:

- the difficulties some children experience, such as the traumas of neglect and abuse, and the effect on their development and capacity to form secure attachments;
- the key parenting skills and parenting capacities they need to care for children who have experienced neglect and abuse;
- the significance of the child's identity, their birth family, the need for openness to help the child to reflect on and understand their history, according to their age and ability, the role of contact, how to manage unauthorised contact, including through online social networks, and the importance of significant memorabilia.

This work can be continued during the assessment process.

### The prospective adopter's report

42. AAR 25 sets out the duties of the agency in carrying out its assessment and preparing the prospective adopter's report. In conducting the assessment, the social worker should analyse and consider the information they ascertain from and about the prospective adopter, including any issues identified during the adoption preparation. The approach should be objective and inquiring: information should be evaluated and its accuracy and consistency checked. The practice guidance *Preparing and assessing prospective adopters* provides advice on how to evaluate the information. AAR Schedule 1 Part 4 lists the information that must be collected during the assessment for inclusion in the prospective adopter's report. The report itself is one of those to which the Restrictions on the Preparation of Adoption Reports Regulations 2005 (ARR) apply. See chapter 1.

43. The agency must obtain a written report from a registered medical practitioner about the health of the prospective adopter following a full examination. The report must include the matters specified in Part 2, Schedule 4 of the AAR, unless the agency has received advice from its medical adviser that such an examination and report is unnecessary. This might be, for example, where the prospective adopter is

a foster carer and the agency already has their health report.

## Health issues

44. The agency's medical adviser will need to provide a summary of the prospective adopter's state of health as part of the prospective adopter's report. The adviser will need to form a view as to the adequacy of the medical reports received and they will be able to advise whether additional specialist opinion should be obtained. It should be borne in mind that the prospective adopter's current GP may not have a full health history of the prospective adopter, particularly if they have received private medical care outside the NHS. Prospective adopters should be helped to understand the importance of making their full health history available to the agency's medical adviser.

45. Agencies have a duty to satisfy themselves that prospective adopters have a reasonable expectation of continuing to enjoy good health. The medical adviser should explain and interpret health information from the prospective adopter, their GP, and consultants to facilitate panel discussion. The opinion of the agency's medical adviser needs to be given sufficient weight by panels and agency decision-makers.

46. Mild chronic conditions are unlikely to preclude people from adopting provided that the condition does not place the child at risk through an inability to protect the child from commonplace hazards or limit them in providing children with a range of beneficial experiences and opportunities. Agencies should bear in mind the possibility of providing adoption support in appropriate cases to assist in overcoming any possible negative consequences arising from disability or restricted mobility. More severe health conditions must raise a question about the suitability of the prospective adopter, but each case will have to be considered on its own facts and with appropriate advice.

## References

47. Schedule 4 of the AAR requires the prospective adopter to provide the names of three referees, not more than one of whom should be related to them. The agency must prepare a written report of the interviews held with each of the referees. To ensure the accuracy of these reports it will be helpful to ask the referees to sign a copy of the report indicating their agreement with its contents. They could also be asked to indicate whether they agree that the information they have provided may be shared with the prospective adopter. Practice guidance *Preparing and assessing prospective adopters* provides advice on obtaining and considering references from ex-partners and adult children of prospective adopters, and on the possible need for additional referees in certain circumstances.

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48. The agency must ascertain whether the local authority in whose area the prospective adopter has their home has any information about them that may be relevant to the assessment. If so, the agency must obtain from that authority a written report setting out the information. Local authorities being asked for this information should comply promptly to these requests. In requesting information from a local authority, the agency should seek to ascertain whether records held by social services and education departments, including the child protection register, hold relevant information about the prospective adopter. There is no reason in principle why information held by one part of the local authority should not be shared with another. Protocols operated by children's services may, however, restrict access to the child protection register to cases where there is concern for the safety of a child. This means that an adoption check may not automatically involve a check to see whether a child of the family has been the subject of a child protection plan unless such a check is specifically requested. The prospective adopter may have lived for only a short period in the area of their local authority. In such cases, the agency should obtain information from the prospective adopter's former local authorities.

### **Second opinion visits**

49. The social worker who assesses the prospective adopter should draft the report for the adoption panel highlighting any issues of concern, and submit it to their team manager. Where there are any issues of concern or where clarification is needed, the manager should arrange for a second person to visit the prospective adopter to discuss these. The second person could be a team manager or another adoption social worker. A visit by another person provides the opportunity for securing a second opinion on the prospective adopter and their assessment before the report to the panel is finalised. The author of the report and the countersigning officer should both sign and date the report, state their qualifications and experience, and confirm that they have complied with ARR 3.

### **Report to the adoption panel**

#### **Full prospective adopter's report**

50. AAR 25.5 sets out the contents of the prospective adopter's report. Except in cases where a 'brief report' is appropriate, the agency will present this to the adoption panel, together with the other documents specified in AAR 25.9. The agency must tell the prospective adopter that the case is to be presented to panel. It must give them a copy of the prospective adopter's report and invite them to send their observations on that report within 10 days. The medical report and references should not be sent to the prospective adopter. Once this time has elapsed or the

observations have been received earlier, the report and the prospective adopter's observations should be sent to the panel, together with the written reports of the interviews with referees, the medical reports if advised by the medical adviser, and 'any other relevant information' obtained by the agency.

51. The other relevant information that the agency might obtain could include, for example, confidential 'soft information' from police checks, also known as 'Additional Information'. This is information that a chief police officer has authorised for disclosure to the agency under section 115(8) of the Police Act 1997. Such information may not be disclosed to the person it is about but it needs to be considered when disclosed to the agency. Where the agency has good reason to withhold information from the prospective adopter, it should not share that information with the panel. The exception to this is in the case of a joint application, where it is not possible to share information about one partner with the other without the consent of the partner to whom the information relates.

52. The panel may request additional information and the agency should obtain it so far as reasonably practicable. Again, unless there is good reason to justify not doing so, additional information obtained in this way should be shared with the prospective adopter. In the case of *R v London Borough of Newham (on the application of A, T and S)* [2008] EWHC 2640 (Admin) the Court of Appeal was critical of the procedural unfairness of the agency's providing additional social work reports to the panel which were not shared with the prospective adopters.

### **Brief prospective adopter's report**

53. AAR 25.7 provides for cases where the agency's assessment of the prospective adopter, while still incomplete, reveals information that leads the agency to consider that the prospective adopter may not be suitable to adopt. Under AAR 25.7 the agency may prepare a brief prospective adopter's report (brief report) even though it may not have obtained all the information required by AAR 25.

54. In brief report cases, it is likely that the information that suggests to the assessing social worker that the prospective adopter may not be suitable will be discussed during the course of supervision. A decision not to complete the full assessment is a serious step to take and advice should first be sought from the social work team leader or line manager. Depending on the nature of the information, advice may also need to be sought from the agency's medical adviser or legal adviser, or both. The agency should explain its concerns to the prospective adopter and offer counselling, involving other professionals as appropriate, for example ensuring health professionals counsel the prospective adopter about information related to their health. As a result of the counselling and advice, the prospective adopter may decide to withdraw their application. If they decide not to withdraw their application, the agency should prepare the brief prospective adopter's report.

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55. As with the full report, a copy of the brief report must be given to the prospective adopter who must be invited to send their views to the agency within 10 days. Once this time has elapsed or the views have been received earlier, the report (and any information obtained under AAR 25.3 and 25.4) should be sent to the panel together with the views expressed by the prospective adopter.

### **The adoption panel: AAR 26**

56. Once a case has been referred to the panel, the panel must consider the case and make a recommendation to the agency as to whether the prospective adopter is suitable to adopt a child. Their recommendation will be governed by the duty under AAR 26 to consider all the information passed to it, and under regulation 4.2 of the Suitability of Adopters Regulations 2005 (SAR) to have proper regard to the stability and permanence of the relationship of any couple whose case is referred. Where it considers that it has insufficient information it should request the agency to obtain further information and the agency must comply with this request. In the case of a brief report, the panel will not be able to make a recommendation that the prospective adopter is suitable, because not all the necessary information will be before it. Its recommendation is restricted to a recommendation that the prospective adopter is not suitable, or a request to the agency to complete a full prospective adopter's report.

57. The prospective adopter must be invited to attend a meeting of the panel before it makes its recommendation. This invitation should be extended to the prospective adopter each time the panel meets to discuss their case. The invitation should make clear that the purpose of the meeting is to provide an opportunity for both the panel and the prospective adopter to discuss and clarify the prospective adopter's reasons for wishing to adopt, and any other matter that either party considers relevant to the application.

58. The invitation should also make clear that the prospective adopter is under no obligation to meet the panel; if they decline the invitation this in itself should never be considered as a reason for recommending that they are unsuitable to adopt. The agency should at this time provide the prospective adopter with advice, as appropriate, about the panel meeting, including information about how it will be conducted.

59. Where the prospective adopter attends the panel meeting, the agency should explain to them who will be present the panel and their individual panel roles. This explanation should include a description of the process of the meeting and its aims.

60. If the panel recommends that the prospective adopter is suitable to adopt a child, AAR 26.3 provides that it may also consider and give advice to the agency about the number of children the prospective adopter may be suitable to adopt, their age range, sex, likely needs and background. The panel will need to consider the strengths and weaknesses of the prospective adopter, as indicated by the prospective adopter's report, particularly the information that sets out their adoptive capacity. Panel members should be made aware of the research of Farmer and Dance<sup>1</sup> which explores the issues connected with 'stretching' adopters' preferences when making a match. Panel advice on such matters will inform subsequent matching of the prospective adopter with a child, although the agency is not restricted by such advice.

### **Agency decision: AAR 27 and SAR 4.2**

61. The agency's decision-maker must make a considered and professional decision as to the suitability of the prospective adopter to adopt a child. The decision must be made within seven working days of the panel's recommendation. As well as making the decision, the decision-maker may express a view on any advice given by the adoption panel or review panel about the number of children the prospective adopter may be suitable to adopt, their age range, sex, likely needs and background. This is not the same as a decision on the prospective adopter's suitability. Where the decision-maker expresses a view on this aspect of the adoption or review panel's advice, this may be taken into account by the agency during the matching process together with other factors such as the further development of the prospective adopter's capacity. This too must be recorded on the prospective adopter's case record. See chapter 1 for guidance on the action the decision maker must take in making the decision.

62. The prospective adopter should be informed orally of the agency's decision within two working days and written confirmation should be sent to them within five working days. Where the decision is to approve the prospective adopter, the agency should provide them with information which explains the role of the Adoption Register for England and Wales and include the Register's website address: [www.adoptionregister.org.uk](http://www.adoptionregister.org.uk). See paragraph 65 when the decision is not to approve the prospective adopter.

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<sup>1</sup> Farmer, E and Dance, C (2010) Adoption Research Initiative study An investigation of family finding and matching in adoption.

### Adoption Register

63. The Adoption Register holds information on children waiting to be adopted and of a range of approved prospective adopters who are available and able to meet the needs of children, including black and minority ethnic (BME) children, as well as children who are older, disabled or in sibling groups.

64. Agencies are required to refer prospective adopters to the Register either at the point the prospective adopter is considered suitable to adopt, or three months after approval to adopt and if the agency is not actively considering a local match with a child. Actively considering is defined as “being in the process of exploring a potential match with an identified, named child(ren)”. Agencies must ensure that the information the Adoption Register holds on the prospective adopter is kept up to date. Prospective adopters may choose to refer themselves to the Register, three months after approval, using the Adopter Self Referral form (AD02).

### Agency decision – unsuitable to adopt

65. If the decision-maker makes a qualifying determination, i.e. considers the prospective adopter is unsuitable to adopt following a full or brief prospective adopter’s report, the prospective adopter has the right to make representations to the agency or apply for an independent review before the agency implements the decision. In these circumstances, the agency must use the standard letter providing full and detailed reasons for the determination. Being considered unsuitable to adopt may have a devastating effect on the prospective adopter who will need help and support from their social worker during this difficult time. Their social worker should give them a full explanation of why they are not considered suitable to adopt, and give them information on what action they can take if they do not agree with the determination.

“I am writing to tell you that having considered your application to become an adoptive parent and the recommendation of the adoption panel, this agency does not propose to approve you as suitable to be an adoptive parent. This is because *[insert full and detailed reasons. It is vital that the prospective adopter understands fully why they are considered unsuitable to adopt a child. Include a copy of the adoption panel’s recommendation if different - See chapter 1]* (this is referred to in this letter as “the determination”).

I know this will be disappointing news for you but before this determination is implemented, you may:

- a. accept the determination; or
- b. make written representations to this agency; or
- c. apply for the determination to be reviewed by an independent review panel.

#### Option a – Accept the determination

It would be helpful if you could advise me, within 40 working days from the date of this letter, if this is your preferred option. The determination will be confirmed and a formal decision will be sent to you.

#### Option b - Representations to the agency

If you choose to make representations to this agency, these must be in writing and be received at this office within 40 working days from the date of this letter. On receipt, I may consider your case again or refer it and your written representations to the adoption panel to consider and to make a fresh recommendation to me. If I do refer your case to the adoption panel you will be invited to attend the panel meeting to answer any questions the adoption panel may have. If I reconsider your case I may invite you to meet me to discuss your case. If I do refer your case to the adoption panel, I will take its recommendation into account when I make the final decision on your suitability to adopt.

#### Option c – Application to an independent review panel for a review

If you wish to apply to the independent review panel to review the determination, your written application and your reasons for the application must be received by the Administrator to the independent review panel within 40 working days from the date of this letter. You will be invited to attend the review panel's meeting. The function of the review panel is to consider your case anew and to make a fresh recommendation to the agency which will be taken into account alongside the original adoption panel's recommendation when I make the final decision on your suitability to adopt. For information on the independent review mechanism (IRM) please see <http://www.independentreviewmechanism.org.uk/>.

If I have not heard from either you or the independent review panel's administrator after the period of 40 working days has expired I will write to you confirming my decision on your suitability to adopt a child.'

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66. The agency must note the prospective adopter's case record to ensure that no action is taken until after the 40 working day period for making representations or applying to the review panel has expired when it must proceed with its decision. It must also notify the prospective adopter in writing of its decision together with the reasons for that decision.

### **Representations**

67. Where the agency receives representations from the prospective adopter within 40 working days, the decision-maker may consider the representations and may invite the prospective adopter to meet to discuss their case. The decision-maker may, instead refer the case to the adoption panel for further consideration. Where the case is referred to the panel, the panel must consider the case again and make a fresh recommendation as to the suitability of the prospective adopter to adopt a child, see AAR 27.7. The prospective adopter must be invited to attend the panel meeting to answer any questions the adoption panel may have.

### **Agency decision following representations or review by review panel**

68. On receipt of the adoption panel's or review panel's recommendation, advice and minutes of the meeting, the agency's decision-maker must make a decision in accordance AAR 27.8 – see paragraph 61 above and chapter 1. This requires them to take into account the further recommendation of the adoption panel (if any) or, where the review panel has made a recommendation, to take account of that recommendation and the recommendation of the original adoption panel before coming to a final decision. As with the original determination, if the decision-maker remains minded not to approve the prospective adopter, they should discuss the case with a senior colleague within the agency.

69. Once the decision is made, the prospective adopter should be informed orally of the decision within two working days and written confirmation should be sent to them within five working days. Where the decision is not to approve the prospective adopter, the agency must provide the reasons for the decision. If the adoption panel's or review panel's recommendation was different, a copy of that recommendation must also be provided to the prospective adopter. In respect of a case referred to the review panel, the IRM contract manager must also be given written notification of the decision. See chapter 1 for the address of the IRM.

### **Review of approval: AAR 29**

70. In most cases, the approved prospective adopter is unlikely to be 'matched' immediately with a child. While they are waiting, the adoption social worker should maintain contact with the prospective adopter and keep them informed of progress, and encourage them to keep the agency informed of any changes in their lives. This

will also be a time of reflection and the prospective adopter may reconsider the characteristics of the children they feel able to parent. The agency will need to be responsive to such changes of view, allowing the opportunity to discuss these and consider their possible implications.

71. AAR 29 requires the agency to review the prospective adopter's approval periodically until a child is placed for adoption with them or a match is under active consideration. Such a review must be held a year after approval, and subsequently at yearly intervals, or earlier if the agency considers it necessary.

72. The need for an earlier review could arise, for instance, where:

- a child was placed with the prospective adopter and the placement disrupts;
- a child was matched with the prospective adopter, and introductions have started, but a decision is made not to proceed with the placement;
- a couple separates;
- the prospective adopter becomes pregnant or has given birth to a child;
- there are substantive changes in their health or their economic circumstances;
- concerns are raised about child welfare and safety;
- any other matters arise which may affect their suitability to adopt.

73. When carrying out a review the agency must:

- make enquiries and obtain information it considers necessary in order to review whether the prospective adopter continues to be suitable to adopt;
- take into consideration minutes and recommendations of any disruption meeting held following a placement disruption; and
- ascertain and take into account the views of the prospective adopter.

The social worker conducting the review should usually be the adoption team manager but could be another social worker who did not conduct the original assessment.

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74. The review should consider the prospective adopter's family circumstances: health, economic circumstances, work commitments, and whether police and medical checks are still up-to-date. Where the police checks are more than two years old, these should be renewed. The prospective adopter should be asked whether their health remains unchanged since the previous medical checks arranged by the agency. Advice on whether these should be renewed should be sought from the agency's medical adviser.

75. Where the agency completes its review and considers that the prospective adopter remain suitable to adopt, it need only inform the prospective adopter and record its view on the prospective adopter's case record.

76. Where the information gathered in the review suggests to the agency that the prospective adopter may no longer be suitable to adopt, AAR 29.4 sets out the steps that the agency must take. As with the original approval process, the report that the agency presents to panel in these circumstances must be shared with the prospective adopter so that they may make comments. The rest of the process, including the rights of the prospective adopter in the event of an unfavourable outcome, is the same as for the original approval process.

77. In some cases the prospective adopter may accept, with the help of counselling, that as their circumstances have changed significantly they are no longer suitable to adopt, or that they no longer wish to go ahead. The agency should note this on the prospective adopter's case record and ensure that the panel is informed that the prospective adopter no longer wishes to adopt. If this occurs prior to the prospective adopter's review report being prepared or submitted to the panel, there is no need for the agency to carry out the subsequent actions set out in AAR 29.

## Chapter 4: Matching and proposing a placement

**This part of the guidance explains the duties of an adoption agency when it proposes to place a child with a selected adoptive family. If the proposed family is resident outside the British Islands, the additional guidance on intercountry adoption should also be followed.**

### Timescales

1. The timescales should be adhered to during this part of the adoption process, unless the adoption agency considers that in a particular case complying with a timescale would not be in the child's interests – the paramount consideration must always be the welfare of the child. Where the agency is unable to comply with a timescale or decides not to, it should record the reasons on the child's case record.

2. The following timescales apply where the agency proposes to place a child with the prospective adopter, whether the prospective adopter is resident in the UK or abroad:

- a proposed placement with a suitable prospective adopter should be identified and approved by the adoption panel within six months of the agency deciding that the child should be placed for adoption;
- where a birth parent has requested that a child aged under six months be placed for adoption, a proposed placement with a suitable prospective adopter should be identified and approved by the panel within three months of the agency deciding that the child should be placed for adoption.

### Introduction

3. The agency should have begun trying to identify a suitable adoptive family before the agency's decision was made that the child should be placed for adoption, and/or before consent to placement has been given or a placement order obtained, see chapter 2. However, in cases where parental consent is unlikely to be forthcoming, and especially where there is doubt about whether a placement order will be granted, it may not be appropriate to do more than make general enquiries about the likely availability of suitable prospective adopters before the agency is authorised to place the child for adoption. The intensity of the search increases once the decision has been made.

### Matching considerations

4. Making a good match between a child and prospective adopter is a highly skilled task and is vital for both the child and the prospective adopter. The social worker has to consider a range of issues: meeting the child's identified needs; the parenting skills of the prospective adopter; working quickly to avoid the damaging effect of delay and using the agency's resources effectively. But by being informed by research, being realistic and consider a prospective adopter who can meet *most* of the child's identified needs, and seeking families in-house, from other adoption agencies – local authorities and voluntary adoption agencies (VAAs) - consortia, and the Adoption Register will put the child in an excellent position of being placed quickly with a new, safe and loving family. **If the prospective adopter can meet most of the child's needs, the social worker must not delay placing a child with the prospective adopter because they are single, older than other adopters or does not share the child's racial or cultural background.** Social workers also need to consider how the prospective adopter's parenting capacities can be supported and developed alongside the child's changing needs. Time is not on the side of the child and a delay in placing a child with a new family can damage their development, contribute to further emotional harm, reduce their chances of finding a permanent family<sup>1</sup> or increase the chance of adoption breakdown. One research study found that the chances of being adopted reduced by nearly a half for every year of delay. For an exploration of the key issues related to family finding and matching, see the research *An investigation into linking and matching in adoption*.

5. There are many people who wish to adopt – including those who are not of the same ethnic origin of the children needing adoption or who are of mixed origin, are single or older. Such applicants should be seen by agencies as an opportunity to address more effectively the needs of a range of children who are themselves older, and/or from different backgrounds including mixed and minority ethnic backgrounds. **Any practice that classifies couples/single people in a way that effectively rules out the adoption because of their status, age or because they**

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<sup>1</sup>Lowe, N., Much, M., Nader, K., Borkowski, M., Copner, R. Lisle, C. and Shearman, J. (2002) *The Plan for the Child: Adoption or Long-term Fostering*, London, BAAF.;

Murch, M, Lowe, N., Borkowski, M., Copner, R. and Griew, K. (1993) *Pathways to Adoption*, London, HMSO.

Biehal, N., Elison, S., Baker, C., and Sinclair I. (2009) *A Characteristics, Outcomes and Meanings of Four Types of Permanent Placements - Adoption by Strangers, Adoption by Carers, Long-Term Foster Care and Special Guardianship*. Adoption Research Initiative study

Ward, H., Munro, E., Brown, B. (2010) *Protecting and promoting the well-being of very young children*, Adoption Research Initiative

Selwyn, J., Frazier, L and Quinton, D. (2006) *Paved with Good Intentions: The Pathway to Adoption and the cost of Delay*, *British Journal of Social Work*, 36, 561-576.

**and the child do not share the same racial or cultural background is not child-centred and is unacceptable.**

### **Ethnicity and culture of children and prospective adopters**

6. The structure of white, black and minority ethnic groups is often complex and their heritage diverse, where the race, religion, language and culture of each community has varying degrees of importance in the daily lives of individuals. It is important that social workers avoid 'labelling' a child and ignoring some elements in their background, or placing the child's ethnicity above all else when looking for an adoptive family for the child<sup>1</sup>.

7. A prospective adopter can be matched with a child with whom they do not share the same ethnicity, provided they can meet the child's other identified needs. The core issue is what qualities, experiences and attributes the prospective adopter can draw on and their level of understanding of the discrimination and racism the child may be confronted with when growing up. This applies equally whether a child is placed with a black or minority ethnic family, a white family, or a family which includes members of different ethnic origins.

8. All families should help children placed with them to understand and appreciate their background and culture. Where the child and prospective adopter do not share the same background, the prospective adopter will need flexible and creative support to be given by their agency. This should be in the form of education and training, not just simplistic advice, provided in a vacuum, on learning their children's cultural traditions or about the food/cooking from their birth heritage. The support plan should consider how the child's understanding of their background and origin might be enhanced. This can include providing opportunities for children to meet others from similar backgrounds, and to practise their religion – both in a formal place of worship and in the home. Maintaining continuity of the heritage of their birth family is important to most children; it is a means of retaining knowledge of their identity and feeling that although they have left their birth family they have not abandoned important cultural, religious or linguistic values of their community. This will be of particular significance as they reach adulthood.

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<sup>1</sup> Selwyn, J., David Quinton, D., Harris, P., Wijedasa, D., Nawaz, S., Wood, M., (2008) Pathways to permanence for children of black, Asian and mixed ethnicity: dilemmas, decision-making and outcomes

### Single prospective adopters

9. Single prospective adopters of both genders can have much to offer an adopted child. They may be able to focus all their time on meeting a child's needs and have a good level of physical and emotional availability. Some children may find it easier to relate to just one parent or prefer not to relate closely to a mother or father figure if there are negative associations from the past. Issues of emotional and financial support, health and future close relationships will need to be carefully explored with single prospective adopters.

### Older children and prospective adopters

10. Where older children need adoptive parents, older and more experienced prospective adopters could take on the care of these children if they enjoy sufficient health and vigour to meet the child's varied demands. *Remember, there is no upper age restriction on applying to become adoptive parents, but they must be at least 21 years old.* The more mature person has a greater experience of life; some may be established in their careers and others may have already brought up children of their own and have developed good parenting skills.

11. But the age of the prospective adopter must also be considered in the light of the gap in age between them and the child to be placed with them. Too large a gap may have an adverse effect upon the child and possibly upon their relationship with the adoptive parents. Where a child has already suffered change, deprivation and loss in their early years, demands on adoptive parents, both physical and emotional, are likely to be considerable, particularly as the child grows older.

### Siblings

12. Siblings should be adopted by the same prospective adopter unless there is good reason why they should not be. Where an agency is making a placement decision on two or more children from the same family, it should be based on a comprehensive assessment of the quality of the children's relationship, their individual needs and the likely capacity of the prospective adopter to meet the needs of all the siblings being placed together. Where it is not possible for the siblings to be placed together the agency should consider carefully the need for the children to remain in contact with each other and the need for adoption support (see paragraph 27). Where a placement is sought for a child whose sibling(s) have already been adopted, it will be important to consider whether it is possible to place the child with the parent who have already adopted the sibling(s). It must be recognised however, that this could be placing too great a burden on the adoptive parent, and risk destabilising the existing adoptive family. See chapter 7.

## Placing a child with birth relatives

13. Local authorities are required by section 22 of the Children Act 1989 (the 1989 Act) to consider a placement with relatives if the child being looked after cannot return to their birth parents. Where this solution is the right one for the child, the placement is likely to be secured under a fostering arrangement or by a residence or special guardianship order, but the appropriateness of adoption by a relative should not be automatically ruled out.

14. There may be some circumstances where the security provided by the irrevocability of an adoption order, and its lifelong effect, would be best for the child and outweigh the potential drawbacks of the 'skewing' of relationships. For example, a grandparent adopting their grandchild would be legally the child's parent, which would mean the child's birth parent would, in law, be their sibling. There is no presumption that a special guardianship order will be preferable to an adoption order if the placement is with a relative. It will be necessary to consider the particular facts of each individual case. In some circumstances where the relatives who would most suitably care for the child live outside the British Islands, it may be that such a placement can best be achieved by adoption. See for example *Re S* (Adoption order or special guardianship order) [2007] EWCA Civ 54, *Re AJ* (adoption order or special guardianship order) [2007] EWCA Civ 55 and *Re M-J* (Adoption order or special guardianship order) [2007] EWCA Civ 56.

## Health

15. Agencies have a duty to satisfy themselves that prospective adopters have a reasonable expectation of continuing to enjoy good health. The medical adviser should explain and interpret health information from the prospective adopter, their GP, and consultants if relevant, to facilitate panel discussion. The opinion of the prospective adopter's GP and the agency's medical adviser about the health status of the prospective adopter needs to be given sufficient weight by adoption panels and agency decision-makers. Mild chronic conditions are unlikely to preclude people from adopting, provided that the condition does not place the child at risk through an inability to protect the child from commonplace hazards or limit them in providing children with a range of beneficial experiences and opportunities. More severe conditions must raise a question about the suitability of a prospective adopter, but each case will have to be considered on its own facts and with appropriate advice.

### Smoking

16. There is no legal reason why a child cannot be matched with a prospective adopter who smokes. However, a local authority may have to restrict smokers as regards the age and type of child who may be placed with them, especially a child: under five, or with disabilities which keep them indoors or who has a heart or respiratory problem or glue ear. An adoption agency has a duty to consider the effects of smoking on children in their care. Agencies should therefore discuss with the prospective adopter the issues and implications of smoking such as expecting them to ensure that a child is not exposed to smoke or role models who smoke. Discussions about smoking should be undertaken in the spirit of promoting the health of the prospective adopter and practical strategies should be made available to support those who wish to stop.

### Adoption agencies, consortia and the Adoption Register

17. In trying to identify a suitable prospective adopter for a child, the agency should bear in mind that the most suitable family may be one that has been approved by another agency. It should make use of all its available resources such as other adoption agencies – both VAAs and local authorities - any consortium of agencies of which it is a member, and the Adoption Register, to help ensure there is no delay in children's placement with adoptive families.

18. The Adoption Register holds information on a range of approved prospective adopters who are available and able to meet the needs of children, including black and minority ethnic (BME) children, as well as children who are older, disabled or in sibling groups. Keeping in touch with the Adoption Register is important, as is carefully considering all the potential matches they provide and responding swiftly to the Adoption Register, particularly when proposed links are accepted and the prospective adopters are matched with children. See chapters 2 and 3.

19. Where a local authority is aware that a particular prospective adopter approved by another adoption agency can best meet the needs of a child, they should negotiate with the agency about the possible placement of the child with that family. *Unwillingness to pay an inter-agency fee should not be the reason for not placing the child.* Indeed, Selwyn J's research *Adoption and the Inter-agency Fee* provides clear evidence that effective use of VAAs has a positive impact on finding suitable and timely placements at a lower cost for local authorities. It shows that local authorities have under-estimated their own costs and that this has influenced their belief about the costs of VAA placements: the true costs of both VAA and local authority family finding are almost identical at around £36,000, which is similar to the

cost of the child remaining in foster care for 18 months. The research found that where adoption is the right option for a child, a timely adoptive placement could save approximately £25,000 for each subsequent year, after the first, that the child is not in care.

20. Where a suitable family is not readily identifiable, the agency may need to make use of resources designed to feature children with the aim of encouraging prospective adopters to come forward, such as BAAF's 'Be my parent' or Adoption UK's 'Children Who Wait', subject of course to appropriate consents. And in using these resources, the agency should not put barriers in place, such as specifying the ethnicity of the prospective adopter or ruling out single prospective adopters. *The emphasis should be on what skills and qualities the prospective adopter must have in order to meet the child's needs.* It is also important that any enquirers responding through these routes be followed up quickly and where not suitable for the specific child are signposted to other agencies so they are not lost to adoption.

### **Proposing a placement: AAR 31**

21. Where the agency is considering the placement of a child for adoption it may identify a number of possible prospective adopters. It needs to compare their potential to provide a stable and permanent family for the child, based on the child's permanence report (CPR), the prospective adopter's report and other information it has collected and assessed.

22. The agency is responsible for considering and comparing alternative prospective adopters for a particular child. In its report to the adoption panel on the proposed placement, the agency should only propose one adoptive family (that is, one couple or a single person) as the prospective adopter(s).

23. Once the agency has identified the family it considers most appropriate as a 'match' for the child, it will need to comply with the requirements of AAR 31. The first stage is to provide the prospective adopter with a copy of the child's permanence report and other information the agency considers relevant. This could include reports or summaries of reports on the child's health, education or special needs. Photographs and a video/DVD of the child may also be helpful to the prospective adopter. The prospective adopter needs to understand and confirm in writing that they will keep this information confidential and return it to the agency if the placement does not proceed. There is no requirement to conceal the child's identity from the prospective adopter; indeed to do so runs the risk that an existing acquaintance between the prospective adopter and members of the birth family will not be discovered until after the match has been agreed.

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24. It is essential that agencies make available to the prospective adopter all material facts about the children that may be placed in their care. **It is unacceptable for agencies to withhold information about a child and provide a picture that bears little relation to the reality.** The information provided must include full details of the child's background. This includes the history of any abuse or neglect and/or sexualised behaviour on the part of the child, their history in care, including the number and duration of placements, educational progress (or difficulties), behaviour and comprehensive information about physical and mental health and development, and the implications for the future. Such information is a vital tool for prospective adopters if they are to be able to make an informed decision as to whether to accept the placement of the child and, once the child is placed, to understand and deal effectively with the child's particular needs.

25. The agency must meet the prospective adopter to discuss the proposed placement, be ready to answer their questions and provide, as far as possible, whatever further information they need. It is good practice for the medical adviser to meet with the prospective adopter to share all appropriate health information, to discuss the needs of the children with whom they are matched, and to provide a written report of this meeting. To comply with the regulations, the agency must ensure that it records the prospective adopter's views about the proposed placement, including any view they have about proposed contact arrangements.

26. Prospective adopters should have received a general explanation of placement procedures as part of their initial preparation for assessment but the agency should now remind them of its placement planning procedures. The agency should ask whether the prospective adopter would be willing to meet later with the child's parents, if this is considered to be appropriate. Where an inter-agency placement is being considered, the prospective adopter's agency should ensure that it is familiar with the introduction and placement procedures used by the child's agency so that it can explain these to prospective adopters.

27. If the agency thinks, following this initial sharing of information and discussion, that the proposed placement should proceed it must carry out (if it is a local authority) an assessment of the support needs of the adoptive family – the child, the prospective adopter and any other children of the prospective adopter - in accordance with the Adoption Support Services Regulations 2005. The agency must also consider the arrangements for future contact between the child and appropriate members of their birth family or other people important to the child; see chapter 7 for more guidance on contact issues. If the placing authority is a VAA, it should explain to the prospective adopter that they may request their local authority to assess their

needs for adoption support services, and should assist them in this process. If the local authority undertaking the assessment asks for a copy of the child's permanence report and the prospective adopter's report to inform its assessment, the VAA must comply with this request.

28. AAR 31.2.d sets out the matters that must be included in the adoption placement report that must now be prepared for the adoption panel. This is a report that falls within the Restriction on the Preparation of Adoption Reports Regulations 2005 (ARR) and must be prepared by someone appropriately qualified and experienced or a social worker or student supervised by an appropriately qualified person. The author of the report and the countersigning officer should both sign and date the report, state their qualifications and experience, and confirm that they have complied with ARR 3. In the case of a VAA supplying a report, the proposals for adoption support will be those, if any, that the local authority has made; see chapter 1.

29. The regulation does not require the agency to include in the report the views of the child about the proposed placement, but where this has been discussed with the child, and particularly where the child already knows the prospective adopter (perhaps as their current foster carers), this will be relevant information to be included in the report. In appropriate circumstances the proposed placement will also have been discussed with the child's birth family and their views should be included in the report.

30. Before it is sent to the panel, a copy of the adoption placement report must be given or sent to the prospective adopter so that they may express their views on it in writing. AAR 31.3 specifies that the prospective adopter must be given 10 working days to comment on the report, so the agency will need to ensure that the timetable for completion of the report allows sufficient time before the panel meeting at which it is scheduled to be presented. It will also be helpful, particularly in the case of any proposal to provide adoption support services, if the agency has discussed the outcome of its assessment of the family's support needs in advance of completing the report.

31. At the expiry of the 10 working days or earlier if the prospective adopter's views are received earlier, the agency must send the report to the adoption panel together with the other documents specified in AAR 31. The agency must also supply additional information, so far as practicable, if so requested by the panel.

32. In the case of a proposed inter-agency placement, the child's agency must open its own prospective adopter's case record (see AAR 22.3) and place on this the documents and information it has received from the prospective adopter's agency.

### The adoption panel: AAR 32

33. Once a case has been referred to the adoption panel, the panel is required to consider it and make a recommendation as to whether the placement proposed by the agency should be made. The adoption panel cannot recommend a particular placement unless decisions have already been made that the child should be placed for adoption and that the prospective adopter is suitable to adopt. In appropriate cases, however, to avoid unnecessary delay, the recommendation as to placement can be made at the same panel meeting at which a recommendation has been made in respect of the child and/or the prospective adopter, although each recommendation must be considered separately. In other words, a recommendation as to the approval of the prospective adopter must be for approval of them as suitable to adopt **any** child; only then can the panel go on to consider whether to recommend that they be approved for the **particular** child. This will be appropriate in a case where a baby is being relinquished for adoption, and the agency may wish to identify a family with whom the baby can be placed quickly from among prospective adopters already approved. In this case the recommendation that the child should be placed for adoption can be made at the same time as the recommendation that they should be placed with a particular prospective adopter. Similarly, where a child is living with foster carers who wish to adopt them, it may be appropriate for the recommendation as to their suitability to be made at the same panel as the recommendation about the placement of the child with them, or even, occasionally, for all three recommendations to be made at the same meeting.

34. As well as making a recommendation on the placement, the panel must consider, and may give advice on the proposed contact arrangements, the proposals for adoption support, and whether the agency should restrict the exercise of parental responsibility by the prospective adopter or parent. If the agency is a VAA and has been able to ascertain any proposals for adoption support from the relevant local authority, the panel should consider these also. See chapter 6 with regard to the exercise of parental responsibility.

### The agency decision: AAR 33

35. The agency's decision-maker must make a considered and professional decision on the proposed placement within seven working days of the panel's recommendation. As well as making the decision, the decision-maker may express a view on any advice given by the panel. The decision and any views on the advice must be recorded on both the child's and the prospective adopter's case record. See chapter 1 for guidance on the action the decision-maker must take in making the decision.

36. The prospective adopter should be informed orally of the agency's decision within two working days and written confirmation should be sent to them within five working days. If the decision is to make the placement, the agency must write to the child's parents, including a father without parental responsibility, where his whereabouts are known and the agency considers it appropriate. Other birth family members who have been consulted about the child should also be informed as appropriate. The agency should ensure that the child's Independent Reviewing Officer is informed.

37. If the placement is to proceed the agency must inform the child and explain the decision in a way that is appropriate to the child's age and understanding. It will also be important to inform the child's current carers. Where the child was aware of the proposed placement before the decision was made and the decision is not to place them for adoption with a particular prospective adopter, it will also be necessary for the agency to explain the decision to the child in an appropriate way.

38. Once a decision has been made that the placement is to proceed, the agency must place on the child's case record the relevant documents set out in AAR 33.5.

39. If the decision is not to make the placement, the prospective adopter does not have recourse (as in the case of a determination not to approve them as suitable adoptive parents) to the Independent Review Mechanism. They are however entitled to a full explanation of the agency's reasons for its decision, and it is most important that they are offered support at this difficult time.

### **Adoption and paternity leave and pay**

40. The prospective adopter should notify their employer of their intention to take adoption leave or paternity leave within seven days of being notified that they have been matched with a child. They should tell their employer the date on which the child is to be placed for adoption with them and the date they intend to start their adoption leave. When notifying the prospective adopter of their decision to place a child for adoption, the adoption agency should also enclose a completed Matching Certificate available from Business Link.

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## Chapter 5: Placement and Reviews

This part of the guidance explains the duties of an adoption agency where:

- **it places a child for adoption**
- **it reviews the child's case**
- **consent to placement is withdrawn**
- **the placement is terminated.**

### Placement by agency

1. Once a decision has been made in accordance with regulation 3 of the Adoption Agencies Regulations 2005 (AAR) that a child should be placed with a particular prospective adopter, the agency will need to make a plan for the placement. The placement cannot be made unless the agency has 'authority to place' (consent under section 19 of the Adoption and Children Act 2002 (the Act) or a placement order) or the child is under 6 weeks old and the birth parents have agreed in writing that the child may be placed, using the agreement form in chapter 2. In most cases it will be impracticable to make plans for the placement until it is clear that it will be lawful to place the child. However in the case of a baby, for example, or where it is necessary to end the child's existing placement in the near future, it will be helpful to comply with the requirements of AAR 35.1 and 2, and to make at least a provisional plan for the placement, in anticipation of the expected consent or placement order.

2. If, before the child is placed, an application is made for the revocation of a placement order, the local authority cannot place the child without the leave of the court. An application for revocation can only be made if the court has granted leave under section 24(2) of the Act, and an application for leave does not in itself prohibit the local authority from placing the child. It is not however appropriate for a local authority to proceed with the placement when it is aware of the application for leave, and an attempt to do so in order to frustrate the birth parents' application could be challenged in court by an application for judicial review. In *Re F (Placement Order)* [2008] EWCA Civ 439 the Court of Appeal stated that the appropriate course of action in such a case would be for the birth parents to request the local authority to delay placement until the application could be heard. If such a delay is likely to be prejudicial to the child's welfare, for example if introductions have already started, the local authority should then apply to the court as quickly as possible for permission to place the child, under section 24(5) of the Act.

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3. The agency is required to meet the prospective adopter to consider the proposed placement. A provisional draft of the adoption placement plan, as set out in Schedule 5 of the AAR, should form the basis for the meeting. Contact plans should be discussed at this stage. Contact between adopted children and their birth families can be beneficial, but research<sup>1</sup> has also highlighted that any form of contact needs careful planning and support, and that children's views and their need for contact may change over time so any contact plans must be kept under review.

4. The prospective adopter will already have received the information about the child and a copy of the adoption placement report as set out in AAR 31. They should also be supplied with any relevant additional information, such as the reaction of the child and birth parents on receiving information about the proposed placement, and any advice given by the adoption panel under AAR 32.3. The agency should arrange for the child's social worker, the prospective adopter's social worker, the child's current carer and any relevant child specialists to attend the meeting with the prospective adopter. It may be helpful to involve the foster carer's social worker, if appropriate.

5. One of the matters to be discussed and agreed is the proposed arrangements for introducing the child and the prospective adopter. These will of course vary depending on the age of the child, and all the circumstances. In some cases a lengthy series of introductory meetings of increasing duration will be needed. It is essential that everyone involved is clear about what is planned, how they can discuss with the agency whether the arrangements are working in a way that is helpful to them and how any changes to the plan will be made if necessary. It will be especially important for the foster carer's own social worker to be part of the meeting if the foster carer is going to be involved in a protracted period of introductions. What is important is that both the child and prospective adopter feel well prepared before the placement and are happy with the pace of the introductions and the date of placement.

6. As soon as possible after the planning meeting, the agency must send the prospective adopter the adoption placement plan. This will set out the information required in Schedule 5 of the AAR, and will be the basis on which the prospective adopter will make their formal decision whether to accept the placement. In some cases, for example if there is any disagreement or uncertainty about the proposed adoption support arrangements, the prospective adopter may wish to take some time to consider the proposal, and take advice if necessary.

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<sup>1</sup> Neil, E., Young, J., Cossar, J., Jones, C. and Lorgelly, P. (2010) Supporting direct contact after adoption, Adoption Research Initiative study.

7. Once the prospective adopter has notified the agency that they wish to proceed with the placement, the agency may make the placement (subject to paragraph 1 above, and AAR 35.3 and 4). The agency should keep the child's current carer informed of the placement arrangements and – having regard to the child's age and understanding – inform the child in an appropriate manner. Where the child is already living with the prospective adopter, such as a foster carer, the agency must notify them in writing of the date on which the child's placement with them becomes a placement for adoption. If financial support is to be paid under the adoption support plan this will be paid as from the formal 'placement' date and any fostering allowance will cease from that point.

8. Before making the placement the agency must give the notifications required by AAR 35.6. These are important in ensuring as smooth a transition as possible in the child's health care and education, and in the safeguarding and support arrangements for the child. The agency should ensure that these organisations are reminded not to give the birth parents the name and address of the prospective adopter. The agency should also ensure that prospective adopter is aware that these notifications have been given.

9. A child who is placed for adoption remains a looked after child and, if they are of statutory school age, will have a Personal Educational Plan (PEP). Statutory guidance *The role and responsibilities of the designated teacher for looked after children* makes clear that the child should continue to be treated in the same way as any other looked after child for the purpose of school admission priority arrangements and in relation to the designated teacher's role. Once the adoption order is made, the child is no longer looked after. The role of the designated teacher changes, not least because it is no longer a requirement for the child to have a PEP or be given priority in school admission arrangements. However, schools and designated teachers will need to recognise that the child's educational, social and emotional needs will not change overnight because of the adoption order.

10. AAR 35.7 requires the agency to notify the prospective adopter in writing of any change to the adoption placement plan, but any such changes should always be discussed with the prospective adopter before they are implemented.

### **Modification of the Children Act 1989: AAR 45**

11. AAR 45 applies only when the agency is authorised to place a child for adoption or has placed a child less than 6 weeks old for adoption. AAR 45 modifies the Children Act 1989 (the 1989 Act) so that in adoption cases certain provisions of sections 22, 61 and Schedule 2 of that Act do not apply or are modified. Section 22 (general duty of local authority in relation to looked after children applies to local authorities) and section 61 (duties of voluntary organisations) applies to voluntary adoption agencies (VAAs).

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12. Where the agency is a local authority, AAR 45.2 modifies section 22 of the 1989 Act so that:

- section 22(4)(b) does not apply. The effect of this is to remove the general obligation on the authority to ascertain the wishes and feelings of the child's birth parents before making any decision with respect to the child;
- section 22(4)(c) applies as if for that sub-paragraph there were inserted "(c) any prospective adopter with whom the local authority has placed the child for adoption." The effect of this is to require that where the authority has placed a child with a prospective adopter it is to ascertain their wishes and feelings before making any decision with respect to the child.

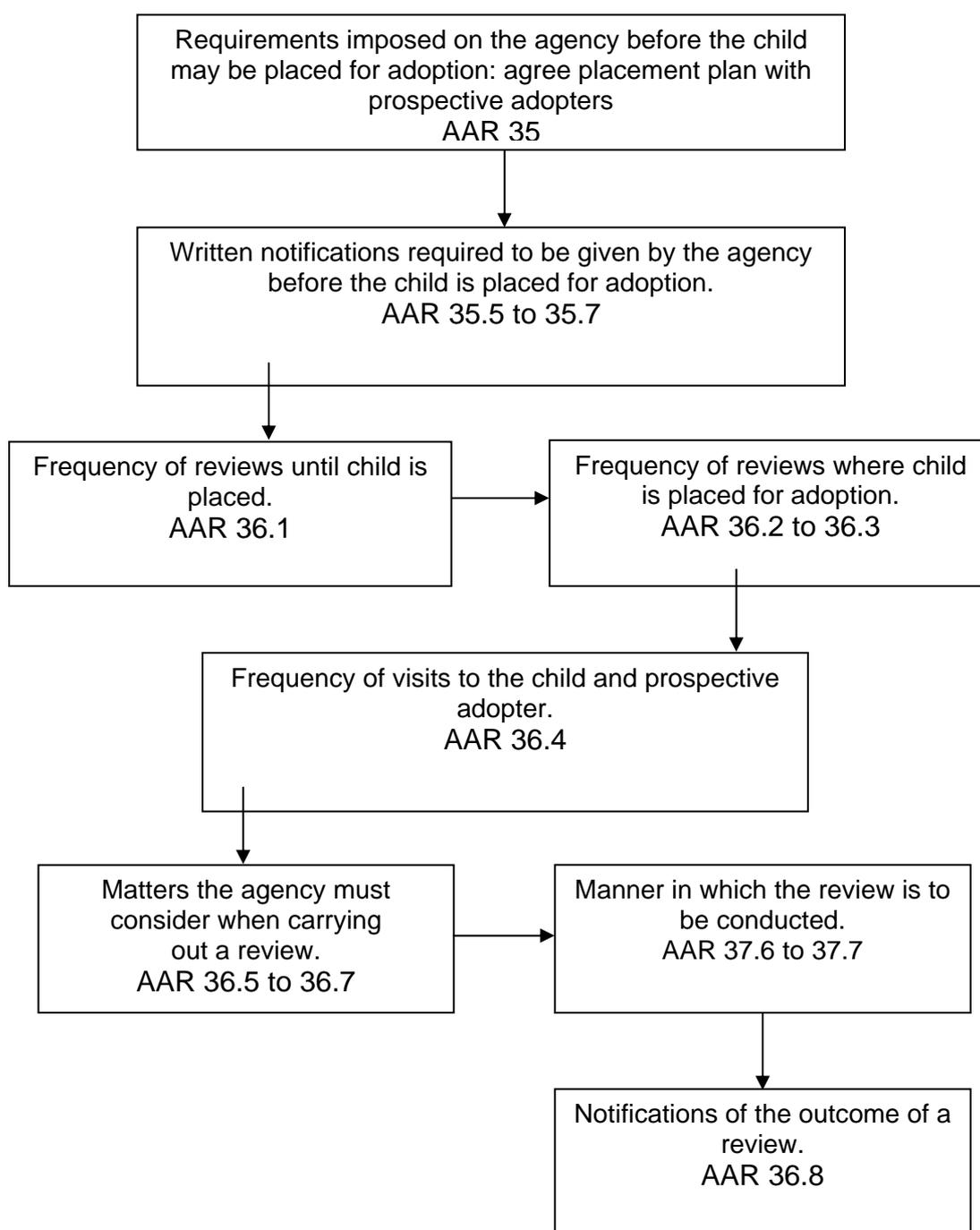
13. The local authority will still be required to comply with section 22(4)(a) and section 22(4)(d) of the 1989 Act in ascertaining, and in section 22(5) in giving due consideration to, the wishes and feelings of the child, and of any other person it considers to be relevant. Research<sup>1</sup> underlines the importance of listening to and acting on the wishes and feelings of children and prospective adopters at this stage. The authority will need to decide in each case whether 'any other person' includes the child's birth parents. When the agency is coming to any decision relating to the adoption of the child, the duty in section 1 of the Act to have regard to the wishes and feelings of the child's relatives (which in that section includes the child's birth parents) will still apply. But, for other decisions (for example the choice of a child's school) the local authority will have the discretion to decide whether it is appropriate to consult the birth parents. The AAR also makes specific provision for ascertaining the views of the birth parents during the adoption process.

14. AAR 45.2 also provides that paragraphs 15 and 21 of Schedule 2 shall not apply where the local authority is authorised to place a child for adoption or has placed for adoption a baby under six weeks old. Paragraph 15 provides for the promotion and maintenance of contact between the child and family (see paragraph 3). The duties with regard to contact are instead governed by section 26 of the Act and the AAR (see the guidance on contact in chapter 7). Paragraph 21 provides for contributions towards the maintenance of children looked after by local authorities.

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<sup>1</sup> Farmer, E., Dance, C., Oujejan., and Beecham, J (2010) *An investigation of family finding and matching in adoption.*

## PLACEMENT AND REVIEW



## The Adoption and Children Act 2002

15. Where the agency is a VAA, AAR 45.4 modifies section 61 of the 1989 Act so that:

- section 61(2)(a) is to have effect in relation to the child whether or not they are accommodated by or on behalf of the VAA;
- section 61(2)(b) shall not apply. The effect of this is to remove the general obligation on the VAA to ascertain the wishes and feelings of the child's birth parents before making any decision with respect to the child;
- section 61(2)(c) shall apply as if for that sub-paragraph there were inserted “(c) any prospective adopter with whom the registered adoption society has placed the child for adoption.” The effect of this is to require that where the VAA has placed a child with a prospective adopter it is to ascertain their wishes and feelings before making any decision with respect to the child.

### Parental responsibility

16. When the agency is authorised to place the child for adoption, the Act makes provision for parental responsibility to be shared between the agency, the birth parents and, once the child is placed for adoption, the prospective adopter. The agency has the power to determine the extent to which the exercise of parental responsibility by the birth parents and/or the prospective adopter should be restricted. This enables the agency to decide how best to share parental responsibility for the particular child, according to their needs, as the case moves through the adoption process.

17. The most important elements of parental responsibility include:

- providing a home for the child;
- having contact with the child;
- protecting and maintaining the child;
- disciplining the child;
- determining and providing for the child's education;
- determining the religion of the child;
- consenting to the child's medical treatment;
- naming the child or agreeing to the child's change of name;
- consenting to the child's marriage or civil partnership; and
- consenting to the child's adoption.

18. With regard to the birth parents, the agency should decide in each case the extent to which it is prepared to involve the birth parents or guardian in the exercise of parental responsibility, where it considers that they would have the necessary capacity to do so and that this would be in the interests of the child's welfare. While the child is not yet placed for adoption and particularly in those cases where the birth parents accept the adoption plan, it may be appropriate for them to have a greater role in the child's life by continuing to exercise some aspects of parental responsibility. Once the child is placed for adoption, it is less likely that it will be appropriate for the birth parents to exercise parental responsibility. In coming to a decision on the exercise of parental responsibility, the agency should take into account the views of:

- the child, if they are of sufficient age and understanding;
- the views of the birth parents or guardian, where it is reasonably practicable to do so; and
- anybody else the agency considers relevant.

19. When the agency makes a decision on the exercise of parental responsibility by the birth parents, it should write to them (if their whereabouts are known). The letter should make it clear the extent to which, if at all, the agency considers it appropriate for them to exercise their parental responsibility, the fact that this will be subject to review, and that they would be notified in writing of any change. The letter should also explain the reasons for the decision. The agency should ensure that it has recorded any views expressed by the birth parents or guardian about the exercise of parental responsibility, particularly in respect of questions of the child's religious upbringing or consent to serious or invasive forms of medical treatment.

20. When the agency is considering placing a child for adoption with a particular prospective adopter, the agency should consider the extent to which the exercise of the prospective adopter's parental responsibility for the child should be restricted by the agency while the child is placed. It may well be appropriate for there to be a gradual 'shift of power' so that the prospective adopter comes to have a greater degree of autonomy as the placement progresses, and their confidence and parenting skills develop, bearing in mind that once the adoption order is made they alone will have parental responsibility.

21. In coming to a decision on the exercise of parental responsibility for the child, the agency should take into account:

- the views of the child, if they are of sufficient age and understanding;
- the views of the prospective adopter;
- the views of anybody else the agency considers relevant, which, in any case where the birth parents are still permitted to exercise parental responsibility, will always include the birth parents; and

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- the advice of the adoption panel where it has made a recommendation as to the placement under AAR 32.

22. The proposed arrangements for exercise of parental responsibility will be set out in the adoption placement plan, giving the prospective adopter the opportunity to express their views about them prior to their agreement to the placement. The arrangements will be subject to review at each review under AAR 36, and any change to the arrangements must be recorded on the amended adoption placement plan. Any changes must also be notified to the child (if of sufficient age), the prospective adopter, and any other person the agency considers relevant. It will be helpful, for example, for the agency to notify the school or education authority of the arrangements in respect of the exercise of parental responsibility with regard to education.

### Changing the child's name

23. A child may not be known by a new surname until the making of an adoption order, unless the court gives leave or each birth parent or guardian has given written consent – see section 82(3) and (3)(a) of the Act.

### Visits: AAR 36.4

24. The risk of a placement disrupting is highest during the first few weeks and the agency is therefore required by AAR 36.4 to visit within the first week after placement and thereafter at least once a week until the first review (four weeks after placement – see below). The frequency of subsequent visits is then to be decided by the placing agency at the first and each subsequent review, and noted on the adoption placement plan.

25. The purpose of the visits is to enable the agency to satisfy itself as to the child's welfare, and to provide the prospective adopter with advice and support. They will also inform the agency's contributions to the review of the child's case, and, in due course, the report to the court when the adoption application is made. Visits should be shared whenever possible between the child's social worker and prospective adopter's social worker, and it is essential that there is clarity from the outset about which social worker will conduct each visit and that they communicate promptly with each other, including sharing their written reports.

26. The child's social worker has the primary responsibility for ensuring the child's welfare and should on each visit see and speak to the child alone. The exceptions to this are:

- where the child refuses (and is of sufficient age and understanding to refuse);

- where the social worker considers it inappropriate to do so (again having regard to the child's age and understanding); and
- where the social worker is unable to do so, for example because the child is out.

If a child has particular communication difficulties or requires specialist communication support, the social worker will need to use specialist resources in order to ensure that the child has the opportunity to express their wishes and feelings, including to request a visit from the social worker. The report should make clear whether the child has been seen alone and, if not, the reason for this.

27. The prospective adopter's social worker will have particular responsibility for supporting the prospective adopter, and may sometimes see them without the child being present. They may also be in contact with the prospective adopter by telephone or email, and it is essential that information gathered in such a way is properly recorded, and, like the reports of the visits, shared promptly with the child's social worker. It should of course be made clear to the prospective adopter that information will be shared in this way.

28. Reports must be written after each visit and placed on the child's case record. These reports are governed by the ARR so must be written by a suitably qualified and experienced social worker, or under the supervision of such a person. For further information about these requirements, see chapter 1.

### **Out of area placements**

29. When a child is placed for adoption by a local authority, the child continues to be looked after by that local authority, (see section 18(3) of the Act). It remains responsible for that child, wherever the child is living, until the adoption order is made. Once an adoption order is made, the child ceases to be looked after and the placing authority has no further responsibility towards them, except in respect of adoption support, see chapter 9.

30. Where the placing agency and the placing agency's social worker cannot visit, the agency must make arrangements with another agency to ensure that a child and family social worker visits the placement. It will not be sufficient, in an inter-agency placement for example, to rely solely on visits by the prospective adopter's social worker.

### Placement breakdown

#### Before the adoption order is made

31. The placing authority is responsible for receiving the child from the prospective adopter (either where the prospective adopter has given notice of their wish to return the child or where the placing authority considers that the child should not remain with the prospective adopter and has given them notice (see section 35(1) of the Act)). The placing local authority also has the power to remove the child from the prospective adopter (see sections 30(1) and 34(1) of the Act).

#### Post adoption order

32. Once an adoption order has been made, the adoptive parent becomes the child's parent and acquires parental responsibility; the child is no longer looked after. From this point onwards the child becomes ordinarily resident in the authority where they now live with their adoptive parent. So if the adoption were to break down after the adoption order was made, the case could not be transferred back to the placing authority under section 20(2) of the 1989 Act. In addition, the local authority where the child lives with their adoptive parent would not be able to recoup the cost of accommodating the child under section 29(7) of the 1989 Act. However, the co-operation duties under section 27 of the 1989 Act would still apply.

#### Reviews: AAR 36

33. Where a child is looked after by a local authority, even though the agency is authorised to place the child for adoption, the review requirements will continue to be governed by the Care Planning, Placement and Case Review (England) Regulations 2010 (the 2010 regulations) until the child is placed for adoption. AAR 36 however will apply whenever the agency is authorised to place the child for adoption and:

- the child is yet to be placed;
- the child has been placed; or
- the placement has disrupted.

This means, therefore, that while the child is authorised to be placed for adoption but not placed, reviews will need to comply with both relevant sets of regulations.

#### Frequency of reviews

34. Where the child has not yet been placed for adoption, the first review under the AAR must take place no more than three months after the agency obtained authorisation to place, and thereafter not more than six months after the previous

review. This is the 'six month review' referred to in AAR 36.7, where particular consideration must be given to establishing why the child has not yet been placed and whether the adoption plan is still appropriate. If a review is needed sooner than three months after authorisation to place in order to comply with the 2010 regulations, this will also be the first review under the AAR. The child's details must be placed on the Adoption Register no later than three months after the agency's decision-maker has decided (after considering the adoption panel's recommendation) that the child should be placed for adoption, see chapter 2.

35. When the child has been placed for adoption, the first review must be held no more than four weeks after placement, the second no more than three months after this, and subsequent reviews held at six-monthly intervals until an adoption order is made, or the child is no longer placed with the prospective adopter. These provisions set out the maximum intervals between reviews. The agency may conduct additional reviews where it considers it appropriate, and should always be prepared to do so at the request of the prospective adopter or the child. In addition, if the placement disrupts and the child is returned to the agency or removed from the placement by the agency, a review under AAR 36.10 must be held between 28 days and 42 days after the disruption.

### **Conduct of reviews**

36. The agency should provide written information about how it intends to review a child's case to the prospective adopter, the child where the agency considers the child is of sufficient age and understanding, and to any other person the agency considers relevant, such as the child's birth parents or guardian and anyone else who has contact with the child. The Independent Reviewing Officer (IRO) appointed by the agency must ensure that the review is conducted in accordance with AAR 36 and, as far as is reasonably practicable, attend and chair any meeting to review the child's case. See AAR 37.

37. The matters to be considered at each review are set out in AAR 36.6. The guidance on reviews of looked after children contained in the 1989 Act guidance Volume 2: Care Planning, Placement and Case Review should also be followed in respect of reviews conducted under the AAR in so far as it is appropriate. The major difference will be that once the child has been placed for adoption, the prospective adopter, who has parental responsibility for the child, will always have a major role and must be consulted, whereas the extent to which birth parents are consulted and involved will be a matter for the agency's discretion depending on the circumstances of the case. It will rarely be appropriate, for example, for birth parents to attend a review meeting once a child has been placed with prospective adopters. In this context the provisions of AAR 45, which modify the application of parts of the 1989 Act, are relevant.

38. It is of the greatest importance that, if the plan is for the child to be placed for adoption and the agency is authorised to place the child but has not succeeded in placing him, it continues to make strenuous efforts to find a suitable family. Selwyn et al<sup>1</sup> found that sustaining a positive, proactive approach to family finding was key to achieving adoption for 'harder to place' children. Efforts will include placing the child's details on the Adoption Register, speaking to other adoption agencies to see if they have suitable prospective adopters, and advertising. In particular, if a placement order is in force, AAR 36.7 stipulates that at the six month review in such a case (ie nine months after the making of a placement order) the review must establish why the child has not yet been placed, and consider whether the adoption plan is still appropriate. A placement order places greater restrictions on the rights of birth parents than does a care order, and the review will need to consider, among other things, whether it may be more beneficial for the child to enable his birth parents to enjoy the greater involvement in his life to which they would be entitled under a care order. Section 24 of the Act enables the agency or the child to apply for revocation of the placement order without the need to establish a change of circumstances since the order was made, and it will not be appropriate for a placement order to remain in force indefinitely with little or no chance of the child being placed for adoption.

39. To ensure that the adoption panel is aware of such cases the agency should inform the panel where there has been a review under AAR 36.7. Although there is no legal role for the panel in the agency's decision to reverse its earlier decision, it will not only help to inform the panel's own practice to know the outcome of cases it has dealt with, but the gathering of such information will enable the panel to provide formal feedback to the agency. In its statement of purpose the agency must indicate the system it has for monitoring and evaluating the provision of its services. Where the panel reports to the executive side (of the local authority) or the agency's trustees (for a VAA) it will be able to identify trends in the adoption work including, for example, in the proportion of cases where the plan has been changed, and any indication that, for example, a higher or lower proportion of placements have disrupted.

40. Where a review is held under AAR 36.10 following a placement disruption, it will be important for any information gathered at a disruption meeting to be available. Where this is not available in time for the review under AAR 36.10 (which must be held between 28 and 42 days after the child is returned to the agency) an additional review should be scheduled at a time when the minutes of the disruption meeting are available in order to inform future plans for the child. Again, it is important for the panel to be kept informed about disruptions to enable it to include this information in its formal feedback to the agency. Although there is no explicit requirement in the

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<sup>1</sup> Selwyn, J., Quinton, D., Harris, P., Wijedasa, D., Nawaz, S., Wood, M., (2008) Pathways to permanence for children of black, Asian and mixed ethnicity: dilemmas, decision-making and outcomes. Adoption Research Initiative study

AAR to this effect, the agency should notify those it previously notified of the placement in accordance with AAR 35.6 that the child is no longer placed, provided that it is clear that there is no prospect of reconciliation between the child and the prospective adopter. Where the child is still looked after, the requirement to give notification of any new placement will be governed by regulation 13 of the 2010 regulations.

41. The information gathered for a review, minutes of the review meeting and a record of any decision made in the course of or as a result of the review must be placed on the child's case record. The agency must ensure that it notifies the child (if of sufficient age and understanding) and the prospective adopter of the outcome of the review, as well as any other person the agency considers relevant. This should normally include anyone whose views were obtained and, of course, anyone directly affected by the decision. The adoption placement plan should also be amended where necessary. If the agency is unable to or otherwise fails to implement any arrangements made as the result of a review, it is required by AAR 37.8 to inform the IRO.

### **Independent reviewing officers: AAR 37**

42. Where an agency is authorised to place a child for adoption the child will continue to be looked after within the meaning of section 22 of the 1989 Act, or accommodated by a voluntary agency within the meaning of section 59 of the Act. The agency is therefore required to appoint an IRO to have responsibility for reviewing the child's case.

### **Withdrawal of consent: AAR 38, or application for revocation of placement order**

43. The Act allows the **child's** birth parents or guardian to withdraw their consent to the child's adoptive placement at any time up to the point where the prospective adopter applies for an adoption order. Where consent given under section 19 or 20 of the Act is withdrawn in accordance with section 52(8) of the Act, AAR 38 applies. Section 19(1) provides that the agency is authorised to place a child for adoption where the agency is satisfied that each parent or guardian has consented to the child being placed for adoption, either with identified adopters or with adopters chosen by the agency. Section 20(2) provides that, where a parent or guardian has given a Section 19 consent, they may also give advance consent to the child's adoption by identified adopters or by adopters chosen by the agency. Section 52(8) provides that consent may be withdrawn either in form A106 under the Family Procedure Rules 2010 or by written notice given to the agency.

44. Where consent is withdrawn before the child has been placed for adoption, the agency will not be able to make the placement unless, if it is a local authority, it

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obtains a placement order. Where the child has already been placed and the birth parents request the child's return, the agency will be required to comply with that request unless, again in the case of a local authority, it applies for a placement order.

45. Under AAR 38.2, where consent to placement is withdrawn and the agency is a local authority, it must immediately review its decision to place the child for adoption. If it considers that the child should still be placed for adoption and, having taken legal advice, it considers that the conditions set out in section 31(2) of the 1989 Act (conditions for making a care order) are likely to be satisfied, it must apply for a placement order. If it does make this decision, it is required to notify the child's birth parents or guardian, (including a father without parental responsibility if possible and appropriate) and, if the child is placed for adoption, the prospective adopter. The making of an application for a placement order has the effect of restricting the birth parents' right to demand the return of the child until the application has been disposed of.

46. Even if the child has not yet been placed for adoption, but a decision has been made to place the child with particular adopters, it will be appropriate to notify them of a decision to apply for a placement order. The agency will need to provide support for them and help them to form a view as to whether they would still wish to have the child placed with them if the placement order application is successful. As far as possible they should be given an estimate of the time that may elapse before the outcome of the application is known.

47. Where the agency is a VAA, it will not itself be able to apply for a placement order. It is required by AAR 38.3 to consider whether it is appropriate to inform the local authority for the area where the child lives, to enable that authority to consider whether it should take action to protect the child, such as applying for an emergency protection order.

### **Life story book: AAR 35**

48. The child's life story book helps them explore and understand their early history and life before their adoption. It is important therefore for it to be written in a simple and age-appropriate style and that the language and terms used are agreed with the prospective adopter before the book is handed over. For example, some prospective adopters use the term "tummy mummy" as a way of explaining to the child who their biological mother is, whereas other prospective adopters use different terms. The explanation of why the child was adopted should not include explicit or distressing details. This information needs to be given to the child at a time when they are emotionally able to cope and understand the information. Consideration should be given on whether the surname of the birth parents, family and others should be included in the life story book.

49. The child's birth parents, family, foster carers and other people who know the child should be encouraged to be involved in putting together the contents. They may also be able to provide memorabilia significant to the child such as the child's hospital birth wristband; soft toys, letters, and celebration cards; first drawings and paintings, and photographs of birth parents, siblings, family members and other people who are important to the child. Where appropriate, this memorabilia should be stored safely in a suitable box – a "memory box".

50. The life story book and "memory box" should be co-ordinated by one person, preferably the child's social worker, and given to the child and prospective adopter in stages. The first stage is at the second statutory review of the child's placement with the prospective adopter. The completed life story book should be presented within ten working days of the adoption ceremony, ie the ceremony to celebrate the making of the adoption order.

### **Later life letter: AAR 35**

51. A social worker who knows the child, preferably the child's social worker, should prepare the later life letter for the child. The letter should explain the child's history from birth and be sufficiently detailed so that in the future the adolescent child, or young adult, will have factual details about their birth family and their life before adoption, and so be able to understand why they could not live with their birth family, and why they were adopted. The letter should be given to the prospective adopter within ten working days of the adoption ceremony, ie the ceremony to celebrate the making of the adoption order.

52. The child's birth family could be asked by the agency to write either their own letters to the child or contributions to the agency's letter, should the agency consider either of these steps appropriate.



## Chapter 6: Safeguarding and permitting access to adoption records

**This part of the guidance explains the duties of an adoption agency in respect of storing, safeguarding and providing access to its adoption case records during the period up to the making of an adoption order (regulations 39-40 of the Adoption Agencies Regulations 2005 (AAR)).**

**Sections 56-65 of the Adoption and Children Act 2002 (the Act) and Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005 (AIR) cover the agency's duties in respect of its adoption records after the making of an adoption order. Guidance to those provisions is largely contained in chapter 11. The provisions with regard to safe storage and obligatory disclosure are, however, matched in both the AAR and the AIR and the guidance in respect of those provisions is contained in this chapter.**

**In this chapter the term 'adoption case records' unless otherwise indicated includes records subject to the AAR, the Adoption Agencies Regulations 1983 (the 1983 Regulations) and section 56 information under the AIR.**

### Storing records

1. Adoption agencies are required to set up case records both for children who are being considered for adoption and for prospective adopters. The contents of such records are dealt with in the relevant chapters. This chapter deals with the specific duties in respect of storage and confidentiality of these records as set out in AAR 39-44, and also with access to records. Specific provisions relating to the statutory scheme for access to information after the adoption order is made are contained in chapter 11, except as indicated above.
2. It should be borne in mind that adoption records, like other records, are subject to the provisions of the Data Protection Act 1998, except where there is a specific exemption. The exemption applying to adoption records relates to the right of a person whose records are held (the 'data subject') to demand access to the records under section 7 of that Act. The provisions of AAR 41 will prevail over section 7 of the Data Protection Act 1998 by virtue of the Data Protection (Miscellaneous Subject Access Exemptions) Order 2000/419 (as amended by SI 2005/3504),
3. The agency is required by AAR 39 and AIR 5 to ensure that adoption case records, and all their contents, are kept in secure conditions at all times. In particular, the agency is required by AAR 39 and AIR 5 to ensure that it takes all appropriate measures to prevent the theft, unauthorised disclosure, loss or destruction of, or

damage to, case records or their contents. This applies equally to information which may not be stored at the agency's main premises, or which is removed from the office while the social worker is working on the case at another location.

4. The adoption agency should keep its security arrangements under review, and any breaches of the security of records should be acted on promptly to prevent any recurrence. All agency staff with responsibility for handling section 56 information should be clear about their duty to safeguard this information at all times.

5. There is nothing in the regulations to prevent the agency from transferring paper records and documents to microfiche or other electronic or digital media but it must be confident that the information can be retrieved during the next 100 years. The agency should take particular care when transferring original documentation to microfiche or other formats to ensure there is no electronic link between the care and adoption records. Documents which are likely to be significant to the adopted person, such as reports, cards or letters handwritten or signed by their birth parents or other birth relatives, should always be preserved in their original format so that the adopted person can see and handle them.

6. AAR 39 covers the storage of the whole case record, including any information that may be stored electronically or digitally, or by other means; cards or letters; the child's life story information; and photographs or audio-visual film. Where it is not practicable to keep some of these objects with the main electronic or paper case record, this fact, and the whereabouts of the other information or objects should be noted on the main case record. The duty to secure these objects securely applies as it does to paper or electronic records.

7. Where a case record is not in active use, it should, if it is a paper record, or stored on disk, CD-rom or microfiche, be stored in a lockable security cabinet or secure room with access allowed only to authorised staff and any person as provided for by AAR 42 and 43, or AIR 8 and 9. Where it is stored electronically or digitally, the agency must ensure that appropriate systems are in place to safeguard it. Confidential information stored on computers should be password protected, and the system should ensure that only those properly authorised can have access to it. The agency should not transmit information from the adoption case record outside the agency by e-mail or facsimile unless its confidentiality can be assured.

### **Preserving records: AAR 40 and AIR 6**

8. AAR 40 provides that the agency must keep the child's case record and the prospective adopter's case record for as long as it considers appropriate. This applies only to adoption case records where the case has not concluded with an adoption order.

9. Where an adoption order is not made and the agency decides to close the child's adoption case record, it should transfer the information from this record to the looked after case record, provided it does not duplicate information already on the looked after case record. Regulation 50 of the Care Planning, Placement and Case Review (England) Regulations 2010 stipulates that records on looked after children should be retained for at least 75 years from the birth of the child or for fifteen years after the child's death (under the age of 18), whichever is the shorter period. If the child has never been looked after, the agency should destroy the records when no further action is necessary. An example of when this may be appropriate is if the possibility of adoption of a baby was discussed before the child's birth, but the baby remained with the birth parents.

10. In considering how long to retain prospective adopters' case records the agency needs to be mindful that one of the principles of the Data Protection Act is that personal data should only be kept for as long as is necessary. Prospective adopters can be asked if they want their case records retained – in case they may wish to reapply to the agency or another adoption agency to adopt again - and to give their consent to the storage of the case record for whatever period is agreed, after which the record will be securely destroyed.

11. AIR 6 requires the agency to keep all section 56 information for a minimum of 100 years from the date of the adoption order. This duty applies to information stored in any format.

12. Where the agency decides to destroy case records or the indexes to those case records, if any, it must treat this as confidential waste and dispose of it accordingly. Where the records are electronic, local destruction procedures should be followed.

### **Confidentiality: AAR 41**

13. The agency is required by AAR 41 to treat the contents of case records as confidential, subject to the requirements of AAR 42.

### Access and disclosure: AAR 42

14. AAR 42 applies to access to and disclosure of adoption records up to the point where an adoption order is made. AAR 42.1 sets out where the agency is required to provide access to information; these provisions are similar to those in AIR 9 with regard to disclosure after the making of the adoption order. AAR 42.2 sets out the circumstances where an agency has discretion to provide access, such as when the child's agency needs information from the prospective adopter's agency during the matching and placement process.

### Obligatory access to or disclosure from records: AAR 42 and AIR 9

15. The following guidance relates to the agency's duties under both AAR 42 and AIR 9 where it is required to make disclosure to authorised people under the provisions of either set of regulations. The duties relate to adoption case records both before and after the making of an adoption order. The same duties in essence also apply to case records kept under regulation 14 of the 1983 Regulations where the adoption order was made before 30 December 2005.

16. In the following circumstances, the agency is required to provide access to information from the case record to the person or body indicated. Where the adoption order has been made, on or after 30 December 2005, the requirement is contained in the AIR. Where no adoption order has yet been made, the AAR apply. The AIR refer to the information as 'section 56 information'; the AAR refer to 'case records.'

- To those holding an inquiry under sections 3 and 4 of the Children Act 2004 (inquiries held by the Children's Commissioner) or under the Inquiries Act 2005

Where the agency has concerns about allowing the inquiry access to the information, for example if the inquiry is being held in public, it may seek the prior written agreement of the inquiry that any information disclosed will be properly safeguarded and its confidentiality maintained.

- To the Secretary of State

The Secretary of State may seek access to, or the disclosure of, adoption case records or section 56 information from an adoption agency in certain circumstances. This may be in relation to a decision as to whether to establish an inquiry under sections 3 and 4 of the Children Act 2004 or under the Inquiries Act 2005. This regulation also provides the Secretary of State with the general authority to seek

information from adoption agencies, including the information provided in statistical returns to central Government.

- To the registration authority

Part II of the Care Standards Act 2000 provides for applications by a voluntary adoption agency (VAA) for registration with the registration authority, and for refusals and cancellations of registrations. The agency may be required by the registration authority to disclose information from its case records where the authority is considering whether to cancel a VAA's registration, or an appeal against such a decision.

Part III of the Care Standards Act 2000 provides the registration authority with the powers to regulate and inspect local authority adoption and fostering services. This gives the registration authority powers to require a local authority adoption agency to disclose any information relating to an inspection of its adoption service.

- To the Commission for Local Administration in England, for the purposes of any investigation conducted in accordance with Part 3 of that Act, subject to the provisions of section 29(7) and 32(3) of the Local Government Act 1974 (the 1974 Act) (investigations and disclosure)

This regulation applies where the Local Government Ombudsman is investigating a complaint involving a local authority adoption agency and needs access to information from the agency's case records in order to do so. The Ombudsman has no power to investigate the activities of a VAA. But where a VAA has provided, for example, a prospective adopter's case record to a local authority in an inter-agency placement, this will be placed on the record set up by the local authority under AAR 31.8 and thus subject to disclosure to the Local Government Ombudsman.

A local authority may refuse to disclose certain information to the Ombudsman where the authority would not be required to disclose it to the High Court (see section 29(7) of the 1974 Act). A local authority may also seek to serve a statutory notice on the Ombudsman under section 32(3) of the 1974 Act. Such a notice would preclude the Ombudsman from disclosing to anyone else any information that has been disclosed to him during the course of an investigation.

- To any person appointed by the adoption agency for the purposes of the consideration by the agency of any representations (including complaints)

Sections 26(3) and 26(3B) of the Children Act 1989 (the 1989 Act) require local authorities to establish a procedure for considering representations, including complaints, and for involving an independent person in that consideration. The Voluntary Adoption Agencies and Adoption Agencies (Miscellaneous Amendments) Regulations 2003 require VAAs to establish a complaints procedure. Regulation 11 of those regulations requires the agency to establish a written complaints procedure and regulation 12 provides for complaints to be fully investigated. Where an independent person has been appointed by the agency to consider any complaint or representations in relation to adoption services, they are likely to require access to the agency's case records in order properly to investigate the complaint.

In relation to adoption services, service users are children who may be adopted, birth parents and guardians, prospective adopters, adopted people and adoptive parents or any other person who the agency considers has sufficient interest in a child who is or may be adopted to warrant his representations being considered by them. See section 3(1) of the Act.

- To a panel constituted under section 12 of the Act to consider a qualifying determination.

Section 12 of the Act provides for an independent review mechanism (IRM) to be established to review a range of qualifying determinations made by the agency. Qualifying determinations may be made in respect of:

- the suitability of a prospective adopter to adopt under AAR 27; and
- disclosure of 'protected information' under section 61 of the Act where AIR 15 sets out the duties of an agency where application is made to the IRM.

Where the case record of a prospective adopter set up under AAR 22 is held under AAR 39, AAR 42 requires the agency to provide access to its case records and disclose information as may be required by and to the extent of the AAR. Since AAR 28 requires the prospective adopter's case records and other relevant documents to be provided to

the IRM, this constitutes a requirement to disclose information to the IRM.

Where the adoption agency makes a qualifying determination in relation to an application for the disclosure of protected information under section 61 of the Act, the process to be followed by the agency is set out in AIR 15. AIR 9.f also places a general duty on the adoption agency to supply any section 56 information requested by the Secretary of State.

- To a court having power to make an order under the Act or the 1989 Act

Sections 43 and 44(5) of the Act require the adoption agency to submit a report to the court on the suitability of the applicants and any relevant welfare issue under section 1 of the Act. Once an adoption order has been made, and the case record is subject to the provisions of the AIR, the agency may still be required to supply information to the court where, for example, an adoption agency decision is the subject of a judicial review or in connection with proceedings instigated by the registration authority. The agency is required to provide access to, or disclosure of, any section 56 information requested by the court.

- To an officer of CAF/CASS or a Welsh family proceedings officer in the discharge of their duties under the Act

This will apply to records held under the AAR prior to the making of an adoption order. The duties of the CAF/CASS officer are set out in section 102 of the Act. Section 103 provides that they may exercise a right of access to adoption agency records to fulfil their duties under the Act. This includes safeguarding the child's rights in an application for a placement order, or if they are appointed to do so in an application for an adoption order, submitting reports to the court relating to the child's welfare if so ordered, and witnessing consent to the making of an adoption order. The CAF/CASS officer has no right to see the adoption case records when witnessing consent to placement under section 19 of the Act; the information necessary for the CAF/CASS officer to fulfil their duty will be supplied by the agency under AAR 20.

- To the Public Services Ombudsman for Wales for an inquiry held by him under section 2 of the Public Services Ombudsman (Wales) Act 2005

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Similar considerations will apply here as in a request from the English Local Government Ombudsman.

17. AAR 42 also makes it clear that the agency must disclose information from its case records to the extent specified in other parts of the AAR. This would include, for example:

- notifying the child's parents of the agency's decision that the child should be placed for adoption under AAR 19;
- notifying the prospective adopter of the agency's decision to approve them or not as suitable to adopt under AAR 27;
- where a prospective adopter requests a review by an independent review panel, sending information to that panel under AAR 28;
- providing the prospective adopter with a copy of the child's permanence report and the adoption placement report under AAR 31;
- where the agency decides to place a child for adoption with a particular prospective adopter, notifying them and the child's parents of the decision under AAR 33; and
- providing the prospective adopter with the adoption placement plan under AAR 35.

### **Discretionary access or disclosure to records**

18. AAR 42.2 gives the agency the discretion to allow access to its case records and disclose the information from them as it thinks fit for the purposes of carrying out its functions as an adoption agency. For example, this may include disclosing information when the child's agency needs information from the prospective adopter's agency during the matching and placement process or disclosing information to the prospective adopter prior to the adoption order, such as the child's life story information.

### **Records of disclosure: AAR 42.3 and AIR 11**

19. Under AAR 42.3, where the agency discloses information from its records, whether because of a requirement in AAR 42.1 or in the exercise of its discretion under AAR 42.2, it must keep a written record of access and disclosure. Under AIR 11, a similar duty applies, but is spelt out in more detail. The record must include:

- a description of the information disclosed;
- the date on which the disclosure was made;
- the person to whom the information was disclosed; and

- the reason for the disclosure.

20. It is important that the agency keeps a detailed and accurate record of any information disclosed to any person by virtue of AIR 8 or 9. This is particularly important where the agency has exercised its discretion to disclose information by virtue of AIR 8.1 or where it has entrusted protected information to an adoption support agency or an adoption agency under AIR 8.2. It is important that the agency is able to verify at any given time details of the information it has previously disclosed under these regulations.

### **Transfer of records: AAR 43**

21. AAR 43 permits the agency to transfer a copy of a case record, or part of that record, to another adoption agency when it considers this to be in the interests of the child or prospective adopter to whom the record relates. The agency is required to keep a written record of any such transfer.

22. If a VAA intends to cease to act or exist as a VAA it must transfer its case records to another adoption agency (subject to the prior approval of the registration authority) or transfer them to the local authority for the area in which its principal office is situated, and notify the registration authority in writing of the transfer.

23. Where the VAA amalgamates with another VAA to form a new VAA, it must transfer its records to the new VAA and notify the registration authority in writing of the transfer.

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## Chapter 7: Contact

**This part of the guidance explains the duties of an adoption agency in relation to contact.**

### Contact

1. One of the key principles of the Children Act 1989 (the 1989 Act) is the presumption that there should be continued contact between the child and their family while the child is in the care of the local authority. This is appropriate for care provided under the 1989 Act, where the underlying philosophy is to work in partnership with the family and towards reunification where possible, provided that this is consistent with the child's welfare. However, the purpose of an adoptive placement is fundamentally different as the intention is that the child should become part of another family. Therefore, where the agency is authorised to place the child for adoption, there should be no general presumption for or against contact. This is why regulation 45.2 of the Adoption Agencies Regulations 2005 (AAR) removes the general duty in the 1989 Act to promote contact.

2. Contact between adopted children and their birth families can be beneficial, but research<sup>1</sup> has also highlighted that any form of contact needs careful planning and support, and that children's views and their needs for contact may change over time so any contact plans must be kept under review

3. Where the agency decides that a child should be placed for adoption, AAR 46 applies. This requires the agency to consider what the contact arrangements – the arrangements that allow any person contact with the child – will be when the agency is authorised to place the child for adoption. Until the agency is authorised to place the child for adoption, the 1989 Act will apply to contact, but it is necessary for the agency to have formed a view about future contact so that this can be discussed with the people affected, and considered by the court on any application for a placement order. Some advice on positive and problematic contact arrangements are suggested in the *Supporting direct contact after adoption* research.

4. Where consent is given under section 19 of the Adoption and Children Act 2002 (the Act) or if a placement order is made, the adoption agency is authorised to place the child for adoption. With authority to place the child for adoption, the contact provisions in sections 26 and 27 of the Act apply. Where the adoption agency is authorised to place the child for adoption any existing 1989 Act contact order ceases

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<sup>1</sup> Neil, E., Young, J., Cossar, J., Jones, C. and Lorgelly, P. (2010) Supporting direct contact after adoption, Adoption Research Initiative study.

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to have effect; birth parents and others may apply to the court for a contact order under section 26 of the Act.

5. Before making a placement order, section 27(4) of the Act requires the court to consider the arrangements the agency has made or proposes to make for contact and to invite the parties to the proceedings to comment on those arrangements.

6. When the adoption order is made it also extinguishes any order under the 1989 Act, and any contact order under section 26 of the Act. Section 46(6) imposes a duty on the court, when making an adoption order, to consider the existing and proposed arrangements for contact with the child, and to seek the views of the parties to the proceedings on those arrangements. The court will be able to make a contact order under section 8 of the 1989 Act (a section 8 contact order), where it considers that to be in the best interests of the child.

7. While section 46(6) of the Act places an explicit duty on the court to consider whether there should be contact there is no presumption that this must be the case. At all times, the child's welfare and best interests drive any arrangements for contact.

8. Contact arrangements should be focused on, and shaped around, the child's needs. The child's welfare is the paramount consideration at all times and each child's needs for contact should be individually considered. For many children, relationships with members of their family, previous carers and others are valued. For some children some form of contact may provide a positive aid to a successful placement with a new family, but all concerned need to understand that the purpose of any such contact, if it is to take place, is fundamentally different from the contact that would normally be arranged between children in care and their families.

9. Unauthorised contact will continue to be a challenge for children, their birth and adoptive parents and social workers alike. A new, and very real, challenge comes when this contact is via the internet, for example, social networks, Smart Phones and hand held gaming devices which have wireless connectivity. Social networking is fast becoming the preferred method of communication for children and adults alike. It is important that social workers help children, birth and adoptive parents to understand the implications of disclosing personal information on social networking sites, and the harm unauthorised or unmediated contact can have. Agencies should provide help and support in such cases.

10. Arrangements which tend to have the best chance of success are those which are mutually agreed between the birth family, relatives and others and the adopters, and have the details and expectations set out and confirmed in writing. The importance of clear boundaries and expectations for all parties in contact arrangements is highlighted in the *Supporting direct contact after adoption* research.

11. Where siblings cannot be placed together with the same family, it is important to ensure that contact arrangements between them are given very careful attention and plans for maintaining contact are robust. Contact arrangements may need to be varied as the children's relationships and need for contact change over time. Contact arrangements with a child's relatives may take the form of indirect contact, with letters and cards and some background information about the child's progress being sent via a social worker. The practicalities of such arrangements require careful planning, see chapter 4.

12. In some cases there may be some form of direct contact. Where the child has siblings who are placed separately, arrangements may be made for visits and family meetings between adoptive families. Sometimes, too, visits from or meetings with grandparents, or former foster carers, may be beneficial to the child. With appropriate preparation and support, direct contact with a birth parent or guardian may, for example, help to reassure a child who is anxious about their parent's well-being.

13. AAR 46.3 stipulates that in coming to a decision on the contact arrangements, the agency is required to:

- take into account the wishes and feelings of the parent or guardian of the child. Where the father of the child does not have parental responsibility for the child and his identity and whereabouts are known to the agency – and the agency considers it appropriate – it is also required to take into account his wishes and feelings;
- take into account any advice given by the adoption panel about the proposed contact arrangements in accordance with AAR 18.3; and
- have regard to the considerations set out in section 1(2) and (4) of the Act. Section 1(2) provides that the paramount consideration of the court or adoption agency must be the child's welfare, throughout their life. Section 1(4) provides that the court or adoption agency must have regard to a number of matters, which include the relationship the child has with relatives, and with any other person, and the likelihood and value of any such relationship continuing. At all times it must be the child's welfare and best interests that decide any arrangements for contact. There should be no presumption for or against contact.

14. AAR 46.4 requires the agency to notify the following people of the contact arrangements:

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- the child, if the agency considers the child is of sufficient age and understanding;
- the parent or guardian, if their whereabouts are known to the agency, including the father of the child where he does not have parental responsibility for the child, his identity and whereabouts are known to the agency and the agency considers it appropriate;
- any person who had provision for contact under the 1989 Act which ceased to have effect by virtue of section 26(1) of the Act and any other person the agency considers relevant.

15. Where the agency decides to place a child for adoption with a particular prospective adopter, AAR 46.5 requires it to review the contact arrangements in the light of the prospective adopter's views and any advice given by the adoption panel in accordance with AAR 32.3.

16. If the agency proposes to change the contact arrangements which affects anyone mentioned in AAR 46.4, it must seek that person's views and take them into account in deciding the contact arrangements while the child is placed for adoption.

17. AAR 46.7 reiterates the agency's duty to set out the contact arrangements in the adoption placement plan and to keep them under review.

### Variation from the terms of a contact order

18. AAR 47 contains provisions to deal with cases where a variation from the terms of a contact order under section 26 of the Act may be appropriate or necessary. Under section 27 of the Act such a variation may be by unilateral decision of the agency, for a maximum of seven days, or by agreement with all those affected.

19. Where the agency decides under section 27(2) of the Act to refuse to allow the contact that would be required by an order made under section 26 of the Act, it is required by AAR 47 to inform the persons specified in AAR 47.3 as soon as the decision is made. The agency is also required to notify them in writing of the decision, the date of the decision, the reasons for the decision and the duration of the period. Unless the case is urgent, the appropriate course is for the agency, if it cannot reach agreement as set out below, to apply to the court under section 27(1) for a variation or revocation of the order.

20. AAR 47.2 sets out the steps that must be taken when the agency and a person entitled to contact under a section 26 order reach an agreement to vary the arrangements for contact. Any agreement is subject to the following conditions:

- where the child is of sufficient age and understanding, subject to their agreement;
- where the child is placed for adoption, subject to consultation before the agreement is reached, with the prospective adopter; and
- written confirmation by the agency to the persons specified in AAR 47.3 of the terms of that agreement.

21. The people specified in AAR 47.3 are:

- the child, if the agency considers they are of sufficient age and understanding;
- the person who had provision for contact under section 26; and
- the prospective adopter, if the child is placed for adoption.

### **Contact after adoption**

22. Before making an adoption order, the court will consider whether there should be arrangements for allowing any person contact with the child. At this time an application may be made for a contact order under section 8 of the 1989 Act. Such orders are however relatively rare, and where some form of continuing contact is proposed, whether direct or indirect, it is more likely that this will be a matter for agreement between the person concerned and the adopters. The court may however make a note on the court file about the agreement reached.

23. Once the adoption order has been made, birth parents lose their status as parents, and no longer have a right to apply for a section 8 contact order without the leave of the court. Other birth relatives, or any other person connected to the child would also need the court's leave to make an application.

24. The circumstances in which a birth parent or relative would be most likely to seek the court's leave to apply for a section 8 contact order after adoption are those where an agreement for some form of continuing contact had been made, but was not adhered to. The agency may have an important role to play in supporting the child and the adults concerned in such a situation. Assistance, including mediation services, in relation to contact between an adoptive child and birth relatives or other connected people is one of the adoption support services that local authorities must make available under regulation 3 of the Adoption Support Services Regulations 2005 (ASR) (see chapter 9). With the agreement of the adoptive parents the local authority may be able to make enquiries as to the reasons why the contact agreed

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has not taken place, and to consider whether it would be in the interests of the child's welfare to offer support to enable it to resume. Support for the person who has been denied the expected contact will also be necessary, and could if appropriate be provided by another adoption agency or adoption support agency.

25. The case of *Re T (Adopted children: contact)* [1995] 3 WLR 793, [1995] 2 FLR 792 suggested that a refusal by adoptive parents to adhere to an agreement for contact may be sufficient to enable the birth relative concerned to obtain leave to apply for a section 8 contact order. The adoptive parents in this situation may wish to obtain legal representation. The local authority should also provide as much support as possible to minimise the risk of an adverse effect on the child's welfare. A mediated outcome is more likely to be successful than an order obtained after a disputed court application.

26. Where an application for leave to apply for a section 8 contact order is made in the absence of any previous agreement for contact, it is unlikely to succeed without strong reasons. It may be unnecessary even to involve the adoptive parents, who will only need to be notified of the application if the court has decided that there may be a case for granting leave. In the case of *Re C (A Minor) (Adopted child)* [1993] 3 WLR 85, [1993] 2 FLR 431 the court considered that in most such cases the local authority involved in the original adoption proceedings should be notified.

27. Where a section 8 contact order has been made, whether at the time of the adoption order or subsequently, it is open to those named in the order to apply to the court for the order to be varied. Again, in these circumstances, the local authority should be ready to assist with support and/or mediation in the interests of the child's welfare.

### Summary of contact requirements, chapters 2-5, 8 and 9

28. The following summarises the duties of the agency in respect of contact as set out in the AAR and the Adoption Support Services Regulations 2005 (ASR) and this guidance.

#### Chapter 2

29. The agency must, so far as is reasonably practicable:

- ascertain the child's wishes and feelings regarding contact with their parent or guardian or other relative or with any other person the agency considers relevant (AAR 13 and regulation 36 of the Adoptions with a Foreign Element Regulations 2005 (FER)); and

- ascertain the wishes and feelings of the birth parent, guardian or any other person the agency considers relevant about contact with the child if the agency is authorised to place the child for adoption or the child is adopted (AAR 14 and FER 37).

30. Counselling of the child's parent or guardian should include the consequences of the adoption process for contact with the child and how this will change if the agency is given authority to place the child for adoption. The counselling should explain that the 1989 Act contact obligations would be replaced by the contact arrangements provided for by the AAR where the agency obtains authority to place the child. This can be difficult information for birth parents and guardians to accept. It is important that they are offered independent support (through their independent support worker) regarding this and other matters related to the adoption. Research<sup>1</sup> has shown that birth relatives benefit from support but can be hard to reach, and that take up of services is low. It can help to offer a flexible range of services, available at different points in time and with multiple referral routes. The agency should also explain the right that the parent or guardian and others have to apply for a contact order under sections 26(2) and 26(3) of the Act.

31. The child's permanence report prepared for the adoption panel under AAR 17 must include:

- the wishes and feelings of the child regarding contact with their parent or guardian or other relative or with any other person the agency considers relevant
- the wishes and feelings of the child's parent or guardian, and of any other person the agency considers relevant, regarding contact with the child if the agency is authorised to place the child for adoption or the child is adopted; and
- the agency's views about the child's need for contact with their parent or guardian or other relative or with any other person the agency considers relevant and the arrangements the agency proposes to make for allowing any person contact with the child.

32. Where the panel makes a recommendation to the agency that the child should be placed for adoption, it is required to consider and may at the same time give advice to the agency about the arrangements which the agency proposes to make for allowing any person contact with the child (AAR 18.3). When the decision maker makes their decision following the panel's recommendation, they may also express a

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<sup>1</sup> Neil, E., Sellick, C., Young, J., Cossar, J., and Lorgelly, P. (2010) Helping Birth Families: A study of service provision, cost and outcomes, Adoption Research Initiative study.

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view in relation to the panel's advice on contact, and any such view should be recorded on the child's case record.

### **Chapter 3**

33. The preparation of the prospective adopter should include giving information to the prospective adopter about contact between a child and their parent or guardian or other relatives where a child is authorised to be placed for adoption or is adopted (AAR 24).

34. The prospective adopter's report prepared for the adoption panel under AAR 25 and Schedule 4 must include the views and feelings of the prospective adopter about contact.

### **Chapter 4**

35. Where the agency is considering placing a child with prospective adopter it must ascertain the view of the prospective adopter about the arrangements that the agency proposes in relation to contact with the child (AAR 31.1).

36. Under AAR 31.2 when the agency considers that a proposed placement should proceed, it must consider the arrangements for contact, and include details of these in the adoption placement report. Where the views of the parents or other relevant people have been ascertained with regard to the proposed arrangements for contact, these should also be included in the placement report, see chapter 4.

37. When the adoption panel considers the proposed placement it must consider the arrangements the agency proposes to make for allowing any person contact with the child (AAR 32.3). Where the panel makes a recommendation that the child should be placed for adoption with a particular prospective adopter, the panel may at the same time give advice to the agency about the matters set out under AAR 32.3, which include contact arrangements (AAR 32.4).

38. When the agency's decision maker makes a decision that the child should be placed with a particular adopter, they may express a view on the advice given by the panel, including any advice on contact, see chapter 4.

### **Chapter 5**

39. The adoption placement plan that must be prepared when the agency decides to place the child with a particular prospective adopter must include any arrangements for contact (AAR 35).

40. The agency must keep the arrangements for contact under review, and will

have to consider at each review under AAR 36.6 the existing arrangements for contact and whether they should continue or be altered.

## Chapter 8

41. Before making a placement order, the court must consider contact, and may make a contact order under section 26 of the Act.

42. Once a child is authorised to be placed for adoption (and also in cases where a child under six weeks old has been placed for adoption) the provisions in the 1989 Act regarding contact cease to apply and contact is dealt with under sections 26 and 27 of the Act. The local authority no longer has an obligation to promote contact between the child and birth family members. The court may however make an order for contact under section 26 of the Act, and may revoke or vary a section 26 order under section 27 of the Act. The court may make an order under section 26 even if there has not been an application.

43. In a case where the child is placed or about to be placed with a prospective adopter whose identity is not to be disclosed to other parties, the agency will need to ask the court to make arrangements to preserve their anonymity.

44. On the making of an adoption order any section 26 contact order will cease to have effect. Section 26(5) of the Act however permits an application to be made for a contact order under section 8 of the 1989 Act when it is to be heard at the same time as an application for an adoption order.

45. If no section 8 contact order is made at the time of the adoption order, a birth parent or relative who wishes to apply for contact will need first to obtain the leave of the court. The application for leave, and the application itself if leave is granted, will be governed by the provisions of the 1989 Act.

## Chapter 9

46. One of the prescribed adoption support services under ASR 3 is assistance, including mediation services, in relation to arrangements for contact between an adoptive child and birth relatives or other related people. The need for such support will form part of the assessment of support needs for the child, adoptive family and parents or others who may be having contact. Support services, including support for contact, will form part of the adoption placement plan drawn up and kept under review under AAR 35 and 36.

47. Once an adoption order has been made, any plan for adoption support that includes assistance with contact should be kept under review according to the provisions in ASR19.



## Chapter 8: Adoption Agency and Local Authority Responsibilities in Court proceedings

**This chapter addresses the duties of adoption agencies (and local authorities in 'non-agency' adoption cases) in court proceedings. In addition to the specific responsibilities imposed by the legislation and the Family Procedure Rules 2010, guidance is given on issues that must be addressed in coordinating adoption agency functions with on-going court proceedings under the Children Act 1989 for a care order. Directors of Children's Services should develop and sustain constructive links between their adoption and looked after children's teams and the courts in their area with the aim of jointly minimising delays in court proceedings.**

### Introduction

1. Chapters 1-7 of this guidance set out the processes that adoption agencies must follow in order to achieve an adoption placement, but no adoption can be finalised without a court order. In addition, a child cannot be placed for adoption without a placement order made by a court, except where the parent gives consent to their child being placed for adoption.
2. The Family Procedure Rules 2010 (the Rules) and their accompanying Practice Directions come into force from 6 April 2011 and set out in detail the procedure to be followed in court proceedings. The adoption agency (or local authority in a non-agency case) has an important part to play in these proceedings. Section 1(3) of the Adoption and Children Act 2002 (the Act) requires courts and agencies to be mindful of the prejudicial effect delay has on children. Rule 1 includes the need to ensure that cases are dealt with expeditiously and fairly as part of the 'overriding objective' of the Rules. All parties, including the agency/local authority, must help the court in furthering this overriding objective. This will include compliance with timetables set by the court.

### Court proceedings

#### Placement order applications

3. As explained in chapters 2, 4 and 5 the decisions by the agency decision-maker that a child 'should be placed for adoption', or should be placed for adoption with a particular prospective adopter, are necessary stages in the process. But these decisions can only be implemented if the agency is 'authorised to place the child for adoption.' Where the agency does not have authorisation through parental

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consent, it will be necessary to apply for a placement order. An application for a placement order must be made:

- if the child is accommodated but no adoption agency is authorised to place the child for adoption provided that either:
  - the child has no parent or guardian, or
  - the authority considers that the grounds in section 31(2) of the Children Act 1989 (the 1989 Act) are met, (section 22(1) of the Act); or
- if there are care proceedings in train (whether or not the parents are prepared to consent to placement for adoption); or
- if a care order is in existence but the parents will not consent to the child being placed for adoption (section 22(2) of the Act).

The local authority may apply for a placement order if there is a care order and it is authorised to place the child for adoption, see section 22(3) of the Act.

### Timing of application

4. Where it is decided that a child should be placed for adoption during the course of care proceedings, the local authority must apply for a placement order. It is essential that the application be issued without delay. The local authority's legal advisers should be kept fully up to date with developments so that the application can be made quickly. It is important that adoption agencies coordinate their actions with the court proceedings.

5. A placement order may not be needed if it is thought that the parent(s) with parental responsibility will consent to their child being placed for adoption. In such cases, the steps set out in regulation 20 or 20A of the Adoption Agencies Regulations 2005 (AAR) should be followed. However, agencies will need to assess the likelihood of the parents changing their mind or being uncontactable when considering whether an application for a placement order should be made.

6. If the parent of a child already subject to a care order has consented to their child being placed for adoption, but the local authority has reason to fear that they may withdraw consent, the local authority may apply for a placement order.

7. If a child has been placed for adoption by consent given under section 19 of the Act, but the parent subsequently withdraws the consent, the agency must immediately to review their decision to place the child for adoption (see AAR 38 and chapter 5). If they consider that the child should still be placed for adoption, and that

there are grounds for a placement order, the application should be made immediately. The court may not make a placement order in respect of a child unless the child is subject to a care order, or the court is satisfied that there are grounds for making one under section 31(2) of the 1989 Act or that the child has no parent or guardian (section 21(2) of the Act). If a parent is seeking the return of the child, the prospective adopter and the agency will need to comply with the request within 14 days, unless the placement order application has been issued before then. Where a child has been placed by a voluntary adoption agency (VAA), that agency will not be able to apply for a placement order, and any steps to secure the child's position will need to be taken by the local authority, if it agrees that the child is at risk of harm if returned to the parent.

### **Making the application**

8. Applications for placement orders are made by submitting form A50 to the court. This should be completed by or with the advice and assistance of the local authority legal adviser. It is important that up-to-date details are included in the form. To avoid delays in court proceedings, it is vital that agencies keep in touch with the parent or guardian, for example through the independent support worker, so that their current address(es) is known. If their current whereabouts are not known, it will be necessary to provide details to the court of the attempts made to locate them and the date when any address was last known to be current. In the majority of cases, the application for a placement order will be made with or during the course of an application for a care order under section 31 of the 1989 Act. In this case, the application will of course be made to the court hearing the care proceedings. A freestanding application may be made to any family proceedings court or to a county court, which is an adoption centre. In some circumstances, it may be appropriate to make the application to the court, which has made any existing care order unless this was made by a county court, which is not an adoption centre (see Allocation and Transfer of Proceedings Order 2008).

9. Form A50 sets out the documents that will need to be filed with the application. The report prepared in accordance with Rule 14.11 and in accordance with Practice Direction 14C of the Rules should be included. It is not a requirement of the Rules for this to be filed with the application, but it will save time if it is.

### **The statement of facts**

10. The grounds for dispensing with consent are that the parent cannot be found, or is incapable of consenting, or that the child's welfare requires the consent to be dispensed with. The local authority will need to provide the information necessary to their legal adviser for them to draft the statement of facts, setting out the facts on which the local authority relies to establish that one of these grounds is made out.

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11. If it is claimed that the parent cannot be found, the statement of facts will need to provide evidence that rigorous investigations have been made by the local authority to try to find them. As well as the obvious steps of contacting the parent's independent support worker, writing to and visiting their last known address and place of work, emailing and sending text messages, other methods can be used. These include making enquiries through other members of the family, the parent's GP, electoral rolls, telephone directories, the local housing authority and possibly by placing advertisements.

12. For the parent to be incapable of consenting, the court will need to be satisfied that they are unable to make a decision for themselves in relation to the adoption 'because of an impairment of, or disturbance in the functioning of the mind or brain'. See section 2(1) of the Mental Capacity Act 2005, and note that the parent may be incapable due to their minority; it will normally fall to their solicitor to determine whether they are able to give instructions. This is likely to require appropriate medical evidence, and a parent who is incapable of consenting is also likely to be incapable of conducting the proceedings and will need to have a 'litigation friend' (who may be the Official Solicitor) to conduct the proceedings on their behalf. In cases where the Official Solicitor represented the parent in earlier care proceedings, the local authority should notify the Official Solicitor of the proposed application.

13. If it is claimed that the child's welfare requires the court to dispense with parental consent, the statement of facts will need to include information about the child's history and long-term needs and the capacity of the parents to meet those needs. It will need to show also, why the child's welfare requires adoption, rather than any other order. The statement of fact should include any findings in earlier care proceedings and the judgment, if there has already been a care order with an adoption care plan.

14. The statement of facts will be sent to the parent. It is important that the statement of fact does not include any information which might identify the prospective adopter where they have already been chosen and their identity is not to be disclosed to the parents.

## Appointment of children's guardian

15. Since the child is a party to any application for a placement order, the court will appoint a children's guardian under Rule 16.3 unless it is satisfied that it is not necessary to do so to safeguard the interests of the child. Where there are combined care and placement order applications the guardian appointed in the care proceedings will usually be appointed for the placement order application.

## Contact

16. Before making a placement order the court must consider contact, and may make a contact order under section 26 of the Act. The application form therefore requires information to be given about the current and proposed contact arrangements, and Practice Direction 14C also contains information about contact, the child's and parents' wishes in this regard, and the local authority's recommendations. This is a matter that will have been considered by the agency and the adoption panel under Part 3 of the AAR, and on which the adoption panel may have given advice under AAR 18.3.

## Combined care and placement order applications

17. If care proceedings are in progress at the time that the local authority's decision-maker decides that a child should be placed for adoption, section 22(2) of the Act requires it to issue an application for a placement order. If this decision is made before any care proceedings are commenced, the local authority has the option of applying for a placement order alone, but it will usually be preferable to apply for both a care and a placement order. If this were done, then although the care order will not have effect while the placement order is in force, it would remain in force if the placement order were subsequently revoked. In the case of *Re P-B (A Child)* [2006] EWCA Civ 1016 the court makes clear that it is not permissible to issue the placement order application before the decision-maker has decided that the child should be placed for adoption. For further guidance on the issue of care proceedings in these circumstances, see the guidance to the Children Act 1989 (Volume 1 Court Orders).

18. It is essential that the child's social worker, the agency adviser to the adoption panel and the local authority's legal advisers, work closely together to ensure that each is kept aware of the progress of the case (see chapter 2). Each team should be prepared to act quickly. For example, an adoption panel date may be arranged, even if only provisionally, to fit in with the time when it is expected that all the necessary reports will be available. It will be the responsibility of the child's social worker, with the assistance of the adoption team, to have prepared as much of the Practice Direction 14C report as possible even before the case goes to the adoption panel. This is so that the report can be finalised and lodged with the court promptly if

the decision is made that the child should be placed for adoption and the placement order application is issued. Agencies may find it helpful to devise their own protocols to fit in with local arrangements.

### Revocation of placement orders

#### Application by birth parents

19. A parent may apply, with the leave of the court, for revocation of a placement order provided the child is not at the time placed for adoption. The court may only give leave for an application if it is satisfied that there has been a change of circumstances since the order was made but, even if there has been a change of circumstances, the decision on whether to give leave will be a matter for the exercise of the court's discretion. In the case of *R (W) v Brent London Borough Council* [2010] EWHC 175 (Admin) the court held that the child was "placed for adoption" once the agency's decision-maker had approved the match and the introductions with the prospective adopter had begun. While an application for revocation of a placement order is pending, the local authority may not place the child for adoption without the court's permission. Strictly speaking, an application for leave to apply for revocation does not act as a bar to the child's placement. However, the Court of Appeal has said that it was good practice for the local authority, where it knows of a pending application, to agree not to take any steps to place the child for adoption whilst the application is pending. The local authority should make the birth parents aware that placement plans are at an advanced stage and could seek the court's leave to place the child under section 24(5) of the Act. See the case of *Re F (Placement Order: Revocation)* [2008] EWCA Civ 439. A deliberate move designed to frustrate a parent's application might be amenable to judicial review.

20. A finding by the court that there has been a change of circumstances since the placement order was made is a necessary condition for the granting of leave to make the application for revocation, but it does not follow that a change of circumstances will automatically mean that leave is granted. Although in making its decision on whether to grant leave the court is not required to regard the child's welfare as its paramount consideration, this will be one of the factors that it will consider, along with the prospects of the parent's success in securing revocation of the placement order if leave is granted. See the case of *Warwickshire County Council v M* [2007] EWCA (Civ) 1084. It will be important for the local authority to be able to supply up-to-date information about the child's current situation, including their views and wishes, and the progress on finding and making a suitable placement. Where a parent has applied for leave or has made a substantive application for revocation and the prospective adopter is unwilling to await the outcome of the application, every effort should be made to ensure that the case is heard as quickly as possible. In the meantime the prospective adopter will need to

be given support, and it may be appropriate for them to be offered independent legal advice.

21. If leave is granted for the parent's application for revocation, the child's welfare throughout their life will be the court's paramount consideration in determining that application. The child will be a party to the application and will be entitled to be legally represented, and a children's guardian will be appointed. If the application is successful, any care order made before or at the same time as the placement order will have effect, unless separately discharged, and the local authority will therefore need to revise the care plan for the child.

### **Application by the local authority or the child**

22. The local authority or the child, without the leave of the court, may make an application for revocation of a placement order. Where the local authority decides that the child should no longer be placed for adoption following a review under AAR36, the local authority must revise the child's care plan and apply to the court for revocation of the placement order, thus ensuring the accuracy of the child's legal status.

23. There is no requirement in the AAR for the adoption panel to consider this change of plan, but it is good practice to ensure that the adoption panel is kept informed.

### **Adoption applications**

24. When the child has been placed by an adoption agency, the prospective adopter is permitted to lodge their adoption application once the child has had their home with them for at least ten weeks. In many cases the prospective adopter and the child may need a longer 'settling-in' period than this before they are ready to address the potential stress of court proceedings, but the timing of any application should be a matter discussed by the agency and the prospective adopters.

25. When a notice of application to the court for an adoption order is received, it will be necessary to check whether the record contains a notice (under section 20(4) of the Act) that the parent does or does not wish to be informed of any application for an adoption order.

26. Although the adoption itself will not usually be opposed by the birth parents, they will nevertheless be entitled, as respondents if they have parental responsibility and they have not given notice to the contrary under section 20 of the Act, to be given notice of the application, and to be heard if they wish on the issue of contact. It will reduce the applicant's potential anxiety if the agency, perhaps through the independent support worker, has been able to maintain contact with the birth

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parent(s) and be aware of their current wishes and feelings. The parent's support worker should, for example, have helped them to understand that they will in due course receive notice of the adoption application, and ensured that they are able to obtain legal advice if necessary. If there are unresolved issues such as disputes over contact arrangements, there is a greater risk that birth parents will take the opportunity of the adoption application to raise issues that concern them or, possibly, seek leave to oppose the application.

### Children freed for adoption under the Adoption Act 1976

27. It is possible that some applications will be brought in respect of children who were freed for adoption prior to 30 December 2005 under the Adoption Act 1976. In these cases, although the adoption application is brought under the Act and the Rules, the birth parents are not parties to the application and are not entitled to notice of the hearing, as they are legally defined as 'former' parents under the 1976 Act see the case of *Re F (Adoption; natural parents)* [2006] EWCA Civ 1345.

### Legal representation for adoptive applicants

28. Where the adoption application is opposed, it might be necessary for the applicants to be legally represented. The cost of legal representation, as well as payment of court fees, is one aspect of adoption support provided by a local authority that should not be means tested (see regulation 15.4 of the Adoption Support Services Regulations 2005 (ASR)). Even where the application is not opposed, it may be necessary for the prospective adopter to be legally represented, in order, among other things, to avoid the risk that they attend court in person at the same time as the birth parents. Advice should be sought from the agency legal adviser about the appropriateness of legal representation. The legal department will also be in a position to provide some of the documentation needed for the filing of the application.

### Which court?

29. An application for an adoption order may be made to a court anywhere in the country. It is likely to be a magistrates' family proceedings court, or a county court, which is also an adoption centre. There is no requirement to make the application to the same court to which an earlier order, such as a placement order, has been made; but there may be advantages in returning to the court which is already familiar with the earlier proceedings, particularly if it is thought that the parents may seek leave to oppose the application.

30. The convenience of the applicant is also a factor, since it may be necessary for them and the child to attend court in person before the order is made. An application to their local court may be the most convenient, but this may be unwise if

it is particularly important not to risk giving any indication to the birth parent of where the adoptive family lives. In an interagency placement where the adoptive family lives at a distance from the placing agency, it will be wise to seek advice about any particular local factors that could affect the application, not only from the placing agency's legal adviser but also from the local authority for the area in which the adoptive family lives. Applicants should be given advice to enable them to make an informed decision, as the final choice is one for the applicants themselves.

### **The application**

31. The application is made by submitting form A58 to the court together with the accompanying documents. The applicant, or their legal representative if one is appointed, will need information from the child's record to complete the application form. This will include a copy of any placement order and the child's birth or adoption certificate. It is important for the agency to ensure that they are provided with the information and support needed. The agency must be ready to submit the report required under Rule 14.11 so that the hearing of the application is not delayed. Where the prospective adopter wish their identity to remain confidential, Form A58 allows them to ask the court to allocate them a serial number, which will be used instead of their name on any documents sent to the other parties.

### **The position of the child**

32. The child will not be a party to the adoption application except in certain circumstances. The Rules provide that the child will be a party when:

- permission has been granted by a court for parents or guardians to oppose the making of an adoption order;
- the child opposes the making of the adoption order;
- a children and family reporter recommends that it is in the best interests of the child to be a party to the proceedings, and the court accepts that recommendation;
- the child is already an adopted child;
- any party to the proceedings is opposed to the arrangements for allowing any person contact with the child, or a person not being allowed contact with the child after the making of the adoption order;
- the prospective adopters are relatives of the child.

33. If the child is made a party, then a children's guardian will be appointed unless this is not considered necessary to safeguard their interests, and they will be entitled to legal representation. Whether or not the child is a party, they must attend court for the final hearing unless the court specifically directs otherwise (Rule 14.6). The court will usually dispense with the child's attendance if there is good reason to do so. If

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the child is particularly anxious about the idea of attending court, this is a matter that should be brought to the attention of the court in advance of the final hearing.

### **The Directions Hearing**

34. The court will need to give directions about the way the case is to be dealt with so that there will usually be a short hearing to consider what is necessary. However, there are variations in the way different courts deal with these procedural issues (perhaps using telephone conferencing, for example) so it is essential to ascertain what process is likely to be followed by the court in question, and to ensure that the applicants are as aware as possible of what to expect.

### **The final hearing**

35. Unless a birth parent has been given leave to oppose the application, the final hearing should be a relatively straightforward process. The birth parent is however entitled to receive notice of the hearing and to attend (unless they are consenting parents and have indicated that they do not want to be kept informed).

36. When giving directions about the final hearing, the guidance issued by the President of the Family Division on 3 October 2008 provides for the court to consider the practical arrangements and to direct whether the child and/ or the prospective adopter need not attend. The guidance requires each adoption centre and magistrates' court, which hears family proceedings, to have arrangements in place to provide information to the parties about any special arrangements made for their attendance at, and the conduct of, the final hearing. The arrangements will vary depending on a number of factors, including the facilities available at the court, whether the applicants are legally represented, and how far away from the court they live. Where the court makes the adoption order in the absence of the child or applicant, the guidance encourages the court to make arrangements for a celebratory event to be attended by the adoptive parent and the child. This event should take place at least 14 days after the making of the order, after the time limit for appealing has passed.

### **Applications by parents for leave to oppose adoption order**

37. Where consent to placement for adoption has been given under section 19 of the Act, or a placement order has been granted, birth parents may not oppose the making of an adoption order unless the court gives them leave to do so. Leave may not be granted unless the court is satisfied that there has been a change of circumstances since the consent was given or the placement order made. In dealing with an application for leave to oppose, the court will also treat the child's welfare throughout their life as its paramount consideration. Unless and until leave is given, the adoption application is treated as unopposed. Depending on the circumstances

of the case, it may not be necessary for the prospective adopter to become involved in the application for leave to oppose, although, if a change of circumstances is proved, then consideration of the child's welfare may need to include evidence of how they are thriving (or otherwise) in the care of the prospective adopter.

38. If leave is given to oppose the application, then it will be necessary for the court to address the issue of parental consent. A statement of facts will be needed, setting out the facts on which the prospective adopter relies to establish the grounds for dispensing with consent. The child will (if not already) be made a party to the application and a children's guardian appointed, and, if they are not already legally represented, the prospective adopter is likely to need legal representation. If there is any question of the agency ceasing to support the adopter's application, this will need to be discussed and decided with the agency's decision maker.

## Contact applications

### Applications under section 26 of the Act

39. Once a child is authorised to be placed for adoption (also in cases where a child under six weeks old has been placed for adoption) the provisions in the 1989 Act regarding contact cease to apply and any order for contact made under that Act will cease to have effect. As explained in chapter 7, contact is dealt with under sections 26 and 27 of the Act, and a local authority no longer has an obligation to promote contact between the child and birth family members. The court may however make an order for contact under section 26 of the Act, and may revoke or vary a section 26 order under section 27 of the Act. At the time of making a placement order, the court is required by section 27(4) to consider the arrangements made or proposed by the agency for contact and invite the views of the parties. The court may also make an order under section 26 on its own initiative, i.e. even if no application has been made.

40. If no section 26 order has been made at the time of the making of a placement order, it is open to any of those entitled to apply to the court for a section 26 order (broadly the child or agency, the parents or guardians and relatives, but see section 26 for the full list). Anyone not falling within the categories in section 26(3) may also apply with the court's leave.

41. An application for a section 26 order is governed by the Rules and is made by submitting form A53 to the court. The application may be made to any court, but if made to a county court it must be to one which is an adoption centre. If a placement order has been made, it will probably be convenient for the section 26 application to be made to the court which made the placement order. The adoption agency, any parent with parental responsibility for the child, and the person with whom the child

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lives or is to live will always be respondents to the application. The child (if not the applicant) will be a respondent, if:

- they, or the agency or any parent with parental responsibility opposes the making of the order; or
- an existing provision for contact is to be revoked; or
- relatives of the child do not agree to the arrangements for allowing or not allowing a person contact; or
- the child is suffering or at risk of suffering harm within the meaning of the 1989 Act.

If the child is a party, the court will appoint a children's guardian unless it is satisfied that this is unnecessary to safeguard the interests of the child.

42. In a case where the child is placed or about to be placed with a prospective adopters whose identity is not to be disclosed to other parties, the agency will need to ask the court to make arrangements to preserve their anonymity. If the agency and the prospective adopter hold the same views in respect of contact, it should not be necessary for the prospective adopter to be separately represented, although, as a party, they are entitled to be represented.

43. If there is already a section 26 order in force, section 27 allows for an application to be made by the agency, the child or a person named in the order to vary or revoke the order. Such an application is made on form A54. If a prospective adopter makes the application and wishes their identity to remain confidential, the form makes provision for them to apply for a serial number, which will be used instead of their name on any documents sent to the other parties.

### Contact after adoption

44. On the making of an adoption order any section 26 contact order will cease to have effect. Section 26(5) of the Act however permits an application to be made for a contact order under section 8 of the 1989 Act when it is to be heard at the same time as an application for an adoption order. Section 46(6) of the Act requires the court making an adoption order to consider whether there should be arrangements for allowing any person contact with the child. The making of an arrangement for contact does not imply that there should be an order; the court may simply indicate its approval of agreed arrangements, or it may make a section 8 order if it considers that this is necessary to promote the child's welfare. It is important to make sure that arrangements are settled; loose ends should not be left to be resolved after the

adoption order has been made, see the case of *Re X and Y v Warwickshire County Council and B* [2009] EWHC 47 (Fam).

45. If no section 8 contact order is made at the time of the adoption order, a birth parent or relative who wishes to apply for contact will need first to obtain the leave of the court (see chapter 7). The application for leave, and the application itself if leave is granted, will be governed by the provisions of the 1989 Act.

### Non-agency adoptions

46. The majority of this guidance deals with duties of adoption agencies, but local authorities additionally have duties in respect of adoption applications where the child has not been placed with the prospective adopter by an adoption agency. Although section 92 of the Act prohibits 'private' adoptions, a child may be the subject of an application to adopt even though they were not placed for adoption by an adoption agency. These are called non-agency adoptions. When this occurs, the local authority has a responsibility to provide a report to the court to assist it in reaching a decision on the application. These reports must be completed quickly to avoid delaying the court hearing the adoption application. The local authority with responsibility for investigating and preparing the report to the court may arrange for another local authority or VAA to carry out the investigation and prepare the report to the court, but the local authority remains responsible for the quality of the work and that the report is filed with the court without delay. See chapter 1 for guidance on who can prepare the report to the court.

47. The principal categories of non-agency adoptions are:

- applications by the partner of the parent of a child, ie the parent's spouse, civil partner or unmarried partner (partner adoptions, but sometimes inaccurately, referred to as step-parent adoptions);
- applications by local authority foster carers where the child has not been placed with them for adoption under the AAR;
- applications by relatives of the child or by private foster carers.

Under the adoption support provisions of the Act and regulations, it may be necessary to consider the need for adoption support, and at least to provide counselling, information and advice.

### Notice of intention to apply

48. Sections 42-44 of the Act contain provisions concerning the conditions that will need to be met before a single person or a couple may apply to adopt a child. As

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for all adoptions, the applicant will need to satisfy requirements as to domicile or habitual residence and age. In addition, section 44 provides that non-agency applicants must give formal notice to the local authority where they have their home of their intention to apply for an adoption order. The notice must be given at least three months and not more than two years before the application is made to the court. On receipt of the notice, the local authority is required to 'investigate' the matter with a view to preparing a report to the court. Local authorities need to have procedures in place for responding to notices of intention, and allocating a suitably qualified social worker to deal with the case. The social worker who prepares the report to court must meet the conditions of the ARR (see chapter 1).

49. Where prospective adopters are resident abroad, but still entitled to apply for an adoption order, regulation 3 of the Local Authority (Adoption) (Miscellaneous Provisions) Regulations 2005 sets out how the appropriate local authority is to be identified. In principle this is the local authority where they last had their home, but where each partner of a couple lived in different local authority areas in England, and they have never had a home together in England, they may choose which of the two relevant authorities they wish to give notice. These cases will require careful planning, since the requirement under section 42(7) of the Act for the court to be satisfied that the writer of the report has had sufficient opportunity to see the applicants and the child together in their home will still apply. It may be possible to arrange to visit the proposed adopters and the child during periods when they are in England on holiday, for example, but reports will need also to cover their home situation in the place where they currently reside. In the case of *Re A (A child)* [2009] EWCA Civ 41 the court said that "home" does not have to be a home in the UK.

50. The local authority has an opportunity to discuss with the proposed adopters their hopes and expectations of adoption and to offer them advice and information. This should include ensuring that they fully understand the implications of adoption and are aware of possible alternative courses of action. For step-parents, for example, a parental responsibility agreement may be more appropriate, and for foster carers or relatives, special guardianship may be suitable. It will be important to ensure that the child, if of sufficient age and understanding, is aware of what is proposed and is given an opportunity to express a view.

### **Minimum period for child to have home with the applicant**

51. Section 42(3)-(5) of the Act sets out the minimum period for which the child must have had their home with the prospective adopter before they may apply to the court, with the possibility of an earlier application in some cases if the court gives leave. The notice of intention may be given up to three months before that minimum period has expired, although in this case the protection offered against removal of the child under sections 36-40 of the Act may not apply. Where leave would be required to make the application because the minimum residence period would not

be completed, notice cannot be given to the local authority until leave has been granted.

52. The relevant residence periods required under section 42 are as follows:

- for applications by the child's own parent – 10 weeks;
- for applications by the partner of the child's parent – 6 months;
- for applications by a local authority foster parent – one year;
- in any other case – three years (whether continuous or not) during the period of five years immediately preceding the application.

The possibility of an application for leave to apply after a shorter period does not apply in the case of partner adoptions.

### **Protection from removal of the child**

53. Sections 36-40 of the Act contain detailed provisions restricting the right of a birth parent and others to remove a child from the care of people who have applied, or in some cases have given notice of intention to apply, for an adoption order. These do not prevent the removal of the child under child protection provisions. They do not apply in the case of a child, accommodated under section 20 of the 1989 Act, where the parent with parental responsibility may exercise their right under section 20(8) of the Act to remove their child.

54. The situation most likely to affect local authorities under these provisions is an application by a local authority foster carer, perhaps where they have sought and been refused approval under the AAR as a prospective adopter for the child, or where the foster carer is unhappy with the plan to move a child to another placement. If the child has been living with the foster carer for at least one year when they give notice of their intention to apply for an adoption order, the local authority may remove the child from their care without the leave of the court. Where such a situation arises, it is essential that the local authority seek the advice of its legal department without delay. If there is a case to justify an application for leave to remove the child, action should be taken speedily. The application will be made under Part 18 of the Rules. It should be remembered that notice of intention to adopt is given to the local authority for the area in which the applicant lives, which may not always be the local authority that has placed the child with the foster carer. Where a local authority receives notice in these circumstances, (and it is aware that the child is looked after) it is required by section 44(7) of the Act to inform in writing the local authority looking after the child within seven days.

### Applications by local authority foster carers

55. It should not normally arise that a local authority foster carer gives formal notice of intention to apply to adopt without this issue having previously been discussed with the local authority. If the issue is raised, the local authority must give it serious consideration and, in its role as an adoption agency, ensure that the foster carer is offered information and counselling under AAR 21. If adoption is already the plan for the child, and the local authority considers that the foster carer may be suitable to be approved as an adoptive parent, the rest of the procedure under Parts 3 and 4 of the AAR (assessment and approval of prospective adopter and matching of child with prospective adopter) will need to be followed. It is not usually appropriate to leave it to the foster carer to make a 'non-agency' adoption application. There will be cases where the local authority is clear that it considers it inappropriate to pursue the foster carer's interest in adopting the child. In such a case, it must respond promptly to the foster carer explaining the reasons for its views, and ensure that the carer has access to their own independent legal advice. See, for example, the case of *Re A, TL v Coventry City Council* [2007] EWCA Civ 1383. A failure to take the foster carer's representations seriously may lead to a risk of delay to a placement with other prospective adopters when they are identified.

56. If a foster carer gives notice of intention to apply to adopt a child whom the local authority is not authorised to place for adoption, it will be necessary immediately to consider the plan for the child and to ascertain the child's and birth parent's wishes and feelings. If the local authority considers that adoption may be appropriate, it will need to follow the procedure set out in Part 2 of the AAR. Parents may be willing to consent to adoption by foster carers who have looked after the child for a considerable period. In such a case, if the local authority, having referred the child's case to the adoption panel, decides that the child should be placed for adoption, it should bear in mind the possibility of the parent consenting under section 19.1.a of the Act to their child being placed for adoption with prospective adopters identified in the consent. Where the parent does not consent and the local authority decides that the child should be placed for adoption, it will need to apply for a placement order.

57. Because of the time needed to complete the procedures under the AAR, it may be that the three months period of notice of intention will expire before the agency has reached its own determination, and the foster carer may have issued their adoption application before the local authority has been able to issue a placement order application. The local authority will need to consider all the circumstances, including the age of the child, and the degree of parental opposition (if any) to the adoption, in deciding the most appropriate course of action. Even if the local authority issues a placement order application before the foster carer's adoption application has been heard, it would be open to the court to adjourn the placement order application and proceed to hear the foster carer's adoption

application. In this case the foster carer's application would still technically be a non-agency one. It should be borne in mind, however, that for the purposes of adoption support, the child in these circumstances falls within the definition of an 'agency adoptive child' unless the local authority opposes the application, see ASR 2.1. Alternatively, the court may adjourn the foster carer's adoption application and hear the placement order application first so that, if the placement order is granted, the foster carer's adoption application can proceed as an agency application.

### Partner applications

58. Section 4A of the 1989 Act defines 'step-parent' as the spouse or civil partner of the child's parent. However, an adoption application may be made by the partner of the child's parent, whether or not they are married or in a civil partnership. It may cause confusion to refer to these types of application as 'step-parent' applications (see section 51(2) of the Act). A person is the partner of the child's parent if they and the child's parent are a couple but the partner is not the child's parent. Couple is defined in section 144(4) of the Act as:

- a married couple;
- two people in a civil partnership; or
- two people whether of different sexes or the same sex, are living as partners in 'an enduring family relationship' (except where they are closely related, i.e. parents, grandparents, siblings, or uncle/aunt and nephew/niece).

See chapter 5, paragraphs 45-46 of the practice guidance *Preparing and assessing prospective adopters* and section 144(5) of the Act.

59. Because the Adoption Act 1976 did not permit adoption by unmarried couples (same sex and opposite sex), there will be some instances where an adoption order was made, probably following an agency placement, in favour of one partner in such a relationship, even though the placement was made with the couple and they were both assessed. Even some years after implementation of the Act on 30 December 2005, there may be cases where the couple are only now taking steps to make the application that will accord both partners equal legal status. The agency that made the placement should offer advice and assistance to enable the application to proceed. One area of difficulty may be explaining the position to the child, who will probably already regard both partners as their parents.

60. An adoption application may be made by the partner of the child's parent alone without the child's own birth parent of whom they are the partner losing their parental status or parental responsibility, although the non-resident parent will lose

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that status and parental responsibility if they enjoyed it previously. See section 46(2) and 46(3)(b) of the Act.

61. It is important for the appointed social worker to ascertain from the proposed adopter what their hopes and expectations are, and ensure that they have a full understanding of the implications of adoption, and are aware of the court's duty under section 1(6) of the Act, if an application is made, to consider all the options available to it. Sometimes they will not have appreciated fully that any decision will not only depend on the child's welfare, but will consider the child's wishes and feelings. In those cases where the proposed adopter has lived as a partner of the parent for a long time, it may be the case that the child believes this partner to be their parent, and the couple have not realised that the proposed adoption will need to be explained to the child. The involvement of the social worker as the result of the notice of intention to adopt provides an opportunity for the parent and partner to be given support and assistance in telling the child about their origins. In cases where the partner and parent obstruct attempts to discuss the true position with the child, it may be necessary, once their application is made, to seek directions from the court.

62. In some cases, it may appear that the primary motivation is for the child to have the same surname as the mother's partner and their half-siblings. Couples need to be given information about other means by which such an end may be achieved (if desirable and consistent with the child's welfare). Where the child's birth father does not have parental responsibility, although his consent to the change of surname is not strictly required by law, it is considered good practice to seek his consent so that the matter can be brought to court if there is a disagreement. See the case of *Dawson v Wearmouth* [1999] 2WLR 960, [1999] 1 FLR 1167.

63. Proposed adopters may also need information about the alternatives to adoption by which the birth parent's partner may obtain parental responsibility (whether or not coupled with a change of surname).

64. Where the couple are married or civil partners, the birth parent's partner may acquire parental responsibility under section 4A of the 1989 Act, by agreement or court order. If the child's non-resident birth parent does not have parental responsibility, then a simple formal agreement between the birth parent and their spouse or civil partner will suffice. Where the non-resident birth parent does have parental responsibility, then their agreement will also be needed. In such a case, both birth parents and the step-parent will all share parental responsibility. The form of agreement is set out in the Parental Responsibility Agreements Regulations 1991 (as amended by SI 2005/2808), and the agreement once signed must be filed in the Principal Registry of the Family Division.

65. If the non-resident birth parent does not agree, an application may be made to a court for a parental responsibility order. The parental responsibility granted to the

step-parent, whether by agreement or by court order, can only be brought to an end by a court order. It is also open for the birth parent and their partner to apply for a joint residence order under section 8 of the 1989 Act, which will have the effect of giving the partner parental responsibility during the currency of the order.

66. Where the child's birth parent and partner are not married or civil partners, section 4A does not apply, but they may still apply for a joint residence order. The child's non-resident birth parent will be a party to any application if they have parental responsibility, or if there is any order in force affecting them, for example a contact order.

67. Special guardianship is not an appropriate alternative to adoption in 'partner' cases, since a special guardianship order made in favour of a birth parent's partner would prevent that birth parent from exercising their own parental responsibility.

68. In some cases, the motivation for the proposed action may arise from anxiety about the child's position if the birth parent were to die. It may be that sufficient reassurance can be provided by the appointment of a guardian under section 5 of the 1989 Act and couples should be given information about this possibility, and encouraged to take legal advice.

## **Investigation**

69. In these cases, the likelihood is that, even if the adoption application is not granted, the child will continue to live in the household. The process of ascertaining the information necessary for the completion of the court report is not as rigorous as the assessment needed under the AAR for prospective agency adopters, but the investigation will nevertheless need to cover, as far as possible, all the topics listed in Rule 14.11 and in accordance with Practice Direction 14C in the Rules.

70. The social worker should explain to the proposed adopter and partner what will be involved and ask them to supply as much of the information and documentation as possible (for example evidence of current or former marriages or civil partnerships). It is good practice to interview the birth parent and proposed adopter separately, in case there are any safeguarding issues, or undue pressure has been applied. Although in partner adoptions, a formal health report is not required to be filed at court, it should be ascertained whether there are significant health issues that could affect the application.

71. The proposed adopter is not required to name referees, but it should be explained to them that it will be necessary to undertake CRB checks in respect of the proposed adopter and adult members of the household, including the child's own birth parent who is the proposed adopter's partner. The existence of a criminal conviction or caution for a 'specified offence' is not an absolute bar to the grant of an

adoption order, but is a matter that will need to be included in the Practice Direction 14C report.

72. Where the non-resident birth parent holds parental responsibility, their consent will be required to the making of an adoption order, unless the court dispenses with consent on one of the statutory grounds. Even where such consent is not required, the writer of the report will need to make every reasonable attempt to ascertain their views and wishes concerning the proposed adoption, and to gather information about them for inclusion in the report. If an adoption order is made, the non-resident birth parent will be relieved of any obligation to maintain the child, but they will also be deprived of their legal relationship with the child, including the right to make an application for a section 8 order (including a contact order) without the leave of the court.

73. The views and wishes of members of the wider family are also likely to be relevant, and the social worker will need to consider whom it will be necessary to approach. This may be a matter of special significance if the child's non-resident birth parent is dead. Even where an absent parent does not have current contact with the child, their parents may have a continuing and beneficial grandparental relationship. Where there is contact between the child and the grandparents, it will be necessary for all the family members to consider how the making of an adoption order might affect their relationship. Where a birth parent and/or members of the wider family live outside the UK, the social worker will need to consider the most appropriate way of obtaining information and ascertaining their views. In cases where there might be a risk of harm to the child or their birth parent in disclosing their whereabouts to wider family members, some discretion should be exercised, and in exceptional cases, it may be necessary to ask the court for directions.

### **Applications by same-sex couples following in vitro fertilisation or surrogacy**

74. The Human Fertilisation and Embryology Act 1990 (as amended by The Human Fertilisation and Embryology Act 2008) has made it possible under certain conditions for the female partner of a woman who gives birth following donor insemination to be treated as the child's parent and to share parental responsibility with the carrying mother. Where the treatment was given before the amendments came into force on 6 April 2009 the couple may wish to achieve parental status for the other partner by an application for an adoption order. A male couple may be able to apply for a parental order under the Human Fertilisation and Embryology Act 1990 following a surrogacy arrangement provided they meet certain criteria. Where they do not meet the criteria for such an application, they also may consider adoption. In either case, where the couple is in a civil partnership, a parental responsibility agreement may be a suitable alternative; if they are not, then a residence order would enable both partners to share parental responsibility.

## Applications by relatives

75. As with partner applications, it will be necessary for the local authority, on receipt of a notice of intention, to offer advice and information and to ascertain the reasons why the proposed adopters wish to adopt. In these cases, unless they have obtained the court's leave to apply earlier, the child will have been living with the proposed adopters for three years. These applications may arise in a variety of circumstances, including:

- a fear of interference by the birth parent(s) in the arrangements;
- a realisation that the current carers need to have parental responsibility for the child;
- the child's or carers' wish to cement their relationship by a legal tie;
- an application by childless relatives to whom a child has been 'gifted' by a family member in accordance with the family's culture;
- where the child is looked after by the local authority and the relatives are local authority foster carers for the child, a wish to end the legal involvement of the local authority and/or to create a stronger legal relationship between the carers and the child.

76. In some cases there may already be a residence or special guardianship order in place, in which case it will be necessary to discover why the proposed adopter believes that this is not sufficient, and whether, for example, the substitution of a special guardianship order for a residence order would meet the needs of the proposed adopter and child. If there is no order currently in force, consideration of alternatives such as residence or special guardianship orders will be necessary, and the local authority should ensure that the proposed adopter is provided with information about these options.

77. Adoption by close relatives of the child has the disadvantage of imposing a distorted set of relationships. Adoption by a grandparent, for example, means that the grandparents' other children, including the child's own parent, become, legally, the child's siblings. Nevertheless, the possibility of adoption by a relative should not be automatically ruled out. There may be some circumstances where the security provided by the irrevocability of an adoption order, and its lifelong effect, would be best for the child. There is no statutory presumption that a special guardianship order will be preferable to an adoption order in favour of a relative. It will be necessary to consider the particular facts of each individual case. See for example *Re S (Adoption order or special guardianship order)* [2007 EWCA Civ 54, *Re AJ (adoption order or*

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special guardianship order) [2007] EWCA Civ 55 and Re M-J (Adoption order or special guardianship order) [2007] EWCA Civ 56.

78. As with partner adoptions, the adoption by a paternal or maternal relative will terminate the child's legal relationship with members of the other side of the family, and this factor will need to be carefully considered.

79. If a special guardianship order is already in place, a detailed report will have been provided to the court when that order was made. If a different local authority from the one to whom notice of intention to apply to adopt is given submitted the report, it will be necessary for the local authority to ask the court that made the special guardianship order to supply a copy of the report filed in those proceedings. An application for leave to disclose could be made under Part 21 of the Rules.

80. In these cases, the proposed adopters will be required under Rule 14.12 to submit a medical report on themselves and the child with their application to the court, and they will need to name at least two referees, who should be interviewed by the local authority before the court report is completed.

### **Applications by private foster carers**

81. Non-relatives who have been caring for a child under private fostering arrangements for at least three years may make an adoption application if they have given the required notice to the local authority. In these circumstances, provided the Children (Private Arrangements for Fostering) Regulations 2005 have been complied with, the child and the local authority, who will have been visiting regularly, will already know family. If there has been a failure to comply with the private fostering regulations it will be necessary to refer the matter to the private fostering team for them to consider what action should be taken. Failure to notify (with or without subsequently being convicted of an offence under section 70 of the 1989 Act) is something that should be taken into account when considering the suitability of those persons to adopt. In addition, full medical reports and interviews with at least two referees will be required.

### **Reports to court**

#### **Placement Order Applications**

82. A placement order application is made by a local authority in the circumstances set out in section 22 of the Act, and Rules 14.6(3)(a) and 14.11 apply to a report to court from the local authority. Under Rule 14.6(3)(a) the court has a discretion whether to direct the filing of a report, but in practice a report will usually be required. To avoid delay, it should be filed with the placement order application.

83. Rule 14.11 provides that the report will be sent to any children's guardian involved in the case, and/or to any reporting officer or children and family reporter. The report is confidential and will not automatically be sent to the parent of the child or other parties to the proceedings, but it is likely that the court will agree to the disclosure to the parent of at least any part of the report that refers to them. The Practice Direction reports by the adoption agency or local authority, which supplements Rule 14.11, sets out the requirements for the contents of this report in Practice Direction 14C.

### **Preparation of the Report**

84. Although a report to the court in respect of a placement order application is not one of those listed in ARR 4 it will most often be appropriate for it to be written by the social worker who has prepared the child's permanence report (CPR) for the adoption panel, which is subject to the restriction under the ARR. There is also considerable similarity between the information required in both reports. To reduce delay, local authorities should consider how to enable information contained in the local authority's electronic recording system to be transferred into a format acceptable to the court and complying with the requirements of Rule 14.11 and the Practice Direction.

### **Confidentiality**

85. It is essential that the writer of the report is alert to the need for any particular pieces of information contained in it to remain confidential. Usually the prospective adopter will not yet have been identified at the time of a placement order application, but where they have been and their identity is not to be disclosed to members of the birth family, it is vital that no information which might disclose their identity or whereabouts is contained in the report. If, however, it is relevant and needs to be included, it should be given on a separate sheet with a notice emphasising the importance of not disclosing it to the birth family. In any case, where the identity of the child's current carers or the whereabouts of the child needs to be protected, this must also be made clear.

### **Contents of the report**

86. There are three sections to the Practice Direction. Section A requires information about the author(s) of the report; in addition to a description of the writer's role in relation to the case, it is likely to assist the court if it is made clear how well and for how long they have known the child and birth family. The second part of Section A requires information about whether in the view of the local authority any other person should be made a party. This might be a father without parental responsibility or a relative of the child whose request to care for the child has been rejected by the local authority. This part also requires information about any

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respondent who is under 18, or who is incapable because of mental disorder of managing their affairs. If this is the case, medical evidence will be required.

87. Part 1 of Section B of the report will contain information that was included in the CPR submitted to the adoption panel under AAR 17. Provided that the application for the placement order is made immediately after the panel recommendation and agency decision, there should be little updating required. The summary by the medical adviser of the child's health history, current health and anticipated health care needs required under paragraph (j) of Part 1.i will contain the same information as was provided to the panel under AAR 17.1.b. This is, of course, unless there has been any change since this was prepared, or the medical adviser considers an updated examination is required.

88. The information required by Part 2 of Section B will also for the most part be available in the CPR. In relation to the child, the information for paragraph (a) will be in the chronology prepared for the CPR (paragraph 9 of Schedule 1 Part 1 of the AAR); the information for paragraphs (b) and (c) as to the child's views will have been gathered in accordance with AAR 17.1.c for the CPR. There may be an addendum if the child has expressed further wishes following the agency decision that they should be placed for adoption. Paragraph (d) requires information as to the child's wishes and feelings as recorded in any other proceedings; this is not explicitly required for the CPR. In most cases the 'other proceedings' concerned are likely to be current parallel care proceedings, and the child's wishes and feelings with regard to those proceedings are likely to be found in the report of the children's guardian for the proceedings.

89. Again, most of the information regarding the child's parents and relatives required for Part 2 of Section B will be contained in the CPR, notably in paragraphs 11 and 14 of Part 1 and paragraphs 11 and 27 of Part 2 of Schedule 1 of the AAR, and AAR 17.1.d, e and g. AAR 17.1.d requires information concerning current as well as previous court proceedings in respect of the child's siblings, and this information may not have been recorded in the CPR, and the information required by AAR 17.1.d is not limited to siblings who are still under the age of 18. If it is possible to ascertain these details in respect of siblings who are now adult, these should be included.

90. Part 3 of Section B requires for the most part factual information concerning the agency's actions to date, but importantly must also set out the agency's reasons for considering that adoption would be in the child's best interests. The reasons given by the agency's decision maker for making the decision under AAR 19 should be included here. See chapter 1 for guidance on the way the decision maker should make and record their decision.

91. Section 3 contains the agency's recommendations, and will need to set out clearly the alternatives to adoption that have been considered and why the agency believes that the child's long-term interests will be best met by a placement order. The agency's opinion as to future contact, including the need for any order under section 26 of the Act must also be set out. This is a matter that will have been considered by the agency and the panel under Part 3 of the AAR, and on which the panel may have given advice under AAR 18.3. The agency will need to have considered whether it believes that the arrangements for contact that it proposes can be implemented without the need for an order, and, if so, explain why. Since generally the prospective adopter will not yet have been matched with the child, it may be difficult to be precise about the contact arrangements that will be appropriate once the child has been placed. But the report needs to make it clear what sort of future contact, and with whom, the agency believes is important for the child's welfare, and how crucial a factor this will be in identifying a suitable prospective adopter for the child.

### **Signing and submitting the report**

92. The report must identify its principal authors and their role in relation to the case (see Part 1) and its contents should be signed off by the agency. It is also essential that its contents be seen by the local authority legal adviser with responsibility for lodging the application and filing evidence with the court. The legal adviser should submit the original report plus an extra copy with the court for service upon a Cafcass Officer. In the exceptional case where it is not possible to file the report at the same time as the placement order application, the agency will need to be ready to tell the court, by the time of the first Directions hearing, (which is held within four weeks of the issue of the application) how soon it will be ready.

### **Agency adoption applications**

93. It is a matter for the prospective adopter when they issue their adoption application (provided the child has had a home with them for at least ten weeks) but in practice it will be important for the placing agency to liaise closely with them about this. Section 43 of the Act and Rules 14.6 and 14.11, and Annex A of the relevant Practice Direction provide for the submission of reports in agency adoption applications. Rule 14.6 provides that the court clerk will request a report from the adoption agency once the adoption application has been issued, and Rule 14.11 requires the agency to submit the report within the timetable specified by the court. The contents of the report are set out in Annex A of the Practice Direction. The court may ask for further information or assistance from the agency. Section 42 of the Act provides that the court cannot make an adoption order unless it is satisfied that the agency has had sufficient opportunities to see the child with the applicant together in their home. The visits that the agency must make under AAR 36, and the reports

made of those visits, will therefore be important in enabling the report to be completed.

### **Preparation of the report**

94. The social worker who writes the report must either have the qualifications and experience as required by the ARR or be supervised by a person with the qualifications and experience as required by the ARR, see chapter 1. The report will contain information about the child, birth family and prospective adopters. In an interagency case, it is the placing agency which has the statutory responsibility for submission of the report, and that agency will need to ask the agency that approved the prospective adopter to contribute. Much of the information needed will be available in the CPR and the prospective adopter's report, but this will of course need to be updated to reflect developments since the child was matched with the prospective adopter.

### **Confidentiality**

95. Although the report is confidential, parts of it are likely to be shared with the parties to the proceedings. In a case where the prospective adopter's identity is not to be disclosed to the birth parents, care must be taken to ensure that any identifying information is contained in a separate section which is not to be disclosed except to the court and any children's guardian or family court reporter. Identifying information may include addresses, employment and, for example, the name of the school attended by the child.

### **Signing and submitting the report**

96. The report must identify its principal authors and their role in relation to the case (see Section A, Part 1) and its contents should be signed off by the agency. Although the prospective adopter is not entitled to a copy of the report, unless the court so orders, it is good practice to discuss those aspects which relate to them. This will include the recommendations the agency is making and issues such as contact. The local authority's legal adviser should submit the original report plus an extra copy with the court for service upon a Cafcass Officer.

## Contents of the report

97. The requirements for the contents of the report set out in Annex A of the Practice Direction are for the most part self-explanatory. The writer of the report must ensure that they check that the matters set out in the Annex are all addressed, or, if information is not available or does not apply in the particular case, the reason for this is made clear. Annex A has five sections (plus a sixth for certain intercountry adoption cases). Each section should be started on a new page so that different sections may where appropriate be shared with some or all of the parties.

### Section A – The report and Matters for the Proceedings

98. Section A sets out clearly the information required. Where more than one person has contributed to the report, this section will explain the role of each contributor and for which parts of the report they have been responsible. The provision of information about the qualifications and experience of the author(s) should not only show that they are permitted under the ARR to prepare the report but make clear to the court the extent of their experience and qualifications. Part 2 of this section requires the writer to address the issue of whether it is recommended that any other person be made a party to the proceedings, for example a father without parental responsibility and whether any respondent is under 18 or suffering from a mental disorder within the meaning of the Mental Health Act 1983. If this is the case, medical evidence will be required.

### Section B - Information about the child and birth family

#### Part 1

99. The information required in Part 1 of Section B is similar to that included in the CPR, and the reviews of the child's case, and reports of visits to the child in placement should have enabled the agency to keep the information up to date through the ICS record.

#### Health

100. B.1.(i)(m) requires a summary written by the agency's medical adviser of the child's health history, current state of health and any anticipated need for health care, with the date of the most recent medical examination. The agency will need to ensure that the medical adviser is advised in good time of the date by which the report is needed and supplied with all the information available. This will enable them to decide whether a further medical examination is required.

101. B.1.(ii)(j) requires health information, when available, about the child's parents. Although this section of the report does not have to be written by the

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medical adviser, the agency should ensure that they have the most recent information available about the parents in order to advise, in particular, on any health factors with genetic implications for the child.

### Part 2

102. Part 2 gathers together information about:

- the child's previous placement history (if they have been looked after);
- the child's wishes and feelings;
- the parent's or guardian's wishes and feelings;
- relationships between the child and birth family members and other people important to them;
- the wishes and feelings of wider family members and others;
- current contact between the child and the birth parent;
- details of arrangements concerning siblings, including half- and step-siblings;
- whether the prospective adopter has met the child's birth parent or other family members and, if so, the effect of the meeting.

103. It is important to note that information given about wishes and feelings should indicate clearly when these were last ascertained, and, in relation to the parents, also indicate their wishes and feelings as recorded at earlier stages in the process leading up to the adoption application. This part of the report is not solely factual, since it must include the agency's opinion on the nature of the child's relationships and whether they are likely to continue, and, if so, to benefit the child. It must include also an assessment of the ability and willingness of family members or friends to provide a secure environment for the child and meet their needs.

104. The details required concerning siblings (whose names and ages will have been entered in Part 1) include their current living arrangements and details of any current or previous court proceedings to which they are or have been subject. An indication must also be given of whether any of them is the subject of a parallel application (that is an application by the same prospective adopter).

### Part 3

105. Part 3 consists of a summary of the agency's actions in respect of the child and birth family, as set out in paragraphs (a)-(g). Paragraph (h) sets out the reasons for the agency's decision that adoption would be in the child's best interests. This will require information regarding the agency decision-maker's decision under AAR 19 and the reasons for it, together with the date, and should explain the reason for any delay in implementing the decision. Note that this is historical information. Section E will set out the agency's current view.

## Section C – The prospective adopter(s)

### Part 1

106. The information for Part 1 will be in the prospective adopter's report. It will however need to be updated to reflect current circumstances, future plans, and an assessment of the prospective adopter's suitability to bring up this particular child throughout childhood. It must confirm that the prospective adopter continues to be approved under AAR 27. Where the prospective adopters are a couple, paragraph (h) requires a current assessment of the stability and permanence of their relationship.

### Health information

107. Again, the medical adviser is required to write a summary of the prospective adopter's health history, current state of health and any anticipated need for health care, with the date of the most recent medical examination. The medical adviser will need to consider whether any developments in respect of the prospective adopter's health since approval and placement justify further investigation.

### Part 2

108. Part 2 will set out the views, wishes and feelings of the prospective adopter and members of their household and wider family concerning the adoption. It must include information as to whether the prospective adopter is willing to follow any wishes of the child or birth parent in respect of the child's religious or cultural upbringing, and the prospective adopter's wishes and feelings concerning contact. Paragraph (c) explores the prospective adopter's reasons for wishing to adopt the child, their understanding of adoption, and whether they have discussed adoption with the child.

### Part 3

109. This part will set out the history of the agency's involvement with the prospective adopter, including the dates and reasons recorded for their approval under AAR 27. The agency's proposals for contact must be described, together with options for facilitating such contact, whether direct or indirect, and the agency's opinion on the likely effect of the proposed contact on the prospective adopter and the security of the placement.

### Section D – The placement

110. This section explains the circumstances and date of the child's placement, which could usefully include information contained in the placement report prepared under AAR 31. This will include a summary of arrangements for adoption support, with the support plan and timescales for continuing support after the making of the adoption order. If no support is being provided, the agency must explain the reasons why. It must also provide a summary of information obtained from visits and reviews during the placement, and make it clear whether the child has been seen separately and whether the agency considers there has been sufficient opportunity to see the family group and the child's interaction in the home environment. The agency must give its own assessment of the child's integration into the adoptive family and the likelihood of their full integration into the family and wider community. In cases where the prospective adopter's ethnic, religious or cultural background does not reflect those of the child, it will be particularly pertinent to provide information about the ways in which the prospective adopter is making use of resources within the wider family and/or community to assist in meeting the child's identity needs.

### Section E – recommendations

111. This section needs to set out clearly the agency's own views on the merits of the application for adoption, including consideration of alternative orders. It should be apparent to the court from this section whether the agency itself considers that adoption is more likely than any other order to meet the child's long-term needs and why. The decision is of course a matter for the court, but it will be assisted by a clear and reasoned recommendation. The agency must also provide its own recommendation as to whether or not there should be arrangements for future contact, again with reasons.

112. Under paragraph (b) if the report recommends that the adoption order should not be made, it must include alternative proposals. These may be for a different order in favour of the applicants, for example a residence or special guardianship order. In these circumstances, if a placement order is currently in force, the court would need to consider revoking the placement order under section 24(4) of the Act. This is because the making of a residence or special guardianship order would not automatically revoke the placement order but it would discharge any care order that might be revived by the revocation of the placement order. See section 29(1) of the Act and section 91(1) and (5A) of the 1989 Act. In a case where the agency considers that the child should not remain the care of the prospective adopter at all, it will need to be clear what alternative arrangements it is proposing, and how these can be achieved. If there is a placement order in force when the adoption application is refused, and no other order is made, the agency may give notice to the prospective adopter under section 35 of the Act requiring them to return the child, and the court should be informed if this is the agency's intention.

113. In a case where a birth parent has been given leave to oppose the adoption order, the recommendation will need to address the issue of whether the child should be returned to the care of the birth parent. The recommendation will need to take account not only of the birth parent's ability to meet the child's needs, but also of the child's legal status, in particular whether there is a placement order in force. If there is a placement order, and the plan is to return the child to the birth parent's care, the court will need to consider revocation of the placement order. The local authority will need to be clear whether it wishes to oppose the discharge of any care order or to propose a care plan whereby the child returns to the birth parent's care on a trial basis, under the protection of the care order. In a case where there is no placement order or care order, the birth parent would be entitled to resume the care of the child immediately, and the agency report could include a recommendation as to suitable arrangements to ease the child's transition.

## **Non-agency adoption applications**

### **Preparation of the report**

114. As for agency adoptions, this report is one that must only be prepared by a person who meets the requirements of the ARR. Where Annex A uses the term 'the adoption agency' this refers to the local authority in non-agency cases, although there are some pieces of information requested that will not be applicable in non-agency cases.

### **Confidentiality**

115. The comments regarding the confidentiality of the report in agency cases apply, but in many non-agency cases the identity of the prospective adopter will be known to the birth parent. Nevertheless there will be cases where even though the birth parent is aware of the identity of the prospective adopter there may be good reason for not disclosing information as to the current whereabouts of the child, so care will still be needed in the way the report is set out.

### **Contents of the Report**

116. In most non-agency cases, the local authority will have had to gather all the information needed for the report during the course of its investigation following notice given in accordance with section 44 of the Act. In some cases, much of the material will already be available, for example, where the prospective adopter is a local authority foster carer, and the child is looked after by the local authority writing the report. It will facilitate the task of gathering the necessary information if the prospective adopter is shown a copy of the Annex A format early on during the investigation, so that they are aware of what will be needed. The preparation of the

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report is not the same as an assessment of prospective adopters under the AAR, but some of the practice guidance *Preparing and assessing prospective adopters* may be a helpful resource for the writer of the report. The prospective adopter can be encouraged in appropriate cases to complete some of the information needed themselves, although it is the responsibility of the social worker writing the report to check this.

117. Where the child is of sufficient age and understanding, the report writer must also explain to them in appropriate terms the purpose of the report and the importance of expressing their own views, wishes and feelings for inclusion in it. It will be important to provide appropriate material to help the child to understand the nature and effect of adoption.

118. The amount of background information about the child and birth family that the prospective adopter themselves hold will vary. Information provided by them, or by the parent of the child whose partner is applying to adopt, will need to be checked with information provided by the child's birth parent (or other parent in the case of a partner adoption) or members of the child's wider family. In some cases, the report may prove to be the only source of information available to the child on reaching adulthood so that its contents have an importance beyond the immediate task of providing information to the court.

119. It will be necessary to ascertain early on after the prospective adopter has given notice of their intention to apply to adopt whether they have informed the birth parent (or other parent) of their intention. If they have not done so, the social worker will need to explain the contribution from the (other) birth parent that will be needed, and discuss with the prospective adopter whether they wish themselves to inform the birth parent before the social worker makes contact with them. If there is likely to be difficulty in tracing the birth parent attempts to do so need to be commenced as early as possible.

### Section A – The report and matters for the proceedings

120. The information required for Section 1 is the same for a non-agency case as for an agency case.

### Section B - Information about the child and birth family

#### Part 1

121. The gathering of the information required for Part 1 of Section B will be a task similar to the initial assessment of a child under the assessment framework. If the child is of school age, information should be sought from their school about their educational progress and any special needs.

**Health**

122. Except in the case of applications by the parent or partner of the child's parent, the prospective adopter will need to arrange for the child to be medically examined so that they can provide a medical report in accordance with Rule 14.12. The health report to be attached to an application for an adoption order must not be more than three months old. If it is, the report will need to be updated. Even if a medical report is not required for the court, the social worker should enquire whether there are any particular health issues relating to the child. Once the report has been provided, a copy will be passed to the local authority. This should be given to the local authority's medical adviser to enable them to complete the necessary summary in accordance with paragraph (m) of Part 1(i).

123. It will be for the social worker completing the report to ascertain as far as possible from the birth parent information about their health in accordance with paragraph (j) of Part 1(ii). This information should be shared with the medical adviser in order to inform the summary in respect of the child's health, particularly in respect of any factors which may have genetic implications for the child's health.

**Part 2**

124. The information required for this part is the same in non-agency applications as for agency adoptions. The gathering of information about the child's placement history, if they have not been in care, is likely to depend on information obtained from the prospective adopter and birth parent, and from the child in appropriate cases.

**Part 3**

125. Much of Part 3 will not apply in non-agency cases, but the local authority should indicate what information it has provided to the child and birth parent, any support and advice given to the birth parent, and any steps taken to contact a father without parental responsibility. In the majority of cases there may not have been any detailed assessment of the child's needs, but where the child has been looked after, or has otherwise come to the attention of a local authority as a child in need, these may be available.

**Section C – The proposed adopter of the child****Part 1**

126. This part consists largely of factual information which will need to be obtained from the proposed adopter, but information from other sources will also be required,

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including a CRB check, health information and interviews with referees. Paragraphs (h) and (m) require a professional assessment.

### CRB checks

127. It will be necessary to ascertain whether the propose adopter has been convicted of or cautioned for a 'specified offence' within the meaning of AAR 23.3. Paragraph (r) of Part 1 refers only to confirmation that the prospective adopter has not been convicted or cautioned. However, regulation 4 of the Local Authority (Adoption) (Miscellaneous Provisions) Regulations 2005 requires the local authority to obtain an enhanced criminal record certificate, within the meaning of section 115 of the Police Act 1997, in respect of both the proposed adopters and any adult members of their household.

128. If a proposed adopter or a member of their household has been convicted of or cautioned for a specified offence, this is not an absolute bar to the making of the adoption order. The court will exercise its discretion after taking the offence into account. Where the check does disclose a conviction or caution in respect of one proposed adopter, and their partner is unaware of it, the local authority is not permitted to share this information with the partner, but may suggest that the person with the conviction or caution disclose it to the other person, since the information will be given to the court. Likewise, where the checks reveal information about the conviction or caution of another adult member of the household, the local authority is restricted from disclosing the conviction or caution to the proposed adopter. It may inform the other adult member of the household and suggest that they inform the proposed adopter but it may not do so itself. In these circumstances, it will be necessary when submitting the report to the court to make the position clear, and to include the information about the offence(s) on a separate sheet, since it would be normal practice for the court to direct that this part of the report be shared with the proposed adopter.

### Health

129. Except where the proposed adopter is the child's parent or partner of the child's parent, they will need to provide a medical report in accordance with Rule 14.12. As with the report on the child this will need to be given to the local authority's medical adviser so that they can write a summary of the proposed adopter's health history, current health and anticipated need for health care. The health report to be attached to an application for an adoption order must not be more than three months old. If it is, the report will need to be updated. Even in a case where a medical report is not required under Rule 14.12 the social worker should discuss with the medical adviser any apparent health issues which might be relevant to the decision on the adoption order. In these cases, the reality is that the child is likely to continue to be cared for by the proposed adopter, whether or not the adoption order is made, but in

some circumstances, for example a life-threatening condition, health may be a relevant factor in the decision.

### Financial circumstances and living standards

130. The proposed adopters should provide appropriate evidence to support information about their income, details of the tenancy or ownership of their home and any mortgage.

### Assessments

131. Paragraph (h) requires an assessment of the stability and permanence of the relationship of proposed adopters applying as a couple. Such an assessment will also be relevant in the case of the relationship of a couple where the child's parent's partner is applying alone. Paragraph (m) requires an assessment of the ability and suitability of the proposed adopter to bring up the child throughout their childhood. This will need to address not only their ability to bring up a child in general, but also their ability to meet the needs of an adopted child in the particular circumstances of this case, and **this** child in particular.

### Part 2

132. The requirements for this part of the report will be similar to those for an agency adoption.

### Part 3

133. Most of this part is not relevant in non-agency adoptions, although it should include details of any information given by the local authority to the proposed adopter. It may not be appropriate in non-agency cases (except for those where a local authority foster carer is applying to adopt) for the local authority to make proposals as to contact, but where the proposed adopter has proposals the local authority should express an opinion on the likely effect of the proposed contact under paragraph (c).

### Section D – The placement

134. Paragraph (a) will not be relevant, and, in most cases, (c) and (d) will not apply. In an application by a local authority foster carer the child will be an 'agency adoptive child' within the meaning of the Adoption Support Services Regulations 2005 unless the local authority opposes the application. An agency adoptive child, their adoptive parents, and any children of the proposed adopters are entitled on request to an assessment of their support needs, see chapter 9. The local authority will need to indicate whether there has been an assessment and whether adoption

support is, or is proposed to be provided, with a summary of the plan and timescales for continuing support. Equally, if no support is to be provided, the reasons for this should be given under paragraph (d).

### Section E - Recommendations

135. As for agency cases, the local authority needs to provide a clear recommendation, with a consideration of the relative merits of other orders. In partner adoption cases it will be particularly relevant to consider whether a joint residence or parental responsibility order would meet the child's needs, leaving their legal relationship with the other birth parent intact. In applications by relatives, it will be important to consider, with reasons, whether an adoption order would be better for the child than a special guardianship or residence order. If the report does not recommend adoption, alternative proposals should be made. These might include any of the orders mentioned above, with consideration of whether they would provide appropriate security and stability for the child. Any recommendation as to alternatives to adoption will need to take into account the particular circumstances of the case. In an application by local authority foster carers, for example, if the child is subject to a care order and the local authority considers that the child should be moved to a different placement, the local authority's care plan should be set out. If the child is accommodated under section 20 of the 1989 Act, and the court declines to make any order in the foster carers' favour, the birth parent will be entitled to request the return of the child to their care.

### Court Fees

136. The Family Proceedings Fees Order 2008 sets out the fees for the various applications to the courts. Where the applicant files adoption applications, at the same time, that relates to two or more children and these children are siblings or children of the family, only one fee is payable rather than a fee for each child.

## Chapter 9: Adoption Support Services

**This chapter provides guidance on the principal duties of local authorities in relation to the arrangements for assessment, provision and review of adoption support services to persons affected by adoption. Some aspects of adoption support, insofar as they consist of the provision of counselling, advice and information, are also addressed in other chapters, particularly chapters 2, 3, 10 and 11.**

In this chapter of the guidance:

An “adoptive child” means:

- a child who has been adopted or in respect of whom a person has given notice of their intention to adopt under section 44 of the Adoption and Children Act 2002 (the Act); or
- a child whom an adoption agency has matched with a prospective adopter or placed for adoption.

An “agency adoptive child” means:

- a child who has been adopted after having been placed for adoption by an adoption agency; or
- a child whom an adoption agency has matched with a prospective adopter or placed for adoption; or
- a child whose adoptive parent has been a local authority foster parent in relation to them (unless the local authority oppose the adoption).

An ‘adoptive parent’ means:

- a person who has adopted a child, or has given notice under section 44 of the Act of their intention to do so, or
- a person with whom an adoption agency has matched a child or has placed a child for adoption:

A ‘related person’ in relation to an adoptive child means either:

- a relative of the child (a grandparent, brother, sister, uncle or aunt, whether of full or half blood, or by marriage or civil partnership), or

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- any person with whom the local authority considers the child to have a beneficial relationship. This should reflect, the likelihood of the relationship continuing and the value to the child of its doing so, the security of the relationship and the ability of the person to meet the child's needs and the wishes and feelings of the person regarding the child.

### Provision of adoption support services

1. The provision of a range of adoption support services is a crucial element of the statutory framework introduced by the Act. This is based on the recognition that adoptive children and their families are likely to have a range of additional needs. For a discussion of these see Section 2 of the Practice Guidance on *Assessing the Support Needs of Adoptive Families*. Because of the lifelong effect of adoption, adults affected by adoption, including adopted people and their adoptive and birth family members, may have needs for support also, and this is recognised in the provision of section 3(1) of the Act which requires each local authority to maintain a service designed to meet the needs of all those affected. The Adoption Support Services Regulations 2005 (ASR) and this guidance focus largely on the needs of adoptive children and their adoptive families. It must be borne in mind that some of the support that may be needed by adopted adults and birth relatives will fall within the provisions of the access to information and intermediary services set out in chapters 10 and 11 of this guidance.

2. The ASR set out detailed provisions for the assessments and decisions about provision of adoption support. It should be noted that it is permissible under ASR 21 to vary or truncate these procedures in cases of urgent need.

### What are adoption support services?

3. Under section 2(6) of the Act, adoption support services are defined as counselling, advice and information, and the services prescribed by ASR 3.1a-f. It is not necessary for all adoption support services to be extended to each category of person who might seek such services, (see ASR 4). In particular, ASR 3.2 excludes from the list of services prescribed in ASR 3.1, services in the case of 'partner' adoptions, ie where the child adopted or to be adopted is the birth child of the partner of the adoptive parent. This means that there is no obligation on the local authority to provide services other than counselling, advice and information in such cases. It does not of course mean that children in such families may not be 'children in need' and entitled to services under the Children Act 1989 (the 1989 Act).

4. ASR 3.3 provides that services provided under ASR 3.1.b-f above may include the local authority giving a person assistance in cash, for example, giving an adoptive parent cash to pay a babysitter so they can have a break for an evening.

When cash is provided in this way it should not be means tested as it is being provided as part of a service rather than as financial support.

5. ASR 3.4 requires that, if respite care consists of the provision of accommodation, this must be accommodation provided by or on behalf of a local authority under section 23 of the 1989 Act (accommodation of looked after children) or by a voluntary organisation under section 59 of that Act. Regulation 48 of the Care Planning, Placement and Case Review Regulations 2010 and guidance sets out how short break care is to be provided.

#### **People to whom adoption support services must be extended: ASR 4**

6. ASR 4 sets out the persons to whom the local authority must extend adoption support services. That is not to say that every service must be supplied to each person in the category, rather that the local authority is obliged to ensure that these services can be made available if an assessment shows that they are needed. The following table sets out the services in respect of which each category of person has a right to an assessment of their needs.

7. Under section 3(3)(b) of the Act, local authorities have discretion to extend services to persons other than those to whom services must be extended. This means that, for example, services to prevent disruption could be provided to a non-agency adoptive child, and financial support could be provided if the local authority considered this appropriate.

#### **Securing the provision of services: section 3(4) of the Act and ASR 5**

8. Section 3(4) of the Act enables the local authority to arrange for adoption support services to be provided by another body. This enables the local authority to delegate or contract out provision of these services to a third party who will provide services on its behalf. The Act provides that voluntary adoption agencies (VAAs) who are registered to do so can provide adoption support services on a local authority's behalf. ASR 5 extends this provision to registered Adoption Support Agencies, other local authorities, (which includes the local authority's education department), and primary care trusts<sup>1</sup> - or local health boards in Wales. This enables the local authority to contract with a neighbouring authority and/or with an independent registered provider to ensure that the service is provided. This may be

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<sup>1</sup> The Coalition Government proposes to replace Primary Care Trusts with GP consortia by April 2012 with GP consortia taking full responsibility for commissioning by April 2013. The White Paper *Equity and excellence: Liberating the NHS (July 2010)* set out the Coalition Government's reforms to the NHS.

**People to whom adoption support services must be extended: ASR 4**

Person being assessed	Services for which they are entitled to be assessed						
	Services to enable discussion of matters relating to adoption	Assistance in relation to arrangements for contact	Therapeutic services	Services to ensure the continuation of adoptive relationship	Services to assist in cases of disruption	Counselling, advice and information	Financial support
Agency adoptive child	•	•	•	•	•	•	
Adoptive parent of an agency adoptive child	•	•		•	•	•	•
Child of adoptive parent				•	•	•	
Birth parents or guardians of an agency adoptive child	•	•				•	
A relative (or someone with whom the local authority consider the child to have a beneficial relationship) of agency adoptive child		•				•	
Intercountry adoptive child			•	•	•	•	
Intercountry adoptive parent				•	•	•	
Birth sibling of an adoptive child		•				•	
Non-agency adoptive children, their parents and guardians						•	
Prospective adopters						•	
Adopted adults, their parent, birth parent and former guardians						•	
A relative (or someone with whom the local authority consider the child to have a beneficial relationship) of a non-agency adoptive child						•	

appropriate where there is a low demand for a particular adoption support service or to avoid duplication where an existing service provided by one of the prescribed bodies can be developed and maintained as appropriate. It will also be helpful in cases where the person needing the support lives in the area of another local authority than the one obliged to ensure the provision of the service.

### **Adoption support services adviser (ASSA): ASR 6**

9. All local authorities must appoint an Adoption Support Services Adviser (ASSA). The role of the ASSA is to:

- give advice and information to people affected by adoption - a single point of contact to provide information, signpost appropriate services and to advise on how those services may be accessed;
- give advice, information and assistance to other staff in the local authority on assessments of need for adoption support services, the availability of services locally and effective planning for service delivery - in particular, supporting and facilitating intra- and inter-agency joint working where needed;
- give advice on good practice in adoption where needed;
- consult with, and give advice, information and assistance to other local authorities as appropriate, for example, liaising between authorities where a family is moving between areas to try to ensure a smooth transition in the provision of support services.

10. In a small local authority, the ASSA may well be able to deal directly with queries from adoptive families and queries regarding individual support plans. However, in larger authorities this may not be possible, so the ASSA should ensure that appropriate delegation arrangements are put in place.

11. The appointment of an ASSA provides clarity for adoptive parents about who in the authority to approach for advice, and identifies a first port of call for questions about adoption support services, the process for accessing support and queries in relation to existing support arrangements. It is important that contact details for the ASSA – a 'phone number and postal and/or email address - be appropriately publicised to facilitate ease of contact for those seeking help and advice. Where appropriate, ASSAs should act as advocates, for example, liaising with education or health services on behalf of a recipient of adoption support services.

12. ASSAs should encourage adoptive parents to access available support services including mainstream and specialist adoption focussed services. They

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should also signpost adoptive parents to information about other forms of support that might be made available to them. Information on statutory adoption leave and pay, tax credits and benefits for adoptive parents is available from Direct Gov. Detailed information on statutory adoption pay and leave is available from Business Link. ASSAs can receive the latest information about the Department for Work and Pensions services and benefits through their forum and groups, and magazines and newsletters.

13. While queries on existing adoption support plans should normally be referred on to the named lead person for that plan (as required by ASR 16) the ASSA may have a role to play in resolving queries, in particular where these relate to provision of services by other agencies. Requests for assessments of adoption support needs that come to the ASSA should be passed on promptly to an appropriate social worker to carry out the assessment. The ASSA should then provide advice about such matters as the services and resources available locally, the way in which assessments should be undertaken, and processes for planning, decisions and review.

14. ASSAs will be key facilitators of joint working both across authority boundaries and between departments within their own authority, particularly the education and housing departments. The ASSA should obtain agreements with those departments on issues such as admission priority to schools and housing allocation, so that there are no disputes within the local authority which would adversely affect children placed for adoption. The ASSAs should act as the liaison point between the authorities where two local authorities are jointly seeking to provide a particular adoption support service, (in accordance with ASR 5). ASSAs should also aim to secure smooth transition for families in receipt of adoption support services who are moving between areas. The ASSA should liaise with the appropriate authority before the family moves to ensure continuity of support. The ASSA, sometimes in concert with the child's Independent Reviewing Officer, may also need to press for senior officers within the authority's own children and families' department to make representations to other departments, or to the health authority, for necessary action to deliver the required support.

15. The ASSA in a receiving authority will be a key contact for a local authority placing a child for adoption out-of-area. Whilst the placing authority remains responsible for the assessment of an agency adoptive child (and their immediate adoptive family) for three years from the date of the adoption order, in some instances the receiving authority might agree to provide services and recover costs from the placing authority (in accordance with ASR 23). The ASSAs should act as representatives from each authority to negotiate such arrangements.

16. Although the ASR applies to local authorities, most VAAs will appoint a person equivalent to an ASSA. Local authority ASSAs will need to liaise with such post holders, in order to coordinate the delivery of a comprehensive adoption support service in the area, and for families that have been approved by VAAs.

### **Skills and Knowledge required**

17. A condition of appointment is that the ASSA will need to have good knowledge and experience of the adoption process and of the impact of adoption on all those involved. The ASSA should also develop a good knowledge of the relevant services in the area, not only within local authority children's services, but also within those provided by other relevant agencies. This will include securing strong inter- and intra-agency working in the relevant local area, and ensuring the strategic development and provision of adoption support services in local partnership arrangements.

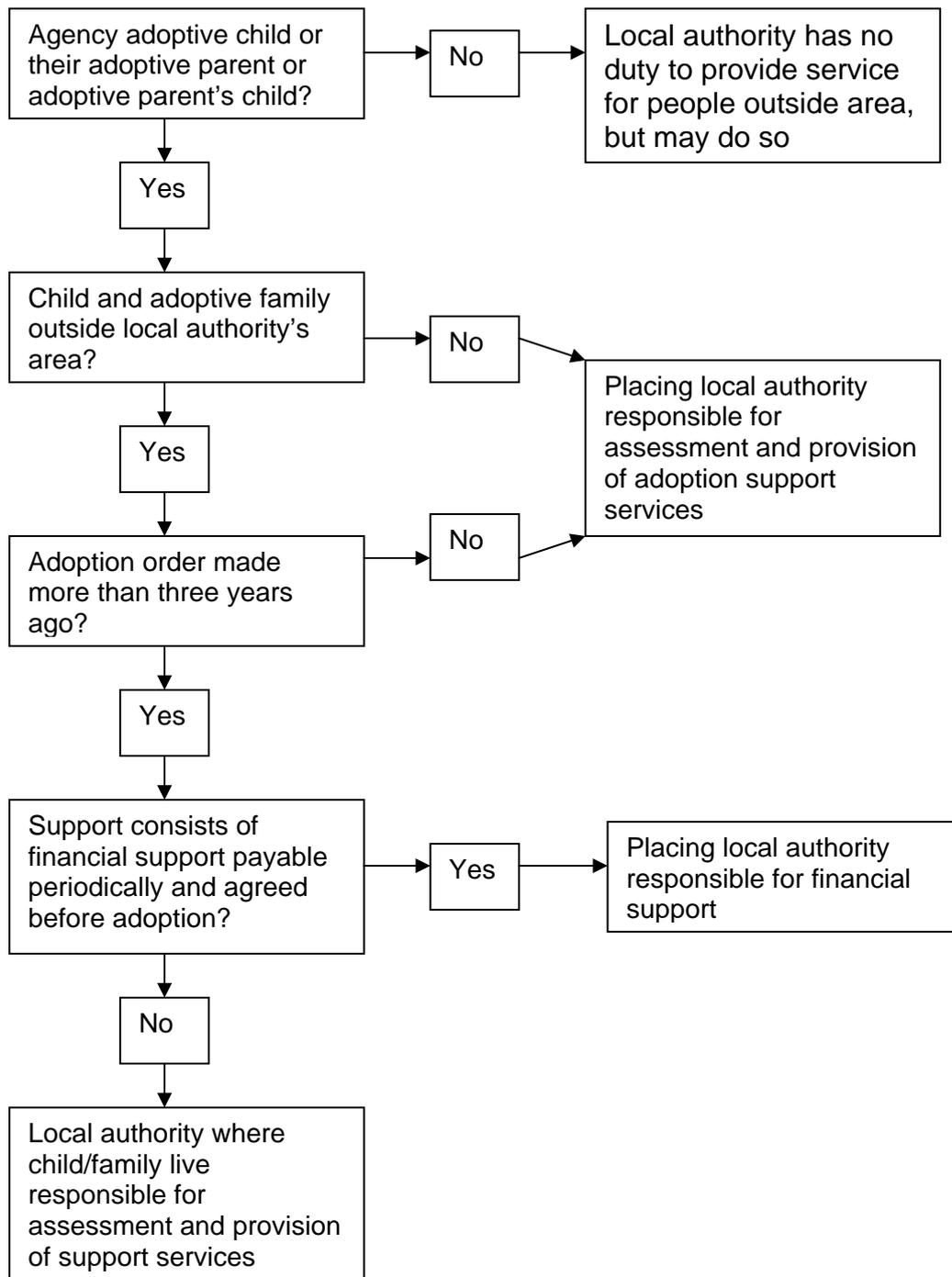
### **Cross-boundary placements and services for persons outside the area: ASR 7**

#### **First three years after an order is made when the child is an agency adoptive child**

18. ASR 7 is concerned with ensuring that those in need of and eligible for support services receive them irrespective of where they live. Accordingly, not only does ASR 7.3 permit a local authority to provide services to people outside their area but ASR 7.1 and 7.2 set out the circumstances in which a placing local authority must be responsible for the provision of services to people living outside their area.

19. This situation may arise at the time of placement, i.e. the child is placed with an adoptive parent living outside the local authority's area (whether as an inter-agency placement or not) or subsequently if the family moves out of the local authority's area. In either case the placing authority is responsible for the assessment for and provision of such support services as are identified as needed for a period of three years following the making of the adoption order. The placing authority will need to think carefully about the best way of delivering support. In some cases, this could mean arranging for a service or services to be provided by the local authority in which the family now live with that local authority having the option of recovering costs in accordance with ASR 23.

Adoption Support Duties to people outside local authority's area: ASR 7



## Ongoing financial support

20. In the case of ongoing financial support payable under ASR 8, however, the three-year limitation does not apply, and the placing local authority is responsible for the continued payment of financial support agreed before the adoption order is made. It is important that this provision is not misinterpreted as justification for a decision to pay ongoing financial support for a period limited to three years from the making of the adoption order. Any decision on the provision of support must be based on the needs and resources of the child and family. This applies equally to a decision about the period for which financial support is payable. Since the three-year limitation under ASR 7.2 does not apply to the provision of financial support, the provision of such support will remain the responsibility of the local authority that originally agreed it, for as long as the family qualifies for payments. This distinction has been made because financial support can be paid in isolation from other services that may have to be locally provided.

21. In the case of contact arrangements agreed before the adoption order, the placing authority should also continue to be responsible for managing and supporting the arrangements irrespective of where the adoptive family lives, as well as for any changes to those arrangements over time.

## Any time after the first three years from the date of an order when the child is an agency adoptive child

22. Where the three-year period following the making of the adoption order has expired, the local authority where the adoptive family lives will have the responsibility for assessing and providing adoption support services. It is essential that there is good communication and advance planning between the placing authority and the local authority where the family lives to ensure that there is no break in the provision of services. To assist with this, the placing authority may wish to make use of the power under ASR 7.3 to provide services for a transitional period.

## Liaison between local authorities

23. Liaison between different local authorities will be especially important where two or more children have been placed with the same adoptive parent but by different placing authorities. In these circumstances, more than one authority may have a duty to assess and provide support services (both to the parent and to the children, arising from the duty owed to the 'other children' of the adoptive parent under ASR 4) and should co-operate with each other to ensure that services are provided in a consistent and co-ordinated way.

### Placement outside of England and Wales

24. Where the child is to be placed, or moves, outside England and Wales, it should be borne in mind that, even within the UK, the duties of local authorities to provide adoption support are not the same as those set out under the Act and the relevant English and Welsh regulations. Each case will need to be considered according to its own circumstances, but placing local authorities may need to make use of the powers under ASR 7.3 to continue to provide support services or to contract and pay for the provision of services for more than the three years after the adoption order. In appropriate cases, they may also make financial support available, whether the child is outside England and Wales or outside the British Islands.

### Non-agency adoptive children

25. Where the adoptive child is not an agency adoptive child the duty to undertake assessments and provide support is placed on the local authority where the person seeking the assessment lives. If the person or family moves to the area of another authority, the duty will pass to the new authority. Liaison between authorities will again be essential to ensure a smooth transition for the child. Assessment of support needs for birth parents is the responsibility of the authority where the birth parent lives.

### Provision of financial support: ASR 8

26. The principle of some financial support for adoptive parents has been accepted since 1975. The statutory framework sets out certain conditions, which will trigger the need for financial support, but the overall intention is to ensure that the adoption of a child or the continuation of adoption arrangements should not be prevented because of lack of financial support. ASR 8.2 sets out the circumstances in which financial support may be paid to an adoptive parent. Generally speaking, an assessment for financial support will include an assessment of the financial circumstances of the adoptive parent (a means test) under ASR 15, but ASR 15.4 and 15.5 set out the circumstances in which the financial circumstances of the adoptive parent may or must be disregarded.

27. It will be seen that the conditions set out in ASR 8.2, looked at alongside those provisions of ASR 15 under which the means test is mandatory, require that there must be some particular condition relating to the child's health or development, or circumstances making it hard to place the child for adoption. Where the child needs special care under ASR 8.2.b, it is intended that financial support should be available where the child's condition is serious and long-term. This might arise, for example:

- where the child needs a special diet, or

- where clothes, shoes or bedding need to be replaced more frequently than would be the case for a child unaffected by the particular condition, or
- the child's special emotional needs may mean that extra help is needed to enable the parent to give the child one-to one attention.

See the Practice Guidance on *Assessing the Support Needs of Adoptive Families* for more examples.

### **Remuneration for former foster carers: ASR 9**

28. Financial support cannot normally include the payment of remuneration to the adoptive parent for care of the adoptive child. ASR 9 provides, however, that where the adoptive parent previously fostered the child they are adopting, and they received an element of remuneration in the financial support paid to them as the child's foster parent, the local authority may continue to pay that element of remuneration for a transitional period of two years from the date of the adoption order. These payments can continue for longer than two years if the local authority considers the case to be exceptional.

29. The purpose of the transitional provision is to enable local authorities to maintain payments to foster parents who go on to adopt, at the same rate as they received when they were fostering the child. This is intended to give the family time to adjust to their new circumstances.

### **Payment of financial support: ASR 10, 11 and 12**

30. ASR 10 allows for financial support to be paid periodically, eg monthly, to meet a need which is likely to give rise to recurring expenditure, or, in other cases, in a lump sum or, if the local authority and adoptive parent agree, by instalments.

31. ASR 11 sets out the circumstances in which financial support ceases to be payable, and ASR 12 sets out the conditions to which an adoptive parent (or both in the case of a couple) must agree before financial support is payable. This includes an undertaking to inform the local authority of any change in their financial circumstances that might affect the amount of support payable. The local authority may also impose other conditions that they consider appropriate. Where an adoptive parent fails to comply with a condition the local authority may suspend or cease payment and seek to recover all or part of the money they have paid. Where there has been a failure to provide an updated financial report, the local authority may not suspend, terminate or seek to recover financial support until they have given the adoptive parent a written reminder of the need to supply this and allowed 28 days for the response.

### Assessment for financial support: ASR 15

32. Particular provision is made in respect of assessments for financial support, and the circumstances in which a person's means must be assessed and taken into account in any decision on payment of financial support. Except in the circumstances set out in ASR 15.4 and 15.5, the local authority must take into account any other grant, benefit, allowance or resource available to the person because of the adoption, and significant income from any investments. The adoptive parent's home must not be taken into account. It is therefore important that adoptive parents apply for statutory adoption pay and leave, and all benefits and tax credits to which they are eligible. Financial support under the ASR must complement and not duplicate financial support available through the benefits and tax credits system.

33. In determining the amount of any ongoing financial support the local authority should have regard to the amount of fostering allowance that would have been payable if the child were instead to be fostered. Most local authorities will have a payment structure for foster care consisting of a 'core' allowance and enhancements appropriate to the needs of the individual child. This core fostering allowance, together with any enhancement that would be payable for the particular child, will make up the maximum payment (excluding any remuneration for former foster carers under ASR 9) that the local authority should consider paying by way of ongoing financial adoption support. The purpose of applying the means test is to ascertain what proportion of this maximum should be payable in the particular case.

34. ASR 15 sets out the circumstances in which the local authority has discretion to disregard means (as calculated in accordance with ASR 15.3) and those in which they must disregard them.

35. The local authority **may** disregard means (ASR 15.5) where they are considering providing financial support in respect of:

- the initial costs of accommodating an agency adoptive child – a 'settling-in grant' that local authorities often pay when a child is first placed with the family. It is not expected that this payment will be means tested, but local authorities might for example, want to means test in the case of any contribution to an adaptation to the home;
- recurring costs in respect of travel for the purpose of visits between the child and a related person so that, for example, where the local authority want to underline the value of and facilitate contact for an adoptive child with a birth relative, they can achieve this by providing non-means tested payments to support this;

- any special arrangements or special care referred to in ASR 8.2.b and c in relation to an agency adoptive child so the local authority can guarantee a financial package for a particular child who may be difficult to place in order to facilitate their adoption;
- where they are considering including an element of remuneration in financial support payments to ex-foster carers so that the local authority can maintain the amount paid to a foster carer who has gone on to adopt for the duration of the transitional period (up to two years unless the local authority considers the case to be exceptional).

36. The circumstances in which the local authority **must** disregard means are when they are considering providing financial support in respect of:

- legal costs, including court fees, where an adoption order is applied for in respect of an agency adoptive child, see chapter 8; or
- expenses associated with introductions between an agency adoptive child and their adoptive parent prior to placement.

37. Where a foster carer applies to adopt a child that they have been looking after and the local authority opposes the application, the local authority is not required to meet the legal costs of the foster carer. This is because the authority has not placed the child for adoption with the foster carer, and so the child does not fall within the definition of an 'agency adoptive child'. In such circumstances the local authority may wish to advise the foster carer that they may be able to obtain help with legal costs from the Legal Services Commission provided they satisfy the means and merits tests.

38. Entitlement to Statutory Adoption Pay (SAP) and adoption leave and ordinary or additional Statutory Paternity Pay and paternity leave depends on how long the adoptive parent (or their partner) have been employed by their current employer and their average earnings. Both of these conditions are based around the date the adoption agency tells the adoptive parent that they have been matched with a child. The local authority should consider making a payment of financial support equivalent to the Maternity Allowance to adoptive parents who are ineligible to receive SAP because of low earnings, length of service or self-employment, but otherwise satisfy the relevant criteria for Maternity Allowance.

### Review of financial support paid periodically: ASR 20

39. ASR 20 sets out the requirements for the frequency of reviews of periodic financial support, and the procedure to be followed. A 'relevant' change of circumstances which will prompt a review is defined in ASR 20.3 as any of the changes that an adoptive parent is required under ASR 12.1 to notify. These include the death of the child, a change of address and a change in the adoptive parent's financial circumstances or the financial needs or resources of the child, as well as any of the circumstances which would mean that financial support would cease to be payable, as set out in ASR 11.

40. The procedure for assessment set out in ASR 14 and 15 applies equally to a review of financial support as to first assessments for financial support. If the local authority proposes, as a result of the review, to reduce or terminate financial support or revise the plan, before making that decision the local authority must give the person an opportunity to make representations. For that purpose, they must give the adoptive parent notice of the proposed decision and the time allowed for making representations. The local authority may suspend financial support pending that decision if they think it appropriate. The notice must contain the same information as the notification of the outcome of the first assessment following the requirements of ASR 17.

41. The local authority must, having regard to the review, and after considering any representations received within the period specified in the notice, then decide:

- whether to vary or terminate payment of the financial support;
- whether to seek to recover all or part of any financial support that has been paid; and,
- where appropriate, revise the plan.

The local authority must then give the adoptive parent notice of their decision including the reasons for it and, if applicable, the revised plan.

42. It will often be appropriate for an annual review of financial support to be achieved by an exchange of correspondence between the local authority and the adoptive family. It should be borne in mind that under ASR 12 financial support cannot be terminated because of the adoptive parent's failure to submit an annual statement of means unless the local authority has reminded them of this requirement and given them 28 days to comply. A request for the annual statement should therefore be sent out at least 28 days before the anniversary of the original decision or previous review.

### **Assessment for adoption support services: section 4(1) of the Act and ASR 13**

43. The people who are entitled on request to an assessment of their need for adoption support services are set out in section 4(1) of the Act and ASR 13. As explained in paragraph 6, ASR 4 limits the local authority's duty in this respect to an assessment of need for support services of the kind to which each category of person is entitled. Local authorities have discretion under section 4(2) of the Act to undertake an assessment for other persons or in other circumstances if they think it appropriate.

44. In addition, an assessment of the adoption support needs of the adoptive child, adoptive parent(s) and any child of the adoptive parent must be undertaken at the time when a match is being considered under AAR 31.

45. Local authorities will normally assess a person based on their needs and those of the child, taking into account the list of services that must be extended to them. However, ASR 13 provides that a limited assessment may be undertaken with reference to a particular service:

- where a request for an assessment relates to a particular adoption support service, or
- if it appears that the person's needs for adoption support services can be adequately assessed by reference to one particular adoption support service.

46. In addition, if a local authority has decided to provide counselling, advice and information, it will not always be necessary for an assessment to be undertaken before that service is provided. For example, providing leaflets on adoption issues or information on the availability of services locally need not require an assessment as a pre-condition of receipt. However, if, when considering the person's needs, the local authority is contemplating providing support services other than counselling, advice and information, an assessment should be carried out in accordance with ASR 13-15 in order that an informed decision can be made about whether that person should be provided with those services.

47. Local authorities, and others undertaking assessments on their behalf, will find it useful to refer to the *Practice Guidance on Assessment for adoption support services*.

### **Procedure for assessment: ASR 14**

48. ASR 14 sets out the factors to be considered during an assessment. These factors reflect those to be considered in assessments carried out under the Framework for the Assessment of Children in Need and their Families. The Practice

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Guidance on *Assessing the Support Needs of Adoptive Families* takes the framework as its basis and is a tool for practitioners undertaking assessments of adoptive children in the context of the adoptive family. When assessing persons other than the immediate adoptive family, local authorities will need to use whichever of their existing assessment tools is the most appropriate to the particular case, taking proper account of the adoption context in undertaking the assessment.

49. Section 4(8) of the Act gives local authorities the power to assess adoption support service needs at the same time as undertaking another assessment, so that local authorities can undertake a single assessment process avoiding the adoptive family having to undergo a number of different assessments.

50. If needs identified during an assessment relate to services provided by bodies other than councils with social service responsibilities, and it appears that there may be service implications for health or education services, the local authority must consult the relevant primary care trusts (or local health boards) or the local authority's education department during the course of the assessment. In view of the time frame governing the assessment process at the time of matching, it is vital that the relevant bodies are notified and consulted as early as possible. Failure to do so may result in a delay in the child's placement. Where the adoptive family live or are going to live in the area of another local authority it will also be important for the assessing local authority to consult with the authority where the family live. The ASSAs of both local authorities should be able to assist in this process.

51. It will usually be necessary during the assessment for the local authority to interview the person whose needs are being assessed, and ASR 14.3 requires this, where the local authority consider it appropriate. In the case of an adoptive child, the adoptive parent should be interviewed unless this is inappropriate in the circumstances, and depending on the age and understanding of the child.

52. A written report of the assessment must be prepared, and this will inform the decision on what, if any services are to be provided, and the contents of any plan as to their provision. A copy of the report should be given to the person being assessed to ensure that the process is transparent and clear

### **Support services plan: ASR 16**

53. The local authority must prepare a plan if they propose to provide support services, but not for services limited to the provision of advice and/or information, or a one-off service (see section 4(5) of the Act 2005 and ASR 16). The draft plan and notice of the outcome of their assessment must be given to the person whose needs have been assessed. Where it appears to the local authority that the person may have need for services from a Primary Care Trust, Local Health Board or the local authority's education department, they must consult them before preparing the plan.

54. The plan should set out:

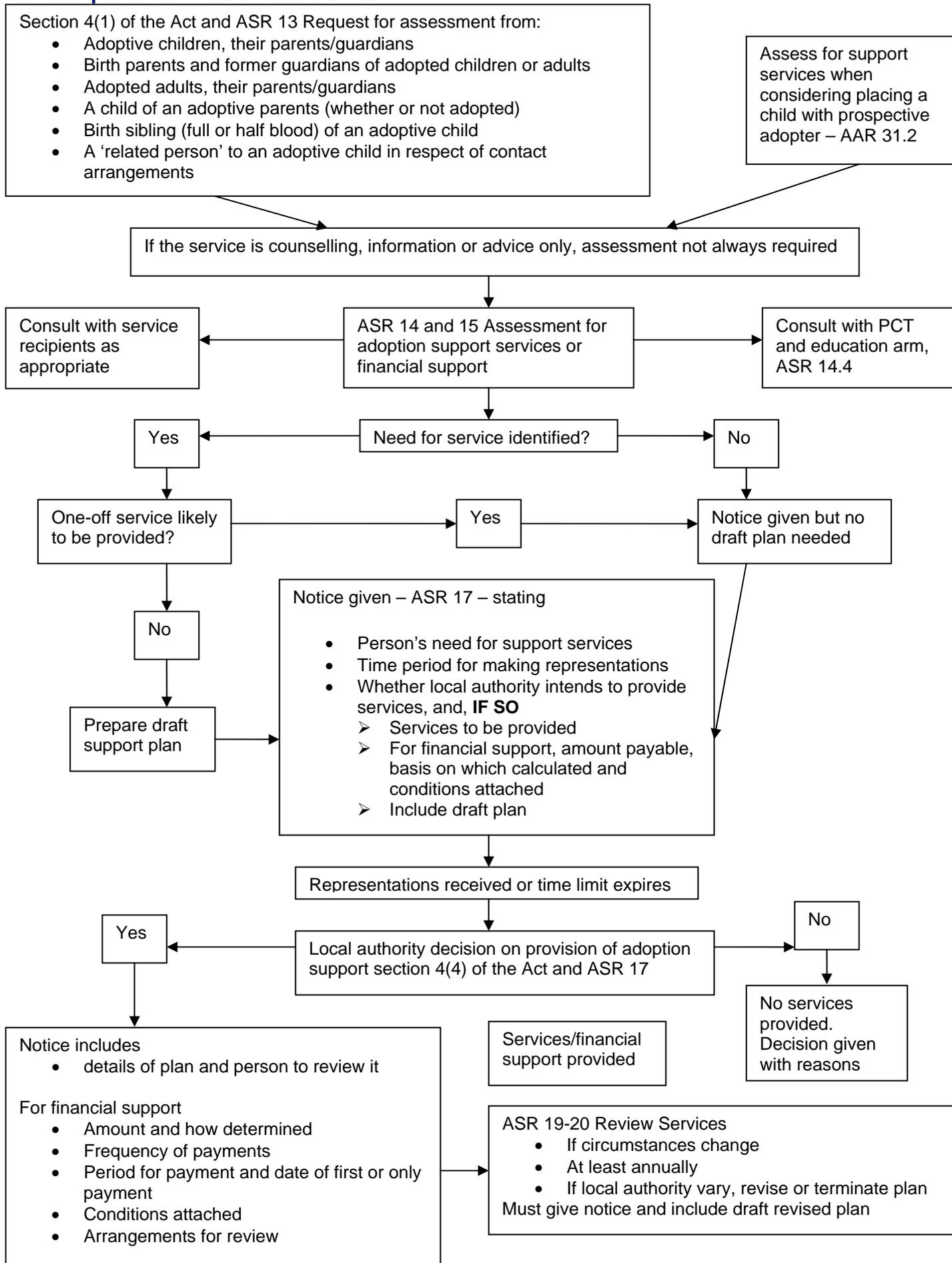
- the services to be provided
- the objectives and criteria for evaluating success
- time-scales for provision
- procedures for review
- the name of the person nominated to monitor the provision of services in accordance with the plan.

55. If the assessment has been undertaken at the matching stage, the plan will be part of the placement plan under regulation 35 of, and Schedule 5 to, the Adoption Agencies Regulations 2005 (AAR) (see chapter 5).

#### **Notice of outcome of assessment: ASR 17**

56. Once the assessment has been completed the local authority must give the person concerned notice of their proposed decision and to allow the person a specified time in which to make representations before a final decision is made. ASR 17.3 sets out the information that the notice must contain, and ASR 17.4 requires that, if it is proposed to provide services, a copy of the draft plan accompanies the notice. Where the assessment relates to financial support, the notice must explain the basis on which this is determined, and, if it is proposed to pay financial support, the amount that is proposed. The regulation does not require the full report of the assessment to be provided, but this is likely to be the most effective and open way of fulfilling the requirement to provide a statement as to the person's needs for adoption support services, as required by ASR 16.3. Where the local authority's assessment has identified needs for services that it does not propose to provide, it should be clear about the reason for that proposed decision, since the notice of any final decision under ASR 18 on whether to provide services will have to give reasons for the decision.

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57. The ASR do not specify a period of time to be allowed for representations. For assessments carried out on request, a period of 28 days from the time the proposed decision was sent to the applicants is suggested as good practice. Where assessments are undertaken at the 'matching' stage, the local authority's proposals regarding the provision of adoption support services will be part of the adoption placement report. The timescale will then need to fit the timetable for that report which would allow 10 days (under AAR 31.3) for the adoptive parent to consider the report and make any representations.

58. After considering any representations received, the local authority must then decide whether to provide any services to the person who has been assessed, taking into account the individual circumstances of the case and the resources that are available locally. The local authority cannot make a decision until the person has made representations to the local authority or notified the local authority that they are satisfied with the proposed decision and, where applicable, the draft plan, or where the period of time for making representations has expired.

59. In the case of a decision in a 'matching' assessment, the local authority decision regarding adoption support should be taken at the same time as the decision about the proposed placement, following consideration of the placement by the adoption panel, and will need to take account of any advice given by the panel.

### **Notification of decision: ASR 18**

60. Once the local authority has made its decision under ASR 17, it must give notice to the person concerned. The notice must include the reasons for the decision. If the decision is to provide services, the notice must include a copy of the plan and the name and contact details of the person nominated to monitor the provision of services. In the case of a 'matching' assessment, the decision regarding the provision of adoption support services will be notified alongside the agency's decision that the child be placed with the adoptive parent.

61. Where the local authority decides that financial support is to be provided, the notice must include all the information set out in ASR 18.3. To ensure that adoptive families are able to demonstrate, if necessary, in relation to tax returns or benefit claims that financial support under the ASR should be disregarded, the following statement should be included in the written notification:

‘This payment(s) is made in accordance with regulations made pursuant to section 4 of the Adoption and Children Act 2002. Under the provisions of the Finance Act, the payment is to be exempt from tax. In addition, the payment will be disregarded if you currently receive, or apply to receive Child Tax Credit or Working Tax Credit. You should keep this letter safe in case you need to provide it to support any tax return or application for a tax credit.’

62. Where service providers other than social services have been involved in the assessment of support needs, the local authority should try, wherever possible, to ensure that decisions made by those service providers follow the same timetable as decisions made under this regulation. These should then be covered in a single notification and plan sent out by the local authority that encapsulates decisions for the whole service package wherever possible. It will be useful to develop strategic and operational agreements to facilitate the involvement of other agencies. Where there is difficulty obtaining the support from these other agencies within the timescale necessary for the child’s needs, the local authority will need to be prepared to take an active role in advocating on behalf of the adoptive child and family. The family’s support worker should consult with the ASSA on the most appropriate way of achieving the desired outcome.

### **Reviews of support services: ASR 19 (non-financial support)**

63. Regular reviews enable the local authority and the service user to review the effectiveness of any services provided and to consider whether it is appropriate to continue that service or change the provision in some way.

64. ASR 19 sets out the circumstances in which the local authority is required to carry out a review of the provision of support services, other than financial support paid periodically. In addition to these requirements, the person charged with monitoring the provision of support should be aware of any indication that the support is no longer the most appropriate to the person’s needs, and they or the person in receipt of services should request an earlier review if this appears to be needed.

65. Where services are being provided during the placement period, the review process will follow the process of review for the placement in accordance with the AAR. AAR 36 provides that the child’s case must be reviewed within the first four weeks of placement (the first review) then not more than three months of the first review, and thereafter not more than six monthly intervals.

66. ASR 19 prescribes that where services are being reviewed, the procedure for assessment set out in ASR 14 and 15 must be followed in reviews as they are in a first assessment.

67. If the review results in the local authority proposing to vary or terminate the provision of support services, they must give the person concerned notice and allow them time to make representations in a similar way to the original assessment and notice of outcome. As with the original notification in ASR 17, the notice will need to be accompanied by a revised draft plan (if services are to be provided), and the final decision can only be made after considering any representations from the person affected within the time scale given in the notice.

68. The format and content of the review will vary depending on the circumstances of the case. Notification of changes of circumstances and any review of the provision of support services need not always necessitate direct contact between the local authority and the adoptive parent. Where the change of circumstances is relatively minor, the review might be limited to an exchange of correspondence. Where the change of circumstances is relevant only to one service, the review may be carried out with reference only to that service. However, where the change of circumstances is substantial, for example, a major change in the behaviour of the child, it will be appropriate to conduct a new assessment of needs.

### **Urgent cases: ASR 21**

69. It is important that the assessment process and follow up does not delay provision where a person has an urgent need for a service. ASR 21 therefore provides that where any requirement under the ASR in relation to an assessment, preparing a plan or giving notice would delay provision in a case of urgency that requirement does not apply. The local authority will need to review provision as soon as possible after support has been provided, in accordance with the procedures set out above.

### **Notices: ASR 22**

70. Notices must be in writing. The notice to the child can be sent to their adoptive parent or to another appropriate adult where the local authority considers the child is too young to be served or that it is otherwise not appropriate.

### **Recovery of expenses: ASR 23**

71. The local authority that assesses need and decides that services should be provided is responsible for funding any resulting social services provision. In arrangements where a placing authority is responsible for assessment but the adoptive family lives out of the area, the placing authority will need to think carefully

about the best way of delivering support. In some cases, this could mean arranging for a service or services to be provided by the local authority in whose area the family now live with that local authority having the option of recovering costs in accordance with ASR 23.

72. Under section 4(10) and 4(11) of the Act, a local authority responsible for assessing and providing support services may request another local authority's help where this is appropriate, and the second local authority is required to comply with the request as long as this is consistent with the exercise of their functions. ASR 23 provides that where a local authority ('the paying authority') has requested the help of another local authority ('the recovering authority') under section 4(10) of the Act, and the recovering authority complies with the request under section 4(11), the recovering authority may recover the expenses associated with providing any adoption support services from the paying authority. This however will not be the case where the recovering authority itself has responsibility for the assessment of the person in relation to whom help has been requested, nor does it apply where the service provided by the recovering authority consists only of advice or information.

## Chapter 10: Intermediary services and access to information in pre-commencement adoptions (pre-30 December 2005)

**This part of the guidance explains the legal framework governing the provision of information, and of intermediary services to facilitate contact between adopted adults and their adult birth relatives, in respect of any adoption prior to 30 December 2005. In relation to access to information, the Adoption Agencies Regulations 1983 still apply. In relation to intermediary services the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005 provide a framework within which intermediary agencies may, on application of an adult adopted person, or an adult relative of such a person, act as intermediaries and, with the consent of the subject of the application, facilitate contact between them. The practice guidance *Adoption: Access to Information and Intermediary Services* provides further guidance.**

### Introduction

1. In relation to a person adopted before the commencement of the Adoption and Children Act 2002 (the Act) on 30 December 2005, the provisions in section 51 of the Adoption Act 1976 regarding access to records were retained with some modifications. A framework for facilitating contact between adopted adults and their adult birth relatives was introduced under section 98 of the Act and the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005 (ISR), giving these people a right to request an intermediary service from intermediary agencies. The Adoption Contact Register, originally established in 1991, was retained with some amendments. See chapter 12.
2. The framework under section 98 and the ISR provides adopted adults and their adult birth relatives with a right to apply to an intermediary agency for an intermediary service. Most birth relatives, including birth parents, will have little or no information that enables them to seek to trace a person from whom they have been separated by adoption and establish if they wish to have contact. This framework enables an intermediary agency to seek information from a range of sources that it may use to establish the current identity of an adopted adult, to trace them, and subject to obtaining their informed consent, disclose identifying information about them to the birth relative and facilitate contact. The intermediary agency will have an important role to play in providing specialist support and advice to all parties throughout this process.

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3. An intermediary service is provided to assist adopted adults and their birth relatives obtain the information they need to trace a relative and establish contact with them, i.e. in relation to an adopted person, any person who (but for their adoption) would be related to them by full and half-blood, or by marriage or civil partnership (section 98(7) of the Act). An adopted person aged 18 or over, who was adopted prior to 30 December 2005, has the right to request an intermediary service to trace and facilitate contact with a birth relative. An adult birth relative of an adopted person has the corresponding right where they wish to trace and establish contact with an adopted adult.

4. Unlike birth relatives, adopted people have a long established right to obtain information about their adoption and family history. Schedule 2 of the Act preserves the legal right of an adopted person, on reaching age 18, to apply to the Registrar General for the information needed to obtain a certified copy of their birth certificate. Schedule 2 replaces the previous access to birth records provision at section 51 of the Adoption Act 1976. Adopted people may also apply to the appropriate adoption agency (AAA) for access to their adoption records. This is likely to include identifying information about their birth parents and, possibly, others who were involved in their adoption. See paragraph 16 for the definition of `appropriate adoption agency` and `identifying information`.

5. An adoption agency has the discretion under the Adoption Agencies Regulations 1983 (the 1983 Regulations) to disclose the information it considers appropriate to an adopted person. This enables adoption agencies to provide adopted adults with the information they need about their family history and origins. This recognises that some adopted adults have no wish for contact with former relatives but do wish to receive information about their family history and early life.

6. Most adopted people apply for information from the adoption agency first before deciding if they wish to go further and actively pursue contact with a birth relative. Some adopted people undertake their own research to establish the identity and whereabouts of the person with whom they wish to have contact. They may then apply to an intermediary agency, in order to request that it make the initial approach to that person. In other cases, the intermediary agency may undertake the research and tracing on behalf of the adopted person, obtaining the information it needs from the adoption agency, the Registrar General, the courts or other public records. The extent of the work undertaken by the intermediary agency will therefore depend upon the range of information that the adopted person already holds.

## Confidentiality and access to information

7. Regulations 14 and 15 of the 1983 Regulations provide for the retention, secure storage and confidentiality of adoption case records in all cases where the adoption order was made before 30 December 2005. The case records, in whatever format the information is preserved, must be kept in secure conditions at all times, e.g. a lockable cabinet or secure room to prevent the theft, unauthorised disclosure, loss or destruction of, or damage to the adoption records. This applies to adoption case records not kept at the agency's main premises, either on a temporary or permanent basis. The regulations also set out the circumstances in which adoption agencies must disclose information from the records, or have discretion to do so. Records must be retained for a minimum of 75 years from the date of the adoption order.

8. The adoption agency should keep its security arrangements under review. Any breach of the security of records are acted on promptly and security arrangements changed, if necessary, to prevent recurrence. All agency staff with responsibility for handling adoption case records should be clear as to their duty to safeguard the records at all times.

9. ISR 4.2 distinguishes between the provision of an intermediary service and an adoption agency's function of disclosing information to adopted adults about their adoption, their family history and early life. Initially, most adopted people seek information about their adoption and reflect on this before deciding if they wish to go further and initiate a search for a birth relative. Where an adopted person is only seeking information about their adoption, they should apply to the adoption agency that holds the relevant case records about their adoption. The adoption agency has the discretion under regulation 15 of the 1983 Regulations to disclose the information it considers appropriate to the adopted person. The adoption agency's function of providing access to the records it holds does not in itself constitute an intermediary service for the purposes of section 98 of the Act and the regulations.

10. Adoption records, like other records, are subject to the provisions of the Data Protection Act 1998, except in one respect. They are exempted from the subject access provisions of section 7 of that Act by virtue of the Data Protection (Miscellaneous Subject Access Exemptions) Order 2000 (as amended by article 2 of the Adoption and Children Act 2002 (Consequential Amendments) Order 2005). This means that the person who is the subject of the record does not have the right to insist on seeing all the records that the data controller holds about them. Nevertheless, in most cases it will be appropriate for the agency to exercise its discretion under regulation 15 of the 1983 Regulations to disclose to the adopted person information that it holds about him. Where it is a question of the possible disclosure of 'third party' information, such as identifying information about members of the birth family or former foster carers, the agency must act in accordance with the

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principles of the Data Protection Act. Although the starting point for disclosure of third party information is that it should only be disclosed with the consent of the person to whom it relates, information about a third party must be disclosed if “it is reasonable in all the circumstances” to do this without their consent; see section 7(4) of the Data Protection Act. A similar approach is likely to be helpful in deciding how to apply the Data Protection Principles to disclosure of adoption information. It will be necessary to consider the impact that disclosure will have on the third party and weigh this against the impact that non-disclosure will have on the person seeking information. The agency in exercising its discretion will need to take account of the context and all the circumstances; see the case of *Gunn-Russo v Nugent Care Society* [2001] EWHC Admin 566. It is important that the reasoning behind any decision as to disclosure be fully recorded.

11. Under Schedule 2 of the Act, an adopted person on reaching age 18, may apply to the Registrar General for the information needed to obtain a certificate copy of their birth certificate. The adopted person may use this information as the basis for undertaking their own search for a birth relative using the public records available to them. They may then apply for an intermediary service to make the initial approach to the birth relative with whom they are seeking contact on their behalf.

12. Part 1 of the practice guidance on *Access to Information and Intermediary Services* provides further information about the provision of information and counselling to adopted adults under the 1983 Regulations and Schedule 2 of the Act. It should be noted that adoption support agencies may also have a role to play in the delivery of this service.

### Intermediary services

13. An intermediary service is assisting adopted adults, who were adopted before 30 December 2005, to obtain information in relation to their adoption; and facilitating contact between such persons and their relatives. See ISR 4.1.

14. However, it is important to note that the provision of information to adopted people may also occur under the 1983 Regulations when the adoption agency holding the records exercises its discretion to provide information ‘for the purposes of its functions as an adoption agency’. In these circumstances, as is made clear by ISR 4.2, the provision of information does not fall within the definition of an intermediary service under the ISR.

15. An intermediary agency is an adoption support agency (ASA) or an adoption agency that provides an intermediary service in accordance with the regulations. See ISR 4.3.

16. 'Appropriate adoption agency' is defined by section 65(1) of the Act, in relation to an adopted person or to information relating to the adoption, as the agency that placed that person for adoption, or if different, the agency which keeps that person's adoption records. In a non-agency adoption, the AAA is the local authority to which notice of intention to adopt was given. In some older adoptions, particularly before 1976, there may be no AAA. This might be, for example, where the adoption was arranged privately and no local authority was given notice of intention. In some cases it may prove impossible to establish which agency, if any, was the AAA.

17. 'Identifying information' is defined in ISR 7.4, for the purposes of regulations 7, 9 and 12 as information which, whether taken on its own or together with information possessed by the applicant, enables the subject, i.e. the subject of the application, to be identified *or* traced.

### Who may provide services?

18. ISR 3.1 stipulates that an intermediary service under section 98 of the Act may be provided by an ASA or an adoption agency (a local authority or voluntary adoption agency (VAA)). An ASA will need to be registered under Part 2 of the Care Standards Act 2000 to provide these services, and indicate this in its statement of purpose. An adoption agency may choose to provide an intermediary service, although there is no statutory requirement for it to do so. When it does so, it must provide the service in accordance with the requirements of the ISR. A VAA that provides intermediary services is exempt from having to register as an ASA but they need to notify Ofsted and request the variation of their conditions of registration. A local authority should also notify Ofsted that they provide an intermediary service.

19. The regulations confer functions on:

- ASAs;
- adoption agencies;
- the courts; and
- the Registrar General.

The regulations set out the detail of how intermediary services will operate and the circumstances in which the bodies listed above will be able – or required – to disclose information to each other to facilitate the tracing of individuals involved in a person's adoption.

### Accepting applications under ISR 5

20. Applications may be accepted:

- from persons adopted before 30 December 2005 for assistance in contacting

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- a birth relative; or
- from a relative of a person, adopted before 30 December 2005, for assistance in contacting the adopted person.

In respect of adoptions after 30 December 2005, the framework at sections 56-65 of the Act and the Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005 will apply, see chapter 11.

21. An intermediary agency must give priority to those applications it receives in respect of adoptions that took place prior to 12 November 1975. This is intended to help intermediary agencies, the Registrar General and the courts manage demand for these services, and to provide priority access to services for those who have the greatest need. These are likely to be those birth relatives who relinquished a child for adoption many years ago, and are now elderly, and adopted people who were adopted many years ago and whose birth parents are now elderly. In relation to adoptions after 12 November 1975, where the intermediary agency has limited capacity it may only accept applications where it is satisfied that the circumstances are sufficiently exceptional, such as where the applicant is terminally ill. Where the intermediary agency does have spare capacity, it may routinely accept applications in respect of post-1975 adoptions.

22. Both the applicant and the subject of the application must have attained the age of 18. Before proceeding with an application, the intermediary agency should seek to establish, as far as reasonably practicable, that both the applicant and the subject of the application are aged 18 or over. Where the intermediary agency accepts an application, for example from an adopted person seeking contact with a birth sibling, and the agency subsequently discovers that the subject of the application is under the age of 18, it must not proceed further with the application. This does not limit the powers of a local authority, which has responsibilities under the adoption support provisions to provide support and counselling to an adopted adult in this position.

### **No obligation to proceed if not appropriate: ISR 6**

23. The intermediary agency has a general discretion not to proceed, or continue proceeding, with an application unless it considers it appropriate to do so. In reaching this decision, ISR 6.2 requires the intermediary agency to have regard to certain specified issues.

24. It is important to note that this regulation applies not only to the intermediary agency's initial decision on whether to proceed, but also to the possibility of a later decision on the appropriateness of continuing. In some cases, there may be strong reasons, either apparent immediately to the intermediary agency in its contact with the applicant, or expressed by the AAA when it gives its views, which argue against

taking up the application. In the majority of cases, however, the information gathered and other factors affecting a decision will become apparent over time. The agency's own procedures need to ensure that they allow the opportunity to reflect on the information as it becomes available, so that the agency can appropriately exercise its discretion as to whether to continue with the application.

25. In deciding whether to proceed or continue proceeding with an application, ISR 6.2.a requires the intermediary agency to have regard to the welfare of the applicant, the subject of the application, and any other person who may be identified or otherwise affected by the application. It must also have regard to all the other circumstances of the case. Each case will be different and some will involve additional factors or particularly complex issues.

26. Where the AAA is providing the intermediary service, it will first need to consider the information available to it on the case records it holds. If necessary, it may also seek additional information held by the Registrar General on the Adoption Contact Register to help inform the exercise of its discretion as to whether to proceed, or continue proceeding, with the application. For example, where the subject of an application has registered a wish for no contact with the applicant on the Adoption Contact Register, the intermediary agency may decide, based on that entry, not to proceed further with the application. Nevertheless, the agency should advise the applicant that the subject might change their mind in the future and that if the applicant registered on the Adoption Contact Register, they would be notified if this were to occur. There may also be information on the relevant adoption case record to indicate that proceeding with the application could place the applicant (or the subject) at risk of harm.

27. Many adopted people have already sought some information about their adoption before deciding that they wish to pursue contact with a relative. Some adopted people will have undertaken their own research and established the current identity and whereabouts of the person with whom they are seeking to establish contact. In such cases, they may apply to an intermediary agency to make the initial approach to that person. It is important, therefore, that on receipt of an application the intermediary agency establishes, as far as possible, what information the applicant already holds, what steps they have taken to trace the person(s) with whom they are seeking contact and their expectations in relation to possible contact. This will be an important part of the preparatory work with any applicant, and still assist the agency in deciding whether to initiate the further enquiries needed to proceed with the application.

28. Where the intermediary agency is not the AAA, ISR 12 requires it to establish if an adoption agency was involved in the adoption and, if so, to identify the AAA. It is then required to ascertain the adoption agency's views on the application and any proposed contact between the applicant and the subject of the application. It is

possible that another agency involved in the placement (in the case of an interagency placement), or the provision of adoption support (where the adoptive family lives outside the area of the placing agency) may have information that has not been shared with the AAA. The AAA may wish to ascertain from such an agency whether they hold information that would be relevant to the enquiry of the intermediary agency.

29. The adoption agency may express the view, based on the information it holds, that proceeding with the application could be harmful to the welfare of the applicant or the subject of the application. The intermediary agency must have regard to those views. The adoption agency will be best placed to provide advice to the intermediary agency based on the information it holds. If the subject of the application is an adopted person who has registered a veto, the agency will be bound by the terms of the veto. The intermediary agency may also seek information held by the Registrar General on the Adoption Contact Register to help inform its decision as to whether to proceed with the application.

30. ISR 12 sets out the enquiries that the intermediary agency must make of the AAA. In the majority of cases the intermediary agency will be best placed to deal with the case, and to form a view on the appropriateness of proceeding, if it receives from the AAA not only its views on the application, but the reasons for those views, with information supporting the reasoning. This will also be essential to enable the intermediary agency to provide counselling for the applicant.

31. In circumstances where:

- the intermediary agency is unable to establish the identity of the AAA;
- the AAA is identified but its records have been lost or destroyed; or
- the intermediary agency establishes that no adoption agency was involved in the adoption,

the intermediary agency will have scant information to inform its decision as to whether to proceed. Thus, it may be useful to seek information that the Registrar General may hold on the Adoption Contact Register to inform any decision as to whether to proceed with the application.

32. In addition to the welfare of the applicant and the subject of the application, the intermediary agency is also required by ISR 6.2.a.iii to have regard to the welfare of “any other person who may be identified or otherwise affected by the application”. The agency will therefore need to have regard to the welfare of the adoptive parents as well as any siblings within the adoptive family. Although the intermediary agency is not routinely required to seek the view of the adoptive parents, it will need to exercise its discretion as to whether it is appropriate to do so having regard to the particular circumstances of the case.

33. The views of the adoptive parents will not on their own be decisive but one of a range of factors to which the agency must have regard in deciding whether to proceed, or continue proceeding, with the application. However, where a younger sibling within the adoptive family is under the age of 18, the intermediary agency is required by ISR 6.3 to have particular regard to his or her welfare.

34. The intermediary agency must have regard to any information it obtains from the Registrar General on the Adoption Contact Register under ISR 13 in deciding whether to proceed, or continue proceeding, with an application. Where the subject of the application had registered a wish for “no contact” on the Adoption Contact Register, this does not preclude the intermediary agency from proceeding, or continuing to proceed, with the application. The intermediary may still proceed with the application if it considers it appropriate to do so. Each case will be different and must be judged on its merits. That is why the intermediary agency is also required by ISR 6.2 to consider “all the circumstances of the case”. Any approach made by the intermediary agency in these circumstances should make it clear that the agency is aware of the subject’s registered wish for no contact.

35. The intermediary agency must have particular regard to the welfare of any person who may be identified or affected by the application who is under the age of 18. This regulation will apply where, for example, the subject of an application is a 19 year old adopted person with a sibling under the age of 18. Although it will ultimately be for the adopted adult to decide if they wish to have contact with the applicant, the intermediary agency must also consider the welfare of the younger sibling in deciding whether to continue with the application. The agency may wish to seek the views of the subject’s adoptive parents on this issue in coming to its decision. Where the agency decides to consult them it should make clear that this is an opportunity for them to make their views known but that they have no right to veto the application. Where the intermediary agency forms the view that proceeding with the application would not be in the interests of the younger sibling’s welfare, it may decide not to proceed with the application or to proceed with the application in the future.

36. The intermediary agency must not proceed, or continue proceeding, with an application where it ascertains that the subject of the application is under the age of 18.

### **Consent of subject to disclosure of identifying information: ISR 7**

37. The framework for the provision of intermediary services is based on the premise that contact and the sharing of information will only be facilitated where both parties agree. ISR 7 therefore prohibits an intermediary agency from disclosing identifying information to the applicant about the subject of the application without

having first obtained the subject's consent. This important safeguard recognises that some adopted persons and birth relatives have no wish to be traced or to have their details passed on.

38. The requirement to obtain consent is intended to provide a safeguard against the inappropriate disclosure of sensitive information about the subject, which the intermediary agency has obtained on the applicant's behalf, and which would not otherwise be available to the applicant. This will generally be the identifying information which the intermediary agency obtains from the adoption agency's case records or other information which is not in the public domain. Therefore, this regulation will not apply to any identifying information that the applicant already holds, for example, where an adopted adult has undertaken their own research and has been able to establish the identity and/or whereabouts of the subject. The regulation will also not apply to identifying information which could reasonably be obtained by the applicant from existing public records such as birth, marriage, civil partnership or death certificates held by the Registrar General or information from the electoral register.

39. ISR 7.2 applies where intermediary agency discovers that the subject of the application has died or where it determines that the subject is incapable of giving informed consent. Informed consent means that the subject fully understands the nature, circumstances and background of the agency's request and the implications of their decision to give or withhold consent.

40. Where the intermediary agency ascertains that the subject of the application has died, this regulation provides the discretion to disclose identifying information about the subject, having first had regard to the matters specified at ISR 6.2. The intermediary agency must therefore have regard to the welfare of any other person who may be identified by disclosing the identifying information about the subject or any other person who may be affected by the application.

41. Each case will be different but the intermediary agency should consider, as a minimum, whether it is appropriate to seek the views of the deceased person's next of kin before deciding whether to disclose the identifying information. Much will depend on the circumstances, particularly the length of time since the person's death and the circumstances (if known) of the death. The agency may also consider it appropriate to seek the views of persons in addition to the next of kin, such as other family members of the subject, depending on the circumstances of the case. Where it has sought the views of the next of kin (and possibly others), the agency must have regard to their welfare and views, when deciding whether to disclose the identifying information. It may then disclose the information to the applicant if it considers it appropriate to do so.

42. In circumstances where the intermediary agency determines that the subject is incapable of giving informed consent because of a learning difficulty or other mental impairment, it is again required to have regard to the matters specified in ISR 6.2. The agency may again need to seek the views of others before deciding whether it is appropriate to disclose identifying information about the subject to the applicant.

43. The intermediary agency will need to establish if someone has been appointed to act on behalf of the subject, for example, the Court of Protection, and would have to consult that person or body. Depending on the circumstances of each individual case, the agency may also wish to seek the views of others such as the subject's spouse or registered civil partner (if applicable) or other family members. Subject to any views obtained by the intermediary agency and having regard to the welfare of others identified or affected by the application, the agency may then disclose identifying information to the applicant if it considers it appropriate to do so.

44. The intermediary agency must take steps to ensure that any person whose consent is required has sufficient information to be able to make an informed decision as to whether to give their consent. This regulation requires the intermediary agency to provide the subject with information about the application and the background of the case. The intermediary agency may also provide the subject with information about the applicant, their circumstances and the reasons for their application. This may include information that identifies the applicant, as the subject will wish to know who is making contact, their reasons for doing so and their expectations, see ISR 16.

45. The process of obtaining consent will need to be handled carefully and compassionately and the intermediary agency should advise the subject about such counselling services or other specialist support and advice as may be available. Finally, the intermediary agency must be satisfied that the subject fully understands the nature and circumstances of the request for consent and the implications of any consent decision they might make.

46. Adopted people and birth relatives are likely to be in a different position, in that an adopted person has a right to obtain a certified copy of their birth certificate and is likely already to possess a range of information about the subject of the application, including their identity. They may also already have had access to some information from adoption agency records. It is principally for this reason that "identifying information" in this regulation is defined as information, which, whether taken on its own or together with other information possessed by the applicant, enables the subject to be identified or traced. Where the applicant is a birth relative it will usually be the former, i.e. the information which reveals the current identity of the adopted person.

47. Where the applicant is an adopted adult, they may have undertaken their own research that enabled them to establish the current identity and/or the whereabouts of the person with whom they are seeking contact. They may subsequently apply to an intermediary agency to make the initial approach to that person. The requirement to obtain the subject's consent will not therefore apply to any identifying information already held by the applicant. However, where the intermediary agency obtains any identifying information about the subject over and above that which is already held by the applicant, and which is not otherwise publicly available to the applicant, it is required to obtain the consent of the subject to the disclosure of that information. Where consent is not given, the intermediary agency will need to make it clear to the subject that the applicant already holds sufficient information to enable them to make a direct approach and may choose to do so even if the subject has indicated a wish for no contact with them.

### **Veto by an adopted person: ISR 8**

48. Where an adopted adult has no wish for contact with birth relatives, the main repository for formally registering such a wish will continue to be the Adoption Contact Register maintained by the Registrar General. Section 80 of the Act enhanced the role of the Adoption Contact Register so that an adopted adult or a birth relative may formally register a wish for no contact or for contact. An adopted person may also specify those birth relatives with whom they do or do not wish to have contact. ISR 6.2 requires an intermediary agency to have regard to any information which it has obtained from the Adoption Contact Register in informing its discretion as to whether to proceed, or continue proceeding, with an application.

49. There will be some cases where an adopted adult has no wish for contact or to be approached by an intermediary agency on behalf of a birth relative. There will also be cases where the adopted person only wishes to be approached on behalf of a specified birth relative or in specified circumstances. In such cases, ISR 8.1 enables the adopted person to register a formal veto with the AAA.

50. An adopted adult may formally register an absolute or a qualified veto. An absolute veto would prevent an intermediary agency from making an approach in any circumstances. However, a qualified veto would enable the intermediary agency to make an approach on behalf of a birth relative specified by the adopted person or in circumstances specified by the adopted person, for example, where there was information about a hereditary medical condition.

51. This provision is intended to ensure that where an adopted person has no wish to be approached by an intermediary agency, that wish for privacy is respected.

52. Where an adopted person wishes to register a formal veto with the adoption agency under ISR 8, the adoption agency must first take steps to verify that the

person seeking to register the veto is the adopted person. Any veto must be an `informed veto`. Therefore, before any veto may be registered the agency must also be satisfied that the adopted person fully understands the implications of so doing, particularly where they wish to register an absolute veto. The agency should explore fully with them their reasons for wishing to register a veto and should explain clearly the effect of doing so. The agency must also make clear to the adopted person their right to amend or withdraw the veto at any time and the steps to be taken should they wish to do so. The agency should consider the adopted person's need for counselling in respect of any decision to register, amend or retract any veto, whether absolute or qualified.

53. A formal veto is not a life-long veto but will remain in place until such a time as it is amended or retracted by the adopted person. An absolute veto under ISR 8.1.b.i will prevent an intermediary agency from making an approach on behalf of a birth relative under these regulations. So, for example, where the birth relative wished to establish contact with the adopted adult because of a possible hereditary medical condition, the intermediary agency would be precluded from proceeding with an application under these regulations by virtue of ISR 8.3. In such cases, the AAA could pass on the medical information supplied by the birth relative to the adopted person where it considers it appropriate to do so. The agency must be fully satisfied that the circumstances are sufficiently exceptional to warrant contacting the adopted person to pass on this information. In exceptional cases, a person may also make an application to the court under section 79(4) of the Act for the disclosure of the identifying information held by the Registrar General on the Adopted Children Register.

54. There may be a small number of cases where a birth relative has been able to establish independently the identity and/or the whereabouts of an adopted adult without any assistance from an intermediary agency. They may then apply to an intermediary agency to make an initial approach to the adopted person on their behalf. Where the intermediary agency ascertains that the adopted person has registered a veto it will not be able to make this approach on behalf of the birth relative, unless the circumstances of the application match those specified by the adopted person in any qualified veto.

55. However, given that the birth relative already holds the information that would enable them to make a direct approach, the adoption agency that holds the veto may contact the adopted person to notify them of this fact. The agency should advise them that the veto would need to be amended or withdrawn to enable the intermediary agency to take forward the application and provide the necessary expert counselling and support. It should be made clear to the adopted person that if they do not wish to amend or withdraw the veto, then the birth relative may choose to make a direct approach.

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56. An adopted person can register a qualified veto which enables them to specify the person(s) on behalf of whom an approach from an intermediary agency would be welcome. For example, an adopted person may not wish to be approached on behalf of a birth parent but would welcome an approach on behalf of a birth sibling.

57. This regulation also enables the adopted person to specify the circumstances in which an approach from an intermediary agency would be welcome. They could specify, for example, that an approach would only be welcomed where the intermediary agency was acting on behalf of a birth relative who had important medical information they wished to impart or in circumstances involving a bequest from a deceased birth relative.

58. The AAA must keep a written record of any veto on the adopted person's case record. It is important that where an enquiry is made by an intermediary agency the AAA is able to respond speedily and inform the intermediary agency of the existence of the veto. Agencies may find it helpful to maintain a central register of any vetoes recorded, perhaps with the index to their adoption records. Where an intermediary agency contacts the adoption agency under ISR 12 to ascertain its views on an application, it is also required by this regulation to notify the intermediary agency of the terms of any veto which may have been recorded on the adopted person's case record.

59. An intermediary agency may not proceed with an application from a birth relative where it is aware that an absolute veto has been registered by an adopted person under this regulation. Where a qualified veto has been registered with the AAA, the intermediary agency may only proceed where the application falls within the circumstances specified by the adopted person.

### **Provision of background information where consent refused etc: ISR 9**

60. ISR 9 will apply where the intermediary agency has been unable to obtain, for whatever reason, the consent of the subject to the disclosure of identifying information to the applicant. It will also apply where the adopted person has registered a veto with the AAA under ISR 8.

61. The intermediary agency has the discretion to disclose background information to the applicant if it considers it appropriate to do so. This could be a wide range of information, provided it does not fall within the definition of identifying information at ISR 7.4. It allows the intermediary agency to pass on details of the subject's domestic or family circumstances, their general health and well-being or other information which may be of value to the applicant. For more guidance on this issue see 4.38-44 of the practice guidance on *Adoption: Access to Information and Intermediary Services*.

### **Counselling: ISR 10**

62. There is no legal requirement for a person to receive counselling, whether or not they have already received counselling when applying to the Registrar General for access to birth records or to the adoption agency for the disclosure of information about their adoption. However, the valuable role that counselling can play is well established. Chapter 12 provides guidance on who should be offered counselling and which body can provide counselling services.

### **Procedure on receipt of application: ISR 11**

63. The agency must take reasonable steps to verify the identity of the applicant and any person acting on the applicant's behalf. For this purpose, it may be necessary to ask for a passport, driving licence or other evidence. The passport or driving licence, or a birth certificate, will also provide proof of age, which is required by ISR 12.b.

64. Where a person is claiming to act on behalf of the applicant it will be necessary (ISR 11.c) for the agency to satisfy itself that they are authorised to do so. Where the applicant suffers from mental incapacity this may not be a straightforward matter.

65. Where the applicant is a birth relative of an adopted person, ISR 11.d requires the agency to confirm the relationship. For example, a birth mother may prove her relationship to the adopted person by providing a copy of her birth certificate, her child's original birth certificate, and if she was married after the child's birth, her marriage certificate. Before proceeding with an application the intermediary agency may request any additional documentation it considers appropriate in order to be satisfied on this point.

### **Contacting the appropriate adoption agency: ISR 12**

66. ISR 12 will only apply in those cases where the intermediary agency is not the AAA. Where the intermediary agency has accepted an application, it must take all reasonable steps to establish whether an adoption agency was involved in the adoption and, if so, to identify the AAA. The applicant may know the adoption agency that arranged the adoption, in which case the intermediary agency needs not make any further enquiries other than to establish if the agency still exists or where the relevant adoption records are held.

67. ISR 12.2 sets out the steps that the intermediary agency may take in seeking to identify the AAA, through the Registrar General, the court, or the local authority for the area in which the adoption took place. The Registrar General may be able to identify, from the records he holds, if an adoption agency was involved in the

adoption and the name of that agency. It needs to be borne in mind that, for past adoptions, the courts had no obligation to notify the Registrar General of the name of the adoption agency and the court itself may be the best source of information. Where the Registrar General does hold information about the AAA, he is obliged by ISR 14.1 to disclose this information to the intermediary agency. Where he does not hold this information he is required by ISR 14.2 to provide the intermediary agency with written confirmation of that fact together with details of the court that made the adoption order. ISR 12.2.b then permits the intermediary agency to make an application direct to the court for the information it needs, and the court is required by virtue of ISR 15 to supply the information, for which it may charge a fee of up to £20. Where the court is unable to comply with the request because it does not hold the information sought, it must notify the intermediary agency in writing, specifying the searches that have been made of the court records. Where it has reason to consider that another court may hold the relevant information it must also provide the intermediary agency with details of that court.

68. An application to the court for information to identify the AAA, is to be distinguished from an application by an adopted person, or a birth relative to a court under Rule 53(4) of the Adoption Rules 1984 or Rule 32(1),(3) and (6) of the Magistrates' Courts (Adoption) Rules 1984 asking for other information from the court files under the exercise of judicial discretion. The provision of information under ISR 15.1 is an administrative act that can be undertaken by the court staff.

69. The intermediary agency may make enquiries of the local authority in the area in which the adoption took place. The local authority may have placed the child for adoption or it may have provided a report to the court. It may also hold the adoption records in respect of former VAAs that used to operate within its boundaries or it may be able to signpost the intermediary agency to the authority that now holds the relevant record.

70. If it has been possible to identify the AAA, the intermediary agency must make enquiries of that agency. It is first essential to establish, in the case of an application by a birth relative, whether the adopted person has registered a veto with the AAA under ISR 8. If a veto has been registered, the intermediary agency is prohibited from proceeding with the application, unless the circumstances fall within the terms of a qualified veto. The agency may nevertheless be able to provide the applicant with some background information under ISR 9.

71. On an application by a birth relative, where no veto exists, the intermediary agency is required to ascertain from the AAA whether the subject of the application has ever registered their views with the agency as to contact or about being approached by the agency with regard to facilitating contact. The adopted person may have previously contacted the agency to register their views about possible contact or about being approached by an agency on behalf of a birth relative. They

may have previously indicated a wish for contact or no contact or expressed a wish only to be approached by the agency in certain circumstances, such as where important health information has come to light. Where a wish for no contact was registered by an adopted person prior to implementation of the Act, this will not constitute a formal veto under ISR 8. Where the adopted person has registered their views with the adoption agency, the intermediary agency is therefore required by ISR 6 to have regard to those views in deciding whether to continue with the application.

72. Where the application is by or on behalf of an adopted person, the birth relative who is the subject will not have been able to register a veto. Nevertheless, they may have contacted the adoption agency to indicate their views on any possible approach with regard to contact. If they have done so, then the intermediary agency must have regard to those views in deciding whether to proceed.

73. The intermediary agency must ascertain the AAA's views as to the appropriateness of the application and any proposed contact between the applicant and the subject. In forming its view on the application, the AAA must have regard to the matters set out in ISR 6, including the welfare of the applicant and the subject. There may be information on the case record to indicate that the application is inappropriate or even vexatious. The intermediary agency is required by ISR 6.2.b to have regard to the views of the adoption agency in deciding whether to proceed, or continue proceeding, with the application.

74. Having considered the adoption agency's views on the application, together with the other matters set out at ISR 6, if the intermediary agency decides to proceed with the application it may then seek the disclosure of certain information from the adoption agency. ISR 12.3.c permits the intermediary agency to seek the information it requires for the purposes of:

- counselling and preparation of the applicant;
- tracing the subject of the application;
- enabling the subject to make an informed decision as to whether they consent to the disclosure of identifying information to the applicant or possible contact;
- counselling the subject, in the relation to the consent decision.

75. The AAA is required by ISR 12.4 to take reasonable steps to provide the intermediary agency with the information it has requested for the purposes listed above. Where the information requested is clearly not relevant to the purposes set out in ISR 12.3.c the AAA is under no obligation to provide it. It is important that the agency respond quickly to the request for information; there is a risk that an applicant, particularly an adopted person who already knows the identity of birth family members, frustrated by the delay in providing the information, may decide to bypass the intermediary agency and attempt direct contact themselves. The AAA should make clear to the intermediary agency any conditions or restrictions that the

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agency may have imposed in respect of the continued safekeeping or onward disclosure of that information.

### Obtaining information from the Registrar General: ISR 13 and 14

76. ISR 13 permits an intermediary agency to seek further information from the Registrar General in certain circumstances. These are where the intermediary agency:

- is unable to obtain sufficient information from the AAA to enable it to trace the subject of the application;
- is unable to identify the AAA or ascertains that there is no AAA; or
- finds that the AAA does not hold the relevant information.

77. The intermediary agency may request in writing from the Registrar General information from the Adoption Contact Register. An entry in the Adoption Contact Register may contain the information that the agency needs, such as an address, to enable it to trace the subject. If the entry in the Adoption Contact Register indicates that the subject has registered a wish for no contact with the applicant, the agency will need to consider whether it is appropriate to continue with the application despite the registered wish, but it is not prohibited from doing so.

78. The agency may also request, if necessary, the information that the Registrar General holds linking an entry in the Register of Births with an entry in the Adopted Children Register. Where the intermediary agency has been unable to establish the post-adoption identity of the adopted person, for example because the records have been lost or are incomplete, or because the adoption was a private arrangement with no agency involvement, this information will enable it to do so.

79. An AAA whose own records are lost or incomplete may also seek information from the Registrar General under this regulation.

80. The Registrar General must take reasonable steps to comply with a written request for information under ISR 12 or 13. If he holds the information requested he is obliged to disclose it, and he may charge a fee of £10 for doing so.

### Authorised disclosures: ISR 16

81. ISR 16 stipulates the circumstances in which an intermediary agency may disclose information, including identifying information, to other persons or bodies.

82. The intermediary agency may disclose information to the Registrar General or the court where it is seeking information from them under ISR 12 or 13. The agency will need to provide the Registrar General or the court with sufficient information

about each individual case to enable them to properly discharge their functions under ISR 14 and 15. This will include information which identifies individuals including the applicant and the subject of the application.

83. The intermediary agency may disclose information to the AAA for the purpose of ascertaining the agency's views on the application or seeking information under ISR 12.3.c. The agency will need to disclose the information it holds about the application, including details of the applicant and the subject to enable the AAA to identify the case records to which the application refers and provide the intermediary agency with the information it requires.

84. The intermediary agency may disclose information, including identifying information, to the subject of the application as required by ISR 7.3 to provide sufficient information to enable the subject to make an informed decision as to whether to give consent. This information will include details of the applicant and any other information that will assist the subject in fully understanding the nature, circumstances and background of the application.

85. The intermediary agency may disclose information to any person or body with whom it has made an arrangement to provide counselling on its behalf. For counselling and support to be meaningful and beneficial, the body providing the counselling will probably require access to some or all of the information that the intermediary agency holds about the application. This will include any information that the intermediary agency may have obtained from the AAA under ISR 12. It is important that the AAA which has supplied the information is aware of the intention of the intermediary agency to share it with another body in order for it to provide the counselling.

86. The intermediary agency may attach conditions or restrictions on the information it passes to the body or person providing the counselling. For example, where counselling is being provided to the applicant, the body or person providing that counselling must take care not to disclose any identifying information about the subject where their consent to the disclosure has not been obtained. However, where such consent has been obtained and the intermediary agency considers that it is appropriate for the information to be disclosed to the applicant, the person providing the counselling may be authorised to disclose that information on behalf of the intermediary agency.

### **Offence: ISR 17**

87. The inappropriate disclosure of identifying information could be distressing and may even place individuals, including children, at risk of harm. ISR 17 therefore makes it a criminal offence for an intermediary adoption agency to disclose any information in contravention of ISR 7. See Annex A.

### Fees: ISR 18

88. An intermediary agency has the discretion to charge a reasonable fee to cover any costs incurred in processing an application, including counselling. It may include any costs incurred by the agency in seeking to identify the AAA, and ascertaining the agency's views under ISR 12, tracing the subject of the application and seeking their consent under ISR 7. The fee may be charged to the applicant or the subject of an application who is considering whether to give their consent to the disclosure of identifying information under ISR 7.

89. Where the subject has requested that counselling and support be provided, it is envisaged that any fees associated with providing the counselling would normally be met by the applicant, as it would not be appropriate to charge the subject in connection with a service which they did not initiate. There may be circumstances where the subject would be prepared to meet those costs such as where the applicant was unable to do so themselves.

90. The general expectation is that the intermediary agency would normally provide the counselling itself, although it may choose to make an arrangement with any of the bodies listed at ISR 10.4 to provide counselling services on its behalf. Where the intermediary agency secures the provision of counselling by another agency on its behalf, ISR 18.2.a permits it to charge a fee to cover any reasonable costs it incurs in securing that provision.

91. Where the intermediary agency secures the provision of overseas counselling for a person, ISR 18.2.b permits it to charge a fee to that person to cover any reasonable costs it incurs in securing that provision.

92. An adoption agency may charge an intermediary agency a fee in connection with a request under ISR 12. This will be a fee which it decides is reasonable for providing its views on the appropriateness of an application, or for disclosing information for the purposes set out at ISR 12.3.c.

93. The intermediary agency is obliged to pay fees charged under these provisions, but may seek to recover these costs from the applicant as part of the charge it may make for processing an application.

## Chapter 11: Access to information in post-commencement adoptions (post 30 December 2005)

This part of the guidance explains the legal framework for managing and disclosing information in relation to people once they have been adopted. It covers the information which must be kept by adoption agencies, the length of time for which it must be kept and the circumstances in which it may be disclosed. It also explains the procedure for dealing with applications for the disclosure of information from adopted people, birth relatives and others. See also chapter 6 on safeguarding adoption records and the practice guidance *Adoption: Access to Information and Intermediary Services*.

### The legal framework

1. Sections 56–65 of the Adoption and Children Act 2002 (the Act) and the Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005 (AIR), set out the legal framework for managing and disclosing information in relation to adoptions which have taken place since 30 December 2005. This framework specifies:

- the information that adoption agencies must keep about a person's adoption;
- the length of time for which it must be kept;
- the information that agencies must disclose to an adopted adult on request; and
- the information that agencies may disclose to adopted people, birth relatives and others who may apply to the agency.

The overarching aim of the framework is to ensure greater consistency in the information that adoption agencies keep, the length of time for which it is kept and the way in which that information is disclosed.

### Adopted persons – legal rights

2. Under the Act, people adopted on or after 30 December 2005 retain the right, on reaching age 18, to apply for the information needed to obtain a certified copy of their birth certificate. The application for this information must be made to the appropriate adoption agency (AAA) rather than to the Registrar General. This is because the adoption agency is considered best placed to disclose sensitive information, to consult interested parties and to arrange for the provision of counselling and support. The AAA will generally be the agency that placed the child for adoption or, if different, the agency that holds the relevant adoption case records.

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It may also be the local authority to which notice of intention to adopt was given. See sections 60(2)(a) and 65(1) of the Act.

3. Section 60(2)(b) of the Act provides an adopted person, on reaching age 18, with a right to receive from the AAA the information disclosed under section 54 of the Act to the prospective adopters during the adoption process. This will be the information contained in the child's permanence report provided by virtue of regulation 31 of the Adoption Agencies Regulations 2005 (AAR) and prepared for the adoption panel. The child's permanence report will include identifying information about the child, the birth parents, birth siblings and possibly other members of the birth family. It will also include information about the child's early life and family history, their social, emotional and behavioural development and other matters.

4. On receipt of such an application, the agency will need to consider carefully how best to disclose it since it will contain information about their early life and some of this may be upsetting or distressing. Prior to disclosure the agency should consider whether it would be best for the information to be disclosed in parts over time accompanied by appropriate counselling and support. This may help lessen the impact for the adopted person of receiving potentially distressing information about their early life while still enabling them to fulfil their right to receive the information.

5. Section 60(4) of the Act provides that an adopted adult has the right to receive from the court which made the adoption order, documents relating to their adoption in so far as they do not contain any protected information. These documents are prescribed in Rule 14.18 of the Family Procedure Rules 2010 and include the application form for an adoption order, the adoption order itself and reports made to the court by a children's guardian, a local authority or an adoption agency. An adopted person seeking this information from the court is unlikely to have access to counselling unless this is offered by an adoption agency or an adoption support agency.

### **Adoption agency responsible for keeping information: AIR 3**

6. AIR 3 clarifies to which adoption agency the general duty to keep certain information in relation to a person's adoption will apply. Generally, the case record for the adopted person, established under Part 3 of the Adoption Agencies Regulations 2005 (AAR), will continue to be kept by the adoption agency that placed the child for adoption. Where that agency has ceased to operate or exist, the agency to which the case records are transferred must keep the information.

## Information to be kept about a person's adoption: AIR 4

7. Where an adoption order has been made by the court, AIR 4 specifies the information that the adoption agency must continue to keep on the child's adoption case record. There may be some transitional cases where the child's case record was established under the Adoption Agencies Regulations 1983 but where the adoption order was made after 30 December 2005, the agency is required to keep the information prescribed by AIR 4. This is referred to as "section 56 information" which encompasses both identifying information and background information about the persons involved in the adoption.

8. Identifying information is "information which, whether taken on its own or together with other information disclosed by an adoption agency, identifies the person or enables the person to be identified" (see section 57(4) of the Act). Identifying information kept by the agency will be wide-ranging and includes:

- information about the adopted person, their birth parents and other birth relatives, the adoptive parents and others, such as former carers, professionals involved in assessments and social workers, and may comprise of names, residential addresses, educational or employment addresses, legal and medical information and photographs or audio-visual material;
- information given to the agency by a birth parent or birth relative (or other significant people in the adopted person's life). It also covers information obtained from the Registrar General about an adopted person's birth record and about an entry relating to the adopted person on the Adoption Contact Register.

Any identifying information, and information obtained from the Registrar General described in paragraph 4 is defined by section 57(3) of the Act as "protected information".

9. Background information will be information that does not identify any person or enables them to be identified. It will include, for example:

- the child's birth details and medical history;
- information about the child's educational needs and progress;
- details of any hobbies and interests; and
- other contextual information.

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10. The agency must keep also:

- any information, mementos and photographs that has been deposited by a birth parent or relative or other significant person in the adopted person's life, with instructions that it is passed to the adopted person at an appropriate time in their life.
- any information supplied by the adoptive parents or other persons. This regulation also covers information in respect of other issues that may arise after the adoption order has been made, for example, where the adoptive parents have contacted the agency to request an assessment for adoption support services, including financial support.
- any information that the adopted person has requested should be kept. This might include the adopted person's views as to the disclosure of information about themselves or a formal expression of their wish for contact, or no contact, with their birth parents or other birth relatives. This regulation also covers any general correspondence that the adopted person may have with the agency after the adoption order has been made.
- any information given to the adoption agency by the Registrar General that would enable an adopted person to obtain a certified copy of their birth certificate. This information would be sought by the agency if it receives a request from the adopted adult but does not hold the information. See section 79(5) of the Act.
- any information given to the adoption agency by the Registrar General about an entry relating to the adopted person on the Adoption Contact Register.
- any information required to be recorded in accordance with AIR 10, 14 or 18.
- the record of any agreement for the disclosure or non-disclosure of protected information about an individual under AIR 11.

11. AIR 4.4 provides the agency with the discretion not to keep information supplied under paragraph (3)(a) to (c) if it considers that it would be prejudicial to the adopted person's welfare to keep it or if it considers that it was not reasonably practicable to do so. For example, the agency may decide not to keep an item supplied by a birth parent where it considers that the material is inappropriate or vexatious or where it was unreasonable to expect the agency to store the item because it was too large or too valuable.

### **Storage and manner of keeping of section 56 information: AIR 5**

12. Any section 56 information, in whatever format it is preserved, must be kept in secure conditions at all times, e.g. a lockable cabinet or secure room to prevent the theft, unauthorised disclosure, loss or destruction of, or damage to, the section 56 information it holds. This applies to any section 56 information which is not kept at the agency's main premises, either on a temporary or permanent basis

13. There is nothing in Part 2 of AIR to prevent the agency from transferring paper records and documents to microfiche or other electronic or digital media but it must be confident that the information can be retrieved during the next 100 years. Documents that are likely to be significant to the adopted person, such as reports, cards or letters handwritten or signed by the birth parents or other birth relatives, should always be preserved in their original format so that the adopted person can see and handle them.

14. Where section 56 information is so transferred, the agency must ensure that systems are in place to protect the confidentiality and integrity of this material. The agency should not transmit section 56 information outside the agency by email or facsimile unless its confidentiality can be assured.

15. The adoption agency should keep its security arrangements under review, and any breaches of the security of records should be acted on promptly to prevent any recurrence. All agency staff with responsibility for handling section 56 information should be clear as to their duty to safeguard this information at all times.

### **Preservation of section 56 information: AIR 6**

16. All section 56 information must be kept for a minimum of 100 years from the date of the adoption order. This duty applies to information stored in any format. See chapter 6 for guidance on storing the case of adoption records of children who were not adopted, or the records of prospective adopters who were not approved.

17. Where the agency wishes to destroy section 56 information after the 100 year period, this must be treated as confidential waste and disposed of accordingly. Records should be shredded prior to disposal.

### Transfer of section 56 information: AIR 7

18. Where a voluntary adoption agency (VAA) ceases to operate or exist, any section 56 information it holds must be transferred to:

- another adoption agency, having first obtained the approval of Ofsted (the registration authority) for such transfer.
- the local authority in whose area the VAA's principal office is situated;
- to the new VAA in the case of a VAA which amalgamates with another VAA to form a new VAA.

19. The adoption agency receiving the section 56 information must give Ofsted written notification of the transfer of records and will automatically become subject to the duties in the AIR in respect of the safeguarding, preservation and disclosure of that information.

20. Where a VAA transfers its records to another adoption agency it must, if its activities were principally based within a single local authority area, notify that local authority of the transfer. This requirement is intended to ensure that clear signposting exists in respect of the former VAA's case records. It is important that former clients of a VAA that has ceased to operate are able to locate easily that agency's case records in the event that they wish to make an application for the disclosure of information. This recognises that persons may seek information many years after a VAA has ceased to exist.

### Disclosure for purposes of agency's functions or for research: AIR 8

21. AIR 8.1 provides an adoption agency with the discretion to disclose any background information from the section 56 information it holds as it thinks fit for the purposes of its functions.

22. The general discretion provided by this regulation may be used by the agency to provide a range of people – such as the birth parents, other birth relatives, former carers, or others who may have played a significant part in the child's life – with information about the child. Such information should only normally be shared by the agency with the full knowledge and agreement of the adoptive parents while the adopted person is still a child. This could be information about:

- their progress within the adoptive family;
- their general well-being
- educational achievements or social development;

- other important milestones in the child's life, without revealing the child's identity or whereabouts or the identity or whereabouts of the adoptive parents.

23. The agency could also use this discretion to provide additional information about the child to the adoptive parents. This could be information supplied by the birth parents or other birth relatives whom the agency considers will be beneficial to the adoptive parents in the care and upbringing of the child. This may be particularly relevant where the child has no contact with the birth parents or any ongoing links with the birth family.

24. Where the agency exercises its discretion to disclose background information to any person, it must take care to ensure that background information, disclosed in isolation, does not identify a person when linked with other information previously disclosed by the agency. This is one reason why the agency is required by AIR 10 to make a written record of the disclosure of any background information by virtue of AIR 8.1.

25. AIR 8.2.a permits an adoption agency to disclose section 56 information, including protected information, to an adoption support agency (ASA) or an adoption agency which provides services in connection with any of its functions under section 61 or 62 of the Act. Where an adoption agency has received an application for the disclosure of protected information under sections 61 or 62 of the Act, and the agency has determined to proceed with the application, it is required to take certain steps before making a determination as to whether the information being sought should be disclosed. These steps include seeking the views of any person the information is about as to the disclosure of that information. This could require the agency to engage in research work, to use the information it holds, and possibly to gather additional information, such as purchasing certificates from the Registrar General, to enable it to trace a person and seek their views.

26. Depending on the circumstances of each case, the adoption agency may wish to make an arrangement with an ASA or another adoption agency to undertake this work on its behalf. Therefore, AIR 8.2.a permits the agency to disclose its section 56 information to an ASA or an adoption agency to enable these bodies to be able to trace a person (or persons) and seek their views on the agency's behalf. The agency working on behalf of the adoption agency will be able to obtain the person's views as to the disclosure of information about themselves and report those views back to the original adoption agency. The responsibility for making a determination as to whether to disclose the information being sought will remain with the adoption agency that received the initial application.

27. Before making such an arrangement with an ASA or adoption agency, the adoption agency must first be satisfied that the conditions of the ASA's or VAA's

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registration do not prevent it from providing such services; and that the ASA or adoption agency has the requisite skills and experience to manage each individual case, especially those involving difficult or complex issues.

28. The adoption agency should also seek the prior agreement of the ASA or adoption agency providing services on its behalf that any section 56 information it discloses will only be used for the purposes for which it was disclosed.

29. An adoption agency may disclose to a researcher authorised in writing by the Secretary of State, section 56 information and protected information. It is for the adoption agency to decide if it wishes to participate in any research, as the Secretary of State cannot commit any agency to research activity. A Department for Education civil servant, acting on behalf of the Secretary of State, will provide the written authority for a researcher to seek the disclosure of section 56 information.

30. Before the Secretary of State's authority is given, research proposals will be examined carefully to assess whether the potential value of the research justifies disclosure by the agency (or agencies). The adoption agency must also be satisfied that the researcher will properly safeguard any section 56 information it discloses and its confidentiality maintained. Authorised researchers should be required by the agency to sign an undertaking to use any section 56 information only for the purposes of the research project and that no information will be published in the research findings that may enable any person involved in an adoption to be identified.

### **Disclosure required for purposes of inquiries, inspection, etc: AIR 9**

31. An adoption agency is required by AIR 9 to provide access to the section 56 information it holds or to disclose this information as may be required to the persons or bodies listed at AIR 9.a to h. Where a request for access to, or the disclosure of, section 56 information falls within the scope of this regulation, the agency has no discretion to withhold the information or deny access to it. The circumstances in which disclosure is required are set out in detail in chapter 6, as they are similar to those prescribed in AAR 42.

### **Requirements relating to disclosure: AIR 10**

32. The adoption agency must keep a written record of any disclosure made under AIR 8 or 9 on the adoption case record. This record must include a description of the information disclosed, the date on which the disclosure was made, the person to whom the information was disclosed; and the reason for the disclosure.

33. It is important that the agency keep a detailed and accurate record of any information disclosed to any person by virtue of AIR 8 or 9. This is particularly

important where the agency has exercised its discretion to disclose information by virtue of AIR 8.1 or where it has entrusted protected information to an ASA or an adoption agency under AIR 8.2. It is important that the agency is able to verify at any given time details of the information it has previously disclosed under the AIR

### **Agreements for the disclosure of protected information: AIR 11**

34. An increasing number of adopted children will have experienced a number of placements during their time in care and there could be a range of people who played in important or stable role in the child's life prior to their adoption. A formal agreement in accordance with this regulation would enable any of those persons formally to register their views as to the disclosure of protected information about themselves at some future time. In the event that the adopted person applied to the agency for the disclosure of protected information about that person, the agency would not be required to take the steps at section 61(3) of the Act to seek that person's views, as their prior agreement to the disclosure of the information had already been given. Such an agreement is not intended to override or limit the sharing of information as part of the life story work for the adopted child. Every child has a right to full information in their life story book, and this will include identifying information about a range of people in their life prior to their adoption.

35. Formal agreements for the sharing of protected information between the agency, the adopters and the birth parents are likely to be rare. The majority of children being placed for adoption will have been the subject of care proceedings, and it is not uncommon for one or both of the birth parents to be hostile to the plan for adoption. However, where an agreement is being contemplated the agency must be satisfied that all parties are fully aware of the implications of entering into such an agreement and its effect. The agency must provide information about the availability of counselling and any fees that may apply, to any person who is considering entering into an agreement. Before making the agreement, the agency must also be satisfied that it is beneficial to the child's welfare and best interests.

36. AIR 11 does not impose a specific duty on the agency to review the agreement. However, where a person's views change or where the agency becomes aware of a change of circumstances of any of the parties it should consider the continuing validity of the agreement and, in consultation with those who are party to the agreement, amend or withdraw it. As the adopted child grows older, the agency should also consider if the agreement continues to meet their needs. The agency may consult the child about this where it considers they are of sufficient age and understanding.

### **Manner of application for disclosure of protected information: AIR 12**

37. Any application to an adoption agency for the disclosure of protected information under sections 61 or 62 of the Act must be made in writing and state the reasons for the application. It is important that the application contains sufficient information to enable the agency to make an initial assessment of the merits of application and to locate and retrieve the records to which the application relates. This is particularly important where the agency holds large numbers of adoption records, some of which may have been inherited from other adoption agencies that have ceased to exist or operate.

38. Where the applicant is the adopted person, the following details should be provided in the application:

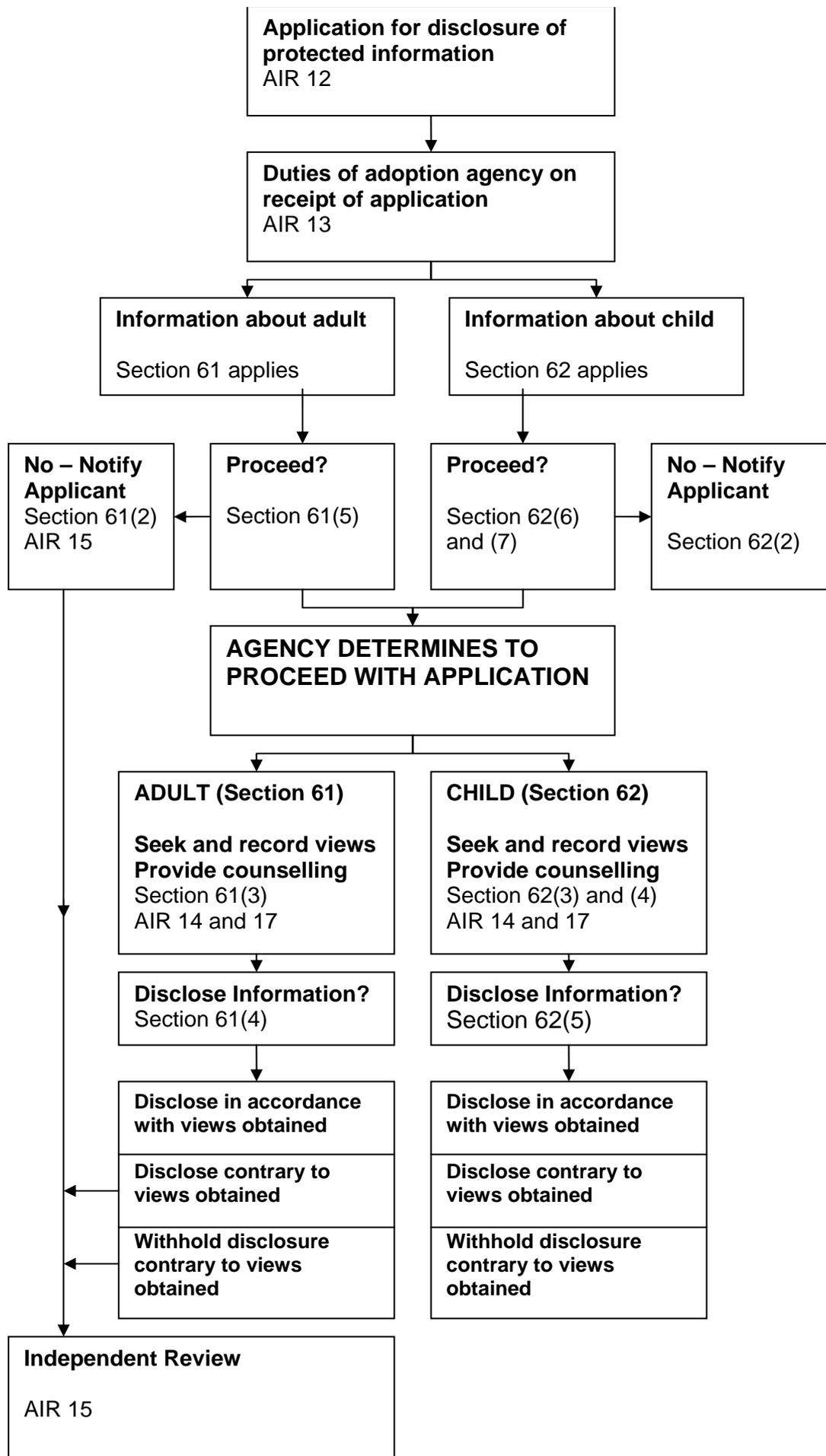
- current (and any previous) forename(s) and surname;
- name on adoption (if different from current name);
- date of birth;
- full names of adoptive parent(s);
- name at birth/prior to adoption (if known);
- date of adoption (if known).

39. Where the application is from a birth relative of an adopted person or from any other person:

- current forenames(s) and surname;
- name of adopted person (if known);
- original birth name of adopted person;
- relationship to adopted person (if a birth relative);
- date of adoption (if known).

40. There is nothing in AIR 12 to prevent a person from registering their intention to apply to the agency for the disclosure of information by other means (e.g. by telephone, email or via the agency's website). But the formal application to the agency must be made in writing - which may include email - and must include the information listed above so as to enable the agency to properly discharge its duties under AIR 13. In addition to the information listed above, the applicant should also

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provide brief reasons for making the application. Where the applicant does not provide sufficient information, the agency should seek any additional information it needs from them before making a determination as to whether to proceed with the application.

### **Duties of agency on receipt of application, and record of views: AIR 13 and 14**

41. It is ultimately for the agency to determine whether to disclose protected information to a person who requests it. In making that decision the agency is required under the Act to take steps to seek the views of the subject of the information (or the parent or guardian if that person is a child) and weigh these up against the welfare of the adopted person and all the other circumstances of the case. Where the information is about a child, the agency must have particular regard to the child's welfare – for an adopted child this must be the paramount consideration.

42. Adoption records, like other records, are subject to the provisions of the Data Protection Act 1998 (apart from the subject access provisions, see chapter 10). So where it is a question of the possible disclosure of 'third party' information, such as identifying information about members of the birth family or former foster carers, the agency must not only act in accordance with sections 61 and 62 of the Act, but also in accordance with the principles of the Data Protection Act. There is some overlap between what is required under the Act and the DPA. Third party information is a complex area and sometimes third party information may also be relevant to the adopted person, for example, in relation to health issues. In addition, the agency should consider whether information is already known or would be available from other sources, e.g. Public Records.

43. What is important is that both the Act and the Data Protection Act require the agency to carry out a balancing exercise between the rights of the person requesting disclosure and those of the person to whom the requested information relates to in considering the overall fairness of disclosure. The agency in exercising its discretion will need to take account of the context and all the circumstances of the case. It is important that the reasoning behind any decision as to disclosure is fully recorded.

### **Disclosing protected information about adults (section 61)**

44. When a person (whether an adopted person or a birth relative or other person with an interest) applies to the AAA for the disclosure of protected information none of which involves a child, the agency has to decide whether to proceed with the application. Before doing so, the agency must take reasonable steps to verify the identity of the applicant (or of any person acting on the applicant's behalf). This would include meeting the applicant (and their representative) and verifying their

identity against the evidence they produce. The agency may request any additional documentation it considers necessary such as a passport, driver's licence or a certified copy of a birth certificate or adoption certificate. See the practice guidance *Adoption: Access to Information and Intermediary Services*.

45. A person who is unable to submit an application, for example, because of physical or mental incapacity, may authorise a person to make an application on their behalf. AIR 13.b requires the adoption agency to be satisfied that the person acting on behalf of the applicant has their authority to do so.

46. The agency is not required to proceed with an application unless it considers it appropriate. In reaching this decision, the agency's decision maker must consider the matters set out at section 61(5) of the Act. The decision maker may determine not to proceed with the application where, for example, it has information to indicate that doing so could be harmful to the welfare of the adopted person.

47. Where the agency does proceed with the application, it is required by section 61(3) of the Act to take all reasonable steps to obtain the views of the subject of that information as to the disclosure of that information.

48. Where a person cannot be traced and their views ascertained, the agency may apply to the Registrar General for any information he may hold about them on the Adoption Contact Register, see AIR 20.1.b. Where there is an entry for the person on the Adoption Contact Register this may contain information, such as whether the person would not welcome contact or where contact is welcome, their most recent address. It is important to bear in mind that the individual may amend their entry on the Adoption Contact Register and the Registrar General is not required to inform the agency if this occurs. Therefore, any information previously obtained by the agency may not be up to date. To overcome this, the applicant may wish to register their own wishes on the Adoption Contact Register.

49. The agency may also use information from an entry on the Adoption Contact Register to help inform its discretion as to whether or not to disclose protected information about the individual to whom the entry relates. Where the agency cannot trace an individual to seek their views as to the disclosure of information, but that person has registered a wish for contact with the applicant on the Adoption Contact Register, the agency may determine to disclose the protected information to the applicant if it considers it safe and appropriate to do so. Similarly, the agency may determine not to disclose the information where the person has registered a wish for no contact with the applicant on the Adoption Contact Register.

50. Where the agency has been able to trace the subject the agency must ensure that those views are recorded in writing and retained by the agency on the adoption case record. The recording of the subject's views by the agency should make it

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clear, as far as possible, whether the subject has indicated their agreement or objection to the disclosure of protected information about themselves.

51. In determining if it is appropriate to disclose the information, the agency must consider:

- the welfare of the adopted person;
- the views of any person to whom the information relates; and
- all the other circumstances of the case.

52. The agency's decision-maker therefore has the discretion to determine whether it will disclose or withhold protected information on the grounds that it was in the interests of the adopted person's welfare, contrary to the views expressed by the person the information is about. This discretion may come into play where, for example, one of the birth parents agrees to the disclosure of protected information but the other does not.

### Disclosing protected information about children (Section 62)

53. Where a person applies to the AAA for the disclosure of protected information, (see the practice guidance *Adoption: Access to Information and Intermediary Services* paragraphs 61-74 chapter 7), and any of that information is about a child, the agency again has the discretion not to proceed with the application unless it considers it appropriate to do so. Where the agency determines to proceed with the application it must first take all reasonable steps to obtain the views of any parent or guardian of the child, and the child, if the agency considers it appropriate having regard to their age and understanding, as to the disclosure of the information.

54. Therefore, where the information concerns an adopted child, the agency must take steps to seek the views of the adoptive parents. Where a person applies to the agency for information that identifies both an adult and an adopted child, the agency must also take reasonable steps to obtain the views of the adult as to the disclosure of that information. However, notwithstanding those views, the adopted child's welfare must continue to be the agency's paramount consideration in deciding whether to disclose the information.

55. The agency may then disclose the information if it considers it appropriate to do so. In deciding if it is appropriate to disclose the information where any of the information is about a child:

- if the child is an adopted child, their welfare must be the paramount consideration;
- in the case of any other child, the agency must have particular regard to their welfare.

56. The agency must also consider:

- the welfare of the adopted person (where the adopted person is not a child)
- any views obtained, including the views of any parent or guardian of the child (and the views of the child if appropriate);
- all the other circumstances of the case.

57. Although the adoption agency has the discretion to disclose protected information if it considers it appropriate to do so, its discretion is more limited where that information concerns a child. Protected information will only normally be disclosed where the agency is satisfied that it is in the interests of the child's welfare to make the disclosure.

58. Any decision made is not a qualifying determination as defined in AIR 15 and thus there is no right to request an independent review.

### **Independent review: AIR 15**

59. When the agency's decision-maker makes a qualifying determination, i.e.:

- not to proceed with an application from any person for disclosure of protected information
- to disclose information against the express views of the person the information is about
- not to disclose information about a person to the applicant where that person has expressed the view that the information should be disclosed

in relation to an application under section 61 of the Act, the agency must notify the relevant person in writing, clearly stating the reasons for reaching the determination. The notification must also advise the relevant person of their right to apply to the Secretary of State for a review of the agency's determination by an independent review panel. The notification must be clear that any application for an independent review must be submitted within 40 working days of the date on which the agency's notification was sent. See chapter 1 for information on the independent review mechanism (IRM).

60. The agency must note the applicant's file and take no action with its original determination until after the 40 working day period for applying to the IRM has expired or until the independent review panel has made its recommendation.

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61. Where no application for a review by an independent review panel has been made the agency may proceed with its decision. It must notify the relevant person in writing of its decision together with the reasons for that decision.

62. On receipt of the review panel's recommendation and minutes of the meeting, the agency's decision-maker must take into account the recommendation before coming to a decision. Once the decision is made, it must be notified to the relevant person in writing clearly stating the reasons for reaching the decision.

### **Counselling: AIR 16 and 17**

63. The agency has a duty to provide written information on the availability of counselling, but there is no legal requirement for a person to receive counselling before the agency discloses information to them under sections 60-62 of the Act. However, the valuable role that counselling can play is well established. Chapter 12 provides guidance on who should be offered counselling and which body can provide counselling services.

### **Disclosure of information for the purposes of counselling: AIR 18**

64. The adoption agency may disclose section 56 information, including protected information, to any person or body with whom it has made an arrangement to provide counselling on its behalf. This will apply where the agency has made an arrangement with another adoption agency or ASA, to provide specialist support and advice on its behalf. For the adoption agency or ASA to provide counselling, support and advice, which is meaningful and beneficial to the recipient, it will require access to the section 56 information held by the adoption agency.

65. It is anticipated that the agency will normally give the person or agency providing the counselling and support unrestricted access to the section 56 information it holds. This would enable the person providing the counselling to consider fully the circumstances of each case before deciding the information that would be of most value in providing the counselling.

66. The agency may attach conditions or restrictions on the information that may be disclosed by the person or body providing the counselling. Sections 61 and 62 of the Act require the adoption agency to make the determination as to whether to disclose protected information to the applicant. However, in circumstances where the agency had already determined that the disclosure of protected information was appropriate, it may give the agency providing the counselling permission to disclose the information on its behalf in the course of counselling. The counselling agency may only disclose protected information on the adoption agency's behalf with the express permission of that agency.

67. The agency must keep a written record on the adoption case record of any information it discloses to a person outside the agency for the purposes of providing counselling on the agency's behalf. This written record must include details of the information disclosed, the date on which it was disclosed, the person or body to whom it was disclosed and any conditions or restrictions attached to the disclosure. Where the adoption agency has authorised the body providing the counselling to disclose protected information on its behalf, this should be made clear in the written record made under this regulation.

### **Seeking information from the Registrar General: AIR 19**

68. Section 60(2) of the Act provides that an adopted person, on reaching age 18, has the right to receive from the AAA any information which would enable them to obtain a certified copy of their birth certificate. It also provides an adopted person with the right to receive certain information disclosed to the adopters by the agency by virtue of section 54 of the Act.

69. Where an adopted adult applies to the AAA for the information they need to obtain a certified copy of their birth certificate but the agency does not hold this information, it must apply to the Registrar General for this information on the adopted person's behalf. The Registrar General must give this information to the agency to pass on to the adopted adult – see section 79(5) of the Act.

70. There is, however, a caveat. If the agency decides that the information that an adopted adult needs to obtain a certified copy of their birth certificate should be withheld, it must apply to the High Court for an order denying the adopted person access to this information, see section 60(2)(a). The Court will only grant an order allowing the agency to withhold the information if it is satisfied that the circumstances are exceptional. This provides for those very unusual circumstances where the agency has grounds to believe that disclosing birth record information to the adopted person could place others at risk of harm.

### **Disclosure of information regarding the appropriate adoption agency and from the Adoption Contact Register: AIR 20**

71. Under the disclosure regime in sections 56-65 of the Act, the adoption agency is the main gateway for access to information, including birth record information. A person adopted on or after 30 December 2005 no longer has the direct route of access to the Registrar General for the information they need to obtain a certified copy of their birth certificate.

72. Where any person (including an adopted person) wishes to apply to the adoption agency for the disclosure of information but does not know to which agency to apply, they may apply to the Registrar General for the information they need to

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make contact with the AAA. Where any person applies to the Registrar General for this information, AIR 20.1.a requires him to disclose this information to them.

73. The Registrar General may charge a fee for disclosing information from the Adoption Contact Register and has discretion whether to charge a fee, particularly for providing information to VAA.

### **Offence: AIR 21**

74. The inappropriate disclosure of protected information could be distressing and may even place individuals, including children, at risk of harm. AIR 21 therefore makes it a criminal offence for a voluntary adoption agency to disclose any information in contravention of section 57 of the Act. See Annex A.

### **Fees charged by adoption agencies: AIR 22**

75. The Act and the AIR make provision for the charging of fees by adoption agencies in connection with the disclosure of information and the provision of counselling. An adoption agency has the discretion to charge a fee to any person to cover any reasonable costs incurred in processing an application for the disclosure of information and the provision of counselling, or to waive its fees in whole or in part where, for example, the person seeking the disclosure of information has a limited ability to pay.

76. The exception to this is that no fee may be charged to an adopted person in respect of any information disclosed to them about a birth relative or counselling given in connection with that disclosure. See section 64(5) of the Act and AIR 22. Giving agencies the discretion to charge a fee recognises the additional work that they are required to undertake by sections 61 and 62 of the Act, including the requirement to seek the views of any person who may be identified by the disclosure of protected information.

77. It is important that potential service users are made aware of any fees that may apply before the agency agrees to process their application. The agency should make it clear that any fee charged will be limited to covering the costs it incurs in processing an application. This could include any costs incurred in tracing an individual to seek their views, gathering additional information where the agency records do not enable it to trace an individual, and the provision of counselling. Where the agency publishes a schedule of fees it must ensure that this is regularly updated, and made available to any person who applies for the disclosure of information under sections 61 or 62 of the Act.

## Chapter 12: Post adoption counselling and Adopted Children and Adoption Contact Registers

**This part of the guidance gives guidance on the duties of agencies in respect of counselling for those seeking intermediary services or access to information after adoption and explains the Registrar General's role in provision of the Adopted Children and Adoption Contact Registers. See also chapters 10 and 11.**

### Counselling

1. The Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005 (ISR) and the Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005 (AIR) recognise the important role that counselling, support and advice can play both for the applicant and the subject of the application. In the context of intermediary services, it may help the applicant prepare for the process of tracing a birth relative from whom they may have been separated for many years. It will also help them to prepare for positive and negative outcomes, such as feelings of loss or rejection that may arise where the subject has no wish for contact or has died. In the context of both intermediary services and the disclosure of information, counselling is likely to be needed to help the applicant understand the context in which decisions were made affecting them, and to provide support where the information disclosed is distressing. The subject may also need careful support in reaching their decision as to whether to give their consent to the disclosure of identifying (or protected) information, and understanding the implications of their decision.

2. ISR 10.1 and AIR 16 require the intermediary agency/adoption agency (the agency) to provide written information about the availability of counselling to any person who makes an application to the agency or to any person who is the subject of an application and is considering whether to give their consent to the disclosure of identifying (or protected) information. The information must include details of the persons or bodies offering the counselling and any fees that may apply. The agency may provide the counselling itself, or make an arrangement with one of the bodies listed at paragraph 6 to provide the counselling or specialist support on its behalf. Agencies have discretion to charge a fee for counselling they themselves provide. However, AIR 22 prohibits the charging of a fee in respect of any counselling provided to an adopted person in connection with the disclosure of any information given to them under sections 60-62 of the Adoption and Children Act 2002 (the Act) in relation to any relative of theirs or in connection with any such disclosure.

3. In the case of proposed agreements for the sharing of protected information under AIR 11, the agency is also required by AIR 16 to provide written information

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about the availability of counselling to any person who enters into, or is considering entering into, such an agreement with the agency. Where the agency is considering setting up an agreement for the sharing of protected information, it is essential that any person who is considering being party to the agreement fully understands its effect, the information that may be shared under the agreement and the implications of their decision.

4. There is no legal requirement for a person to accept counselling or to receive any other form of support and advice before the agency discloses information to them under sections 60-62 of the Act or provides an intermediary service. In respect of people adopted before 12 November 1975 they will have been required to receive counselling before being given information enabling them to obtain their birth certificate. However, experience has shown that counselling and support has real value in helping adopted persons, birth parents, birth relatives and others come to terms with the disclosure of sensitive information about themselves and their past, particularly where this has involved severe disruption or trauma. The agency should explain to both the applicant and the subject of the application the benefits of counselling, any fees that may apply and give assurance that the agency will secure counselling on request (see ISR 10.3 and AIR 17). A refusal by the applicant to receive initial counselling and support, particularly in complex cases, could be one of the factors that informs the exercise of the agency's discretion as to whether or not to proceed with their application.

5. Where the applicant or the subject has complex support needs which an agency considers it cannot meet, they may be referred to their local authority for an assessment of their need for adoption support services under the Adoption Support Services Regulations 2005.

6. The agency may provide the counselling itself or from one of the following bodies depending on where the person lives (see ISR 10 and AIR 17):

- in England or Wales, another adoption agency or an adoption support agency (ASA);
- in Scotland, a Scottish adoption agency. This could be a local authority or a voluntary organisation registered to provide that service.
- in Northern Ireland, an adoption society which is registered under Article 4 of the Adoption (Northern Ireland) Order 1987 or any Board. AIR 17.3 defines a "Board" for this purpose as being a Health and Social Services Board or, where the functions of a board are exercisable by a Health and Social Services Trust, that Trust.
- outside the United Kingdom, any person or body outside the United

Kingdom who appears to the agency to correspond in its functions to a body mentioned in paragraphs (a) to (c), ie possesses the requisite qualifications, skills and experience to provide the counselling service. A list of approved overseas counselling providers is maintained by the Registrar General.

7. Where the agency makes an arrangement with an ASA or voluntary adoption agency (VAA) under ISR 10.4.a or AIR 17.2.a above, it must be satisfied that the agency's conditions of registration allow it to provide counselling services. If necessary, the agency may verify the ASA or VAA's conditions of registration with Ofsted, the registration authority. The agency should also be satisfied that the agency providing the counselling possesses the necessary skills and experience, especially in cases involving particularly complex issues.

### **Disclosure of information for the purposes of counselling: AIR 18 and ISR 16**

8. The agency may disclose information, including protected information, to any person or body with whom it has made an arrangement to provide counselling on its behalf.

### **The Adopted Children and Adoption Contact Registers**

9. An adoption order gives a child a new identity (although there is no obligation for the child to be known by a new name) and the entry made by the Registrar General for England and Wales in the Adopted Children Register will be evidence of that identity and the legal parenthood of the adoptive parents. A certified copy of an entry in the Adopted Children Register (adoption certificate) replaces the birth certificate for adopted people.

10. The Adopted Children Register shows the link between the pre- and post-adoption identity of an adopted person. This register is not accessible to public inspection, and information from it can only be disclosed in the circumstances set out in section 79 of the Act, or, for those adopted before 30 December 2005, Schedule 2 of the Act.

11. The Registrar General may make an entry in the Adopted Children Register where a child has been adopted under a Convention adoption or an overseas adoption, provided he has sufficient particulars, and provided that the adoptive parent (or parents in the case of a joint adoption) is at the time of the adoption habitually resident in England or Wales. See Schedule 1, paragraph 3 to the Act and regulation 3 of the Adopted Children and Contact Registers Regulations 2005

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12. The Registrar General runs the Adoption Contact Register, which puts adopted people and their adult birth relatives in touch with each other, if that is what they both want. The onus remains on the adopted person to take the first steps to make actual contact. The Registrar General may disclose information from the Adopted Children Register and the Adoption Contact Register to the adopted adult in order to obtain a certified copy of their birth certificate and to an intermediary agency to help find adopted adults or adult birth relatives – see chapters 10 and 11.

13. The Adopted Children and Contact Registers Regulations 2005 contain further details about the responsibilities and powers of the Registrar General in respect of both registers, as well as about their content and the requirements for applications to obtain information from the registers.

## Offences – since 30 December 2005

Below is a summary of the offences and the time limit within which proceedings may be brought.

### Time period within which proceedings may be brought

1. Although offences under sections 9, 59, 93, 94 and 95 of the Adoption and Children Act 2002 (the Act) are summary offences, section 138 of the Act extends the normal time limits. Proceedings for these offences may not be brought more than six years after the commission of the offence but subject to that may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to their knowledge. Aside from this, the normal time limits for summary offences (six months from the commission of the offence) apply to summary offences under the Act. Certain of the offences under the Act are triable either way (e.g. sections 83 and 85) and may therefore be tried on indictment without time limit.

### Arranging adoptions: section 92

2. Generally, only adoption agencies and persons acting in pursuance of a High Court order may take the steps specified in relation to the adoption of children. Where stipulated below, certain individuals are exempted from this general restriction. An adoption agency is a local authority or a registered adoption society, known also a voluntary adoption agency.
3. The steps are:
  - a. Asking a person other than an adoption agency to provide a child for adoption. For example, a birth parent or a third party is asked to supply a child.
  - b. Asking a person other than an adoption agency to provide prospective adopters for a child. For example, where the birth parent approaches a third party, such as an intermediary, and asks them to provide adopters for their child.
  - c. Offering to find a child for adoption. For example, where X approaches Y and suggests that X can locate a child for Y to adopt.
  - d. Offering a child for adoption to a person other than to an adoption agency. This would be where X, a parent of a child or an intermediary,

who has already identified a child who could be adopted makes a direct proposal about them to Y.

- e. Handing over a child to any person other than to an adoption agency with a view to the child's adoption by the person who receives them or by someone else. For example, it would be where X takes and gives the child to Y for adoption, or X takes and gives the child to Z, so that Z can hand the child over to Y.
- f. Receiving a child for the purpose of adoption in contravention of sub-paragraph (e). This would catch Y for taking the child from either X or Z. It would also catch Z for receiving a child from X to hand the child over to Y.
- g. Entering into an agreement with any person for the adoption of a child, or for the purpose of facilitating the adoption of a child, where no adoption agency is acting on behalf of the child in the adoption. For example, this would catch both X and Y in their agreement for the adoption of the child by Y and it may also catch Z for helping to facilitate this arrangement under sub-paragraph (e) or in any other way that Z assists X and Y in the adoption of the child. "Agreement" includes an arrangement whether or not enforceable.
- h. Initiating or taking part in negotiations of which the purpose is the conclusion of an agreement within sub-paragraph (g) for the adoption of a child, or an agreement to facilitate the adoption of a child. In the example of X and Y it would also catch W who has no other role in the illicit adoption but does open up negotiations between X and Y by introducing them to each other for this purpose. Another example is V who participates in the negotiations, perhaps in a mediating role.
- i. Causing another person to take any of the steps mentioned in sub-paragraphs (a)-(h). This final step makes it clear that although a person may not have taken any of the steps in sub-paragraphs (a)-(h), that person commits an offence if they induce any other person to do so.

### People who may also arrange adoptions

- 4. Paragraph 1 does not apply to a person taking any of the steps in sub-paragraphs (d), (e), (g)-(i) if the prospective adopters are parents, relatives or guardians of the child (or one of them is), or the partner of a parent of the child. Section 144(1) of the Act defines "relative" in relation to a child as a grandparent, brother, sister, uncle or aunt, whether of the full blood or half blood or by marriage, or civil partnership.

## Offence

5. An offence will be committed if a person takes any of the steps above in contravention of section 92(1). Where section 92(1) is contravened by an adoption society, (i.e. because it is not registered) then the person who manages the adoption society will also be guilty of the offence.

## Penalty: section 93

6. Liable on summary conviction, to a term of imprisonment not exceeding six months and/or a fine not exceeding £10,000.

## Preparation of reports: section 94

7. The Restrictions on the Preparation of Adoption Reports Regulations 2005 prescribes those persons who may prepare or supervise the preparation of adoption reports for the purposes of section 94 of the Act. In summary they must be registered and properly experienced and properly supervised social workers employed by, or acting on behalf of, an adoption agency, or a student training to become a social worker who is employed by, or placed with, an adoption agency, and supervised by a properly experienced social worker employed by the adoption agency.
8. These restrictions apply in the following circumstances:
  - a. Preparing a report about whether a child should be placed for adoption (child's permanence report)
  - b. Preparing a report about the suitability of a prospective adopter to adopt a child (prospective adopter's report).
  - c. Preparing a report about whether a child should be placed for adoption with a particular prospective adopter (adoption placement report).
  - d. Preparing a report of a visit to a child after they have been placed for adoption.
  - e. Preparing a report of a visit or review of an adoption placement where a child has been brought into the country for adoption.
  - f. Preparing a report of a review of a child's case where an intercountry prospective adopter fails to make an application to the court for an adoption order within two years of notifying the local authority of their intention to adopt the child.
  - g. Preparing a pre-adoption report for a relevant authority in the child's State of origin of an intercountry adoption placement (otherwise than in accordance with the Adoption Agencies Regulations 2005 (AAR) or corresponding Welsh provision).

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- h. Preparing a post-adoption report for a relevant authority in the child's State of origin following the adoption of the child (otherwise than in accordance with the AAR or corresponding Welsh provision).
- i. Preparing a report for the court in accordance with section 43 (reports in adoption agency cases) or section 44(5) (reports in non-agency cases) of the Act.
- j. Preparing a report for the court considering the making of an order under section 84 of the Act giving parental responsibility prior to the child being adopted abroad.

### Offence

- 9. An offence will be committed if a person contravenes section 94 of the Act or causes a person to prepare a report, or submits to any person a report which has been prepared in contravention of section 94.
- 10. It is also an offence to prepare, cause to be prepared or submit a report prepared in contravention of section 94 of the Act.

### Penalty

- 11. Liable on summary conviction, to a term of imprisonment not exceeding six months and/or a fine not exceeding level 5 on the standard scale.

### Payments: section 95

- 12. It is a principle of the conventions relating to adoption to which the United Kingdom is a signatory that there should be no trade or traffic in children and no improper financial gains in the adoption process. Section 95 therefore prohibits various payments in connections with adoption; and section 2 requires registered adoption societies to operate on a not-for-profit basis. However, certain payments made to an adoption agency are excepted under section 96 of the Act.

### Offence

13. The offences are: to make, offer or receive payments for or in consideration of:
- a. the adoption of a child;
  - b. giving consent to adoption;
  - c. the removal from the United Kingdom of a child who is a Commonwealth citizen, or is habitually resident in the United Kingdom, to a place outside the British Islands for the purpose of adoption.
  - d. a person taking any of the steps set out in paragraph 2(a) – (i) above in contravention of section 92(1);
  - e. preparing a report in contravention of section 94(1)

### Penalty

14. Liable on summary conviction to a term of imprisonment not exceeding six months and/or a fine not exceeding £10,000.

### Advertising: section 123

15. Under section 123 certain advertisements or information about adoption that may only be published or distributed by or on behalf of an adoption agency.

### Offence

16. An offence will have been committed where:
- a. there is an advertisement indicating that-
    - i. the parent or guardian of the child wants the child to be adopted,
    - ii. a person wants to adopt a child,
    - iii. a person is willing to take any steps in paragraph 2(a)-(e), (g) and (i) and that person is not an adoption agency,
    - iv. a person is willing to receive a child handed over to them with a view to the child being adopted by them or another person, and the person is not an adoption agency,
    - v. a person is willing to remove a child from the UK for the purposes of adoption.
  - b. Information is provided on how to do anything which would constitute an offence under certain provisions of the Act, the Adoption (Scotland) Act 1978 or the Adoption (Northern Ireland) Order 1987.

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- c. information about a particular child as a child available for adoption other than through an adoption agency.

### **Penalty: section 124**

17. Liable on summary conviction, a term of imprisonment not exceeding three months and/or a fine not exceeding level 5 on the standard scale.

### **Restriction on bringing children into the UK: section 83**

18. Section 83 of the Act applies where a person is habitually resident in the British Islands and brings a child into the UK for the purposes of adoption or having adopted the child outside the UK within the previous 12 months. This does not apply if the child has been, or is intended to be adopted under the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (Hague Convention). But regulation 59 of the Adoptions with a Foreign Element Regulations 2005 imposes other offences in relation to Convention adoptions. Before a person may bring a child into the UK, they must be assessed and approved as suitable to adopt by a UK adoption agency, and comply with the other relevant requirements of the Adoptions with a Foreign Element Regulations 2005.

### **Offence: section 83(7)**

19. An offence would be committed if a person brings, or causes another to bring, a child into the UK and:
  - a. they have not been assessed and approved as suitable to adopt by a UK adoption agency; or
  - b. they have not met any condition required by the Adoptions with a Foreign Element Regulations 2005

### **Penalty**

20. Liable on summary conviction to imprisonment for a term not exceeding six months, and/or a fine not exceeding the statutory maximum.
21. On conviction on indictment, to imprisonment for a term not exceeding twelve months, and/or a fine.

### **Taking a child abroad for adoption: section 85**

22. Children who are Commonwealth citizens or who are habitually resident in the UK cannot be removed from the UK to a place outside the British Islands for the purposes of adoption. The exception is where a court has made an order giving the prospective adopter parental responsibility for the child under section 84 of the Act (or authority is given under the relevant Scottish or Northern Irish legislation).

### **Offence**

23. An offence would be committed:
- a. if a child is removed from the UK without a parental responsibility order (or authority given under the relevant Scottish or Northern Irish legislation);
  - b. a person makes arrangements to remove a child without a parental responsibility order (or authority given under the relevant Scottish or Northern Irish legislation) including those where they
    - i. enter into an arrangement for the purpose of facilitating the removal of the child;
    - ii. initiate or take part in any negotiations of which the purpose is the conclusion of an arrangement with sub-paragraph (i), or
    - iii. causes another person to take any step mentioned in sub-paragraph (i) or (ii).

### **Penalty**

24. Liable on summary conviction, to a term of imprisonment not exceeding six months and/or a fine not exceeding the statutory maximum. On conviction on indictment, to a term of imprisonment not exceeding twelve months, and/or a fine.

### **Inspection of premises: section 15**

25. This section provides for a person authorised by the appropriate Minister to:
- i. inspect premises in which a child who has been placed for adoption is living or, in which a child in respect of whom a notice of intention to adopt is living; and
  - ii. inspect any records relating to the discharge of an adoption agency's functions, as specified by the Minister.

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### **Offence**

26. An offence would be committed if any person intentionally obstructed another in the exercise of any of the powers under section 15 (including the powers of entry).

### **Penalty**

27. Liable on summary conviction, to a fine not exceeding level 3 on the standard scale.

### **Prohibitions on removal of child from prospective adopters or local authority/agency accommodation: section 30**

28. Where a child has been placed for adoption with parental consent or the child has not been placed but there is such consent, only the adoption agency or a person with leave of the court may remove the child. Where a child has not been placed but there is a placement order application pending, only the local authority or a person who has leave of the court may remove the child.

### **Offence**

29. An offence would be committed if an unauthorised person removed the child from the prospective adopter or accommodation provided by the local authority or adoption agency, respectively.

### **Penalty**

30. Liable on summary conviction, to a term of imprisonment not exceeding three months and/or a fine not exceeding level 5 on the standard scale.

### **Recovery by parent where child not placed or is a baby: section 31 Child placed for adoption without authority or a baby**

31. If the child's parent or guardian informs the agency that they wish the child or baby to be returned to them the prospective adopter must return the child to the agency within seven days unless an application is, or has been, made for a placement order and the application has not been disposed of.

**Offence**

32. An offence would be committed if the prospective adopter fails to return the child within seven days to the adoption agency.

**Penalty**

33. Liable on summary conviction, to a term of imprisonment not exceeding three months and/or a fine not exceeding level 5 on the standard scale.

**Recovery by parent where child placed and consent withdrawn: section 32**

**Offence**

34. If the child's parent or guardian informs the agency that they wish the child to be returned, the prospective adopter must return the child to the agency within 14 days unless an application is, or has been, made for a placement order and the application has not been disposed of.(or an application for an adoption or special guardianship order is pending).

**Offence**

35. An offence would be committed if the prospective adopter fails to return the child within 14 days to the adoption agency.

**Penalty**

36. Liable on summary conviction, to a term of imprisonment not exceeding three months and/or a fine not exceeding level 5 on the standard scale.

**Recovery by parent where child placed with parental consent and placement order refused: section 33**

37. If the child's parent or guardian informs the agency that they wish the child to be returned to them the prospective adopter must return the child to the agency on a date determined by the court.

**Offence**

38. An offence would be committed if the prospective adopter fails to return the child by the set date to the local authority.

**Penalty**

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39. Liable on summary conviction, to a term of imprisonment not exceeding three months and/or a fine not exceeding level 5 on the standard scale.

### Placement orders - prohibition on removal: section 34

40. Where a placement order is in force or has been revoked, but the child has not been returned by the prospective adopter or remains in accommodation provided by the local authority, the child may *only* be removed by the local authority.
41. Where the court has revoked a placement order and determines that the child is not to remain with the prospective adopter, they must return the child to the local authority within the period determined by the court.

### Offence

42. An offence would be committed if:
- a person other than the local authority removed the child from the prospective adopter;
  - the prospective adopter fails to return the child by the set date to the local authority.

### Penalty

43. Liable on summary conviction, to a term of imprisonment not exceeding three months and/or a fine not exceeding level 5 on the standard scale.

### Return of child in other cases: section 35

44. Where an adoption agency considers that a child should not remain with the prospective adopter, the agency can give notice to them to return the child

### Offence

45. An offence would be committed if the prospective adopter fails to return the child within seven days of receiving notice from the agency. .

**Penalty**

46. Liable on summary conviction, to a term of imprisonment not exceeding three months and/or a fine not exceeding level 5 on the standard scale.

**Restrictions on removal of child in non-agency cases: sections 36-40**

47. A child may only be removed from the home of the persons who have applied for an adoption order, have given notice of their intention to adopt, or have applied for leave to apply for an adoption order, and the applications have not been disposed of, i.e. where removed:
- (a) with the court's leave;
  - (b) by a local authority (sections 37-40);
  - (c) by a person with parental responsibility for the child (section 38(5)); or
  - (d) a parent or guardian (section 39(3)).

**Offence**

48. An offence would be committed by a person who does not return a child to a parent or guardian who is entitled to remove that child and has requested their return, or by a person who removes a child and is not authorised to do so under sections 36-40.

**Penalty**

49. Liable on summary conviction, to a term of imprisonment not exceeding three months and/or a fine not exceeding level 5 on the standard scale.

**Recovery orders: section 41**

50. Section 41 makes provision for what is to happen where a child is removed, or there are reasonable grounds for believing that a person intends to remove a child, or a child is withheld and not returned, in breach of *sections 30-40*. It also applies where a person has failed to comply with *sections 31(4), 32(2), 33(2), 34(3) or 35(2)*.
51. In those circumstances an application may be made to the court and the court may by order:
- direct any person who is in a position to do so to produce the child,
  - authorise the removal of the child by certain person,
  - require anyone who has information as to the child's whereabouts to disclose that information to a constable or officer of the court, or

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- authorise a constable to enter any premises specified in the order (if there are reasonable grounds for believing the child is there) and search for the child, using reasonable force if necessary.

### Offence

52. An offence would be committed if a person intentionally obstructs a person exercising the power of removal conferred by the court order. .
53. A person who is required by an order to disclose information must disclose that information even though it might amount to evidence that they had committed an offence. However, in any criminal proceedings in which the person is charged with an offence the prosecution cannot adduce evidence relating to the information provided or ask questions about it, unless it is raised by or on behalf of that person. There is one exception which is excluded in subsection (8), for example offences under section 2 or 5 of the Perjury Act 1911.

### Penalty

54. Liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### Disclosure of information – adoptions post 30 December 2005: section 57

55. A registered adoption society may not disclose identifying information about an adopted adult, birth relative or other person except in accordance with sections 56-65 of the Act and the Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005 (AIR). It is intended to ensure that sensitive information about a person's adoption is properly safeguarded and only disclosed under certain circumstances.
56. If a registered adoption society is found to have contravened section 57 it may be grounds for Ofsted to cancel the agency's registration under section 14 of the Care Standards Act 2000 (as amended).

### Offence: section 59 and AIR 21

57. An offence would be committed if the registered adoption society disclosed information otherwise than in accordance with sections 56-65 of the Act and the AIR.

### Penalty

58. Liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Disclosure of information – adoptions pre 30 December 2005**

59. Under regulation 7 of the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005 (ISR), an intermediary agency may not disclose identifying information about an adopted adult, birth relative or other person without consent of the person about whom the information relates. It is intended to ensure that sensitive information about a person's adoption is properly safeguarded. An intermediary agency may be a registered adoption society or an adoption support agency.

#### **Offence: ISR 17**

60. An offence would be committed by an intermediary agency if it disclosed identifying information to the applicant without the subject's consent, and it did so without reasonable excuse.

#### **Penalty**

61. Liable on summary conviction to a fine not exceeding level 5 on the standard scale. If found guilty the agency will be liable to a fine. It may also be subject to cancellation of its registration by Ofsted, the registration authority. Where a local authority providing an intermediary contravenes ISR 7 the appropriate Minister may take action under section 14 of the Act.

### **Adoption Support Agencies - setting up, managing and conduct**

62. The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005 set out the requirements in relation to setting up and managing, an Adoption Support Agency. The Regulations set out the conduct of the agency. Should Ofsted, as the registration authority, find there to be a contravention or a failure to comply with the Regulations, it may serve notice on the registered person. This notice sets out the contravention or failure, the action that must be taken to comply with the regulations, and the time within which remedial action must be completed; this can be no more than three months. The notice must also set out the time within which the registered person may make representations to Ofsted. Ofsted may also bring proceedings in respect of a former registered person in respect of a failure to comply with regulations 14 or 22.

### Offence

63. The registered person will have committed an offence if they contravened or failed to comply with:
- Regulations 5.1-5.7 and 6 (Statement of Purpose and Children's Guide and review of those documents),
  - Regulation 7.1 and 7.4 (Fitness of registered provider) Regulation 8(2) (Appointment of manager)
  - Regulation 9(1) (Fitness of manager)
  - Regulation 10 (Registered person – general requirements)
  - Regulation 11 (Notification of offences)
  - Regulation 12(1) and (2) (Arrangements for the protection of children)
  - Regulation 13 (Provision of services)
  - Regulation 14 (Records with respect to services)
  - Regulations 16-18 (Complaints and staffing of agency)
  - Regulation 19(1) (Fitness of workers)
  - Regulation 20 (Employment of staff)
  - Regulation 21(1) (Staff disciplinary procedure)
  - Regulation 22 (Records with respect to staff)
  - Regulation 23 (Fitness of premises)
  - Regulation 24(1) and (2) (Notifiable events)
  - Regulation 25 (Financial position)
  - Regulation 26 (Notice of absence)
  - Regulation 27(1) (Notice of changes)

### Penalty

64. The registered person is liable on summary conviction to a fine not exceeding level 5 on the standard scale.