



Department
for Education

Adoption Support Agencies: proposed regulation changes

Government consultation

Launch date 9 January 2023

Respond by 20 March 2023

Contents

Introduction	3
Who must register with Ofsted?	3
Current exceptions	4
What changes are we proposing?	4
What do we hope these changes will achieve?	5
Who this consultation is for	6
Issue date	6
Enquiries	6
Additional copies	6
The response	6
About this consultation	7
Respond online	7
Other ways to respond	7
Deadline	7
Would you like us to keep your responses confidential?	8
Proposal 1: Removal of Ofsted registration requirement for providers of adoption support services, where those providers are working under contract with an adoption agency	9
Background	9
Proposal and rationale	9
Consultation Questions for Proposal 1	11
Proposal 2: Removal of Ofsted registration requirement for providers of adoption-related counselling and therapeutic services to adults	12
Background	12
Proposal and rationale	12
Consultation Questions for Proposal 2	14

Introduction

Adoption support services are defined as “counselling, advice and information and any other services prescribed by regulations¹”. Most adoption support service providers must register with Ofsted as Adoption Support Agencies (ASAs), which brings safeguarding and service quality protections². However, the Department for Education believes that aspects of this requirement are not working in practice. We propose to amend the Adoption Support Services Regulation 2005 and the Adoption Support Agency (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005 to simplify arrangements for providers and increase accessibility of these support services.

Who must register with Ofsted?

The requirement to register with Ofsted applies to any provider offering adoption support services. These services include³:

- financial support for the purpose of supporting the adoptive placement or adoption arrangements
- services which enable adopted children, adopters and members of the birth family to discuss matters relating to adoption
- assistance including mediation services relating to arranging contact between the adoptive child and members of birth family
- therapeutic services for the child
- services ensuring continuance of the relationship between child and adoptive parent, including adopter training and respite care in some cases
- assistance when there is a disruption of adoption placement or adoption arrangement, including mediation services and coordinating supportive meetings
- preparing and training for adoptive parents
- facilitating contact between adopted persons aged 18 or over and their relatives
- respite care.

Further detail on definitions of adoption support services can be found in the Adoption and Children Act 2002⁴ and the Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005.

When applying to register with Ofsted, the organisation or individual must provide evidence that demonstrates compliance with the relevant regulations for ASAs and the

¹ [S 2\(6\) Adoption and Children Act 2002](#)

² [s.5\(1A\) Care Standards Act 2000](#)

³ [Regulation 3, Adoption Support Services, 2005](#)

⁴ [Adoption and Children Act 2002](#)

Adoption National Minimum Standards⁵. They must also follow the Adoption Statutory Guidance⁶. These requirements are designed to reflect the sensitivity and seriousness of adoption for all parties involved. Once registered, the adoption support agencies are subject to regular inspections and pay an annual fee.

Current exceptions

The law allows for some exceptions to be made to this registration requirement. For example, an individual person who only provides an adoption support service under a contract for services with a registered adoption agency or adoption support agency, (e.g. local authority or a registered adoption agency), does not also need to register as an adoption support agency. If they are part of a partnership they must register. A counsellor may also not have to register if the adoption issues are not the primary concern or focus of the counselling session, though it would be good practice for them to seek advice from someone registered to provide adoption support services. Nevertheless, if these exceptions do not apply, it is an offence to operate without registering.

What changes are we proposing?

Our first proposed regulation change is to exempt providers of adoption support services from the Ofsted registration requirement, if the providers are working under contract with an adoption agency.

We are aware that currently there are providers working under contract with adoption agencies who should be registered as ASAs but who are not. This situation is unsatisfactory. However, we have confidence that adoption agencies already properly oversee safeguarding and quality checks on all services with whom they contract. We therefore propose to regulate to make a formal exemption from registration for providers of adoption support services, where those providers are working under contract with adoption agencies.

Our second proposed regulation change is to exempt adoption support service providers from the Ofsted registration requirement where they are providing adoption-related counselling and therapeutic services to adults aged 18 and over, other than counselling provided in the context of intermediary services⁷.

⁵ [Adoption: national minimum standards](#)

⁶ [Adoption: statutory guidance](#)

⁷ Intermediary services are defined as “a service provided for the purposes of assisting adopted persons aged 18 or over, who were adopted before 30 December 2005, to obtain information in relation to their

The requirement for providers of adoption support services to register with Ofsted also currently applies to such services where provided to adults. We are concerned that this reduces counselling and other support access for adults over the age of 18 and treats these adults very differently from all other potentially vulnerable adults. This has been flagged to the Department on several occasions as an issue. Most recently, the inquiry by the Joint Committee on Human Rights (JCHR) into issues relating to historical adoption (*'The right to family life: adoption of children of unmarried women 1949-1976'*⁸) concluded that the registration requirement acts as a restriction on the availability of counsellors. In oral evidence, the then Secretary of State committed to consider the issues and consult on them.

However, we intend that providers of counselling offered in the context of intermediary services (which support access between birth parents and adoptees) should continue to be registered with Ofsted, and that this specialist work area will remain subject to regulation.

What do we hope these changes will achieve?

Through these changes, the Department hopes to:

- maintain safeguarding and quality standards through adoption agencies, rather than through Ofsted registration provisions
- simplify arrangements and reduce costs for providers of adoption support services
- increase the pool of available counsellors/therapists for adopted adults and others affected by adoption

adoption; and facilitating contact between such persons and their relatives.” – [The Adoption Information and Intermediary Services \(Pre-Commencement Adoptions\) Regulations 2005](#)

⁸ [The right to family life: adoption of children of unmarried women 1949 - 1976](#)

Who this consultation is for

- Adoption Support Agencies
- Local authorities / other local government
- Regional Adoption Agencies
- Voluntary Adoption Agencies
- Providers of adoption support services
- Adopted persons
- Adopters
- Birth parents
- Representative organisations
- Social workers

Issue date

The consultation was issued on 9 January 2023.

Enquiries

If your enquiry is related to the policy content of the consultation you can contact the team by emailing ASA-OFSTED.CONULTATION@education.gov.uk.

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the DfE Ministerial and Public Communications Division by email: Consultations.Coordinator@education.gov.uk or by telephone: 0370 000 2288 or via the [DfE Contact us page](#).

Additional copies

Additional copies are available electronically and can be downloaded from [GOV.UK DfE consultations](#).

The response

The results of the consultation and the department's response will be [published on GOV.UK](#) in spring 2023.

About this consultation

This consultation document makes two proposals:

- removing the Ofsted registration requirement for providers of adoption support services, where those providers are working under contract with an adoption agency
- removing the Ofsted registration requirement for providers of adoption-related counselling and therapeutic services to adults, aged 18 or over, other than counselling provided in the context of intermediary services

We would like to hear your views on our proposals.

Respond online

To help us analyse the responses please use the online system wherever possible. Visit [DfE consultations on GOV.UK](#) to submit your response.

Other ways to respond

If for exceptional reasons, you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may request and complete a word document version of the form.

By email

ASA-OFSTED.CONULTATION@education.gov.uk

By post

Helen Walker
Level 6, Department for Education
20 Great Smith Street
London
SW1P 3BT

Deadline

The consultation closes on 20 March 2023.

Would you like us to keep your responses confidential?

Information provided in response to consultations, including personal information, may be subject to publication or disclosure under the Freedom of Information Act 2000, the Data Protection Act 2018 or the Environmental Information Regulations 2004.

If you want all, or any part, of a response to be treated as confidential, please explain why you consider it to be confidential.

If a request for disclosure of the information you have provided is received, your explanation about why you consider it confidential will be taken into account, but no assurance can be given that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department for Education will process your personal data (name and address and any other identifying material) in accordance with the Data Protection Act 2018 and, your personal information will only be used for the purposes of this consultation. Your information will not be shared with third parties unless the law allows it.

You can read more about what the DfE does when we ask for and hold your personal information in our [personal information charter](#).

Proposal 1: Removal of Ofsted registration requirement for providers of adoption support services, where those providers are working under contract with an adoption agency

Background

The intention of the adoption support agency legislation is that adoption support services are provided by organisations and individuals who are suitably qualified and experienced to meet the needs of those affected by adoption, and who understand the nature of adoption. Registration should prevent unsuitable or ill-qualified people from providing such services and therefore protects service users. Failure to register where required is an offence and punishable by a fine or a term of imprisonment not exceeding 6 months.

In 2010, the regulations⁹ were amended to exempt self-employed professionals who provide adoption support services under a contract with a registered adoption support agency. This was reviewed in light of the statutory obligation on the adoption agency to ensure that all those who work for the agency, whether as an employee, as a volunteer or as an outsourced contractor, must be 'fit and proper' in accordance with the regulatory framework, specifically Regulation 14 and Schedule 2 of the Voluntary Adoption Agencies and the Adoption Agencies (Miscellaneous) Regulations 2003¹⁰ as well as Regulation 11 and Schedule 3 of the Local Authority Adoption Service (England) Regulations 2003. These regulations place a requirement on the adoption agency to quality assure the providers who work for them, irrespective of whether those providers are registered by Ofsted.

Proposal and rationale

The proposal is to remove the Ofsted registration requirement for any providers of adoption support services, where those providers are working under contract with an adoption agency, such as a local authority (LA) or Voluntary Adoption Agency (VAA). This would mean that any provider only delivering adoption support services under a contract of services with one or more of these agencies would not be required to register with Ofsted and would not pay an annual fee. A similar amendment came in via the Adoption Support Agencies (England) (Amendment) Regulations 2010 to exempt

⁹ [Adoption Agencies \(Miscellaneous Amendments\) Regulations 2005 \(ASA Amendment Regs 2005\)](#)

¹⁰ [Voluntary Adoption Agencies and the Adoption Agencies \(Miscellaneous\) Regulations 2003](#)

self-employed professionals who work under a contract with a registered adoption agency or adoption support agency.

The Department is aware that some providers are not registered with Ofsted as an ASA when they should be. These providers are in breach of legislation, though we think this is likely to be due to confusion or lack of awareness.

When the registration requirement was introduced, it was publicly acknowledged that regulating independent adoption support service providers was necessary to “safeguard service users, ensure that unqualified providers cease to operate and provide assurance to service users as to the quality of the service they can expect”¹¹.

However, we believe that removing this requirement in the way proposed will not reduce the quality of service. Adoption agencies are legally required to carry out an assessment on their contractors to ensure they are “fit to work for the purposes of an agency”, in accordance with the regulatory framework¹⁰. Some pre-employment checks of contractors are also required and include criminal record checks, evidence of relevant qualifications, written references, verification of the reason why employment ended if previous roles included duties with children and vulnerable adults, and more^{10, 12}. A local authority is also required by law to carry out certain checks on contractors working with an adoption service discharging local authority adoption functions, which adds a further layer of protection¹². The Department is confident that adoption agencies routinely carry out their own safeguarding and quality assessments of the providers they contract with.

In addition and separate to the legal requirements set out above, we have feedback that providers also carry out voluntary checks, including checks on the providers’ qualifications and accreditation, Disclosure and Barring Scheme checks for all staff, and checks on safeguarding policies, complaints processes, data protection and references¹⁶.

Where DfE is funding support for children through the Adoption Support Fund, all applications come via local authorities and Regional Adoption Agencies. We will expect that all applications include a declaration that appropriate quality and safeguarding checks on the provider have been carried out.

On average, it takes Ofsted 47 days to process an adoption support agency registration application and it costs providers up to £3,424 depending on the number of employees the adoption support agency has.

¹¹ [Explanatory Memorandum to The Adoption Support Agencies \(England\)\(Amendment\) Regulations 2010](#)

¹² [The Local Authority Adoption Service \(England\) Regulations 2003](#)

In all, the Department believes that Ofsted registration is putting an unnecessary burden on providers who are already subject to robust checks. This proposal will reduce the financial burden on providers who wish to offer adoption support services only under contract with adoption agencies, and will minimise delays in the provision of support.

Providers of adoption support services who are working other than under a contract as above – for example, where parents are funding the service directly – will still be subject to the registration requirement.

Consultation Questions for Proposal 1

1. Do you agree that the Ofsted registration requirement for providers of adoption support services, where those providers are working under a contract with an adoption agency, should be removed?
2. Do you think the checks provided by the regulatory framework are sufficient to avoid a drop in standards?
3. Do you think this will reduce burdens on providers?
4. Do you think this change will increase the number of providers of adoption support services?
5. Do you have any further thoughts on this proposed amendment?

Proposal 2: Removal of Ofsted registration requirement for providers of adoption-related counselling and therapeutic services to adults

Background

Ofsted's document *Introduction to adoption support agencies: A children's social care guide to registration* explains that a counsellor needs to register as an adoption support agency if they provide an adoption-related service to people requiring counselling for adoption-related issues. However, if an adoption-related issue arises after counselling has begun and it is not the primary reason a person is undertaking counselling, registering is not necessary.

At the Joint Committee of Human Rights (JCHR) inquiry into adoption of children of unmarried women 1949 – 1976, it was highlighted that this requirement to register to provide adoption support acted as a disincentive to many counsellors, and that there was a shortfall in the number of counsellors available to undertake this work as a result.

In his oral evidence in May 2022, Nadhim Zahawi, the then Secretary of State for Education, acknowledged this “barrier to adult adoptees accessing and receiving support”, and said that he wanted to “get rid of any bureaucratic barriers” to “improve service delivery” while being “careful that we do not sacrifice quality”. He went on to say:

“We will consult very shortly on removing the requirement for providers of support services for adult adoptees having to register with Ofsted. In practice, that should make it much easier, and also more cost effective, for these providers to run their businesses. It will mean that support is more accessible for the adults who need it.”

The report produced by JCHR concluded that “therapy is not sufficiently accessible” and that the registration requirement for counsellors “acts as a restriction on the availability of counsellors”. The report recommended that “the Government should consider as a matter of urgency how to make sure that the necessary regulations to protect standards do not prevent mothers and adopted children getting the support they need.”

Proposal and rationale

The proposal is to remove the Ofsted registration requirement for those providing adoption-related counselling and therapeutic services to adults aged 18 and over. This may include services from a wide range of providers and include services to adoptees, birth parents and adoptive parents. For example, it could include counselling to birth parents, therapy to adopted adults and therapeutic parenting services to adoptive parents.

For birth parents and adopted adults in particular, it is sometimes difficult to determine whether counselling will centre around the adoption before support starts. If an adoption-related issue emerges after counselling has been established, which is a significant concern, then under current rules the counsellor is prevented from continuing to work with the individual. Adoption has lifelong effects for adoptees, adopted parents and the birth family and it may not be recognised as significant until later into the support or treatment.

Adults affected by adoption face difficulty in accessing counselling and therapeutic services because there are too few providers available that are registered with Ofsted. By removing this registration requirement, we hope to increase the number of providers offering these services to adults and therefore make it easier for them to access the vital support they require.

Removing this requirement will also allow adults to focus on choosing a provider that meets their needs, without needing to determine at the outset whether adoption will be discussed. They could choose from any provider available, which significantly increases access to counsellors and other therapeutic providers for this group of people.

Additionally, it would remove the challenges which arise for therapists and counsellors, who are not registered with Ofsted as an adoption support agency when clients disclose at a later stage that their issues may arise from their adoption. If providers realise that they are inadvertently providing regulated service without appropriate registration, they will be disincentivised to continue support due to the unclear legal picture. Therefore, removing this requirement will ensure support continuity if adoption issues arise.

On average, it takes Ofsted around 47 days to process a registration. It costs providers up to £3,424 depending on the number of employees the adoption support agency has. Adults are often a small proportion of users of these providers and therefore this causes disproportionate burden. Making this change should increase the number of counselling and therapeutic services available to adults, who are currently struggling to gain access to such services.

Removing this Ofsted registration requirement would mean that adopted adults would be able to access counselling services in the same way as adults in the general population. Providers will work in line with any usual professional registration and training arrangements, and will not have to apply separately to cover service users who may have an adoption background.

For example, if an adult adoptee would like to access private counselling, they may look for a counsellor who is registered with the British Association for Counselling and Psychotherapy (BACP). To gain BACP registration, therapists must either have passed the BACP-accredited course or a Certificate of Proficiency, and agree to Terms and Conditions of the Register (including the Ethical Framework for the Counselling

Professionals)¹³. Specialised registers for different types of counselling may also be considered by the individual, such as the UK Council for Psychotherapy Register¹⁴. If the Ofsted registration requirement is removed, an adult wishing to discuss adoption-related issues could seek advice on accessing counselling in the same way as any other adult.

In addition, where DfE is funding support through the Adoption Support Fund for those over 18, and/or adoptive parents, all applications come via local authorities and Regional Adoption Agencies. We will expect that all applications include a declaration that appropriate quality and safeguarding checks on the provider have been carried out.

Providers of other types of adoption support services to adults, including counselling offered as part of intermediary services support, will still be subject to the registration requirement.

Consultation Questions for Proposal 2

6. Do you agree that the Ofsted registration requirement for providers of adoption-related counselling and therapeutic services to adults should be removed?
7. Do you think this will have a positive effect on the provider market?
8. What impact on quality do you think it will have on adoption-related counselling and therapeutic adoption services for adults?
9. Will this have a positive effect on the number of counsellors and therapists for people who want support for adoption-related issues?

¹³ [BACP Register of Counsellors and Psychotherapists](#)

¹⁴ [Our registers | UKCP \(psychotherapy.org.uk\)](#)



Department
for Education

© Crown copyright 2023

This document/publication (not including logos) is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

To view this licence:

visit www.nationalarchives.gov.uk/doc/open-government-licence/version/3

email psi@nationalarchives.gov.uk

write to Information Policy Team, The National Archives, Kew, London, TW9 4DU

About this publication:

enquiries www.gov.uk/contact-dfe

download www.gov.uk/government/consultations



Follow us on Twitter:
[@educationgovuk](https://twitter.com/educationgovuk)



Like us on Facebook:
facebook.com/educationgovuk