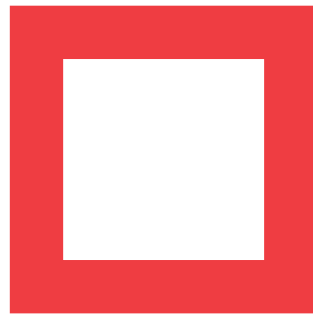


Contents



Introduction	3
Arranging Adoptions – Guidance for the Adoption Agency Regulations	
Part 1: Arrangement of Regulations	11
Part 2: Adoption Agency – Arrangements for Adoption Work	13
Part 3: Duties of Adoption Agency where Agency is Considering Adoption for a Child	25
Part 4: Duties of Adoption Agency in Respect of Prospective Adopter	49
Part 5: Duties of Adoption Agency in Respect of Proposed Placement of Child with Prospective Adopters	61
Part 6: Placement and Reviews	71
Part 7: Records	77
Part 8: Miscellaneous	87
Assessing Prospective Adopters – Guidance for the Suitability of Adopters Regulations	93
Appendix A: Practice guidance for assessing the suitability of prospective adopters	101
Appendix B: Partial Regulatory Impact Assessment	155
Appendix C: Feedback form	173
Appendix D: The Adoption and Children Act 2002	197
Appendix E: Glossary	211



Introduction



This covers:

Foreword	3
Executive summary	6
Values	8
Consultation process	9
How to respond	10

FOREWORD BY MARGARET HODGE

In November 2002 the Adoption and Children Act 2002 received Royal Assent. The Act represents the most radical overhaul of adoption law for 26 years, replacing the outdated Adoption Act 1976 and modernising the entire legal framework for domestic and intercountry adoption.

The Government is now working to ensure that the regulations and guidance needed to implement the Act will be finalised by the end of 2004. This is a complicated task so the Act is being implemented in phases. Some of the Act's key provisions which amended the Adoption Act 1976 have been implemented in 2003 and these include:

- June – implementation of the provisions placing restrictions on adoption from overseas
- October – implementation of the first phase of the adoption support provisions for adoptive families.

Later this year, the regulations and contract for running Phase 1 of the new Independent Review Mechanism will be put into place. This will cover prospective adopters who ask for a review of an adoption agency determination not to approve them as suitable to adopt.

But implementation of the remainder of the Act is a much larger task. That is why related provisions will mostly be published in five packages of regulations and guidance.

This consultation document, the first package, contains the draft regulations and guidance that are intended to completely replace the regulations that currently provide for the operation of the adoption service by adoption agencies in England. These date back to 1983 and 1997. It includes adoption agency regulations and guidance for:

- Arranging Adoptions – the Adoption Agency Regulations
- Assessing Prospective Adopters – the Suitability of Adopters Regulations.

At present the other four other packages of draft regulations and their accompanying guidance are expected to cover:

- Adoptions with a Foreign Element
- Access to Information
- Adoption Support Services: Phase Two; and Adoption Support Agencies
- Independent Review Mechanism: Phase Two; Isle of Man and Channel Islands Regulations; and Fees.

Draft regulations and accompanying guidance on Special Guardianship and the e-Commerce Directive are expected to be published separately. These consultation documents will be published sequentially over the next six months.

Clearly there will be many points where the regulations in the different packages interconnect, such as the interface between the Adoption Agency Regulations, the Adoptions with a Foreign Element Regulations, the Adoption Support Services Regulations and the Access to Information Regulations. Any issues such as this will be comprehensively addressed when all the regulations are finalised to ensure that we deliver a fully integrated, coherent system of regulations and accompanying guidance.

The issues raised in Parliament while the Adoption and Children Act 2002 was being debated and the responses to the consultation document *Adopter Preparation and Assessment and the Operation of Adoption Panels: A Fundamental Review* have all played their part in influencing the development of these draft regulations and draft guidance.

But to refine and finish the regulations and guidance the Government needs your views. The Government is committed to ensuring that adoption agencies, service users and others with an interest in adoption have the opportunity to contribute to the development of these new regulations and accompanying guidance, which are issued today for six months of consultation.

All the responses to the consultation will be considered before the regulations and accompanying guidance are finalised and published. And we will ensure that once the Regulations and guidance that give effect to the Act are in place, there will be sufficient time for local preparation and training.

A handwritten signature in blue ink that reads "Margaret Hodge". The signature is written in a cursive style with a large initial 'M'.

Margaret Hodge

Minister for Children, Young People and Families.

EXECUTIVE SUMMARY

This consultation document comprises two related sets of draft regulations and guidance. These are:

- Arranging Adoptions – the Adoption Agency Regulations
- Assessing Adopters – the Suitability of Adopters Regulations.

The intention is that the final guidance will be issued as Section 7 guidance under the Local Authorities Social Services Act 1970¹. This status will not however apply to the Practice Guidance in Appendix A, which we intend to issue as good practice guidance.

Both sets of regulations and their accompanying guidance are published together as they govern the interrelated functions of the adoption agency in collecting information, assessing and deciding whether applicants are suitable to be approved as adoptive parents. The connections between the two sets of regulations are explained in the guidance.

These regulations are two separate sets as The Suitability of Adopters Regulations will be subject to affirmative resolution. The Adoption Agency regulations are not subject to the same Parliamentary procedure. This means that when the regulations are laid before Parliament each set will appear as a separate Statutory Instrument.

When the consultation has been completed, the regulations and guidance finalised, and the Parliamentary procedures complied with, the intention is that all the regulations will be published together.

The Adoption Agency Regulations set out the essential requirements on adoption agencies for preparing and arranging a child's adoption. They cover:

- the arrangements that adoption agencies need to put in place, such as establishing an adoption panel and formulating policies and procedures based on these regulations and guidance
- and the significant duties adoption agencies will have:
 - where a child is being considered for adoption, counselling the child and his parents, preparing the report for the adoption panel, the panel's recommendation and the agency decision on whether the child should be placed for adoption
 - where the agency is considering applicants as prospective adopters, conducting checks, references and collecting other information, submitting a report to the adoption panel, the panel's recommendation and the agency's decision on whether to approve them as suitable to adopt

¹ All local authorities are required to observe section 7 guidance unless there is an exceptional reason to justify variation. This does not apply to voluntary adoption agencies but they should nevertheless follow it as a matter of good practice.

- where the agency is considering matching and placing a child with prospective adopters, fully informing the prospective adopters about the child's needs and seeking their views, assessing adoption support for the placement, the panel's recommendation and the agency's decision about whether the placement should proceed
- where the child is about to be placed, providing the approved prospective adopters with a placement plan
- reviewing the child's case, including where the child is placed
- arrangements for recording, storing, safeguarding, accessing and transferring confidential adoption case records
- arrangements for contact and deciding on the parental responsibility of the child's parents and prospective adopters during the adoption process.

The Suitability of Adopters Regulations set out the matters to be taken into account by adoption agencies when assessing whether applicants are suitable to adopt children. These regulations require the adoption agency to have proper regard to the need for stability and permanence in the prospective adopters' relationship.

VALUES

The regulations and their accompanying guidance are founded on the following values, which were first set out in the National Adoption Standards:

- Children are entitled to grow up as part of a loving family which can meet their needs during childhood and beyond
- Where possible it is best for children to be brought up by their own family
- The child's welfare, safety and needs will be at the centre of the adoption process
- The child's wishes and feelings will be actively sought and fully taken into account at all stages
- Delays in adoption can have a severe impact on the health and development of children and will be avoided wherever possible
- Children's ethnic origin, cultural background, religion and language will be fully recognised and positively valued and promoted when decisions are made
- The particular needs of disabled children will be fully recognised and taken into account when decisions are made
- The role of adoptive parents in offering a permanent family to a child who cannot live with their birth family will be valued and respected
- Adoption has lifelong implications for all involved and requires lifelong commitment from many different organisations, professions and individuals who have to work together to meet the needs for services of those affected by adoption.

CONSULTATION PROCESS

These draft regulations and their accompanying guidance are being issued for consultation to local authorities, to voluntary adoption agencies and to other adoption stakeholders. But anyone with an interest in adoption may ask for a free copy of this document and is welcome to comment on it. The document may also be accessed from the Department of Education and Skills' website: www.dfes.gov.uk/consultations

The draft guidance is intended to explain and amplify the draft regulations, which have been placed in a wallet at the back of this document. While reading the guidance, please consider whether it provides appropriate and sufficient guidance for each regulation.

HOW TO RESPOND

If you wish to comment on any aspect of the draft regulations and draft guidance in this document, please complete the electronic feedback form which can be found at www.dfes.gov.uk/consultations. Alternatively you may complete and return the feedback form, which can be found at Appendix C, or write to us before **1 May 2004**. Alternatively you may fax or email your views to us by the same date.

If you choose not to reply to us with the feedback form, please ensure your letter, fax or email includes the following information:

- your name
- your job title and interest in adoption
- your telephone number
- whether your comments represent your own view, the corporate view of your organisation², or the view of a group or team within your organisation
- your specific comments on the draft regulations, guidance or **consultation questions** set out in Appendix C. Please quote the relevant paragraph number
- any general comments you wish to make
- whether your comments may be made available to the public when the final regulations and guidance are published, or whether you wish your comments to remain confidential.

Our postal address is:

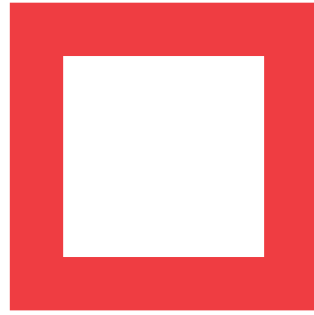
Placement, Permanence and Child Protection
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Department for Education and Skills
Room 121
Wellington House
133 – 155 Waterloo Road
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Fax: 0207 972 4179

email: adoptionagencies.consultation@dfes.gsi.gov.uk

Remember, if you want your comments and views to be considered we need to receive them before **1 May 2004**.

² We welcome responses from individuals and organisations. Where an organisation is considering responding to this consultation, in the context of its own policies, procedures and practice, an internal consultation exercise on these regulations and their accompanying guidance may help to involve staff usefully in shaping the corporate response.

Part 1



Arrangement of Regulations

This part of the guidance explains:

Regulation 1: Citation, commencement and application	11
Regulation 2 : Interpretation	11

Scope

1.1 These draft regulations – the Adoption Agency Regulations – aim to provide the central framework for the operation of an adoption service under the Adoption and Children Act 2002 which puts the needs of the child at the centre of the adoption process and is aligned with regulations made under the Children Act 1989. The draft regulations and guidance will replace the Adoption Agencies Regulations 1983, as amended, and associated guidance made under the Adoption Act 1976.

REGULATION 1: CITATION, COMMENCEMENT AND APPLICATION

1.2 Regulation 1 will set the date on which these regulations will come into force and provides that they apply to England only.

REGULATION 2: INTERPRETATION

1.3 Regulation 2 defines certain expressions used in the regulations.

Part 2



Adoption Agency – Arrangements for Adoption Work

This part of the guidance explains:

Regulation 3: Establishment of an adoption panel	14
Panel chairman	14
Panel membership	15
Joint adoption panels	16
Restrictions on the appointment of independent panel members	17
Regulation 4: Panel tenure	17
Regulation 5: Adoption panel meetings	18
Regulation 6: Panel fees	19
Regulation 7: Adoption agency policies and procedures	19
Timescales	20
Regulation 8: Agency adviser to the panel	21
Recruitment of panel members	22
Regulation 9: Appointment of a medical adviser	22

REGULATION 3: ESTABLISHMENT OF AN ADOPTION PANEL

2.1 Regulation 3, paragraph 1, requires the adoption agency to establish at least one adoption panel. An adoption panel may be established jointly, under **regulation 3, paragraph 5**, by any two but not more than three local authorities. These regulations do not make provision for the establishment of joint voluntary adoption agency panels. However there is no restriction on the establishment of joint adoption panels that a single voluntary adoption agency may consider it necessary to establish between its own branches.

PANEL CHAIRMAN

2.2 Regulation 3, paragraph 2, requires the adoption agency to appoint an independent panel chairman who, in the agency's view, has the skills and experience to chair the panel. He must not be a member, trustee, director or employee of the agency, or related to an employee or any person who is responsible for the management of the agency.

2.3 A key characteristic of the panel is its independence from the agency, which enables it to scrutinise the agency's assessments, proposals and actions when considering a case. For this reason, the regulation requires the agency to appoint a person who is independent of the agency to chair the panel.

The most significant qualities that a chairman should have are:

- the authority and expertise to chair a panel
- ability to analyse and explain complex information
- ability to identify key issues and problems and to recommend solutions
- excellent oral and written communication skills
- experience at a senior level in an organisation.

2.4 The chairman should ensure that the panel is well organised, methodical and clear about its recommendations and the reasons for making them. He should, in a constructive manner, ask each panel member to explain the reasons for their own views, and encourage all members to examine, consider and weigh the information with which they are presented before reaching their conclusions. The chairman will need to guard against complacency by scrutinising the panel's views and recommendations, and satisfying himself that the panel can justify its recommendations. It is important that his performance is carefully monitored by the agency.

2.5 The chairman should encourage all members to influence the panel's recommendations, using their own knowledge and experience, and ensure that where panel members have serious reservations these are recorded in the minutes of the panel's meetings and are also attached to the panel's recommendations. The chairman is responsible for ensuring that panel's records are accurate.

2.6 The chairman should have a sound understanding of the adoption process. If he does not possess this knowledge but possesses all the other qualities, he may be appointed provided the agency considers he will quickly develop an understanding of the adoption process and the agency ensures that the chairman receives appropriate training before he takes up his appointment.

PANEL MEMBERSHIP

2.7 Regulation 3, paragraph 3, requires that the adoption panel shall consist of no more than ten members. The agency should ensure that the membership of the panel should be gender balanced as far as possible and reflect the composition of the community that the agency serves. Where this is not practicable in the short term, the agency should inform the panel chairman of the efforts it is making to recruit new panel members from under-represented parts of the community.

2.8 The panel chairman should make it clear to all panel members that any management members or elected members appointed to the panel operate on an equal basis with other members of the panel.

2.9 Before appointing any panel member, the agency should inform him in writing of his performance objectives, which should include attendance at an agreed number of panel meetings, participation in induction and training and safeguarding the confidentiality of records and information submitted to the panel. Each panel member should be required to sign an acceptance form to record his or her agreement to these objectives.

2.10 Regulation 3, paragraph 3, requires that the panel's membership should comprise of:

- two social workers employed by the adoption agency. At least one of these should have expertise – practical knowledge and experience – in the placement of children for adoption and the other should have experience of working in children's services.
- where the agency is a voluntary adoption agency, a director, manager or other officer responsible for the management of the agency
- where the agency is a local authority, an elected member of the local authority. Wherever possible, the local authority should appoint an elected member from the corporate parenting group or a member with responsibility for children's services.
- a medical adviser
- at least three independent people, including where reasonably practicable at least:
 - one adoptive parent
 - and one adopted person aged at least 18.

2.11 Where prospective adopters are being considered in respect of an application for an intercountry adoption, the agency should make arrangements to ensure that a social worker with experience of agency arrangements for intercountry adoption is available to provide the panel with advice.

2.12 Regulation 3, paragraph 4, requires the adoption agency to appoint one member of the panel to be the vice chairman. Where the chairman is absent or his position is vacant, the vice chairman is to assume the chairman's responsibilities for those particular panel meetings that he chairs. The vice chairman should have the necessary skills and experience to deputise for the chairman. These should be similar to those qualities set out in the guidance for regulation 3, paragraph 2. Where he has deputised for the chairman at a panel meeting he should inform the chairman about the case considered and the outcome of that meeting.

JOINT ADOPTION PANELS

2.13 Regulation 3, paragraph 5, provides for the establishment of a joint adoption panel by two or three local authorities. The conditions on the establishment of a joint panel are that:

- its maximum membership is 11
- each local authority shall appoint 2 persons to the panel, of whom one is to be a social worker and the other an elected member of the local authority.

2.14 Regulation 3, paragraph 5, also provides that, by agreement, the local authorities should appoint:

- an independent person to chair the panel. He must not be a member of any of the local authorities who have established the panel, or be an employee of any of these authorities, or related to an employee or to any person responsible for the management of any of these authorities
- at least three independent members, including where reasonably practicable at least:
 - one adoptive parent
 - and one adopted person aged at least 18
- a member of the panel to be the vice chair, acting as the chairman if he is absent or his office is vacant.

RESTRICTIONS ON THE APPOINTMENT OF INDEPENDENT PANEL MEMBERS

2.15 Independent members help to contribute to the breadth of a panel's experience and knowledge and their independence is also a significant part of the panel's credibility. This independence should be safeguarded. **Regulation 3, paragraph 6**, requires that a person shall not be appointed as an independent member of an adoption panel if:

- he is employed:
 - in the case of a voluntary adoption agency, by that agency
 - in the case of a local authority, in the social services department of that authority
- in the case of a local authority, he is an elected member of the authority
- in the case of a voluntary adoption agency, he is concerned in the management of that agency
- he is an adoptive parent who was approved as a prospective adopter by the agency within the last 5 years
- he is related to an employee of the agency or to any person concerned in the management of the agency. **Regulation 3, paragraph 7**, provides that for the purposes of this restriction a person ("person A") is related to another person ("person B") if he is:
 - a member of the household of, or married to, person B
 - the son, daughter, mother, father, sister or brother of person B; or
 - the son, daughter, mother, father, sister or brother of the person to whom person B is married.

REGULATION 4: PANEL TENURE

2.16 Regulation 4, paragraph 1, provides for the period for which panel members may be appointed. It replaces the current regulation that requires that an adoption panel member cannot hold office as a member of the panel for more than two consecutive terms of three years. In increasing the tenure the Government is responding to concerns that agencies find it difficult to replace experienced panel members, but a balance does need to be struck to ensure that membership of a panel still provides effective scrutiny.

2.17 Under **regulation 4, paragraph 1**, an agency may not appoint a panel member for more than two consecutive terms, and each term is limited to a maximum of five years. Each panel member's term should be subject to an annual review against agreed performance objectives, conducted by the agency adviser to the panel *and* the panel chairman.

2.18 The agency should plan and manage the turnover of its panel members. The current requirement for the agency to arrange for a proportion of its panel members' terms to end each year has not been repeated in these regulations as it is understood that agencies would prefer to have more flexibility. However the agency chooses to organise the departure of current panel members and the arrival of new panel members, within the restrictions provided by regulation 4, paragraph 1, it should avoid having to replace a large proportion of the panel members in any one year.

2.19 Regulation 4, paragraph 2, provides that there is to be no restriction on panel tenure of the medical adviser member of the adoption panel, where he has been appointed and continues to be appointed under regulation 9.

2.20 Regulation 4, paragraph 3, provides that a panel member may resign his office at any time by giving one month's notice in writing to the adoption agency.

2.21 Regulation 4, paragraph 4, provides that where an adoption agency considers that any member of the adoption panel is unsuitable or unable to remain in office, it may terminate his office at any time by notifying him in writing with reasons. Where an agency identifies that a panel member is not performing to the required standards, perhaps as part of the review process, it should ensure that this is discussed promptly with the particular 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 levels, the agency should act promptly both to inform the current panel member that his services are no longer required and to identify a replacement panel member.

2.22 The requirement in the regulation to provide reasons in writing acts both to help ensure that the agency considers carefully the reasons for the termination and the panel member is also clear about the rationale for the termination of his appointment.

2.23 Regulation 4, paragraph 5, provides that where the panel member is a member of a joint adoption panel, his appointment may only be terminated with the agreement of all the local authorities whose panel it is.

REGULATION 5: ADOPTION PANEL MEETINGS

2.24 An adoption panel may only hold a formal meeting if at least five panel members are present, forming a quorum. This is provided for by **regulation 5, paragraph 1**, which also provides that the quorum must include the chairman or the vice chair, at least one of the social workers employed by the agency and at least one of the independent members.

2.25 Regulation 5, paragraph 2, provides that a joint adoption panel quorum is formed by the presence of six panel members: these must include the chair or the vice chair, one social worker from each local authority and at least one independent panel member.

2.26 Regulation 5, paragraph 3, requires the adoption panel to make a written record of its meetings, its recommendations and its reasons for making those recommendations. As the guidance has said, the chairman is responsible for ensuring that this record is accurate and also for ensuring that a person is given the task of writing and keeping the record. Such a person should have no other function on the panel. Arrangements should be made by the agency adviser to the panel for the proper safe keeping of the record.

2.27 The panel's recommendations should not be conditional and it should not make any in principle recommendations. The adoption panel may however give the agency preliminary advice, such as where the agency seeks advice when the agency is considering contingency planning³ for a child, whether to continue with the assessment of prospective adopters in cases where the agency has doubts or reviewing the approval of prospective adopters.

REGULATION 6: PANEL FEES

2.28 Regulation 6 provides that a local authority may pay to any independent member of their adoption panel, or joint adoption panel, a fee that the authority considers reasonable. Fees may be paid in proportion to the number of panel meetings that the independent member attends or as an annual fee. The authority may pay a fee to independent panel members for the time that they prepare for panel meetings and it may also reimburse independent panel members for the expenses they incur in travelling to and from panel meetings.

REGULATION 7: ADOPTION AGENCY POLICIES AND PROCEDURES

2.29 Regulation 7 requires the adoption agency to prepare and implement its written policy and procedures, which should govern the work of the agency and its adoption panel. The regulation requires the agency to consult the adoption panel and the agency's medical adviser before finalising its policy and procedures. The medical adviser's views are to be sought in respect of access to and the disclosure of health information⁴. It is also recommended that the adoption agency should provide its staff with opportunities to contribute to the drafting of its written policy and procedures. The agency is also required to keep its written policy and procedures under review and, where appropriate, to revise them.

2.30 It is recommended that the agency's written policy and procedures be set out in one document, which should be made available electronically and in a printed format. It should set out:

- a statement of purpose
- the timescales to which the agency expects the adoption panel and the agency's staff to work (see the next section)
- the policies and procedures for its adoption panel, including:
 - how the panel will monitor and report on its work to the agency and others
 - recruitment, induction, training and performance review of panel members
- the agency's expectations of panel members
- a statement of the support and induction training the panel members can expect to receive from the agency

³ See guidance for regulation 10.

⁴ Regulation 9, paragraph 2.

- a panel membership agreement: a signed document which sets out the mutual commitments of the adoption panel members and the agency
- arrangements for the keeping, safeguarding and disclosure of information
- arrangements for informing the prospective adopters, the natural parents and, where appropriate, the child of the panel's recommendations and the agency's decisions
- how the agency is using the Adoption Register
- any other matters the agency considers relevant.

2.31 The agency should ensure that each member of its staff and each non-staff member of the adoption panel is provided with the agency's most recent policy and procedures document. All natural parents, prospective adopters and each child, where the agency considers he is of sufficient age and understanding, should be told about the existence of the document and provided with a copy if they request it.

TIMESCALES

2.32 The adoption agency's policies and procedures document is to set out the timescales to which the agency expects its adoption panel and its staff to work. These should address the following:

The child

2.33 Whenever plans for permanence are being considered, they will be made on the basis of the needs of each looked after child, and within the following timescales, as set out in the national adoption standards:

- at the **four month** review, the child's need for a permanent home should be addressed and a plan for permanence made
- within **six weeks** of the completion of the child's adoption assessment report, the adoption panel should receive all necessary information from the agency
- within **two months** of a review where adoption has been identified as the plan for the child, the adoption panel should make its recommendation

The prospective adopters

2.34 The prospective adopters can expect:

- within **five working days**, written information sent in response to their enquiry
- within **two months**, follow up invitation to an information meeting
- within **six weeks** from the completion of their assessment report, the adoption panel should receive all necessary information from the agency
- within **six months** of the receipt of their formal application, a determination about their suitability to adopt should be made by the agency, following the adoption panel's considerations and recommendation

Matching and placement

2.35 The following timescales should be adhered to, *taking into account the individual child's needs*:

- within **six months** of the agency deciding that the child should be placed for adoption, a match with suitable adoptive parents should be identified and approved by the panel
- within **three months** of the agency deciding that the child should be placed for adoption, where a parent has requested that a child aged under 6 months be placed for adoption, a match with suitable adoptive parents should be identified and approved by the panel

Agency decisions

2.36 Where the agency decides whether or not the child should be placed for adoption, whether or not the prospective adopters should be approved or whether the child should be placed with approved prospective adopters, the agency's decisions should be:

- taken within **seven working days** of the adoption panel recommendation
- conveyed orally within **48 hours** of the decision being made, where reasonably practicable, to:
 - the child and his parents, where the decision is about whether the child should be placed for adoption or placed with particular approved adopters
 - the prospective adopters, where the decision is about their approval as suitable adopters or whether a particular child should be placed with them
 - confirmed in writing within **seven working days**

2.37 The adoption agency should monitor its progress against these timescales and make this information available in its annual report.

REGULATION 8: AGENCY ADVISER TO THE PANEL

2.38 Regulation 8 requires the adoption agency to appoint a senior member of the agency's staff to be the agency adviser to the panel. This person is also to be responsible for the recruitment, induction, and training of adoption panel members. The agency adviser to the panel is, in conjunction with the panel chairman, to be responsible for the performance monitoring of panel members – assessing their performance against agreed objectives for each panel member, and reviewing their progress on at least an annual basis. The agency adviser should also performance monitor the panel chairman.

2.39 The agency adviser is not a panel member but is required to attend panel meetings as an observer and adviser. He should be able to contribute to the panel's meetings by providing advice to the panel, for example about the agency's procedures and practices, and about Government guidelines.

2.40 The agency should make arrangements to monitor a child's case as it moves towards adoption to help ensure that delays are kept to a minimum. This is a role that could be given to the agency adviser to the adoption panel as he would be well placed to update the panel on progress with cases it has considered and on which it has made recommendations.

RECRUITMENT OF PANEL MEMBERS

2.41 Recruiting panel members with the appropriate skills and experience can be difficult. Formalising the recruitment of panel members should help and is recommended for a number of reasons:

- recruitment arrangements can be reviewed by the agency, agreed and implemented in consultation with the panel chair and the agency's adviser to the panel
- the review may in itself help to identify problems with the agency's existing arrangements and incorporate improvements in the new arrangements
- once formalised and implemented, the arrangements should then be clear to everyone who needs to work with them
- formalised arrangements should help to safeguard the objective and impartial selection of panel members
- formalised and recognised arrangements should help the agency to plan ahead and identify when to concentrate recruitment efforts to enhance the prospects of recruiting panel members of the appropriate calibre.

REGULATION 9: APPOINTMENT OF A MEDICAL ADVISER

2.42 Regulation 9 requires the adoption agency to appoint at least one registered medical practitioner to be its medical adviser. The medical adviser must be consulted about the agency's arrangements for accessing and disclosing health information, which these regulations require or allow the agency to obtain.

2.43 The medical adviser has a significant role, providing the agency and its adoption panel with an assessment of the child's current and future health needs, the health of the child's family, any health problems that the child may inherit and the health of the prospective adopters.

2.44 The medical adviser should be consulted where the agency:

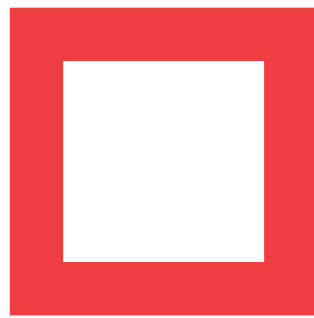
- arranges for the child to be examined by a registered medical practitioner and obtains from him a report on the child's health (regulation 15(1) and Part 3 of Schedule 1)
- arranges for other medical examinations of the child to be carried out and for reports to be obtained (regulation 15(2))
- arranges for health information to be obtained about the child's parents (regulation 15(4) and Part 4 of Schedule 1)

- arranges for medical examinations of the child's parents to be carried out and for reports to be obtained (regulation 15(4))
- prepares the report on the child for the adoption panel, providing a summary of the child's state of health, his health history and any need for health care which might arise in the future (regulation 16(1))
- obtains a report from a registered medical practitioner about the health of the prospective adopter (regulation 23(3) and Part 2 of Schedule 4)
- prepares a report for the adoption panel for the prospective adopters, summarising the health of the prospective adopters (regulation 23(5))
- prepares a report on the child for the prospective adopters where the agency is considering placing the child with them (regulation 27(1) and schedule 5)
- notifies the prospective adopter's GP of the proposed placement and sends him a report on the child's health (regulation 30(6)), before the child is placed for adoption with the prospective adopter
- notifies the Primary Care Trust (PCT) in whose area the prospective adopter lives of the proposed placement and sends the PCT a copy of the placement plan (regulation 30(4))
- reviews the child's case, including reviewing the arrangements for meeting the child's health care and education needs (regulation 31(7))

2.45 The medical adviser therefore needs to be suitably skilled and experienced for this role. It is recommended that the adoption agency make arrangements for the appointment of its medical adviser with a local Primary Care Trust's designated doctor for looked after children. The designated doctor assists the Trust in fulfilling its responsibilities as a commissioner of services to improve the health of looked after children and 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 fulfill the role of the medical adviser. Alternatively the designated doctor should be able to recommend another doctor to become the agency's medical adviser.

2.46 Health information is subject to safeguards to protect its confidentiality. Access to health records requires fully informed consent from the person to whom the records relate, or, in the case of the child, consent should be obtained from the person with parental responsibility for the child. In planning arrangements for accessing and disclosing health information, the agency should always consult its medical and legal advisers in advance, as they can help to ensure the agency's policies and procedures accord with the Data Protection Act 1998 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 Data Protection Act, and other areas of law surrounding confidentiality.

Part 3



Duties of Adoption Agency where the Agency is Considering Adoption for a Child

This part of the guidance explains:

Regulation 10: Application of regulations 11 to 16	26
Regulation 11: Opening a case record	28
Regulation 12: Obtaining information about the child, his family and others	28
Regulation 13: Counselling and informing the child	30
Regulation 14: Counselling and informing the parent or guardian	32
Regulation 15: Health information	37
Regulation 16: Report for the adoption panel	41
Regulation 17: The adoption panel	43
Regulation 18: Adoption agency decision	43
Regulation 19: Appointment of a CAFCASS officer	46

REGULATION 10: APPLICATION OF REGULATIONS 11 TO 16

3.1 Regulation 10 provides that regulations 11 to 16 apply where an adoption agency is considering adoption for a child. Where the agency is a voluntary adoption agency, it will be considering the needs of a child that has been relinquished for adoption or is about to be relinquished for adoption. A local authority will be considering the needs of a child that is about to be relinquished for adoption or that is 'looked after', either because the child is being voluntarily accommodated or is the subject of a care order under the Children Act 1989.

Planning for Permanence

3.2 Where a child is looked after by the local authority, an appropriate permanence plan should be identified 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. These options may cover:

- returning the child to the parents, with support where necessary
- long term placement with the child's wider family
- long term placement with foster carers
- residential placement until independence
- placement for adoption

3.3 As part of the second statutory review, the child's social worker should⁵ ascertain and record the views of the child, where he is of sufficient age and understanding, the child's parents, anyone else with parental responsibility for the child and any other relevant person, such as a relative or carer, on the possible permanence options for the child. The social worker should explain the options for the child's permanence and how these could help to meet the child's current and future needs, and, if adoption is an option, also explain the general implications and procedures relating to adoption. The social worker should also provide the parents with written information about the implications of the different permanence options.

3.4 Where the second – or a subsequent – review decides that adoption is the preferred option for permanence, an adoption plan is to be commenced and the information on the care plan should be transferred to the adoption plan, which is set out in the Integrated Children's System (ICS). This is where regulation 10 applies, as from this point the agency is clearly considering adoption for the child.

⁵ Under section 22(4) of the Children Act and regulation 5 of the Arrangements for the Placement of Children, Regulations 1991.

3.5 The adoption plan will be subject to all the safeguards that these regulations put in place, such as the agency report to the adoption panel, the panel's recommendation and the agency decision on whether or not the child should be placed for adoption. As part of the adoption counselling, under regulations 13 and 14, it is essential that these safeguards and the adoption process in general is explained to the child, where he is of sufficient age and understanding, his parents, his guardian and any other relevant person.

Contingency Planning

Where the assessment identifies that the child's parents may be unlikely to make and sustain the necessary changes in their parenting, contingency plans should be made to avoid delay in securing a permanent family for the child.

A number of contingency planning models are emerging that can help to ensure early permanence plans for the minority of looked after children who are in this position. These include:

- *Concurrent Planning* The Concurrent Planning model places the child with foster carers, who as well as providing temporary care for the child, act as a support to the birth parents in meeting the objectives of any rehabilitation plan. These carers have also been identified as available to be the child's prospective adopters if the rehabilitation plan should be unsuccessful.
- *Parallel or Twin Track Planning* The child remains with the parents or is placed with foster carers. A rehabilitation plan with timescales is in place. At the same time, the agency puts in place elements of a plan for an alternative permanence placement if the rehabilitation plan is unsuccessful.

Contingency planning should be an identified part of the agency's childcare strategy policy and procedure. It will be important to have discussions with local courts, CAFCASS and other agencies to enable them to understand these models and play their part in an informed way.

Parents need to be informed that the two plans (rehabilitation and alternative permanence) are being made to meet the child's needs and prevent unnecessary delay. The primacy of the rehabilitation plan should be stressed. Retaining the co-operation and involvement of the parents is essential to successful contingency planning.

Source: Department of Health Draft Practice Guidance, 2001

REGULATION 11: OPENING A CASE RECORD

3.6 Regulation 11, paragraph 1, requires that the adoption agency must set up a case record for the child and place on it any information obtained under this Part of the regulations.

3.7 Regulation 11, paragraph 2, provides for cases where a child is:

- looked after by a local authority
- or is provided with accommodation under section 59(1) of the Children Act 1989⁶

and the adoption agency has maintained records in respect of the child under the Children Act 1989. Paragraph 2 requires the agency to obtain from the 'Children Act record' any information required under this Part of the regulations and to place that information on the child's case record.

3.8 Where a child is looked after, the adoption plan will take the place of part 2 of the care plan when the decision has been made at the statutory review to pursue adoption for the child. Where a child's case record is opened for a looked after child, the adoption plan should become part of that case record.

3.9 The adoption plan is an electronic document and a written note should be made in the case record to identify where the adoption plan is located. The adoption plan should be updated as part of the regular reviews conducted under the Children Act 1989 regulations and under these regulations when the agency has authority to place the child for adoption. The intention is to implement the adoption plan as part of the Integrated Children's System from December 2005.

REGULATION 12: OBTAINING INFORMATION ABOUT THE CHILD, HIS FAMILY AND OTHERS

3.10 The agency is required by **regulation 12(a)** to obtain – as far as reasonably practicable – specified information about the child⁷. The full details are set out in Part 1 of Schedule 1.

3.11 In summary this information is:

- basic information about the child:
 - identity
 - nationality
 - current legal status: voluntarily accommodated or under care order
- detailed information about the:
 - child's care
 - child's relationship with parents, relatives and others

⁶ Provision of accommodation by voluntary organisations.

⁷ The information that the agency is required to obtain about the child's health is provided for by regulation 15.

- child's emotional and behavioural development
- child's education and educational needs
- child's religious persuasion, racial origin and cultural and linguistic background
- arrangements for contact
- and any other information the agency considers relevant

Part 1 of Schedule 1 should always be referred to for the full details.

3.12 The agency is required by **regulation 12(b)** to obtain – so far as is reasonably practicable – specified information about the child's family and others. The full details are set out in Part 2 of Schedule 1. In summary this information is:

- information about the child's parents:
 - identity
 - nationality
 - contact details
 - the status of their relationship
 - parental responsibility
 - religious persuasion, racial origin and cultural and linguistic background
 - educational history
 - employment history and interests
- information about the child's siblings
 - identity
 - nationality
 - current legal status: voluntarily accommodated or care order
 - contact details, if appropriate
 - past and present relationship with the child
- information about any other relative or anyone else whom the agency considers relevant
 - identity
 - nationality
 - contact details
 - past and present relationship with the child
- any other relevant information which the agency considers may assist the adoption panel

Part 2 of Schedule 1 should always be referred to for the full details.

REGULATION 13: COUNSELLING AND INFORMING THE CHILD

3.13 Regulation 13, paragraph 1, requires the adoption agency to provide a counselling service to the child, in so far as this is reasonably practicable. Counselling should be the provision of information, advice and support in a manner that is appropriate to the understanding, background and age of the child. Under this regulation, the adoption agency has two specific functions to perform while counselling the child:

- to explain to him – in a way that the agency considers appropriate – the process of adoption, including its legal implications for him and to provide him with related written information
- to ascertain his wishes and feelings in relation to adoption and contact with his parent, guardian, relative or other person

3.14 Adoption counselling is an ongoing process, a continual interaction between the child, the professionals involved with him and those caring for him. In some cases, the agency may consider that it is in the child's interests for certain members of his family to play a part in his 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 his background, age and understanding.

3.15 Where an agency considers that adoption is the preferred permanence option, his counselling should help him to understand what adoption would mean for him now and in the coming weeks, months and in the longer term. He should be helped to understand why the agency considers that adoption is the preferred option for his permanence and what the implications might be, including the consequences for contact with natural family members and other significant people.

3.16 Where a child is a looked after child, the social worker who counsels the child should be the professional who knows him best, the person who has already given the child earlier counselling and support to help him understand why he has already or is about to leave his natural family. There may, however, be circumstances where another professional knows the child better, who has his trust and confidence and is better placed to undertake this task. For example, a specialist counsellor or play therapist who is already involved with the child. Alternatively the agency may decide that someone with these skills is needed to help a particular child understand the difficult concepts of adoption and permanence. It may be that someone who is providing direct care for the child – a foster carer or residential worker – is best placed to help the child understand the implications of adoption.

3.17 The child will want to know how his adoption will affect him and key people in his life such as his parents, his siblings, other family members and his current carers. He will want to know where he is going to live and who will be looking after him. Issues such as contact will need to be dealt with and the child will probably want to know about the views of his family members. A careful record should be kept of the child's counselling under this regulation as it will be essential to the development of the agency's plans for his adoption and it will probably be requested by the court.

3.18 In providing counselling under this regulation, the agency must be particularly mindful of the need for clear communication with the child. English will not be the first language for some children, others will have physical or learning impairments and some children may have little or no verbal communication. In such cases, it is essential that the counselling is either provided by or assisted by someone who can communicate effectively with the child and who has the necessary understanding of what adoption will mean for the child.

3.19 The child's race and ethnic origin should be carefully considered when counselling the child. Counselling also needs to be sensitive to the child's religious beliefs or other values.

3.20 A child's counselling will probably need to be provided through a number of sessions over several weeks or months. Explanations and reassurances may need to be repeated. An essential part of the counselling is that the child must have opportunities to question and consider the information he is given. The agency should try to ensure that, where practicable, the child understands what adoption would mean for him and then the agency should ascertain his wishes and feelings about the plans for his adoption. In seeking his views, the agency should be wary of giving the child the impression that he is being asked to bear the weight of the decision that needs to be made about his adoption. He should be helped to understand that his wishes and feelings will be listened to and taken into account.

3.21 The child's wishes and feelings are of importance throughout the adoption process. Where the agency is unable to ascertain the child's views, the reasons for this should be recorded on the child's case record.

3.22 Counselling should take place somewhere where the child feels comfortable and is able to talk and ask questions in a way that enables him to understand the plans for his future. There are many publications and guidebooks available to assist with this task, such as Life Story book templates and memory boxes and agencies are encouraged to use these wherever helpful.

3.23 Appropriate written information about the process of adoption and adoption itself is a vital part of the counselling process and agencies should ensure it is provided. It enables the child to reflect on what he has been told and to remind himself by reading the information again. The professional could write this for the child or use special leaflets or books that have been designed for the purpose.

3.24 In those few cases where the child has already received some adoption counselling from another adoption agency, the agency should take this into account in continuing the child's counselling and involving the child's former social worker as appropriate from the other agency.

3.25 In summary, in counselling the child the agency should, so far as is reasonable and in an appropriate manner:

- explain adoption procedures and the legal implications of adoption for him
- provide him with appropriate written information
- ascertain his wishes and feelings in relation to:
 - the plans for his adoption
 - contact with his parent, guardian, or other relative or person

3.26 The guidance for regulation 44 (contact) in Part 8 sets out the information that should be provided about contact arrangements.

3.27 Where the adoption agency is satisfied that the requirements of regulation 13 have been complied with fully by another adoption agency, **paragraph 2 of regulation 13** provides that the agency does not have to provide the counselling.

REGULATION 14: COUNSELLING AND INFORMING THE PARENT OR GUARDIAN

3.28 Regulation 14, paragraph 1, requires the adoption agency to counsel the child's parents or guardian, giving the agency two key counselling functions: explaining to them their rights and the legal implications of the adoption process; and ascertaining their wishes and views. Counselling will generally need to be an ongoing process, helping the child's parents or guardian to understand their rights, the implications of adoption, why the agency considers the child should not be returned to them and should be placed for adoption. It is essential that the agency provides the parents or guardian with opportunities to discuss these matters fully and it should offer to arrange for them to have an independent support worker.

3.29 The parents' counselling should be sensitive to their ethnic origins and religious beliefs. English may not be their first language, so the agency should ensure that the parents' counselling is either provided by or assisted by a person who can communicate effectively with them.

3.30 Where the parents or guardian need detailed advice on legal issues they should be encouraged to consult their own lawyer as soon as possible, particularly where they are not prepared to accept that adoption is the preferred option for their child.

3.31 Where the parents refuse to accept the adoption agency's proposals of adoption for the child, they may also decline counselling from the agency. In such cases, the agency should seek to arrange counselling through another adoption agency. The agency should take all reasonable steps to ensure the parents or guardian are provided with counselling, or the opportunity to receive it. Where counselling is declined, the agency should record this, together with a record of its actions, on the child's case record. The agency should also write to the parents' or guardian's solicitor, independent support worker or other advocate, to ensure that they are aware of the situation and receive essential information about the legal implications of the adoption process and the rights of the parents or guardian.

3.32 In time the parents or guardian may come to accept that it is in the child's interests for him to be placed for adoption; they may then be prepared to receive some counselling to help them come to terms with the consequences of the child's placement for adoption. The agency should maintain contact with the parents or guardian throughout the adoption process, via their legal representative where necessary, and should be ready to provide counselling to parents or guardians, even where they have previously refused to accept the agency's proposals for the child or any counselling.

3.33 Where the agency is able to maintain contact with the child's parents it is more likely to be aware of whether they intend to attend the adoption order hearing.

3.34 **Regulation 14** requires the adoption agency to explain to the parents or guardian the legal implications of their giving consent to placement for adoption, consent to the making of a future adoption order and how they may withdraw their consent. The agency is also required to explain the legal effect of placement orders and adoption orders and how these may be contested.

3.35 The agency should also explain the consequences of the adoption process for parental responsibility, for contact with the child and how this will change with authority to place the child for adoption⁸. As well as providing the parents with an oral explanation of these issues, the adoption agency should provide them with clearly written explanations. An Annex will be provided with the final guidance that may be used by agencies to supplement the written information they should give the child's parents or guardian.

3.36 As part of the ongoing counselling, the agency should provide clarification, including written clarification where appropriate, for the parents or guardian whenever they seek it during the adoption process.

⁸ An adoption agency receives authority to place a child for adoption when the parents give their formal consent to the placement of their child for adoption or the court makes a placement order. Further details are set out in Appendix D.

3.37 If the parents are relinquishing their child for adoption and express a wish for another adoption agency to arrange the adoption, the agency that is providing the counselling should make contact with the parents' preferred agency and if appropriate refer them to that agency. Where the parents express a wish to further consider the options for their child's care or to seek advice from another source, the adoption agency should arrange to see the parents or guardian again after an agreed period to obtain their views, provided that the agency considers that the delay will not prejudice the child's welfare.

3.38 Where the child is under 6 weeks old and is relinquished for adoption, the agency should also counsel the parents about the special status of these placements. The guidance for regulation 18, paragraphs 3, 6 and 7 explains the safeguards that are to apply in these cases.

3.39 Regulation 14, paragraph 1(c), requires the adoption agency to ascertain the wishes and feelings of the parents or guardian. It is essential that the wishes and feelings of the child's parents or guardian are carefully recorded on the child's case record as these will be needed later when the agency prepares the report for the adoption panel and when the court is considering making a placement order or adoption order. In particular, the adoption agency should establish if the parents are willing to consent to the child being placed for adoption, whether this consent would relate to identified adopters or would be general consent to placement with any prospective adopters chosen by the agency and whether they have any views about:

- the child's future upbringing, including his religion and culture
- contact with the child, if the agency is authorised to place the child for adoption or the child is adopted.

3.40 The guidance for regulation 44 (contact) in Part 8 sets out the information that should be provided about contact arrangements.

3.41 The agency should explain to the parents or guardian the reasons why it will need to ask them for information about themselves and the child, including health information. The agency should make it clear that this is intended to ensure the agency is able to anticipate and provide for the child's needs now and in the future when he is placed for adoption.

3.42 The agency should explain that it will safeguard this information, but that some of it will be shared with others, such as when the child is placed with prospective adopters. It should also explain that information about them will need to be passed to the adoption panel, the court and any children's guardian appointed in court proceedings. The parents or guardian should also be told how information may be disclosed when the child becomes an adult under the Act's access to information provisions⁹. The agency should also explain how the parents or guardians may also apply for access to information under these provisions.

⁹ The access to information provisions will be explained in the consultation document that will set out the draft regulations and accompanying guidance.

3.43 The agency should also ask the child's parents if they wish to deposit information with the adoption agency for it to pass to the adopted person at his request when he is an adult.

3.44 In summary, in counselling the child's parents or guardian the agency should, so far as is reasonably practicable:

- explain to him:
 - the procedure in relation to both placement for adoption and adoption
 - the legal implications of giving consent to:
 - placement for adoption under section 19 of the Act;
 - the making of a future adoption order under section 20 of the Act;
 - a placement order
 - the legal implications of adoption
- provide him with written information about these matters
- ascertain his wishes and feelings in relation to:
 - the placement of his child for adoption, including any wishes and feelings about the child's religious and cultural upbringing; and
 - contact with the child if the agency is authorised to place the child for adoption or the child is adopted.

Unmarried fathers without parental responsibility

3.45 Regulation 14, paragraphs 3 and 4, require that where the father of a child does not have parental responsibility for the child and:

- the father's identity is known to the agency
- and the agency considers it is appropriate to do so
 - the agency must counsel the father and ascertain his wishes and feelings as it would for a father under paragraph 1 of Regulation 14.

3.46 Under paragraph 4(b), the agency is also required to ascertain whether the father intends to acquire parental responsibility for the child under section 4 of the Children Act 1989, or to apply for a residence order or contact order under section 8 of the Children Act 1989 with respect to the child.

3.47 Adoption agencies have become increasingly concerned to ensure that they comply with Human Rights legislation when counselling the parents. This can be particularly difficult where the father of the child does not have parental responsibility for that child and the agency is not able to establish his identity.

3.48 The difficulties with counselling unmarried fathers are exemplified by the cases of *Re H and Re G*¹⁰. In each case, the mother had placed her baby with a local authority with a view to adoption on the basis that neither mother would be pressed to disclose the identity of the father without parental responsibility.

3.49 Whether or not the unmarried father enjoys an Article 8¹¹ right to respect for family life will depend on the facts of the case, but the facts may be difficult to establish or open to dispute.

3.50 Briefly, in *Re. H* the parents had had a relationship – they had lived together – which lasted several years and the father had shown continuing commitment to the elder child. The father was entitled to respect for family life with the child under Article 8 and to place the child without notice would be a breach of that right. In accordance with rule 15(3) the father should be given notice and made a respondent with an opportunity to be heard.

3.51 In *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 so the father had no right to respect for family life. It was therefore not necessary for him to be joined in any proceedings.

3.52 As part of its counselling of the mother, the agency should explain its obligations under Human Rights legislation to counsel and seek the views of the father of the child. An adoption agency should consider the nature of the child's relationship with the unmarried father and the nature and extent of the father's relationship with the child's mother and any siblings of the child.

3.53 Where the agency considers that there is a right to family life and that it is in the child's best interests, the agency must take all reasonably practicable steps to trace and counsel the child's unmarried father, if his identity is known.

3.54 If the father's identity cannot be established, the agency should seek legal advice. Each individual case will need to be carefully 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. Provision for this is expected to be made in the forthcoming court rules. Another option is to apply for a placement order. This latter approach has the advantage of enabling the court to consider the circumstances of the case and reach an earlier decision on whether the child should be placed for adoption.

¹⁰ (Adoption: Consultation of Unmarried Fathers) [2001] 1FLR 646

¹¹ Article 8(1) of European Convention of Human Rights which was incorporated into UK law by the Human Rights Act 1998.

3.55 In the cases of *Re H and Re G* the mothers had placed their babies with a local authority with a view to adoption on the understanding that neither mother would be pressed to disclose the identity of the father without parental responsibility. The court was critical of these arrangements. Agencies should avoid entering into arrangements that could cut across their obligations to the child and to other parties. The paramount consideration for the agency must be the child's welfare. Except where provided for in the Act, such as consent for placement with identified adopters¹², agencies should not enter into arrangements that place conditions on consent for placement, or advance consent to adoption. Where a voluntary adoption agency is approached in similar circumstances it should notify the local authority. If the local authority considers that the child should be placed for adoption, then in such cases it should apply for a placement order.

3.56 Where the mother gives consent to placement for adoption, or advanced consent to adoption, and the mother subsequently marries the father of the child, the father would acquire parental responsibility and is a parent within the meaning of the Act. The Act provides under Sections 52(9) and 52(10) that if the child is placed the father is deemed to have given his consent, but of course he may later withdraw it, provided he does so before the prospective adopters apply to the court for the adoption order hearing. Unless such a father withdraws his deemed consent, the adoption process should continue.

3.57 Regulation 14, paragraph 5, requires the adoption agency to ascertain the wishes and feelings of any other person the agency considers relevant, so far as is reasonably practicable, in relation to:

- the placement of the child for adoption and to his adoption
- contact with the child if he is placed for adoption or is adopted

3.58 A relevant person could be, for example, a carer or relative where the agency considers this is appropriate.

REGULATION 15: HEALTH INFORMATION

3.59 Regulation 15, paragraph 1, requires the adoption agency to arrange for the child to be examined by a medical practitioner and to obtain a written report from the doctor on the child's health. The exception to this requirement is where a doctor has examined the child and completed a report, which satisfies the same requirements, in the three months before the agency established the child's case record under regulation 11. This is less than the current period of six months and is intended to ensure that the agency has access to a recent medical report on the child.

¹² The Act provides under Section 19 for consent to be given for placement for adoption with identified adopters, with adopters selected by the agency, or combined consent: both identified adopters and general consent, so that if the initial placement breaks down the agency may place the child with adopters its selects.

3.60 Paragraph 1(b) of this regulation stipulates that the report should include information about the state of the child's health, any treatment the child is receiving, his needs for health care – now and in the future – and the matters specified in Part 3 of Schedule 1. In summary these broadly cover:

- a neo-natal report, including:
 - details of the birth
 - results of examinations and tests
 - details of any treatment
- medical history and examination of the child, including:
 - details of any serious illness, disability, accident, or hospital admission
 - a physical and developmental assessment
 - school health history, if any
 - any other relevant information which may assist the adoption panel.

Part 3 of Schedule 1 should always be referred to for the full details.

3.61 Regulation 15, paragraph 2, requires the agency to arrange for any other examinations of, or tests on, the child as recommended by the agency's medical adviser, and for written reports of these to be obtained. These may be medical or psychiatric examinations. The agency's medical adviser should have a key role in assessing and advising whether or not further examinations or tests should be conducted on the basis of the report the agency obtains under paragraph 1 of regulation 15. He will also need to consider the child's family health and social history. The agency will of course need to obtain the parents' consent for these tests while they retain parental responsibility for the child¹³.

3.62 Where the child is of sufficient understanding¹⁴, the agency will also need to obtain the consent of the child. **Regulation 15, paragraph 3**, provides that the requirements in paragraphs 1 and 2 do not apply if the child is of sufficient understanding to make an informed decision and refuses to agree to the examinations or tests.

¹³ The Data Protection Act 1998 will apply, and consent from those with parental responsibility will be required.

¹⁴ When a child under the age of 16 has the capacity and understanding to take decisions about their own treatment, they are also entitled to decide whether personal information may be passed on and generally to have their confidence respected. Case law has established that such a child is known as 'Gillick Competent', i.e. where a child is under 16 but has sufficient understanding in relation to the proposed treatment to give, or withhold consent, consent or refusal should be respected.

3.63 Regulation 15, paragraph 4, requires the agency to make the following arrangements, so far as is it reasonably practicable for the agency to do so:

- obtain the health information about the child's parents¹⁵ as specified in Part 4 of Schedule 1, which is summarised as:
 - a family health history, covering each of the child's parents, the child's siblings, if any, and the other children, if any, of each parent with details of any serious physical or mental illness and hereditary disease or disorder
 - a health history of each of the child's parents, including details of any serious physical or mental illness, drug or alcohol misuse, disability, accident or hospital admission
 - a summary of the mother's obstetric history
 - details of any present illness, including treatment and prognosis
 - any other relevant information which the agency considers may assist the adoption panel
- arrange for medical and psychiatric examinations of, and other tests on, the child's parents as are recommended by the agency's medical adviser, and for written reports of these to be obtained

3.64 The agency's written procedural instructions should set out the arrangements for commissioning these essential examinations and reports. Requests should be accompanied by a covering letter from the agency's medical adviser that should explain the purpose of the examination or test and requests the health information that the agency needs incorporated in the report.

3.65 The agency should also make arrangements, with the involvement and guidance of the medical adviser, to obtain other health information about the child and his parents, where practicable, from the family doctor or other health professionals, as appropriate. This is a complex area, bounded on one side by privacy and confidentiality and on the other by the need to obtain as much information as possible about the child's health history and his current and future health needs. With advances in medical science, information about genetic disorders in the child's family may allow treatment to begin at an early stage or for future problems to be anticipated by the agency's medical adviser.

3.66 The primary legislation that governs access to health information is the Data Protection Act 1998¹⁶, and guidance on confidentiality and disclosure has been issued by the Department of Health¹⁷, the General Medical Council¹⁸ and the British Medical Association¹⁹. The Data Protection Act and its regulations provide that an application for access to medical health records may be made to the family doctor, for example, by:

¹⁵ If an adult is not capable of giving consent to disclose information from their health records, the health professional concerned must make a decision whether or not to disclose in the patient's best interests.

¹⁶ Copies of the Act may be obtained from: www.legislation.hmso.gov.uk

¹⁷ Confidentiality: NHS Code of Practice, which may be obtained from: www.doh.gov.uk/ipu/confiden

¹⁸ Confidentiality, 1995.

¹⁹ Confidentiality and disclosure of health information, 1999.

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

3.67 The Data Protection Act qualifies this by providing 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 individual²⁰; 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 disclosure²¹

3.68 It is essential that the agency seeks to explain to the child's parents as part of their counselling why it needs access both to the child's medical records and their medical records and why further examinations or tests could be beneficial. Under the 1998 Act, the agency will need the parents' 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. It is important that all consent given is fully informed and freely given. The consequences of giving and withholding consent should be explained to help to ensure that consent is fully informed.

3.69 In seeking to obtain the parents' written consents, 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 confidentiality²². If necessary, it should provide written information about its arrangements for protecting information.

3.70 Where the parents oppose the agency's proposals for the child's adoption, consent will probably be withheld. Where an agency is able to maintain some contact with the parents, perhaps through their representative, it may be able to persuade them that their child's adoption is in his best interests and consent for the disclosure of medical records may then be forthcoming. It is possible for data controllers to disclose information without consent if it is in the public interest to do so, or there is a court order requiring disclosure of the information. Public interest is judged on a case by case basis and the data controller would be expected to justify their decisions.

20 Health (The Data Protection (Subject Access Modification) (Health)) Order 2000 – (S.I. 2000 No 413).

21 Section 7(4) of the Data Protection Act.

22 The Data Protection Act requires that data subjects are provided with 'fair processing information'. This consists of information on who holds the data, who it will be disclosed to, how long it will be held for, what it will be used for, and any other information which may be relevant.

REGULATION 16: REPORT FOR THE ADOPTION PANEL

3.71 Regulation 16, paragraph 1, requires the agency to prepare a written report for the adoption panel where it considers in the light of all the information obtained under regulations 12 to 15 that adoption is the preferred option of permanence for the child. The report is to include:

a) *the details of the child and his family;*

Basic information about the child and his family, such as identity, physical description, gender, date and place of birth, ethnic origin and nationality.

b) *a chronology of the child's life;*

A list of the key events and dates in the child's lifetime, such as when he entered school, became looked after, or was placed with foster carers.

c) *a summary of the child's history and the history of his family;*

A brief narrative account of his history and the history of his parents, any siblings, and any other relatives who were involved in his care.

d) *a chronology of the actions and decisions taken by the agency with respect to the child*

A list of the agency's actions and decisions, with the dates when these were taken, such as when the child's care plan was drawn up and reviewed, when it became a plan for adoption, the counselling of the child and others, and the arrangements made for obtaining medical and other reports.

e) *the wishes and feelings of the child about adoption;*

A record of the child's views which should have been ascertained, where it was reasonably practicable for the agency to do so, during the child's counselling. His views about what his adoption would mean to him, his wishes for his future upbringing, contact and anything else the child would like the panel to know.

f) *the wishes and feelings of his parent or guardian and, where regulation 14(4) applies, his father about adoption;*

A record of the parents' or guardian's views which should have been ascertained, where it was reasonably practicable for the agency to do so, during their counselling. Their views about the agency's proposal for the child's adoption and future upbringing, contact and anything else they would like the panel to know.

g) *the views of the person with whom the child is living about adoption;*

A record of the views of the child's current carer, such as a foster carer, about the agency's proposal for the child's adoption, contact and anything else they would like the panel to know.

h) *a summary of the child's state of health, his health history and any need for health care which might arise in the future;*

The agency's medical adviser should prepare this summary of the child's current and future health needs. **Regulation 16, paragraph 2**, requires the full health reports to accompany the report to the panel so the summary should outline the most significant health issues, including the risk of the child developing future illnesses or disabilities and provide advice as necessary.

i) *a summary of the educational history of the child, his educational needs, progress and development including whether any assessment in respect of any special educational needs under the Education Act 1996 has been made or needs to be made;*

The agency may prepare this summary or arrange for an educational professional to prepare or contribute to it depending on the nature and extent of the child's educational needs.

j) *the views of the adoption agency about the child's needs for contact and the arrangements the agency proposes to make for allowing any person contact with the child;*

The agency should have explained the consequences of the adoption process for contact during the counselling. It should have ascertained and recorded the views, where practicable, of the child, the child's parents, anyone with a current contact order under the Children Act 1989, and anyone else the agency considers is relevant, such as the child's current carer. Where it intends to make arrangements for contact, it should include information about this in the report to the panel.

k) *an assessment of the child's needs including an analysis of the options for permanence with respect to the child which have been considered by the agency and why placement for adoption is the preferred option for permanence.*

The report should conclude with an assessment of:

- the child's emotional and behavioural development and his emotional and behavioural needs. This information should be based on an assessment of the child's history and placement moves, observation of the child's development and behaviour and observations of how he interacts with his parents, carers, other adults, siblings, his wider family and his peers.
- an analysis of all the possible options for providing the child with permanence and stability, including placing the child with relatives. It must explain why the agency considers – in the light of all the information it has obtained – the preferred option for the child is adoption.

l) *any other information which the agency considers relevant.*

This might for example include the views of a person the agency considers relevant to the child, such as a relative or carer.

3.72 Regulation 16, paragraph 2, requires that the agency send the written report together with the other reports – medical and other health reports on the child and his parents – required under regulation 15 to the adoption panel.

3.73 Regulation 16, paragraph 3, requires that the adoption agency must obtain, so far as is reasonably practicable, any other relevant information which may be requested by the adoption panel.

REGULATION 17: THE ADOPTION PANEL

3.74 Regulation 17, paragraph 1, requires that the adoption panel must consider the case of every child referred to it by its adoption agency. The panel must make a recommendation to the agency as to whether or not the child should be placed for adoption. At the same time as making this recommendation, the panel may give advice to the agency about the agency's proposed arrangements for allowing any person contact with the child. In accordance with the timescales, the adoption panel should make its recommendation within two months of a review where adoption has been identified as the plan for the child.

3.75 In considering its recommendation, the panel is required by **Regulation 17, paragraph 2**, to have regard to the duties provided by Sections 1(2), 1(4), 1(5) and 1(6) of the Act (see Appendix D), and:

- a) to consider and take into account all the information and reports passed to it in accordance with regulations 12 to 16
- b) may request the agency to obtain any other relevant information which the panel considers necessary
- c) may obtain legal advice as it considers necessary in relation to the case

3.76 The panel should, in particular, consider the child's recorded views and record how it has taken them into account. Where a panel makes a recommendation that is contrary to the views expressed by the child, the panel should record its reasons for doing so.

REGULATION 18: ADOPTION AGENCY DECISION

3.77 Regulation 18, paragraph 1, requires that the adoption agency must take into account the recommendation of the adoption panel in coming to a decision about whether the child should be placed for adoption. In doing so, the agency decision maker should consider the minutes of the panel meeting and the reports submitted to the panel that considered the child's case and made the recommendation. In reading the minutes of the meeting, he should have particular regard to:

- the panel's reasons for making the recommendation
- any particular concerns that are recorded in the minutes

3.78 The agency decision maker's decision and the reasons for that decision should be recorded on the child's case record. Where the decision maker is minded to disagree with the adoption panel's recommendation, he should discuss this with another senior person in the agency who is not a member of the panel. The outcome of that meeting should also be recorded on the child's case record.

3.79 Regulation 18, paragraph 2, requires that no member of an adoption panel shall take part in any decision made by the adoption agency under paragraph 1. It is essential that the fundamental decision about the child's adoption is objective and impartial and should be taken by the agency decision maker, a senior person in the agency who is not a member of the panel that submitted the recommendation.

3.80 Where the child is less than six weeks old at the time the agency makes its decision as to whether the child should be placed for adoption, **regulation 18, paragraph 3**, applies. This is linked to paragraph 6 of this regulation, which sets out the steps the agency is required to take where the child is aged less than six weeks and the agency decides that he should be placed for adoption.

3.81 Where the agency decides that the child should be placed for adoption and paragraph 3 does not apply, **regulation 18, paragraph 4**, requires that the agency must notify, if their whereabouts are known to the agency, the following persons of its decision:

- the child's parents or guardian
- the child's unmarried father without parental responsibility – where regulation 14(4) applies.

3.82 Regulation 18, paragraph 4, also requires that, unless an application for a care order in respect of the child has not been disposed of, the agency should ascertain whether the parent or guardian is prepared:

- to give consent under section 19 of the Act to the child being placed for adoption with:
 - prospective adopters identified in the consent
 - or with any prospective adopters who may be chosen by the agency
- and at the same time whether the parent or guardian is prepared to consent to the making of a future adoption order under section 20 of the Act.

3.83 If the parent or guardian of the child indicates that he is prepared to consent to the making of a future adoption order under section 20 of the Act, **regulation 18, paragraph 5**, requires the agency to inform him in writing that:

- he may notify the agency in writing in that he does not wish to be informed of any application for an adoption order
- he may withdraw such a statement.

3.84 Placement with consent should be an entirely voluntary process, and agencies should ensure that they bring no pressure to bear on parents or guardians to give consent. The consequences of giving consent must be clearly explained by the agency to the parents, guardian, or their representative, as set out in the guidance for regulation 14.

3.85 The Act allows the parents to withdraw their consent to placement at any time up to the point where the prospective adopters apply for an adoption order, and the agency should explain this to the child's parents or guardian as part of their ongoing counselling, as required under regulation 14.

3.86 Regulation 18, paragraph 6, is connected to paragraph 3 of this regulation (where the child is less than six weeks old at the time the agency makes its decision that he should be placed for adoption). Paragraph 6 requires the agency to:

- notify the parents or guardian of its decision, if their whereabouts are known to the agency
- where regulation 14(4) applies²³, notify the father of the child of its decision
- obtain the consent in writing of the parents or guardian to the child being placed for adoption with any prospective adopter chosen by the agency. (This is 'informal consent')
- ascertain when the child reaches six weeks old whether the parents or guardian will consent under section 19 of the Act to the child being placed for adoption and at the same time consent to the making of a future adoption order under section 20 of the Act. These consents are formal and required to be witnessed by an officer of the Children and Family Court Advisory Support Service²⁴

3.87 Regulation 18, paragraph 7, requires the adoption agency to keep the written 'informal consent' signed by the parents or guardian on the child's case record in accordance with regulation 11. 'Informal consent' is not the same as section 19 consent and does not affect the parents' parental responsibility for the child nor remove their rights to have contact with the child. Paragraph 7 also stipulates that the agency may not place a child for adoption where the child is less than six weeks old until consent – informal consent – has been obtained.

3.88 The safeguards that all these regulations provide apply equally to cases where a child is relinquished for adoption and is aged six weeks or less. It is essential that the rights of the child's parents are respected, that they receive full information and counselling, that the adoption panel receives all the reports and information that it needs to be able to make a recommendation, and that the agency decides whether the child should be placed for adoption.

²³ Unmarried father without parental responsibility.

²⁴ See the guidance for regulation 19.

3.89 Preparation and planning can help to ensure that all the proper steps are taken with the minimum of delay between different stages of such placements. For example, where it is known before the child is born that the parents wish to relinquish the child, they should be given pre-birth counselling, which should be followed with post-birth information and counselling²⁵. Most of the social worker's report for the adoption panel may be prepared and prospective adopters may be identified and prepared by the agency. When the child is born and the reports for the panel are completed and submitted the panel should consider whether the child should be placed for adoption, and, if so, whether the child should be placed with the prospective adopters that the agency has selected. However, the agency should not place the child for adoption until the agency decision maker has decided that the child should be placed for adoption and informal consent has been obtained.

3.90 Regulation 32 sets out the agency's duties where a child is placed for adoption with consent and that consent is subsequently withdrawn.

REGULATION 19: APPOINTMENT OF A CAFCASS OFFICER

3.91 Regulation 19, paragraph 1, requires that where the parent or guardian of the child is prepared to consent to the placement of the child for adoption and, as the case may be, to consent to the making of a future adoption order, the adoption agency must:

- notify the Children and Family Court Advisory and Support Service (CAFCASS) in writing to request that arrangements be made for a CAFCASS officer to witness²⁶ the formal consent to placement or adoption
- and send with that request the information specified in Schedule 2.

3.92 The information the agency must send CAFCASS is:

- a copy of the child's birth certificate
- the name and address of the parents or guardian
- a chronology of the actions and decisions taken by the adoption agency with respect to the child
- confirmation by the agency that it has counselled and explained to the parent or guardian the legal implications of both consent to placement under section 19 of the Act and, as the case may be, to the making of a future adoption order under section 20 of that Act and provided him with written information about this
- such information about the parent or guardian or other information as the adoptive agency considers the officer of CAFCASS may need to know. For example, where the parents are consenting to placement with identified adopters, the relevant profile of the prospective adopters that has been shared with the parents

²⁵ Such circumstances are delicate and complex. BAAF have published practice guidance that provides detailed and helpful advice – *'Right from the Start: best practice in adoption planning for babies and other children, 2003'*

²⁶ The regulation refers to 'signification'.

3.93 In making the request for a CAFCASS officer to witness consent, the agency should write to the CAFCASS office that is nearest to the parents' or guardian's address. Court rules will provide for the appointment of CAFCASS officers to witness consent.

3.94 For consent to be effective, a CAFCASS officer will need to satisfy himself that the parents or guardian fully understand the consequences of giving consent and that they are willing to do so without condition²⁷. The CAFCASS officer will then need to witness the formal signing by the parent or guardian of the consent to placement form, which will be a prescribed form, sign the form himself and then notify the agency, including a copy of the prescribed form in his notification.

3.95 Regulation 19, paragraph 2, requires that the agency keep the signed consent form and any notice given to the agency that the parent or guardian does not wish to be informed of any application for an adoption order²⁸ on the child's case record.

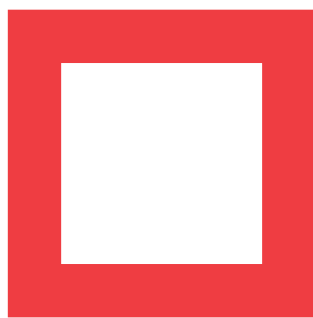
3.96 Where the CAFCASS officer is not satisfied that the parents wish to give their full consent, or has doubts that they fully understand its implications, or considers that they are not competent to give consent, he will be required by court rules to notify the agency. In these circumstances consent cannot be given.

3.97 Where formal witnessed consent is given, the agency is authorised to place the child for adoption, unless it is a baby placement where the child is less than six weeks old and has been relinquished for adoption. In the latter case, the agency may place the child but the placement is not authorised and the agency must seek formal consent from the parents when the child reaches the age of six weeks.

²⁷ Section 52(5) of the Act.

²⁸ Section 20(4)(a) of the Act.

Part 4



Duties of Adoption Agency in Respect of a Prospective Adopter

This part of the guidance explains:

Regulation 20: Informing and counselling prospective adopters	50
Regulation 21: Police checks	51
Regulation 22: Notifications	52
Regulation 23: Carrying out an assessment	53
Regulation 24: The adoption panel	56
Regulation 25: Adoption agency decision and notification	57
Regulation 26: Information for the Independent Review Mechanism	59

This should be read in conjunction with the guidance for assessing the suitability of prospective adopters – the Suitability of Adopters Regulations.

REGULATION 20: INFORMING AND COUNSELLING PROSPECTIVE ADOPTERS

4.1 Where persons interested in becoming adopters contact the adoption agency, it should welcome them and respond impartially and promptly. The agency should provide them with clear written information about the recruitment, assessment and approval process. Written information should be sent to them within five working days of their enquiry. To help applicants decide whether to proceed further, they should be given information about the:

- children, locally and across the country, who need adoptive families
- agency's expectations of adopters

4.2 The agency should provide applicants with details of the assessment and approval process. If the agency has specific selection criteria, for example where the agency's selection criteria is based on particular religious beliefs, applicants should be informed and, if necessary, be referred to another agency. Applicants must not be automatically excluded on the grounds of age, health or other factors, except in the case of certain criminal convictions, as set out in regulation 21 and their eligibility to apply for an adoption order under the Act²⁹.

4.3 Foster carers who make a formal application to adopt children in their care should receive information and preparation appropriate to their particular circumstances. Prospective adopters should be informed of their right to make representations and complaints.

4.4 Prospective adopters should also be given the opportunity to hear about preparation and support services available to adopters and to talk to others who have adopted children. The agency should keep prospective adopters informed of the progress of their application, so that they know what stage it has reached.

4.5 Where the adoption agency is considering whether a person may be suitable to be an adoptive parent, **regulation 20, paragraph 1(a)**, requires the agency to provide a counselling service for the prospective adopter. Counselling should enable the prospective adopters to consider whether they can meet the needs of an adopted child and whether adoption could meet their expectations. It should include an explanation of the role of adopters. It should take place on a one-to-one basis in a location where the prospective adopters can explore their feelings in relation to adoption and consider what adoption would mean for them and their family.

4.6 At an early stage, the prospective adopters 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 where these checks are unsatisfactory it will not be able to proceed with their application, but will only be permitted to disclose the specific reasons to the person who has the conviction or caution.

4.7 The agency should prioritise applications that are more likely to meet the needs of children waiting for adoption and this should also be made clear to applicants.

²⁹ Section 49. See Appendix D.

4.8 As part of the counselling of the prospective adopters, **regulation 20, paragraph 1(b)**, requires the agency to also explain the procedures for and the legal implications of placement for adoption and of adoption itself. This explanation must also include:

- placement by consent under section 19
- consent to the making of a future adoption order under section 20
- and placement orders

4.9 Regulation 20, paragraph 1(c), specifies that the information provided under paragraph 1(b) must also be given to the prospective adopters in writing.

4.10 Some prospective adopters will have already been given information and counselling so **regulation 20, paragraph 2**, stipulates that where the agency is satisfied that the requirements of paragraph 1 of this regulation have been properly discharged by another adoption agency, it is not required to carry them out.

REGULATION 21: POLICE CHECKS

4.11 The safety of the child is of paramount concern and it is vital that the background of prospective adopters is checked rigorously. Regulation 21 maintains the existing statutory requirement for the adoption agency to conduct police checks into the background of the applicants. Ideally these should be completed before the agency commences the detailed assessment of the prospective adopters but in practice this may not be possible and the assessment may need to proceed in parallel with the checks. However, the assessment should not be concluded until the checks have been completed.

4.12 Where an agency is not reasonably able to conduct police and other background checks on the prospective adopters, for example where they are from another country, it must decide whether it should conduct any other checks or take up additional references. It should then decide whether it has sufficient information with which to proceed with the prospective adopters' application. If it decides to proceed with the application, it should make a record of its decision and its reasons, and place this on the prospective adopters' case record.

4.13 Regulation 21, paragraph 1, requires that the agency must obtain:

- in respect of the prospective adopter, an enhanced criminal record certificate within the meaning of section 115 of the Police Act 1997³⁰ including the matters specified in subsection (6A) of that section
- and in respect of any other adult member of his household, an enhanced criminal record certificate under section 115 of that Act

³⁰ 1997 c.50.

4.14 Regulation 21, paragraph 2, requires that the agency may not consider a person suitable to be an adoptive parent if he or any adult member of his household has:

- been convicted of a specified offence committed at the age of 18 or over, or
- been cautioned by a constable in respect of any such offence which, at the time the caution was given, he admitted

4.15 Regulation 21, paragraph 3, provides that a “specified offence” means:

- an offence against a child
- an offence specified in Schedule 3 of the regulations
- an offence involving indecent photographs of children under the age of 16. (This is an offence contrary to section 170 of the Customs and Excise Management Act 1979³¹ in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (prohibitions and restrictions relating to pornography)³² where the prohibited goods included indecent photographs of children under the age of 16.)
- any other offence involving bodily injury to a child, other than an offence of common assault or battery

4.16 The expression “offence against a child” has the meaning given to it by section 26(1) of the Criminal Justice and Court Services Act 2000³³.

4.17 There may be other offences or cautions that might lead the agency to consider that the applicants are not suitable. A detailed explanation of these is set out in Appendix A.

REGULATION 22: NOTIFICATIONS

4.18 Where the checks conducted by the adoption agency under paragraph 2 of regulation 21 provide information that indicates that the applicant is not suitable to be an adoptive parent, **Regulation 22** requires the agency to notify the applicant in writing as soon as possible. The notification must specify the conviction, or as the case may be, the caution.

4.19 As a recipient of information disclosed under the Police Act 1997, the adoption agency must ensure that it does not pass that information to persons not authorised to receive it under section 124 of the 1997 Act. Section 124 makes unauthorised disclosure an offence.

4.20 In circumstances where the application is a joint application, the agency should only inform the applicant 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 as a consequence of information obtained from the checks the joint application cannot proceed.

31 1979 c.2.

32 1979 c.35.

33 2000 c.43.

4.21 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.

4.22 Where the checks lead to the agency obtaining information about another adult member of the household, and that information obtained indicates that the agency should terminate the application, the agency is again restricted from disclosing the conviction or caution that prevents the application proceeding. It may inform the other adult member of the household and suggest that he inform the applicants but it may not do so itself. In such a case, the agency should counsel the applicants that its checks, other than those that concern them directly, indicate that the agency should not process their application.

REGULATION 23: CARRYING OUT AN ASSESSMENT

4.23 The prospective adopters' social worker should check whether any issues were identified during the preparation and training of the prospective adopters, and if so, should ask them about this at the beginning of their assessment. This might be issues that it would be helpful for the social worker to clarify, or issues that might have a bearing on their further preparation or suitability.

4.24 In conducting their assessment, the social worker should analyse and consider the information they ascertain from and about the prospective adopters. The approach should be objective and inquiring: information should be evaluated and its accuracy and consistency checked.

4.25 Following the agency's counselling, preparation and checks of the prospective adopters, and where the agency considers that they may be suitable, it is required by **regulation 23, paragraph 1**, to set up a case record, placing on it any information obtained under these regulations. This refers in particular to regulations 20 to 26.

4.26 Regulation 23, paragraph 2, requires the agency to obtain the information about the prospective adopters that is set out in Part 1 of Schedule 4. In summary this broadly covers:

- Information about the prospective adopter:
 - identity, date of birth and contact details
 - domicile or habitual residence
 - income
- History:
 - religion
 - race, cultural and linguistic background
 - education
 - employment

- family details
- Relationships:
 - nature and extent of the prospective adopters' current relationship, if any
 - details of previous relationship
 - capacity to relate to others
 - previous child care experience, including where they have children of their own
- Views:
 - of others of the prospective adopters capacity to adopt. For example, all the referees should be interviewed. Where the prospective adopters have adult children, they should also be interviewed.
 - of prospective adopters' about their reasons for wishing to adopt
- References and other information:
 - identity and contact details of the three referees
 - contact details of prospective adopters' GP
- Home and neighbourhood:
 - assessment of home and environment.
 - details of others in prospective adopters' household
- Agency's assessment:
 - assessment of capacity to care for and support an adopted child throughout his childhood
- Other:
 - any other information which the agency considers may assist the panel. This might, for example, include information about the physical description of the prospective adopters if the agency considers that this is relevant for a particular reason.

Part 1 of Schedule 4 should always be referred to for the full details. Appendix A provides practice guidance on the assessment of this information.

4.27 Regulation 23, paragraph 3, requires the agency to obtain written reports about the prospective adopters. The agency must acquire a report on each of the following:

- the health of the prospective adopters from a registered medical practitioner. It is recommended that this should be the prospective adopters' own GP where practicable. This report must cover the information in Part 2 of Schedule 4, unless the agency has a report which covers the same information and this report was completed within 6 months of the agency setting up of the case record for the prospective adopters. The agency should ask the doctor whether in his opinion the prospective adopters are healthy enough to adopt. In summary, the information in Part 2 of Schedule 4 is broadly:
 - a family health history
 - if applicable, reasons for inability to have children
 - past health history
 - if applicable, obstetric history
 - any present illness and treatment
 - full medical examination
 - any other relevant information that the agency considers may assist the panel.
- the premises where the prospective adopters intend to live with any child who might be adopted by them.
- each of the interviews with the referees nominated by the prospective adopters. The prospective adopters are required to nominate three referees and not more than one of these may be a relative.

Part 2 of Schedule 4 should always be referred to for the full details.

4.28 Where the adoption agency is not the local authority in the area where the prospective adopters have their home, **regulation 23, paragraph 4(a)**, requires that the agency must obtain a written report about them from that authority.

4.29 Where the adoption agency is the local authority in the area where the prospective adopters have their home, **regulation 23, paragraph 4(b)**, requires that the authority must ascertain whether its social services department holds any information about the prospective adopters.

4.30 Regulation 23, paragraph 5, requires the adoption agency to prepare a written report for the adoption panel that must include:

- the details of the prospective adopters
- a summary of the prospective adopters home and their neighbourhood
- the written report of the interviews with the prospective adopters' referees

- a summary of the state of health of the prospective adopters
- the agency's assessment of the prospective adopters' suitability to be adoptive parents
- any other observations of the agency on the matters referred to in regulations 20 and 21.

4.31 The social worker who assesses the prospective adopters should draft the report for the adoption panel, highlighting any issues of concern, and submit it to his team manager. The manager should arrange for a second person to visit the prospective adopters to discuss any issues of concern or where clarification is needed. The second person could be the team manager or another experienced worker in the team. A visit by another person provides the opportunity for securing a second opinion on the prospective adopters and their assessment before the report to the panel is finalised.

4.32 When this report has been completed the adoption agency is required by **paragraph 6 of regulation 23** to notify the prospective adopters that their application is to be referred to the adoption panel. At same time, the agency must send the prospective adopters a copy of the agency's report, except that this copy must not include any of the information obtained from the interviews with the nominated referees, or any third party information given in confidence.

4.33 Regulation 23, paragraph 6, also requires the agency to invite the prospective adopters to reply with any observations in writing on the agency's report within 14 days. The starting date for this period is the date that the notification was sent.

4.34 At the end of the 14 day period, or sooner if the prospective adopters' observations are received earlier, the adoption agency is required by **regulation 23, paragraph 7**, to pass the report on the prospective adopters to the adoption panel, together with all relevant information obtained by the agency under this regulation. Where the adoption panel requests any other relevant information, **regulation 23, paragraph 8**, requires the agency to obtain it, so far as is reasonably practicable.

REGULATION 24: THE ADOPTION PANEL

4.35 The adoption panel is required by **regulation 24, paragraph 1**, to consider the suitability of prospective adopters referred to it by the adoption agency. Paragraph 1 also requires the panel to make a recommendation to that agency as to whether prospective adopters are suitable to be adoptive parents. Paragraph 1 is subject to **regulation 24, paragraph 2**, which requires that in considering its recommendation the adoption panel must consider and take into account all information and reports passed to it by the agency, in accordance with regulation 23(7). The agency should provide the adoption panel with all the necessary information within six weeks of the completion of the prospective adopters' assessment report.

4.36 Regulation 24, paragraph 2, also provides that the adoption panel may:

- request the adoption agency to obtain any other relevant information which the panel considers necessary
- obtain legal advice as it considers necessary in relation to the case

4.37 Regulation 24, paragraph 3, requires the adoption panel to invite the prospective adopters to meet the panel, before making any recommendation. In inviting the prospective adopters, the panel should make it clear that the purpose of the meeting with the panel is to provide scope both for the panel and the prospective adopters to discuss and clarify their reasons for wanting to adopt, and anything else that either party considers relevant to the application.

4.38 The invitation should also make it clear that the prospective adopters are not obliged to meet with the panel and that if they decide to decline the invitation this in itself can never be considered as a reason for recommending that they are unsuitable to adopt. The agency should at this time also provide the prospective adopters with advice, as appropriate, about the meeting, including information about how it would be conducted.

4.39 Where the prospective adopters attend to meet the panel, the agency should explain to them who will be present from the panel and their individual panel roles. This advice should include talking through the meeting process, and explaining that this is also an opportunity for them to ask questions.

REGULATION 25: ADOPTION AGENCY DECISION AND NOTIFICATION

4.40 When the adoption agency receives the recommendation of the adoption panel about the suitability of the prospective adopters to be adoptive parents, the agency is required by **regulation 25, paragraph 1**, to consider this recommendation before reaching a decision on this matter. In doing so, the agency decision maker should consider the minutes of the panel meeting and the reports submitted to the panel that considered the prospective adopters' application and made the recommendation. In reading the minutes of the meeting, he should have particular regard to:

- the panel's reasons for making the recommendation
- any particular concerns that are recorded in the minutes.

4.41 The agency decision maker's decision and the reasons for that decision should be recorded on the prospective adopters' case record. Where the decision maker is minded to disagree with the adoption panel's recommendation, he should discuss this with another senior person in the agency who is not a member of the panel. The outcome of that meeting should also be recorded on the prospective adopters' case record.

4.42 Regulation 25, paragraph 2, requires that no member of an adoption panel shall take part in any decision made by the adoption agency under paragraph (1). It is essential that the fundamental decision about the approval of prospective adopters is objective and impartial, and should be taken by the agency decision maker, a senior person in the agency who is not a member of the panel that submitted the recommendation.

4.43 Where the adoption agency decides to approve the prospective adopters as suitable adoptive parents, it is required by **regulation 25, paragraph 3**, to notify them in writing of its decision.

4.44 Where the adoption agency considers that the prospective adopters are not suitable to be adoptive parents, **regulation 25, paragraph 4**, requires the agency to:

- notify the prospective adopters in writing that it proposes not to approve them as suitable to be adoptive parents. This is a “qualifying determination”.
- send with its notification its reasons, and a copy of the recommendations of the adoption panel if these are different
- advise the prospective adopters that they may:
 - submit any representations they wish to make to the agency, or
 - apply to the independent review panel for a review of the qualifying determination within 28 days. The period of 28 days should commence on the day that the agency sends the notification to the prospective adopters.

4.45 Where the prospective adopters do not apply to the independent review panel or make any representations to the adoption agency within the 28 day period, **regulation 25, paragraph 5**, requires the adoption agency to make its decision as to whether or not to approve the prospective adopters and to notify them in writing of its decision together with the reasons for that decision.

4.46 Where the adoption agency receives representations from the prospective adopters within the 28 day period, **regulation 25, paragraph 6**, provides that the agency may refer the case together with all the relevant information to the adoption panel for further consideration. Where the agency chooses to refer the case to the adoption panel, **regulation 25, paragraph 7**, requires the panel to consider the case and to make a fresh recommendation to the adoption agency as to whether the prospective adopters are suitable to be adoptive parents. The panel chairman should decide whether the panel should meet to consider the representations.

4.47 Regulation 25, paragraph 8, requires the adoption agency to make a decision on the case. But where the case has been referred by the agency to the adoption panel to consider representations or the prospective adopters have applied to the independent review panel for a review of the qualifying determination, this paragraph also requires the agency to make the decision only after taking into account any recommendation of the adoption panel or, as the case may be, of the independent review panel. In doing so, the agency decision maker should consider any minutes or views of the adoption panel or the independent review panel. In reading the minutes of meetings or views, he should have particular regard to:

- the reasons for the recommendation
- any particular concerns.

4.48 As soon as possible after making the decision, the adoption agency is required by **regulation 25, paragraph 9**, to notify the prospective adopters in writing of its decision. Where the agency decides that the prospective adopters are not suitable to be adoptive parents, this paragraph also requires the agency to:

- state its reasons for that decision
- and to set out the adoption panel's recommendation, if this is different from the agency's decision.

REGULATION 26: INFORMATION FOR THE INDEPENDENT REVIEW PANEL

4.49 Where the adoption agency receives a notification from the independent review panel that the prospective adopters have applied for a review of the agency's qualifying determination, **regulation 26, paragraph 1**, requires the agency to send to the independent review panel – within 10 working days – the following information, as specified in paragraph 2:

- the agency's report about the prospective adopters to the adoption panel, as referred to in regulation 23(5)
- any written representations made by the prospective adopters in accordance with regulation 25(6).
- any other reports or information sent by the adoption agency to the adoption panel
- the minutes of the adoption panel, its recommendations and the reasons for its recommendations
- the notification, together with the agency's reasons for making its qualifying determination, as sent by the adoption agency to the prospective adopters in accordance with regulations 25(4)(a) and (b).

4.50 A 'working day' is any day other than Saturday or Sunday, Christmas Day, Good Friday or a day which is a bank holiday. This is set out in **regulation 26, paragraph 3**.

Part 5



Duties of Adoption Agency in respect of Proposed Placement of Child with Prospective Adopters

This part of the guidance explains:

Regulation 27: Proposed placement	62
Regulation 28: The adoption panel	67
Regulation 29: Adoption agency decision	69

REGULATION 27: PROPOSED PLACEMENT

5.1 Where an agency is considering the placement of a child for adoption, it will probably 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 range of detailed information it has collected and assessed. In order to propose to the adoption panel a placement with a couple or with one prospective adopter, the agency will need to undertake a matching and placement process which involves a dialogue with the prospective adopters and the child, where appropriate.

5.2 The agency is responsible for considering and comparing alternative prospective adopters for a particular child. In its report to the panel on the proposed placement the agency should not put forward optional prospective adopters: this is unfair to the prospective adopters and unsettling for the child, and wastes valuable time and resources for little benefit.

5.3 Where the agency has identified a prospective adopter or a number of prospective adopters with the potential to care for the child in an adoptive placement, the agency should approach them to seek their initial views. It is therefore recommended that the agency should prepare a child profile report which is to be given to the prospective adopters when they are visited by the child's social worker and the adoption social worker for an initial discussion about the child.

5.4 Prospective adopters should have received a general explanation of the introduction and placement procedures as part of their initial preparation for assessment but the agency should also remind them of its introduction and placement procedures as part of this meeting, and this should be supplemented with written information. Where it is an interagency placement that is being considered, the prospective adopters' agency should explain the introduction and placement procedures used by the child's agency.

5.5 The child's profile report should provide brief information about the child's behaviour and needs, his family circumstances, his appearance, why he was taken into care or is being given up for adoption, and his current care status. It should not contain identifying information and should be shared on the understanding that the prospective adopters will return it to the agency when the agency requests it.

5.6 Where the prospective adopters subsequently indicate that they are interested in considering the child in more detail, and the agency considers that placing the child with them is the preferred placement, the agency should provide them with the child's matching report. Where more than one set of prospective adopters indicate that they are interested in having the child placed with them, the agency should again consider and compare their capacities to meet the child's needs in an adoptive placement and decide which placement would best meet the child's needs. **Regulation 27, paragraph 1**, requires that where the agency is considering placing the child with a particular prospective adopter, it should provide them with a report about the child and any other information the agency considers relevant. This report, the child's matching report, should include the information set out in Schedule 5.

5.7 The child's matching report should be shared with the prospective adopters if they agree in writing that they will keep it confidential and that they will return it to the agency when the agency requests it. Prospective adopters need this information if they are to be able to understand and care successfully for the child.

5.8 In summary the information listed in schedule 5 is:

1. *Details of the child.*

Basic information about the child such as identity, gender, date and place of birth, and nationality.

2. *Photograph and physical description.*

Height, weight, colour of eyes and hair, and distinguishing features.

3. *Details of the child's family circumstances and home environment.*

Information about the child's parents, their past and current relationship with the child, their age, nationality, culture and linguistic background, their employment and other interests, and religious beliefs; and also information about the child's siblings, if any, and his wider family, and the circumstances of the child's care and family home. The information should not identify the persons described here, other than the child. For example, their names, identifying descriptions or addresses should not appear in this document.

4. *Chronology of child's care.*

A list of the key events and dates in the child's care, such as when he became looked after, or was placed with foster carers.

5. *The child's behaviour, how he interacts with other children and relates to adults.*

Information based on an assessment of the child's history and placement moves, observation of the child's development and behaviour, and observations of how he interacts with his parents, carers, other adults, siblings, his wider family, and his peers.

6. *Whether the child is looked after by the local authority and if so the reasons and why the child is to be placed for adoption.*

Information about the current arrangements for his care, and the reasons why the agency considers or has decided that he should be placed for adoption.

7. *Details of the child's state of health, his health history and any need for health care which might arise in the future.*

This should summarise the child's health history, and his current and future health needs, including the risk of the child developing future illnesses or disabilities. The basis for this information should be the health summary submitted, or to be submitted, to the adoption panel for its consideration of whether the child should be placed for adoption. This should be updated as necessary.

8. *Details of the child's educational history, a summary of his progress to date and whether he has been or is likely to be assessed for special educational needs under the Education Act 1996.*

The basis for this information should be summary for the report to the adoption panel submitted, or to be submitted, to the adoption panel for its consideration of whether the child should be placed for adoption. This should be updated as necessary.

9. *The child's wishes and feelings in relation to adoption, so far as possible.*

A record of child's views, which the agency should have been ascertained, where it was reasonably practicable for the agency to do so, during the child's counselling. His views about what his adoption would mean to him, his wishes for his future upbringing, contact and anything else the child would like prospective adopters to know.

10. *The wishes and feelings of his parent, guardian or other relative, so far as possible.*

A record of the parents' or guardian's views which should have been ascertained, where it was reasonably practicable for the agency to do so, during their counselling. Their views about the agency's proposal for the child's adoption and future upbringing, contact and anything else they would like prospective adopters to know.

Schedule 5 should always be referred to for the full details.

5.9 Where the agency has provided the prospective adopters with the child's matching report, it should arrange a subsequent meeting with them. This is to allow the prospective adopters time to consider and reflect on the details of the matching report. **Regulation 27, paragraph 2**, requires that the agency must:

- meet with the prospective adopter to discuss the proposed placement and the report – the matching report – and any other information the agency considers relevant
- and provide a counselling service for, and any further information to, the prospective adopter as required.

5.10 The prospective adopters may need further time to consider the report and the agency may need to provide them with further information, as it considers necessary. **Regulation 27, paragraph 3**, requires that the agency must ascertain the views of the prospective adopters about the:

- proposed placement
- child's needs for adoption support services
- the agency's proposals for allowing any person contact with the child.

5.11 Where the agency has complied with paragraphs (2) and (3), the prospective adopters should be asked to confirm that they are prepared to agree to the proposed placement. If confirmation is obtained, **regulation 27, paragraph 4**, applies. This requires that, in such cases as it considers appropriate, the agency must counsel the child and tell him in an appropriate manner, having regard to his age and understanding, about the prospective adopters, their family circumstances and their home environment and ascertain the child's views about the proposed placement.

5.12 Although it may be the case that the adoption panel is likely to endorse the agency's proposed placement, it is possible that the panel may not. The agency should therefore take care to explain to the prospective adopters and the child that the proposed placement is subject to the adoption panel's recommendation and the agency's decision. **Regulation 27, paragraph 4**, therefore stipulates that the agency must counsel the child and tell him in an appropriate manner "in such cases as it considers it appropriate". Where the agency is unable to ascertain the child's views, the reasons for this should be recorded on the child's case record.

5.13 Regulation 27, paragraph 5, requires that where the adoption agency considers that the proposed placement should proceed the agency must:

- consider the needs of the child and the needs of the prospective adopter for adoption support services. As the agency should have ascertained the views of the prospective adopters with respect to the child's adoption support needs, the agency should be well placed to combine this with its knowledge of the child and the capacity of the prospective adopters to prepare a plan which incorporates adoption support.
- consider the arrangements for allowing any person contact with the child.
- prepare a report on the proposed placement which must include:
 - the agency's reasons for proposing the placement
 - the information obtained under paragraphs 2 to 4. This is broadly the views of the prospective adopters on the proposed placement and the child's needs for adoption support, and where appropriate, the child's views on the proposed placement.

- the agency's proposals for the provision of adoption support services, and its arrangements for allowing any person contact with the child
- any other relevant information
- refer the proposal to place the child for adoption with the particular prospective adopter to the adoption panel and send to the panel the written placement report together with the agency's reports referred to in regulations 16³⁴ and 23³⁵.

Issues to consider when making the matching decision:

- Whether the placement will meet the developmental needs of the child over the course of their childhood and beyond
- The child's views about what this placement has to offer him, where the child is of sufficient age and understanding
- The parenting capacity of the prospective adopter/s to meet the developmental needs of the child
- The developmental capacity of the adoptive parent/s to meet the child's needs over time
- The support that the adoptive parent/s will need to help them develop this capacity
- The birth parent/s wishes in relation to the child's placement
- Whether the emerging criteria for adoptive parent/s are likely to be deliverable, taking into account the role of consortia arrangements and the Adoption Register
- If there is no possibility of meeting the child's needs as presently formulated, whether there is some other formulation that might increase the possibility of a match.

Source: Department of Health Practice Guidance, 2001

5.14 Regulation 27, paragraph 6, limits the circumstances where the agency may refer its proposal to place a child for adoption to the adoption panel to ensure that other agencies are consulted where they have made some of the adoption arrangements or have parental responsibility for the child. In the latter case, the agency with parental responsibility must also agree to the placement proposal. For example, agency A, the agency which is arranging the proposed placement, may only submit a placement proposal to the adoption panel if it has:

- consulted another adoption agency, agency B, about the proposed placement where that agency's decision maker has decided:
 - that the child should be placed for adoption

³⁴ The report for the panel where the agency considers adoption is the preferred option for permanence.

³⁵ The assessment report for the adoption panel where it is considering whether or not to recommend that the prospective adopters be approved as suitable to adopt.

- or that the prospective adopter is suitable to be an adoptive parent
- consulted another adoption agency, agency C, where that agency has parental responsibility for the child and agency C agrees with the proposal.

5.15 Regulation 27, paragraph 7, requires that where an adoption agency proposes to place a child for adoption with a particular prospective adopter the agency must:

- set up case records in any case where it has not already set up such records
- and place on the appropriate record any information, report, recommendation or decision referred to it by another adoption agency together with any other information to be sent to the adoption panel under this regulation in respect of the prospective adopters.

5.16 Where an agency places information about a child that the prospective adopters have been matched with in the prospective adopters' case record, it should ensure that this is clearly recorded and identified in the case record. This is to ensure that where the prospective adopters are subsequently matched with another child the information about the children does not become intermingled or merged.

5.17 Regulation 27, paragraph 8, requires that the agency should obtain, so far as is reasonably practicable, any other relevant information that the adoption panel may request about the proposed placement.

REGULATION 28: THE ADOPTION PANEL

5.18 Where the adoption agency refers a proposed placement to the adoption panel, **Regulation 28, paragraph 1**, requires that the adoption panel consider the agency's proposal. The basis for this consideration will be the agency's report to the panel. Paragraph 1 also requires the panel to make a recommendation to the agency as to whether that particular prospective adopter would be a suitable adoptive parent for that particular child.

5.19 As part of its consideration, the panel is required by **regulation 28, paragraph 2**, to have regard to the duties imposed on the agency by sections 1(2), (4), and (5) of the Act. These are set in Appendix D. Paragraph 2(a) of this regulation also requires the adoption panel to consider and take into account all information and the reports passed to it in accordance with regulation 27(5). **Regulation 28, paragraphs 2(b) and 2(c)**, provide that the adoption panel may:

- ask the adoption agency to obtain any other relevant information which the panel considers necessary
- obtain legal advice as it considers necessary in relation to the case.

5.20 Regulation 28, paragraph 3(a), requires the adoption panel to consider the need of the child or the prospective adopter or the prospective adopter's family for adoption support services. It also allows the panel to make a recommendation to the agency about the provision of adoption support services for the proposed placement. This provides the panel with the flexibility to exercise its discretion as not all cases will require a recommendation for the provision of adoption support services.

5.21 Regulation 28, paragraph 3(b), provides that the panel may give advice to the adoption agency about the arrangements it proposes to make for allowing any person contact with the child. Where the agency proposes to make arrangements, it should include information about this in its report to the panel. Part 8 of these regulations makes further provision for contact. The agency needs to have scope to tailor the contact arrangements in accordance with the child's changing needs and changing circumstances as the plan for the child's adoption is developed. Therefore the panel is allowed to provide the agency with advice about the agency's contact arrangements rather than making a firm and fixed recommendation.

5.22 Regulation 28, paragraph 4, restricts the circumstances in which an adoption panel may make recommendations on the agency's proposed placement of the child. This is intended to ensure that either the panel has already recommended the child for adoption at the same meeting, or an agency has decided that the child should be placed for adoption; and that the panel has already recommended the approval of the prospective adopters at the same meeting, or an agency has decided that they are suitable to adopt.

5.23 Therefore paragraph 4 stipulates that the panel may only make the recommendation about the placement proposal:

- if that recommendation is to be made at the same meeting of the adoption panel at which a recommendation has been made that the child should be placed for adoption
- or an adoption agency's decision maker has decided, in accordance with regulation 18, that the child should be placed for adoption.

5.24 And the panel's recommendation about the placement proposal is to be made either:

- at the same meeting of the panel at which a recommendation has been made that the prospective adopter is suitable to be an adoptive parent
- or an adoption agency's decision maker has decided, in accordance with regulation 25, that the prospective adopter is suitable to be an adoptive parent.

REGULATION 29: ADOPTION AGENCY DECISION

5.25 Regulation 29, paragraph 1, requires that the adoption agency must take into account the recommendation of the adoption panel in coming to a decision about the proposed placement. In doing so, the agency decision maker should consider the minutes of the panel meeting which considered the child's case and made the recommendation. In reading the minutes of the meeting, he should have particular regard to:

- the panel's reasons for making the recommendation
- any particular concerns that are recorded in the minutes.

5.26 The agency decision maker's decision and the reasons for that decision should be recorded on the child's case record and on the prospective adopters' case record. Where the decision maker is minded to disagree with the adoption panel's recommendation, he should discuss this with another senior person in the agency who is not a member of the panel. The outcome of that meeting should also be recorded on the child's case record and on the prospective adopters' case record.

5.27 Regulation 29, paragraph 2, requires that no member of an adoption panel shall take part in any decision made by the adoption agency under paragraph (1). It is essential that this important decision is taken by the agency decision maker, a senior person in the agency who is not a member of the panel that submitted the recommendation.

5.28 Regulation 29, paragraph 3, requires that after the agency has made its decision it must notify the prospective adopters. It should do this orally and in writing.

5.29 Regulation 29, paragraph 4, requires that as soon as possible³⁶ after making its decision, the agency must notify:

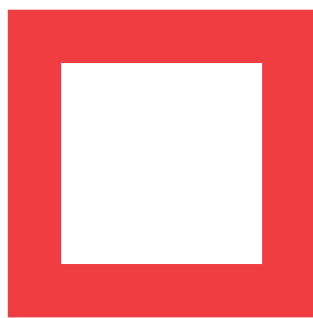
- the parents or guardian, if their whereabouts are known
- where regulation 14(4) applies, the father of the child. This is where the father does not have parental responsibility for the child and the agency considers that it is appropriate to provide him with counselling and ascertain his views.

5.30 The agency's notification should be given orally, where practicable, and confirmed in writing.

5.31 Where the agency decides that that proposed placement should proceed, **regulation 29, paragraph 5**, requires the agency to explain its decision to the child in an appropriate manner and having regard to the child's age and understanding. The agency should also explain its reasons for making the decision to the child and continue to provide a counselling service to the child, as required by regulation 13.

³⁶ See the guidance on timescales in Part 2.

Part 6



Placement and reviews

This part of the guidance explains:

Regulation 30: Placing the child for adoption	71
Regulation 31: Reviews	73
Regulation 32: Withdrawal of consent	75

REGULATION 30: PLACING THE CHILD FOR ADOPTION

6.1 Where the adoption agency has decided, under regulation 29, to place a child with prospective adopters and the agency is authorised to place the child for adoption or the child is less than 6 weeks old, **regulation 30, paragraph 1**, applies. This places duties on the agency in respect of the arrangements for the child's placement.

6.2 Regulation 30, paragraph 2, requires the agency to provide the prospective adopter – at least 7 days before the child is placed for adoption – with a placement plan. The placement plan is a new concept. The prospective adopters will already have been provided with the child's matching report and the agency should have ascertained their views with respect to the proposed placement before submitting its placement proposal report to the adoption panel.

6.3 The intention of the placement plan is to provide the prospective adopters with a written proposal before the child is placed with them, and the requirement to do so seven days before the placement date is to allow them time to consider the agency's plan. The prospective adopters may of course indicate to the agency on receipt of the plan that they wish the placement to proceed immediately. The placement plan is to comprise the information set out in Schedule 6. This is:

1. *Date on which it is proposed to place the child for adoption with the prospective adopter.*
2. *Whether the prospective adopters' parental responsibility for the child is to be restricted and if so the extent to which it is to be restricted.*
3. *The adoption support services the agency has decided to provide for the adoptive family.*
4. *The arrangements which the adoption agency has made for allowing any person contact with the child.*

6.4 Where the child already lives with the prospective adopters, such as foster carers, **regulation 30, paragraph 3**, requires the local authority to provide the prospective adopters with the placement plan in respect of the child within 7 days of the decision to place the child for adoption with him.

6.5 Before the child is placed, the agency should arrange for the prospective adopters to meet with the child on at least one occasion in an appropriate setting. For example, the agency could arrange for the prospective adopters and the social worker to see the child while he is in a play group or with his foster carers. Following the meeting or meetings, the agency should ascertain the views of the prospective adopters and, where appropriate, the child. **Regulation 30, paragraph 4**, requires that where the prospective adopters confirm that they wish to proceed with the placement, the agency may place the child with them. It is recommended that the agency seek some form of written confirmation from the prospective adopters.

6.6 Regulation 30, paragraph 5, requires that where the child already lives with the prospective adopters, the local authority is to notify them in writing of the date on which the child is placed with them for adoption by the authority.

6.7 Where the agency has received confirmation from the prospective adopters and the agency decides to proceed as planned to place the child, **regulation 30, paragraph 6**, requires that before placing the child with the prospective adopters the agency must send notifications in writing to:

- the prospective adopter's general practitioner and send with that notification a written report of the child's health history and current state of health
- the local authority (if that authority is not the adoption agency) and Primary Care Trust in whose area the prospective adopter resides and send with that notification a copy of the placement plan

- the local education authority in whose area the prospective adopter resides and send with that notification a copy of the placement plan and information about the child's educational history and whether he has been or is likely to be assessed for special educational needs under the Education Act 1996.

6.8 Provided the agency has sent these written notifications it may then proceed with the placement. For example, the agency does not need to delay the placement while awaiting confirmation of receipt of the notification from the prospective adopters' GP.

6.9 Regulation 30, paragraph 7, requires the agency to notify the prospective adopter in writing of any change to the placement plan. This provides for the placement plan to be changed where, for example, the prospective adopters request changes and the agency agrees to alter the plan.

REGULATION 31: REVIEWS

6.10 It is essential that the child's case is reviewed regularly to ensure that the agency is clear whether the child should still be placed for adoption, whether currently placed or not. Reviews are a key part of considering the child's needs, welfare, progress and development, and whether any changes need to be made to meet those needs or assist development.

6.11 The review obligations in these regulations apply where:

- a) the agency has authority to place the child for adoption
- b) the child is placed for adoption where he is aged less than 6 weeks

Prior to either (a) or (b), the Children Act review regulations apply. For example, where:

- a looked after child is being considered for adoption
- a child is accommodated by a voluntary adoption agency under section 59 of the Children Act
- the agency decision maker has decided that the child should be placed but the agency does not yet have authority to place the child

6.12 Where an adoption agency has authority to place a child for adoption but the child is not yet placed, **regulation 31, paragraph 1**, applies. This is linked to the obligations under paragraph 3 of this regulation, which requires the adoption agency to review the child's case. The agency must review the case:

- not more than 3 months after the date on which the agency first has authority to place
- and not more than 6 months after the date of the previous review

6.13 This duty continues until the child is placed for adoption. When the child is placed for adoption, **regulation 31, paragraph 2**, applies. This requires the agency to review the child's case:

- not more than 4 weeks after the date on which the child is placed for adoption ("the first review")
- no more than 3 months after the first review

- and not more than 6 months after the date of the previous review

6.14 This duty continues until such time as the child is removed from the prospective adopter or the adoption order is made. When the child is placed for adoption, **regulation 31** also places an obligation on the agency to conduct visits. **Paragraph 5** stipulates that the agency:

- visit the child and the prospective adopter within one week of the placement and on such other occasions as the agency considers necessary
- ensure that written reports are made of such visits
- provide such advice and assistance to the prospective adopter as the agency considers necessary.

6.15 Where an agency is reviewing the child's case, **regulation 31, paragraph 6**, requires that so far as reasonably practicable the agency must ascertain the views of:

- the child, having regard to his age and understanding
- if the child is placed for adoption, the prospective adopter
- any other person the agency considers relevant. Where the agency considers it appropriate to the particular case, it should seek the views of the child's parents or wider members of his family.

6.16 The social worker should talk to the child without the prospective adopters being present, if the child is of sufficient age and understanding.

6.17 As part of each review, **regulation 31, paragraph 7**, requires the agency to consider:

- whether the child should still be placed for adoption, whether he is placed or not
- the child's needs, welfare, progress and development, and whether any changes need to be made to meet his needs or assist his development
- the existing arrangements for contact, and whether they should continue or be modified
- where the child is placed for adoption, the arrangements for the exercise of parental responsibility for the child, and whether they should continue or be modified
- the existing arrangements for the provision of adoption support services and whether they should continue or be modified
- in consultation with the appropriate agencies, the arrangements for meeting the child's health care needs and educational needs.

6.18 Where the child is subject to a placement order and has not been placed for adoption at the time of the first 6 months review, **regulation 31, paragraph 8**, requires the local authority to review the child's case:

- to establish why the child has not yet been placed for adoption
- to consider whether the child should still be placed for adoption and, if not, whether the local authority should apply to revoke the placement order

- and if the local authority considers that an application should not be made to revoke the placement order, the local authority should consider what further steps it should take to place the child for adoption.

6.19 Regulation 31, paragraph 9, makes provision for the agency to explain how it will conduct the review, and for recording views, details of meetings and decisions. **Paragraph 9(a)** requires the agency to set out the arrangements for the review of each case in writing and to give this to the child, where reasonably practicable having regard to his age and understanding, to the prospective adopters, and to any other person the agency considers relevant. The agency should also explain these arrangements orally to the child, having regard to his age and understanding.

6.20 Paragraph 9(b) requires the agency to ensure that it records in writing and places on the child's case record the following information:

- the details obtained about the child's case, including the views expressed by the child
- details of any meeting arranged by the agency to consider any aspect of the review of the case
- details of any decision made in the course of or as a result of the review.

6.21 When a review has been completed, the agency is required by **regulation 31, paragraph 10**, to inform the persons set out below of the outcome of the review and of any decision taken by the agency as result of the review, so far as is reasonably practicable:

- the child, where the agency considers he is of sufficient age and understanding
- the prospective adopters
- any other person whom they consider ought to be notified

6.22 This information should also be explained orally, including to the child where he is of sufficient age and understanding.

REGULATION 32: WITHDRAWAL OF CONSENT

6.23 The Act allows the child's parents or guardian to withdraw their consent to the child's placement for adoption at any time up to the point where the prospective adopters apply for an adoption order.

6.24 Regulation 32, paragraph 1, applies where consent, given under section 19(1), or section 19(1) and 20(2) of the Act, is withdrawn in accordance with section 52(8) of the Act.

6.25 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 advanced 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 a prescribed form, which will be provided for in forthcoming court rules, or by notice given to the agency.

6.26 Where the adoption agency is a local authority, on receipt of the prescribed form or notice given under Section 52(8), the authority is required by **regulation 32, paragraph 2**, to immediately review its decision to place the child for adoption. In reviewing its decision, the agency should consider all the relevant information and with the child's welfare as the paramount consideration decide what action to take. In particular, the authority must consider Section 22 of the Act, which provides for those circumstances where the authority must apply for a placement order.

6.27 Paragraph 2 requires that where the authority, in complying with Sections 22(1) to (3), decides to apply for a placement order in respect of the child, it must notify:

- the parent or guardian immediately
- if regulation 14(4) applies³⁷, the child's father
- if the child is placed for adoption, the prospective adopters with whom the child is placed.

6.28 An application for a placement order would prevent the child's removal until such time as the court had decided whether to make the placement order. Where the agency is a voluntary adoption agency, it may inform the relevant local authority social services department, which may then take whatever action it considers necessary under the Children Act, such as applying for an Emergency Protection Order.

6.29 Regulation 32, paragraph 3, therefore requires that where the adoption agency is a voluntary adoption agency, it must immediately consider whether it is appropriate to inform the local authority in whose area the child is living.

6.30 Sections 30 to 35 of the Act place restrictions on the removal of children where the agency has been authorised to place the child for adoption or the child is placed for adoption and is less than six weeks old. The Act makes it an offence for anyone other than the agency to remove a child where the child:

- is placed for adoption with the parents' consent under Section 19 of the Act
- is placed and either the child is less than 6 weeks of age or the agency has at no time been authorised to place the child for adoption
- is not yet placed with prospective adopters and is being accommodated by the local authority and the authority has applied for a placement order
- is not yet placed but the agency is authorised under Section 19 of the Act or would be if consent is not withdrawn.

6.31 Appendix D provides further details of the Act's restrictions on the removal of a child placed for adoption.

³⁷ Unmarried father without parental responsibility

Part 7



Records

This part of the guidance explains:

Regulation 33: Requirement to place reports etc. on case record	77
Regulation 34: Storage of case records	78
Regulation 35: Confidentiality of case records	80
Regulation 36: Access to case records and disclosure of information	80
Regulation 37: Transfer of case records	84
Regulation 38: Preservation of case records	84
Regulation 39: Application of regulations 36 to 38	85

REGULATION 33: REQUIREMENT TO PLACE REPORTS ETC. ON CASE RECORD

7.1 Regulation 33 provides that where a case record has been opened in respect of a child or a prospective adopter, the adoption agency must place on the appropriate case record any report, recommendation or decision made by the agency with respect to the child or the prospective adopter.

7.2 There will be separate case records for the child and for the prospective adopter(s). The case record for the child should have been opened under regulation 11 when adoption was identified as the plan for the child at the statutory review. Where the child is looked after by the local authority or is provided with accommodation by a voluntary adoption agency³⁸, the agency should transfer any information which is required under these regulations into the child's case record.

³⁸ The regulations in this Part refer to the voluntary adoption agency as a 'registered adoption society' – see definition in Section 2(2) of the Act.

7.3 The case record for the prospective adopter should have been opened under regulation 23, when the prospective adopter(s) have demonstrated that they wish and are eligible to proceed and the adoption agency considers that they may be suitable.

7.4 Regulation 12 requires the adoption agency to obtain information about the child, his family and others. The information to be obtained on the child is set out in Part 1 of Schedule 1. The information to be obtained on the child's family and others is set out in Part 2 of Schedule 1. The adoption agency is also required by regulation 15 to obtain information on the child's health including a written report on the child's state of health by a registered medical practitioner.

7.5 The adoption agency is also required to obtain certain information in respect of the prospective adopter(s). This will be the information which establishes that they are eligible³⁹ to adopt and the information that the agency is obliged to obtain under regulations 21 (police checks) and 23 (assessing whether or not the prospective adopter(s) are suitable to adopt and preparing a report for the adoption panel.)

7.6 It is essential that the case records for the child and the prospective adopter(s) present an accurate and clear record of any reports, recommendations or decisions made by the agency. For example, records of the outcomes of counselling, notes of meetings, any reports submitted to the adoption panel, the adoption panel's minutes and recommendations, and the agency's decisions. It is essential that any recommendation or decision with respect to the child or the prospective adopter is properly recorded and placed on the appropriate case record.

7.7 For those children adopted after the full implementation of the Act, the child's case record will become subject to the disclosure regime set out in sections 56-65 of the Act. In the event of an application for disclosure of information – which may occur many years after the adoption order was made – it is essential the case record is both complete and presented in a clear and coherent order. Separate draft guidance will be issued for consultation on access to information.

REGULATION 34: STORAGE OF CASE RECORDS

7.8 Regulation 34 requires the adoption agency to ensure that the case records for the child and the prospective adopter are at all times kept in secure conditions. It also requires the adoption agency to have in place appropriate measures to safeguard against theft, unauthorised disclosure, loss or destruction of, or damage to, the case record or its contents.

³⁹ Section 49 of the Act.

7.9 This regulation covers the storage and safeguarding of the case records, including any information about the adoption that may be stored electronically or digitally, or by other means. The main case records for the child and the prospective adopter are likely to be paper-based records comprising reports, legal and medical papers, papers compiled for the adoption panel, the panel's minutes and recommendations and the agency's record of its actions and decisions.

7.10 The child's case record may also contain cards or letters from child's relatives and a life storybook. It may also contain information stored on other media such as photographic or audio-visual material. Even though this material may be kept separately from the main case record it still comprises part of the case record and the adoption agency is under the same duty in respect of its storage and safekeeping. Where it is not possible to keep this other information with the case record, this should be noted on the record and an explanation of where it is being kept should be provided.

7.11 Regulation 34 contains a general requirement to keep the case records for the child and the prospective adopter in secure conditions. This means that the case records – whether or not in active use – should be stored in a lockable security cabinet or secure room so that the agency restricts access only to those entitled to have access: a member of the adoption agency's staff and any person as provided for by regulations 36 and 37.

7.12 The adoption agency must also have in place measures to ensure, as far as is reasonably practicable, that the conditions in which the case records are stored minimise the risk of accidental damage or damage caused by fire or water. The adoption agency should keep its security arrangements under review, and any breaches in the security of its records should be acted on promptly and measures taken to prevent a re-occurrence. This should be recorded in the agency's policies and procedures document. The duties placed on the adoption agency by this regulation also apply to any case records that are, for whatever reason, not retained on the agency's premises.

7.13 Where sensitive information from the case record for the child or the prospective adopter is stored electronically or digitally, the adoption agency must ensure that appropriate systems are in place to safeguard this material. Confidential information stored on computers should always be password protected and where information from the case record is stored on disk, CD-rom or microfiche these items must always be securely stored when not in use.

7.14 Regulation 34 covers those case records where the adoption process is ongoing. Where the adoption order has been made, the requirements in respect of the storage and safeguarding of case records will be set out in the forthcoming draft guidance for the Access to Information (Adopted Persons) (England) Regulations.

REGULATION 35: CONFIDENTIALITY OF CASE RECORDS

7.15 Regulation 35 provides that any information obtained or reports, recommendations or decisions made under these regulations must be treated by the adoption agency as confidential. It places a general duty on the adoption agency to maintain the confidentiality of any information it acquires or creates in the course of arranging a child's adoption. Confidential information will be information about the child, his family, the prospective adopter(s) or anybody else involved in the adoption, such as the child's social worker or counsellors. It may also cover any information generated by the agency, such as reports, recommendations, or decisions. The exceptions to this confidentiality requirement are set out in **regulation 36**.

7.16 As well as ensuring that case records are kept in secure conditions (see regulation 34 above), the adoption agency should ensure that sensitive information is not transmitted outside the agency (by fax or e-mail) unless its confidentiality can be assured.

REGULATION 36: ACCESS TO CASE RECORDS AND DISCLOSURE OF INFORMATION

7.17 Regulation 36, paragraph 1, provides for the circumstances in which an adoption agency is required to provide access to its case records or disclose such information in its possession. It places a general duty on the adoption agency to provide access to its case records or to disclose information in its possession in certain circumstances. Where a request for access to case records or disclosure of information falls within the remit of this regulation, the adoption agency has no discretion to deny access to the case record or to refuse to disclose the information requested. *This regulation only applies to cases where the adoption process is ongoing and the adoption order is still to be made by the court.*

7.18 The circumstances where the adoption agency is required to provide access to its case records or disclosure of information are as follows:

(a) *to those holding an inquiry under section 81 of the 1989 Act or section 17 of the Act (inquiries) for the purposes of such an inquiry;*

An inquiry under section 81 of the 1989 Act or section 17 of the Act may seek access to case records or disclosure of information in relation to a matter before the inquiry. Access to adoption case records or disclosure of information from the case record is to be provided on request by any person acting for the inquiry. The inquiry must be able to show that access to case records or disclosure of information from case records is necessary for the purposes of taking forward the inquiry.

Where the adoption agency has concerns about allowing access to the case record or disclosing identifying information to the inquiry, for example if the inquiry is being held in public, it may seek the prior written agreement of the inquiry that it will maintain the confidentiality of this information.

(b) to the Secretary of State;

There may be circumstances in which the Secretary of State may seek access to case records or disclosure of information from the case records. These will include where Government seeks information from an adoption agency in connection with the issuing of a certificate of suitability and eligibility in inter-country adoption cases; or where the Secretary of State needs to obtain information from the agency in order to decide whether to establish an inquiry under the Act or the Children Act.

(c) to the registration authority;

Access to, or disclosure from, the case record will be necessary for the purposes of the functions conferred on the registration authority by Parts II and III of the Care Standards Act 2000.

Part II of the 2000 Act provides for applications by an adoption agency for registration with the registration authority, and for refusals and cancellations of registrations. So the agency may be required by the registration authority to disclose information in connection with a decision by the registration authority to cancel a voluntary adoption agency's registration, or in relation to an appeal against such a decision by the registration authority.

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. Section 45 of the 2000 Act provides the registration authority with the powers to require a local authority to provide any information relating to its adoption service in connection with an inspection. **Regulation 36, paragraph 1(c)**, therefore places a corresponding duty on the adoption agency to disclose the information requested by the registration authority.

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

Regulation 36, paragraph 1(d), provides for circumstances where a local commissioner (i.e. the Local Government Ombudsman) is investigating a complaint involving a local authority adoption agency and needs access to the adoption case records in order to do so. It will only apply to local authority adoption agencies, as the local commissioner has no powers to investigate the activities of registered voluntary adoption agencies. Where the local commissioner requests access to case records or disclosure of information for the purposes of investigating a complaint, the local authority is required by this regulation to provide the information sought.

A local authority may, under s29(7) of the 1974 Act, refuse to disclose certain information to a local Commissioner or Ombudsman where the authority would not be required to disclose it to the High Court. A local authority may also seek to serve a statutory notice on a local commissioner or ombudsman under section 32(3) of the 1974 Act. Such a notice would preclude him from disclosing to anyone else any information that has been disclosed to him during the course of an investigation.

(e) 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(4) of the Children Act 1989 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 the Adoption Agencies (Miscellaneous Amendments) Regulations 2003 require voluntary adoption agencies to establish a complaints procedure. Regulation 11 of those regulations requires the VAA to establish a written procedure and regulation 12 provides for complaints to be fully investigated.

For the purposes of adoption, a service user will be any person listed in section 3(1) of the 2002 Act. Where an independent person has been appointed for the purpose of the consideration of any representations, or complaints, in relation to an adoption, he is likely to need access to the appropriate case records or disclosure of information from the case record. **Regulation 36, paragraph 1(e)** places a duty on the adoption agency to disclose the information requested by the person appointed by the agency to consider the representations or complaints.

(f) to the persons and authorities referred to in regulations 18, 26, 29 and 30 to the extent specified in those regulations;

(g) to an officer of CAFCASS for the purpose of the discharge of his duties under the Act;

Section 102 of the Act sets out the duties of the CAFCASS officer, and section 103 provides that he may exercise a right of access to adoption agency records to fulfil his duties under the Act, which will include:

- witnessing consent, where a parent signs the prescribed form signifying consent to the placement of the child for adoption, and also to advance consent to the making of a future adoption order.
- where a local authority applies for a placement order under sections 21 or 22, safeguarding the child's interests.
- witnessing consent to adoption for the making of the adoption order, for example in non-agency cases where the step parent or foster parents apply to adopt

- where there is an application for an adoption order, safeguarding the child's interests where the court orders his appointment.
- submitting reports to the court relating to the child's welfare, where the court orders.

(h) to a court having power to make an order under the Act or the 1989 Act.

7.19 Regulation 36, paragraph 1(h), requires the adoption agency to provide access to the case record, or disclosure from the case record, on request to the court dealing with the adoption proceedings. 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.

7.20 Regulation 36, paragraph 2, provides the adoption agency with a discretion to provide such access to its records and disclose such information in its possession as it thinks fit for the purposes of carrying out its functions as an adoption agency. Whereas regulation 36(1) sets out the circumstances where an adoption is required to provide access or disclosure, this regulation provides that the adoption agency may provide access or disclosure, where it considers it appropriate, to outside bodies or individuals.

7.21 Where the agency is exercising its discretionary power to disclose information or to provide access to the case record, it should obtain the prior written agreement of the person to whom the information is to be made available that it will remain confidential, and that it will be returned to the agency as requested. For example, where the agency discloses information about the child in the report which is passed to prospective adopters as part of the matching stage. The prospective adopter(s) should be asked to sign an agreement that they will keep the information confidential and that they will return it to the agency if they or the agency subsequently decide not to proceed with the child's placement.

7.22 Regulation 36, paragraph 3, requires the adoption agency to keep a written record of any access provided or disclosure made under this regulation. It is essential that the adoption agency maintains an accurate record of the person(s) to whom discretionary access or disclosure was provided, together with brief supporting reasons and the date on which access or disclosure took place. The adoption agency may have cause to rely upon this information at a later date, for example in the event of a legal challenge in respect of information that the agency had disclosed using this discretionary power.

REGULATION 37: TRANSFER OF CASE RECORDS

7.23 Regulation 37, paragraph 1, provides for an adoption agency to transfer a copy of a case record, or part of the record, to another adoption agency when it considers this to be in the interests of the child or prospective adopter to whom the case record relates. This regulation is intended to facilitate the sharing of information in inter-agency cases, for example where one adoption agency has assessed and approved the prospective adopter but where the child is being placed for adoption by another agency. In such cases it is important that the two adoption agencies are able to share information so that the child's agency can assess whether it is appropriate to suggest a match between the child and the prospective adopter(s).

7.24 Where a copy of the case record, or part of the record, is transferred to another adoption agency by virtue of this regulation, the adoption agency is required by **regulation 37, paragraph 1**, to keep a written record of the transfer. This record should include the date on which the transfer or disclosure took place, the reasons for the transfer together with details of the person to whom the case records were transferred.

7.25 Regulation 37, paragraph 2, sets out the circumstances in which a voluntary adoption agency is permitted to transfer its original case records and the indexes to those records.

7.26 A voluntary adoption agency which intends to cease, or where it is no longer registered, must either – with the prior approval of the registration authority – transfer its case records to another adoption agency, or transfer its case records to:

- i. the local authority in whose area the society's principal office is situated, or
- ii. a new voluntary adoption agency, where this formed by the merger of the original voluntary adoption agency with another voluntary adoption agency.

7.27 Regulation 37, paragraph 3, requires that where an adoption agency receives case records under the circumstances set out above in (i) or (ii), it is to inform the registration authority in writing. The adoption agency receiving the case records automatically takes on the statutory duties in respect of their storage, confidentiality and preservation.

REGULATION 38: PRESERVATION OF CASE RECORDS

7.28 Regulation 38 provides the adoption agency with a discretion to keep its case records for such a period as it considers appropriate. It applies only to the child's case record in respect of a plan for adoption that did not conclude with an adoption order being made, or where the case record is about the prospective adopter(s) and the agency did not consider them suitable. This regulation applies to paper based information and to information stored electronically or digitally. Where the child's plan for permanence changes from adoption to foster care or to Special Guardianship, for example, then the adoption case record should be transferred to the looked after child's care plan.

7.29 When an adoption agency decides to destroy case records or the indexes to those case records, if any, the agency must treat this as confidential waste and dispose of it accordingly. Sensitive information relating to persons involved in an adoption should be shredded prior to disposal.

REGULATION 39: APPLICATION OF REGULATIONS 36 TO 38

7.30 Regulation 39 provides that regulations 36 to 38 will not apply to case records where an adoption order has been made. Where an adoption order is made, the Access to Information (Adopted Persons)(England) Regulations will – when introduced – apply in respect of the preservation of the case record, transfer of case records, access to and disclosure from the case record. Where the adoption order is made after the full implementation of the Act, the case records will become subject to the regime for disclosure set out in sections 56-65 of the Act and supporting regulations and guidance.

Part 8



Miscellaneous

This part of the guidance explains:

Regulation 40: Modification of the Children Act 1989 in relation to adoption	88
Regulation 41: Parental responsibility of the parents or guardian for the child – child not placed for adoption	89
Regulation 42: Parental responsibility of the prospective adopters – child placed for adoption	90
Regulation 43: Parental responsibility – records	90
Regulation 44: Contact	90
Regulation 45: Contact - supplementary	92

REGULATION 40: MODIFICATION OF THE 1989 ACT IN RELATION TO ADOPTION

8.1 Where a local authority is authorised to place a child for adoption or a child who has been placed for adoption by a local authority is less than six weeks old, **regulation 40, paragraph 1** applies, and **paragraph 2** of this regulation modifies the Children Act 1989 so that certain parts of section 22^{40&41} shall not apply or are changed. Regulation **40, paragraph 2**, provides that:

- section 22(4) (b) of the Act shall not apply. This removes the general obligation on the authority to ascertain the wishes and feelings of the child's parents before making any decision with respect to the child. These regulations make particular provision for ascertaining the views of the parents during the adoption process.
- section 22(4)(c) of the Act shall apply as if for that sub-paragraph there were inserted "(c) any prospective adopter with whom the local authority has placed the child for adoption." This requires that where the authority has placed a child with prospective adopters it is to ascertain their wishes and feelings before making any decision with respect to the child.
- section 22(5)(b) of the Act shall apply as if for the words "(4)(b) to (d)" there were inserted "(4)(c) and (d)". This requires the authority to consider the wishes and feelings of the prospective adopters where the child has been placed with them. These regulations make particular provision for considering the views of the parents during the adoption process.

8.2 Regulation 40, paragraph 2, also modifies paragraphs 15⁴² and 21⁴³ of Schedule 2 of the 1989 Act so that they shall not apply.

8.3 Where a voluntary adoption agency⁴⁴ is authorised to place a child for adoption or a child who has been placed for adoption by the agency is less than six weeks old, **regulation 40, paragraph 3**, applies, and **paragraph 4** of this regulation modifies the Children Act 1989 so that certain parts of section 61⁴⁵ shall not apply or are changed. **Regulation 40, paragraph 4**, provides that:

- section 61(2)(a) of the Act is to have effect in relation to the child whether or not he is accommodated by or on behalf of the voluntary adoption agency.

40 General duty of local authority in relation to looked after children.

41 The modifications to the provisions in Section 22 do not change the requirements for the authority to:

- ascertain the wishes and feelings of the child and any other person the authority considers to be relevant
- give due consideration to the wishes and feelings of the child and any other person the authority considers to be relevant.

42 Promotion and maintenance of contact between the child and family.

43 Contributions towards the maintenance of children looked after by local authorities.

44 A registered adoption society as defined in section 2(2) of the Adoption and Children Act 2002.

45 Duties of voluntary organisations.

- section 61(2)(b) of the Act shall not apply. This removes the general obligation on the agency to ascertain the wishes and feelings of the child’s parents before making any decision with respect to the child. These regulations make particular provision for ascertaining the views of the parents during the adoption process.
- section 61(2)(c) of the Act 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.” This requires that where the agency has placed a child with prospective adopters it is to ascertain their wishes and feelings before making any decision with respect to the child.

PARENTAL RESPONSIBILITY

8.4 Where an adoption agency receives authority to place a child for adoption⁴⁶, the agency is able to determine the extent to which the parents and prospective adopters may exercise parental responsibility⁴⁷. This enables the agency to decide how best to share parental responsibility for the particular child, according to his needs as his case moves through the adoption process. For example, it may be appropriate in some placements for the prospective adopters’ parental responsibility to increase over time as the child settles into the placement and they are more able to make decisions on matters such as the child’s education and health.

REGULATION 41: PARENTAL RESPONSIBILITY OF THE PARENTS OR GUARDIAN FOR THE CHILD – CHILD NOT PLACED FOR ADOPTION

8.5 Where an adoption agency is authorised to place a child for adoption but the child is not yet placed for adoption, **regulation 41, paragraph 1**, applies, and **paragraph 2 of regulation 41** requires the agency to consider the extent to which the parents’ or guardian’s parental responsibility for the child is to be restricted. As part of that consideration, paragraph 2 also requires the agency to take into account the views of:

- the child, if he is of sufficient age and understanding
- and the views of the parent or guardian, where it is reasonably practicable to do so.

8.6 Regulation 41, paragraph 3, requires that where the adoption agency decides to restrict the parental responsibility of the parents or guardian for the child, it must notify the parent or guardian, if their whereabouts are known, in writing of its decision and of any alteration to those arrangements. The agency should also seek to explain this decision, and the reasons for the decision, to them orally, where this is practicable.

⁴⁶ When the parents give their formal consent under Section 19 to the placement of their child for adoption or the court makes a placement order.

⁴⁷ Sections 25(1) and 25(2) of the Adoption and Children Act 2002

REGULATION 42: PARENTAL RESPONSIBILITY OF THE PROSPECTIVE ADOPTERS FOR THE CHILD – CHILD PLACED FOR ADOPTION

8.7 Where an adoption agency is considering placing a child for adoption with a particular prospective adopter, **regulation 42, paragraph 1**, applies, and **paragraph 2 of regulation 42** provides that the adoption agency must consider the extent to which the prospective adopters' parental responsibility for the child should be restricted, while the child is placed with them. As part of that consideration, paragraph 2 also requires the agency to take into account the views of:

- the child, if he is of sufficient age and understanding
- and the views of the prospective adopter.

8.8 Where the adoption agency decides to place the child with the prospective adopters, **regulation 42, paragraph 3**, requires the agency to set out in the placement plan the extent to which the prospective adopters' parental responsibility for the child is to be restricted, while the child placed with them for adoption.

8.9 The adoption agency is required to keep the arrangements for the exercise of parental responsibility under review in accordance with regulation 31(7)(d).

REGULATION 43: PARENTAL RESPONSIBILITY - RECORDS

8.10 Regulation 43 requires the adoption agency to keep a record of the views of the child, the parents or guardian and the prospective adopters in respect of the arrangements for the exercise of parental responsibility for the child. It also requires the agency to keep a record of any agency decision in respect of the exercise of parental responsibility and the outcome of any review of that decision on the child's case record.

8.11 Where the agency is not able to ascertain the views of the child, the parents or guardian, it should record this and the reasons on the child's case record.

REGULATION 44: CONTACT

8.12 As part of its provision of counselling, regulation 14 requires the adoption agency to ascertain the wishes and feelings of the child's parents or guardian, or the unmarried father without parental responsibility, or anybody else that the agency considers relevant to the child, such as another relative or carer. The agency should also explain that where the agency has authority to place the child for adoption the Children Act contact obligations are replaced by the contact arrangements provided for by these regulations.

8.13 As well as explaining the way contact is provided for under these regulations, the adoption agency should also explain the right that parents, the guardian and others have to apply for a contact order. Parents, the guardian, other relatives and other person may apply to the court for contact orders under Sections 26 (2) and 26 (3) of the Act.

8.14 Where the adoption agency decides that the child should be placed for adoption, **regulation 44, paragraph 1**, applies, and **regulation 44, paragraph 2**, requires the agency to consider what arrangements it should make for allowing any person contact with the child when the agency is authorised to place the child for adoption. These are “the contact arrangements”. Paragraph 2 is subject to paragraph 3.

8.15 In considering and coming to a decision in respect of the contact arrangements, **regulation 44, paragraph 3**, requires the agency to:

- take into account the wishes and feelings of the persons specified in regulation 13. These are the child, the child’s parents or guardian, or other relative or person connected with the child, such as person with a current contact order.
- take into account any advice given by the adoption panel in accordance with regulation 17(1). This is where the panel is considering a child’s case and is to make a recommendation as to whether or not the child should be placed for adoption. Regulation 17, paragraph 1, also provides that the panel may at the same time give advice to the agency in respect of the agency’s proposed contact arrangements for the child.
- and have regard to the considerations set out in section 1(2) of the Adoption and Children Act 2002. This section of the Act provides that the paramount consideration of the court or adoption agency must be the child’s welfare, throughout his life. At all times it must be the child’s welfare and best interests that decide any arrangements for contact. There should be no presumption that there must be contact, and indeed it could be harmful in some cases.

8.16 Regulation 44, paragraph 4, requires the adoption agency to notify the following persons of the contact arrangements:

- the child, if he is of sufficient age and understanding
- if their whereabouts are known, the parents or guardian, and where regulation 14(4) applies the father⁴⁸ of the child
- any person in whose favour there was contact order under section 8 of the 1989 Act or an order under section 34 of the 1989 Act⁴⁹
- any other person the agency considers appropriate.

8.17 Where an adoption agency decides that a child should be placed for adoption with particular prospective adopters, **regulation 44, paragraph 5**, requires the agency to review the contact arrangements in the light of the views of the prospective adopters and any advice given by the adoption panel under regulation 28(3)(b) – where the panel is considering a proposed placement.

⁴⁸ Unmarried father without parental responsibility.

⁴⁹ Parental contact with children in care.

8.18 If the adoption agency proposes to make any change to the contact arrangements which affects any person mentioned in paragraph 4, **regulation 44, paragraph 6**, requires the agency to seek the views of that person and the views of the child if he is of sufficient age and understanding. Paragraph 6 also requires the agency to take those views into account in deciding what arrangements it should make for allowing any person contact with the child while he is placed for adoption with the prospective adopters.

8.19 Regulation 44, paragraph 7, requires the adoption agency to set out the contact arrangements in the placement plan. The information that is to be set out in the placement plan is listed in Schedule 6.

8.20 Regulation 44, paragraph 8, requires the adoption agency to keep the contact arrangements under review. Regulation 31, paragraph 7(c), also requires the agency to review the contact arrangements as part of the reviews of the child's case.

REGULATION 45: CONTACT – SUPPLEMENTARY

8.21 Where the adoption agency decides under section 27(2) of the Act to refuse to allow contact with the child that may be required by an order made under section 26 of the Act, **regulation 45, paragraph 1**, places certain obligations on the agency. Paragraph 1 requires that as soon as the agency has made its decision to refuse contact provided for by section 26 it is to notify the persons specified in paragraph 3. Paragraph 1 also requires the agency to inform them orally and in writing of the decision, and this information is to include the date on which the decision was, the reasons for the decision and the duration of the period for which contact will be denied.

8.22 The terms of a contact order made under section 26 of the Act may be changed by agreement between the adoption agency and any person for whom the order makes provision for contact with the child. This is subject to the conditions provided by **regulation 45, paragraph 2**:

- where the child is of sufficient age and understanding, subject to his agreement
- where the child is placed for adoption, subject to consultation, before the agreement is reached, with the prospective adopters with whom the child is placed for adoption
- written confirmation by the agency to the persons specified in paragraph 3 of the terms of that agreement.

8.23 Regulation 45, paragraph 3, specifies the persons referred to in paragraphs 1 and 2:

- the child, if the agency considers he is of sufficient age and understanding
- the person in whose favour the order under section 26 was made or, as the case may be, the person the agency allowed contact with the child
- if the child is placed for adoption, the prospective adopters.



Assessing Prospective Adopters – Guidance for the Suitability of Adopters Regulations

This part of the guidance explains:

Regulation 1: Citation, commencement and application	93
Regulation 2: Matters to be taken into account when assessing suitability	94
Regulation 3: Stability and permanence of a couple	98

This should be read in conjunction with the guidance which sets out the duties of the adoption agency in respect of the prospective adopter – Part 4 of the Adoption Agency Regulations. This guidance includes cross references to the guidance in the Adoption Agency Regulations.

CITATION, COMMENCEMENT AND APPLICATION

1 Regulation 1 sets the date on which these regulations will come into force and makes it clear that they apply to England only.

INTERPRETATION

2 In the Suitability of Adopters Regulations:

“the Act” means the Adoption and Children Act 2002

3 This draft guidance is intended to explain and amplify the Suitability of Adopters Regulations (the Suitability Regulations) which are about assessing the suitability of people to be approved as adopters. The guidance sets out all of the information, written reports and observations on these which must be taken into account by an adoption agency when they are determining the suitability of adopters or making a report about the suitability of adopters to an adoption panel. This guidance should be read in conjunction with the guidance to the Adoption Agency Regulations and with the detailed practice guidance on the assessment of adopters which can be found at Appendix A.

SUITABILITY TO ADOPT A CHILD

4 The Suitability of Adopters Regulations must be read in conjunction with Part 4 of the Adoption Agency Regulations and their accompanying guidance, which set out the duties of an adoption agency in respect of a prospective adopter. Regulations 20, 21 and 23 of the Adoption Agency Regulations set out a number of requirements which the agency must undertake in respect of anyone applying to be approved as an adopter. These requirements will result in information being gathered and reports obtained about the prospective adopter.

5 The Suitability Regulations are about the agency using the information and the content of the reports, together with any observations on these, in the process of making an assessment of and determining the suitability of the prospective adopter to be approved by the adoption agency following a recommendation from an adoption panel.

6 **Regulation 2** sets out the list of matters which must be taken into account by the adoption agency when it is assessing whether a person is suitable to become an adopter in accordance with:

- Regulation 23(5)(e) of the Adoption Agency Regulations – the preparation of report to the adoption panel, and
- Regulation 25 of the Adoption Agency Regulations – the agency decision as to whether to make a determination to approve a prospective adopter

7 **Regulation 2(a)** refers to Regulation 20 of the Adoption Agency Regulations which requires the agency to provide counselling and information to any person who approaches the agency enquiring about adoption. The enquirer will be provided with information about children who need adoptive families, both locally and nationally, procedures in relation to placement for adoption and the legal implications of adoption.

8 Having received information, the enquirer is then offered counselling, an iterative process during which he can reflect on and consider what he has heard or read, its implications for him and whether he wishes to proceed with the formal application process. The agency will need to make a note of these discussions and this record may contain information which is relevant to their consideration of the suitability of that person to adopt. For example, the process of counselling may reveal that the enquirer was abused as a child by his birth parents and now feels that what he has learnt from that experience may be of use in caring for an adopted child. His past history and the continuing impact on him will be relevant to any consideration of his suitability to adopt. Information obtained as a consequence of this counselling must be taken into account.

9 Regulation 2(b) refers to Regulation 21(1) of the Adoption Agency Regulations which requires the agency to obtain an enhanced criminal record certificate in respect of the prospective adopter and other members of his household who are aged 18 or over. The certificates may contain details of convictions or cautions for various offences. Regulation 21(2) of the Adoption Agency Regulations states that the adoption agency may not consider someone to be suitable to be an adoptive parent if he or any member of his household aged 18 or over has been convicted of a specified offence or been cautioned and admitted a specified offence. The specified offences are listed in Regulation 21 of the Adoption Agency Regulations.

10 If the criminal record certificate shows that the prospective adopter has been convicted of a specified offence, the agency should inform him that he is not suitable to be an adoptive parent and is required to notify him in writing as soon as possible in accordance with Adoption Agency Regulation 22. If he has been cautioned for a specified offence or convicted of other offences which are not on the specified list, then the agency should discuss with the prospective adopter the circumstances of the offence before deciding whether the conviction or caution render the prospective adopter unsuitable to be an adoptive parent.

11 Regulation 2(c) requires the agency to take into account, when determining suitability or making a report about the suitability of a prospective adopter, the written reports about the prospective adopter's health, the premises where he intends to live with an adopted child and the interviews with each of his nominated referees. In relation to these, the requirement to obtain the report is imposed by regulations 23(3) (a), (b) and (c) of the Adoption Agency Regulations, while the use to be made of the contents of the reports is set out in the Suitability Regulations.

12 Regulation 2(c)(i) requires the adoption agency to take into account the written report from the registered medical practitioner about the health of the prospective adopter which has been obtained under Regulation 23(3)(a) of the Adoption Agency Regulations, unless such a report has already been made within six months of setting up the adoption case record. The report, which must cover the matters specified in Part 2 of Schedule 4 of the Adoption Agency Regulations and the relevant part of the guidance to those regulations, includes a number of items of fundamental importance to any consideration of suitability to adopt, for example, family health history with details of serious physical or mental illness and inherited or congenital disease. The agency will wish to explore the contents of the health report in detail with the prospective adopter to try and ascertain whether he will have a level of good health to enable him to parent an adopted child throughout childhood and adult life.

13 Regulation 2(c)(ii) requires the agency to take into account the written report about the premises where the prospective adopter intends to live with any child who might be adopted by him and this report must have been obtained by the agency in accordance with Regulation 23(3)(b) of the Adoption Agency Regulations. The report written by the social worker who is assessing the prospective adopter covers a detailed description of the home in relation to the potential needs of an adopted child; its size, location, layout, state of repair and decoration, how it is or could be made suitable for a child, play space, garden and an assessment of its safety.

14 Regulation 2(c)(iii) requires the agency to take into account the written reports of each of the interviews with the persons nominated by the prospective adopter to provide personal references for him in accordance with Regulation 23(3)(c) of the Adoption Agency Regulations. In accordance with the guidance to the Adoption Agency Regulations the agency should obtain three personal references for the prospective adopter, of which not more than one may be a relative. Referees should receive a letter asking for their views as to the suitability of the prospective adopter to be approved to adopt a child and, in particular, their views as to whether a child placed with the prospective adopter would be safe in their home. The social worker will then visit the referees to explore further their views as to the capacity of the prospective adopter to care for a child who may have experienced abuse and neglect. When taking into account the views of any referee, consideration must be given as to how well that person understands the task of adoptive parenting.

15 Regulation 2(d) requires the agency to take into account a written report from the local authority where the prospective adopter lives. Regulation 2(d)(i) applies where the adoption agency is not the local authority where the adopter lives. If this is the case the agency must take into account the report from the local authority in whose area the prospective adopter has his home. This report will be obtained in accordance with the Adoption Agency Regulations. Regulation 2(d)(ii) applies where the adoption agency is the local authority where the prospective adopter lives. This is in accordance with the Adoption Agency Regulations.

16 The report should provide any information about the prospective adopter from the local authority records which is relevant to the assessment of suitability to adopt. This is likely to be information about any previous experience in caring for children as a childminder, foster carer or in relation to a previous adoption application. The report may also refer to the Social Services Department's records where, for example, the prospective adopter may be known to the department because of difficulties in caring for his own birth children.

17 Regulation 2(e) requires the agency to take into account the particulars about the prospective adopter obtained in accordance with Regulation 23(2) of the Adoption Agency Regulations. These particulars are set out in Part 1 of schedule 4:

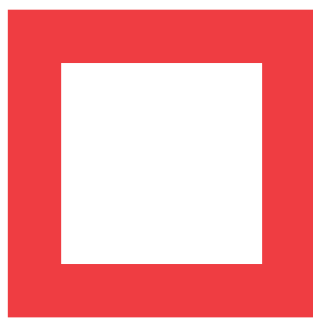
- Basic information about the prospective adopter
- History and background
- Relationships
- Views and attitude to adoption of the prospective adopter and his family
- Reasons for wishing to adopt
- Contact details of referees and the GP
- Home and neighbourhood
- Agency's assessment of suitability
- Any other information which the agency thinks may assist the panel

18 Regulation 2(f) requires the agency to take into account any other information obtained in accordance with Adoption Agency Regulation 23(8) which may be required by the adoption panel.

19 Regulation 2(g) requires the agency to take into account any observations made by the adoption agency or person on any information obtained or reports prepared under Part 4 of the Adoption Agency Regulations (duties imposed on an adoption agency). This provision enables the agency to take into account observations on information as well as the information itself.

20 Regulation 3 requires an adoption agency, when determining the suitability of a couple to adopt a child, to have proper regard to the need for stability and permanence in their relationship. This requirement is important and is fundamental to any assessment of suitability of adopters. It applies equally to couples, whatever their marital status and sexual orientation. The assessment of the stability and permanence of the relationships of all couples should be approached in the same way, with an expectation that all joint applicants will be able to demonstrate commitment to each other, evidenced through the conduct of their partnership to date and to demonstrate a similar commitment into the future. The information and evidence already collected by virtue of the preceding regulations, in relation to prospective adopters who are couples, has relevance to any assessment of stability and permanence and the need to bear this in mind throughout cannot be overemphasized. This aspect is further discussed in the Practice Guidance in Appendix A.

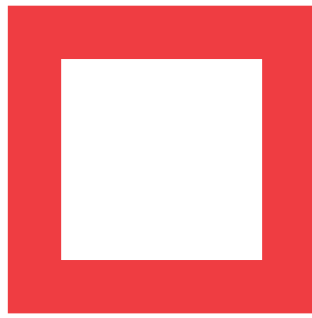
Appendices



The Appendices comprise:

Appendix A: Practice guidance for assessing the suitability of prospective adopters	101
Appendix B: Partial Regulatory Impact Assessment	155
Appendix C: Feedback form	173
Appendix D: The Adoption and Children Act 2002	197
Appendix E: Glossary	211

Appendix A:

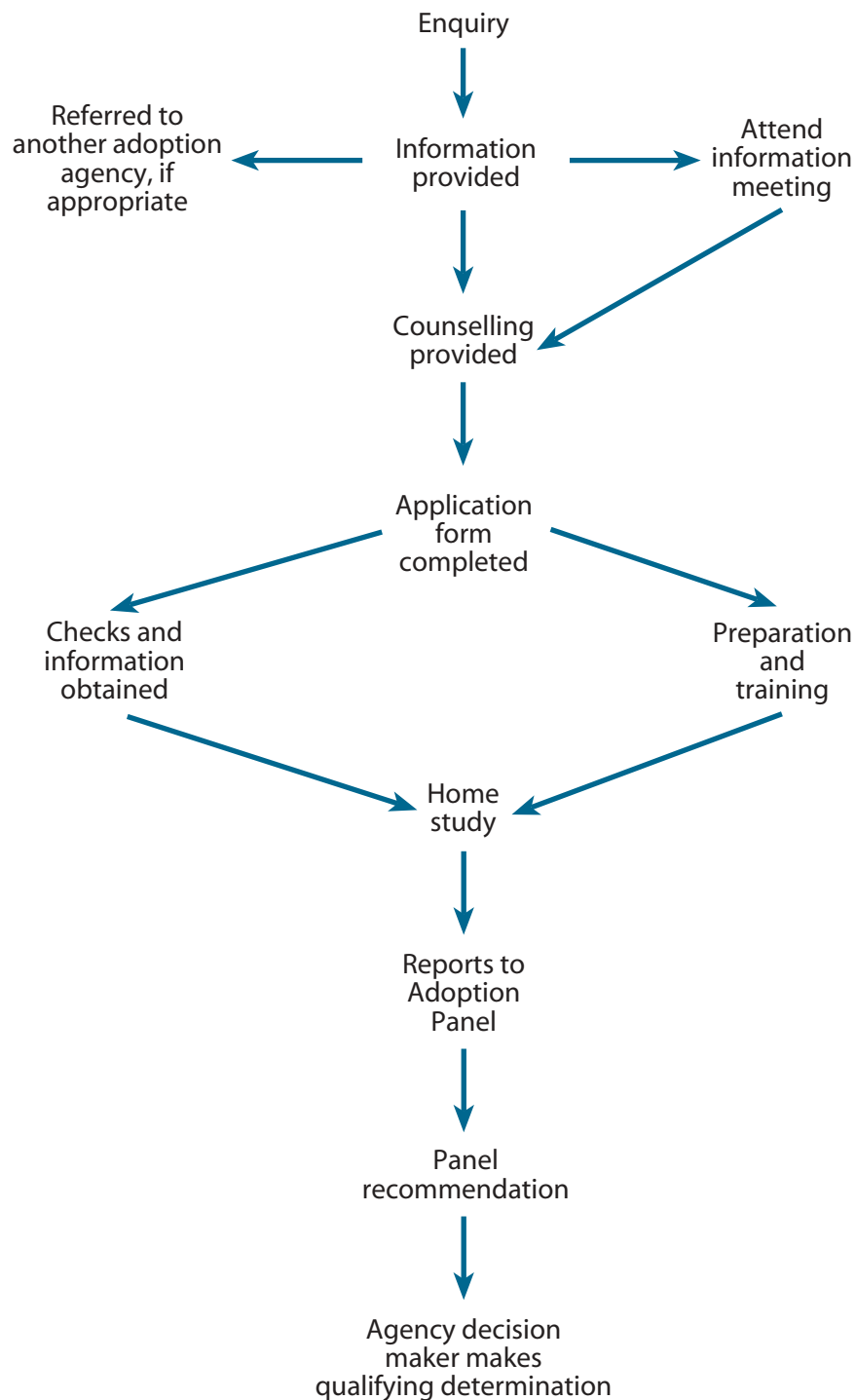


Practice guidance for assessing the suitability of prospective adopters

SECTION 1 – INTRODUCTION AND KEY THEMES

A.1 This practice guidance is designed to assist social workers to carry out the assessment of prospective adopters and determine their suitability to be approved. Section 1 presents some key themes which are crucial to effective assessment and which need to be borne in mind throughout the process. Sections 2 and 3 cover the information to be given to enquirers and prospective adopters followed by the checks and information which must be obtained in all cases and those which may be done where the agency considers it appropriate. Section 4 covers the preparation and training process, its scope, status and the link with the rest of the assessment process. Section 5 covers the Home Study and is adapted from the Framework for the Assessment of Children in Need and their Families. Section 6 looks at how the process should be modified when assessing foster carers who wish to adopt, prospective adopters for inter-country adoption and people who have adopted before. Section 7 explains the process for making sense of all the information collected and using it to move towards a recommendation to the Adoption Panel.

Stages in the Assessment of Prospective Adopters



Putting Children First

A.2 Adoption is a service for children and this must remain central to the thinking. Most people recognise the purpose of the different elements of the assessment process in relation to the task and the high cost to children and adopters of getting it wrong. Experience tells us that prospective adopters will cooperate willingly if a clear description of all the steps in the process, together with the purpose of each, is clearly explained to them right from the start.

Decision Maker

A.3 We are not looking for perfect parents but for people who have the capacity, with training and support, to meet the needs of children; mainly children from the looked after system, but also children adopted from abroad and from within their families. There is room for elements of self-assessment in the process and we should encourage prospective adopters to look reflectively at themselves throughout and to provide evidence of their own relevant skills, capacities and experience. They are not, however, equal partners in the decision to approve, which must be made by the agency. The assessment process should, nevertheless, be based on collaboration, prospective adopters should be treated respectfully and with honesty at all times and the process should be transparent and even-handed.

Elements of an Assessment

A.4 The 3 main elements of the assessment – the formal application (including checks and information obtained), the preparation and training process, and the Home Study provide information from different points of view, helping to produce a rounded picture of what the prospective adopter has to offer. There is considerable cross-over between the 3 elements and they should not be seen as conceptually separate. The guidance in LAC(84)3 has served us well and some ideas from that have been incorporated here, together with material based on recent research, practice and learning from responses to the Fundamental Review.⁵⁰

A.5 The process described in this guidance must be delivered with sensitivity to issues of diversity and the need to be inclusive of the range of communities in modern society. Agencies will need to adapt their approaches to ensure that assessments are carried out in a way that applicant/s can understand and in a form that is responsive to and encourages full participation, including using the applicant/s preferred method of communication. Applicant/s should always feel that their culture, language, religion and history is positively respected and valued. The importance of agencies having access to specialist advice cannot be underestimated.

⁵⁰ Department of Health: *Adopter Preparation and Assessment and the Operation of Adoption Panels: A Fundamental Review*, Department of Health, October 2002.

Using the Assessment Framework

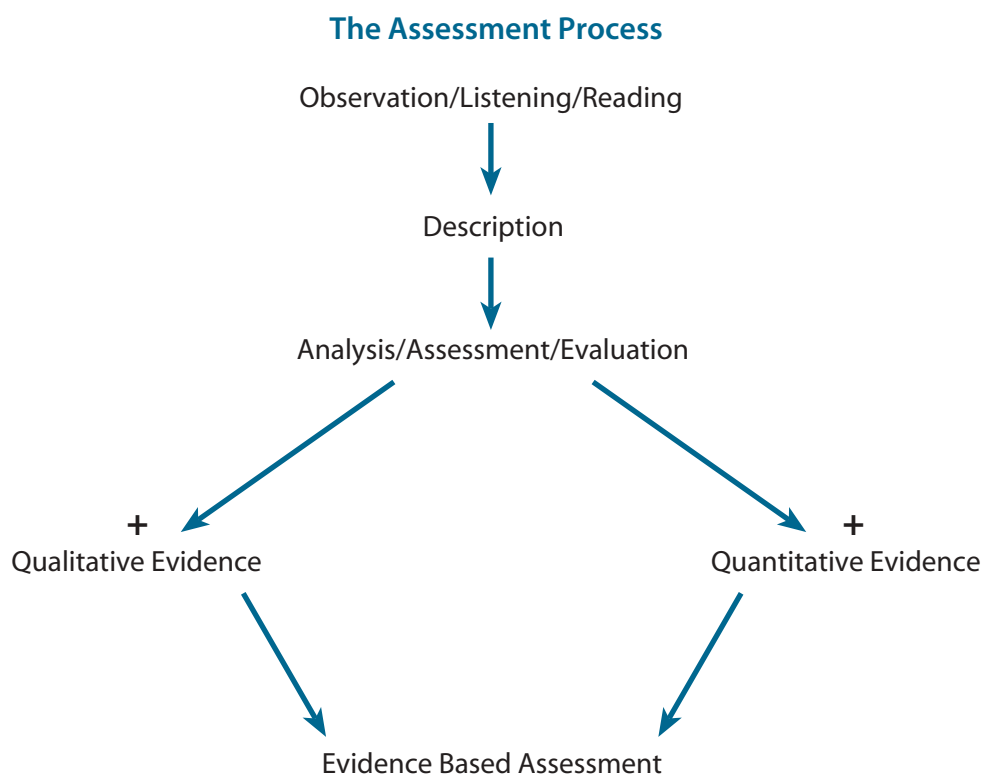
A.6 The Government is considering extending the use of the *Framework for the Assessment of Children in Need and their Families*⁵¹ (the Assessment Framework) for the assessment of carers including prospective adopters, and this is mentioned in the Green Paper *Every Child Matters*. This is reflected in the Home Study section of this guidance which is structured to include consideration of the Parenting Capacity and Family and Environmental Factors domains of the Assessment Framework in assessing the prospective adopter's ability to meet a child's assessed developmental needs, including the particular needs of an adopted child. An added 'adoption perspective' looks at some of the specific issues relating to adoption which need to be considered during the assessment process. The majority of prospective adopters are not assessed in relation to a specific child and the guidance is written to reflect this. Under the new Adoption Agency Regulations, prospective adopters will be approved only on a 'generic' basis, ie. not for specific categories of children. This means that the thinking, planning and preparation in relation to specific parenting tasks will take place between approval and the matching panel.

Making an evidence based assessment

A.7 There are a number of challenges in the task of assessing prospective adopters. The decision made in respect of the assessment needs to be based on the facts and information obtained, profiling the skills and strengths prospective adopters can bring to the task of parenting an adopted child, as well as any areas needing development or skills they may lack. An evidence-based approach to assessment involves a worker discussing a range of issues related to the task of parenting an adopted child with prospective adopters and collecting information through careful listening, observation and exploration.

A.8 The information gathered then needs to be analysed and assessed with the worker clearly noting the 'evidence' – what they have heard, learnt or seen in their work with the prospective adopters or from other sources – on which the professional judgements in their assessment are based. The areas to be assessed need to be directly relevant to the adoptive parenting task. The process of assessment needs to be open so that prospective adopters are clear about what is being assessed and why.

⁵¹ Department of Health et al: *Framework for the Assessment of Children in Need and their Families*, London, Stationery Office, 2000.



The Life-long Adoption Task

A.9 There are some life-long differences between parenting adopted and birth children. To meet an adopted child's needs adoptive parents must be able to recognise these differences and be able to 'stand in the child's shoes'. This will enable them to understand the emotional and social experience of the adopted child and they can then provide appropriate help at any point in the child's life when 'being adopted' becomes an issue. When a child's behaviour challenges or concerns them or others and this behaviour is likely to be linked to their past experiences, adoptive parents must have the capacity to be thoughtful and reflective about how to respond rather than reacting in an impulsive way.

A.10 The last, but possibly most important challenge, is that adoptive parents taking on a child who has suffered loss, early trauma, abuse and/or neglect must have the capacity to offer the sort of parenting which will have a therapeutic effect in helping children recover from their past experiences.

A.11 Because some prospective adopters will not have children of their own and most will not have experience of caring for adopted children, the assessment will inevitably involve trying to judge how people respond to hypothetical situations. Workers will need to look for evidence of any relevant and transferable skills, experiences and capacities which are likely to help adopters respond to the particular challenges posed by parenting adopted children.

Tools which can help with the Home Study Process

A.12 Staff in the field who are familiar with assessing birth families using the Assessment Framework will also know of the *Family Pack of Questionnaires and Scales*⁵², the *Home Inventory*⁵³ and the *Family Assessment: assessment of family competence, strengths and difficulties*⁵⁴ tools commissioned by the Department of Health. These provide a structure for systematically assessing the strengths and difficulties in families and, with some adaptation, can be used to assist in the assessment of prospective adopters. Many agencies already have tools which they have designed themselves and they are free to use any such tools they find helpful.

Recording the Assessment

A.13 It is important that the assessment of suitability is recorded in a timely and accurate way, so that the process of moving from collecting information to analysis, evaluation and assessment through to recommendations can be evidenced in the event of a complaint. Issues discussed between the social worker and manager and decisions made should be recorded. Key decisions such as a determination that an prospective adopter is not eligible to apply or that the prospective adopter has agreed with the agency not to proceed with their application, should be evidenced clearly and countersigned by the responsible manager. All prospective adopters should be told about the complaints procedure of the Agency which is assessing them. Timescales should reflect the National Adoption Standards and where this has not been possible the reasons should be recorded.

Matching Adopters and Children

A.14 We are all aware of the mismatch between the children waiting for a placement and the approved adopters waiting for a child. This gap will never entirely disappear, as we must acknowledge that some people who have not been able to have their own biological children would choose to adopt children who are much younger and who have had fewer challenging experiences than is typical for the majority of children awaiting adoption. However, the gap can be made much smaller. There are many people, with or without children of their own, who would like to parent a child from the looked after system. We must encourage them to come forward by being welcoming and efficient. It is important that agencies do not create barriers for prospective adopters by forcing them to make early decisions about the kinds of children for whom they could care.

52 Department of Health et al: *The Family Assessment: Assessment and Decision Making Regarding Children and their Families*, Pavilion, 2002.

53 Department of Health et al: *The HOME Inventory: A training approach for the UK*, Pavilion, 2002.

54 Department of Health et al: *The Family Assessment of family competence, strengths and difficulties*, Pavilion, 2001.

A.15 The process of moving from thinking about a birth child of your own (where couples are infertile) to thinking about a child or children born to somebody else with an identity and life story all their own, needs time and significant adjustment. It is very difficult for applicant/s to imagine what this means without considerable exposure to real experiences. Prospective adopters should therefore be discouraged from making early decisions about the characteristics of children they may want to adopt unless there are good reasons to do so. They need to understand that 'love is not enough'; they can be helped to acquire the necessary skills and receive appropriate support over the long term to enable them to provide appropriate care and parenting.

Eligibility and suitability

A.16 Agencies must understand the difference between eligibility to apply for an adoption order and suitability to be approved to adopt. Eligibility should be considered as early as possible after the enquirer has approached the agency, preferably before an official application form has been completed and definitely before an assessment is taken forward.

A.17 This should conserve both the enquirer's and the agency's time and resources. People who are not yet 21 (unless the prospective adopter is the partner of a parent of the person to be adopted) and people who do not have habitual residence/domicile in the UK are not eligible to apply to adopt, as an adoption order cannot be made in their favour in an English court. They should be given advice and information but the assessment process should not proceed.

A.18 Verification of age can usually be done by requesting sight of the original birth certificate. Establishing habitual residence/domicile may be more difficult. In such cases, agencies should seek their own legal advice and the prospective adopter may also wish to seek his own legal advice. The process of assessing their suitability can proceed once it is clear that they are eligible to apply for an adoption order and subject to him receiving counselling about adoption as required by Adoption Agency Regulation 20.

A.19 A key point of difference from some past practice is to note that for Local Authorities, apart from the eligibility criteria on the face of the Act (see above) and those people excluded by their criminal record, there are to be no other 'blanket bans' for instance, on grounds of age, weight, appearance, sexuality etc. All other enquiries and applications will be dealt with on their merits, considering whether that person has the capacity to parent a looked after child.

A.20 To ensure that the adoption service remains child focused, Local Authorities should prioritise applications from those most likely to be able to meet the needs of children waiting in their area and nationally.

A.21 Standard 3.4 of the National Minimum Standards⁵⁵ makes it clear that voluntary adoption agencies (VAAs) may have specific eligibility criteria, for example, stemming from a religious ethos. In these circumstances, agencies are required to refer prospective adopters that they cannot help to another adoption agency. Local authorities are expected to work with adoption agencies in their area to ensure that a comprehensive adoption service is available. Choice can be an important factor for prospective adopters and the particular ethos of a voluntary adoption agency should not prevent a local authority from working with that agency. Standards 4 and 5 of the National Adoption Standards for England⁵⁶ set out the relevant timescales:

A.22 There will be clear written timescales for each stage. Applicants can expect:

- (a) Written information sent in response to their enquiry within five working days
- (b) Follow up interviews/invitation to an Information Meeting within two months
- (c) Agencies will prioritise applications that are more likely to meet the needs of children waiting for adoption. Where agencies and applicants decide to proceed, a decision on the outcome will be made by the agency following the Adoption Panel within six months of the receipt of the formal application. Where the agency decides not to proceed applicants will be informed in writing and advised of the options open to them
- (d) If (b) and (c) follow each other without a gap, the whole process from enquiry to decision should not take more than eight months. Panels will record reasons for delays

A.23 Foster Carers who make a formal application to adopt children in their care will be entitled to the same information and preparation as other adopters and be assessed within four months

SECTION 2 – INFORMATION TO BE GIVEN TO PROSPECTIVE ADOPTERS

What information should be provided to prospective adopters

A.24 Following consultation on *The Draft Practice Guidance to support the National Adoption Standards for England*⁵⁷, the Government believes agencies should provide high quality written information that will give prospective adopters a clear picture of:

- the nature of adoption
- children who are waiting for adoptive homes, locally and nationally
- what is expected from adoptive parents (including statements from children and young people who have been adopted)
- the agency's recruitment priorities

⁵⁵ National Minimum Standards for Voluntary Adoption Agencies and Local Authorities in England and Wales.

⁵⁶ National Adoption Standards for England.

⁵⁷ Department of Health: *Draft Practice Guidance to Support the National Adoption Standards for England*, London: Stationery Office, 2001.

- the agency's equal opportunity policies in relation to, for example, race, ethnic origin, religion, family structures, sexual orientation, disability
- the stages and timescales involved in becoming an approved adopter, including information on the agency's complaints procedure and the IRM
- eligibility criteria that must be met, including legal requirements, and a statement clarifying the absence of any 'blanket bans'
- the objectives of the whole assessment process
- support available locally to adoptive families, including the right to an assessment for adoption support, practical support and allowances
- sources of advice and further information, including local or national helplines
- the role of adoption consortia and the Adoption Register
- details of forthcoming information sessions
- opportunities for discussing individual circumstances prior to making an application
- for intercountry adopters, where to find specialist information about the specific requirements of various countries (much of this is on the Government's Adoption Website) and the legal framework within which intercountry adoption takes place

Available to everyone

A.25 Bearing in mind the need to attract prospective adopters from as wide a range of backgrounds as possible, agencies should give careful thought to what range of formats and languages might be required. Videos (particularly those featuring children), audio tapes, CD Rom and local websites are alternatives to the usual written leaflets. Often, providing information at a public meeting where interested people can hear about adoption from experienced adopters and ask questions is more effective than just giving written material. Some agencies take information round to the homes of those who have expressed an interest so that the contents can be talked through, questions answered straight away and misconceptions about who can adopt can be laid to rest. Agencies will need to consider the needs of people with impairments and ensure that their information material and information meetings are accessible to all.

A.26 The *Fundamental Review* asked agencies whether centrally produced, standardised information, should be made available for their use on a voluntary basis. There were mixed views on this issue; many agencies did feel that such information would be helpful as long as they could use it in conjunction with their own locally produced information, which would include their recruitment priorities, preparation arrangements etc. There is already a Recruitment Toolkit on the Government's Adoption Website, produced by the Department of Health and agencies can obtain free Toolkit packs. Agencies should review the information they already use and the way it is given to prospective adopters, to ensure that it is available in a variety of formats, is attractive, up to date and does not include any unnecessary barriers to recruitment. The views of people who have been assessed recently and those who took information but did not follow up their interest can be used to check the usefulness of information currently in use.

SECTION 3 – CHECKS AND INFORMATION OBTAINED

A.27 Information in this context means information derived from enquiries required under regulation 23 of the Adoption Agency Regulations. The Agency is under a statutory duty to carry out the checks and obtain the information in accordance with regulations 21 and 23 of the Adoption Agency Regulations.

A.28 The checks and information to be obtained during the assessment process have been updated in the light of our current knowledge and experience, including the recommendations from a number of serious case reviews where children have been killed or seriously injured by their adoptive parents. The list of checks and information is prescribed in regulations 21 and 23 of the Adoption Agency Regulations. The administrative process of collecting the checks and information is described in the guidance to those regulations, whilst the process of considering the information collected, understanding its significance and using it to inform suitability is described here. There are also other checks that the agency may wish to undertake given the circumstances of a particular case for example, NSPCC or the Probation Service.

A.29 The checks and information that are required should be explained to prospective adopters at an early stage with clear explanation of their purpose, how the information collected will be kept, with whom it will be shared and who will have access to the file in the future. The application form should ask prospective adopters to provide the relevant names and addresses, together with a form of written permission for the agency to undertake the checks and obtain the information.

A.30 Where prospective adopters are reluctant to comply or refuse, this should be carefully explored so the reasons can be understood and recorded. If prospective adopters refuse to cooperate, the agency cannot proceed with their application. It may be useful to ask such prospective adopters to sign a letter acknowledging that their application will not go forward because they are unwilling to cooperate to enable the agency to meet its statutory duties. They should also be advised that this requirement applies to all adoption agencies, including VAAs.

Criminal records check

A.31 An enhanced Criminal Records Bureau (CRB) check must be undertaken on all prospective adopters, together with other members of their household over the age of 18. Many agencies ask prospective adopters to disclose convictions on the application form and this can continue. The CRB checks should still be done, whether or not convictions or cautions have already been disclosed. An enhanced check will reveal 'soft' information and any history of surveillance, as well as convictions and cautions. Where a criminal record or 'soft' information is revealed by the check, the agency will need to discuss this with the prospective adopter, whilst remembering that a partner or family member may not be aware and there is no permission for the agency to share the information unless the prospective adopter himself gives express permission. If such information has not been shared between partners, it may be advisable to ask why this is so. Failure to share such information with a partner may have wider significance in terms of trust and secrets in the relationship and, in particular, its stability and permanence.

Convictions for specified offences

A.32 If a prospective adopter has been convicted of one or more of the offences listed in the Adoption Agency Regulation 21(3), the application cannot proceed; the prospective adopter must be told without delay and the decision confirmed in writing. Agencies need to be aware that lack of a criminal record does not indicate that the prospective adopter is a safe and trustworthy person. Where other offences are revealed, a discussion with the prospective adopter is needed to consider the relevance of the offence to adoption. The agency will need to know about the length of time since the offence, the circumstances which led to it, what was the sentence, the impact on the prospective adopter's life then and subsequently and how the prospective adopter sees the offence and surrounding circumstances now. A judgement will then need to be made as to whether to proceed with the application. These discussions should be carefully recorded and decisions countersigned by the manager.

Convictions for other offences

A.33 Many adopters have a record of minor offences such as taking without consent, shoplifting or criminal damage committed many years ago when they were teenagers and have not had convictions since. In such circumstances it is possible that the agency may wish to proceed with the application. Where a more serious offence is revealed (for example drink-driving, robbery, grievous bodily harm, domestic violence or large-scale fraud), the offence took place recently or there has been a series of offences (even minor) over a long period of time then this may indicate that the prospective adopter is unsuitable to adopt. Any prospective adopter excluded in this way should have the decision confirmed in writing. The CRB check will also include a check with the Protection of Children Act (POCA) list, the Protection of Vulnerable Adults (POVA) list and List 99, (the DfES list of teachers and teaching staff in connection with whom child protection concerns have been raised), any of which may reveal additional information relating to the prospective adopter's past history with children or vulnerable adults. Any such information will need to be discussed because of its relevance to the question of suitability to adopt.

Verification

A.34 Good practice and lessons from serious case reviews indicate the necessity for a prospective adopter's basic details, as provided on the application form, to be verified with documentary evidence. Name, address, date of birth, marital status where relevant and, where a person is in employment, their current employer should be verified. The onus for supplying documentation to verify this basic information lies with the prospective adopter. Verification of employment will involve a letter to the employer. Some of this verification may already have been done when the prospective adopter's eligibility was considered. Where documentation indicates that the prospective adopter is known by a number of different names, the reasons for this should be discussed and clearly understood by the social worker. When the chronology of the prospective adopter's life is prepared at the beginning of the Home Study process, this might highlight where any further elements of verification are needed.

Medical reports

A.35 A medical report is required consequent on an adoption medical examination which is usually conducted by the prospective adopter's GP. The purpose of this is to:

- provide information as to the prospective adopter's level of general health and fitness – and the likelihood that they will have the health and energy to parent an adopted child for as long as is necessary
- identify any particular health problems or issues that may affect the ability to parent a vulnerable and demanding child
- identify any follow-up information, specialist tests or examinations that may be required to establish health status

A.36 There are no eligibility criteria as such in relation to health or impairment. An individual judgement should be made for each prospective adopter as to whether they are fit and well enough to provide the care and support an adopted child will need. The agency medical adviser should see all medical reports and their advice should be sought in every case where there are particular health issues or the GP expresses a doubt about health status.

A.37 There is no intention to exclude or discourage disabled people from applying to adopt; the information about any impairments will be considered alongside all other information relating to their suitability to adopt a child. If they are approved as suitable to adopt, the question of how best to use their strengths is a matching issue. The medical adviser should also be responsible for liaising with the GP, any other doctors involved in the care of the prospective adopter and for obtaining any other medical advice which may be needed. Where there are serious health issues to consider, the medical adviser could meet the prospective adopter and should be available at the relevant panel meeting to advise the panel. Obtaining accurate and detailed medical information on all parties to adoption can be difficult – the child, the birth parents and the prospective adopters – yet this information is of crucial importance to effective adoption placements. The agency medical adviser, perhaps together with the designated doctor for looked after children, may wish to work with the local Primary Care and Acute Trust/s to establish protocols which will improve the medical information available to support adoption whilst still working within the relevant data protection legislation.

Other information from medical reports

A.38 The medical report may reveal a range of information which is health-related but which has much wider significance in terms of the application, for example – a history of mental health problems, previous relationship difficulties, significant past losses or trauma, sexually transmitted disease, history of inability to conceive, assisted conception and/or failed pregnancy. It is possible that the GP may be unaware of some of this history if prospective adopters have had private treatment without going through their GP and the NHS route. This information may not have been shared with the prospective adopter's current partner, if they have one, and cannot be so shared without express permission.

A.39 It is precisely because the evidence gathered is unlikely to be comprehensive, that professional experience and judgement are so important in the assessment process. In most cases partners are aware; understanding the impact of this history on motivation and suitability to adopt, on coping with unresolved feelings of bereavement and loss and on the relationship itself will be key to any assessment of suitability. This subject is further considered in the section looking at assessing Family and Environmental factors in the Home Study.

Former Partners and Adult Children

A.40 Information should be obtained with former partners and adult children of the prospective adopter. This will apply where the prospective adopter has been married previously and is divorced or separated; where an prospective adopter has been in a long-term relationship with a partner of the same or different gender; where adult (over 18) children are living in the household or elsewhere. The agency can decide how far back this enquiry with former partners should go depending on the prospective adopter's history. The enquiry is principally about whether the prospective adopter can provide safe care for an adopted child.

A.41 Evidence from case reviews indicates that such enquiries could have prevented tragedies in the past where unsafe adults had access to adopted children. These individuals might have been identified if this information had been obtained. The potential difficulties involved are understood but nevertheless if the need for the checks and their importance to the wellbeing of children is carefully explained to prospective adopters, the majority will agree.

A.42 If adult children are living in the household they should be interviewed as part of the Home Study anyway and the subject of safe caring can be raised alongside their views on the parenting they received. For ex-partners and adult children living elsewhere, a standard letter should be sent asking specifically for views on the ability of the prospective adopters to provide a safe home for an adopted child and offering the opportunity to raise concerns or issues about child abuse or domestic violence. Although some ex-partners may be deliberately misleading, the agency will need to use its social work skills to make the best use of this opportunity.

A.43 Where prospective adopters are unwilling for this letter to be sent to ex-partners because they fear this will provoke a violent or hostile response, then the agency should consider whether seeking this information may cause harm to the prospective adopter and/or their children. Although the agency has some discretion not to undertake this exercise in the circumstances described, it is envisaged that this discretion will only be exercised in exceptional circumstances. If the information reveals issues or concerns, the agency may need to ask to interview the person concerned to clarify what is being said, before raising this with the prospective adopter. Care should be taken as a current partner may not be aware of the previous relationship and this cannot be shared without the prospective adopter's express permission.

Report from the 'Home' Local Authority

A.44 A report must be obtained from the records of the 'home' local authority, that is the one where the prospective adopters currently live. The enquiry will cover, in particular, the Social Services department records (including the Child Protection register if there have been children). Information about any previous experience the prospective adopter has had as a childminder, foster carer, residential carer or adopter will also be needed. If the prospective adopter has or has had school-aged children then the agency may wish to check the Local Education Authority record if it has any concerns about the prospective adopter in relation to the care of children or attitude to education.

References

A.45 Written references should be sought by letter from three people, not more than one of whom should be a relative. Referees should know the prospective adopter in a personal capacity in the home environment rather than just being a work colleague and should have known the prospective adopter for at least five years. If a couple is applying, then at least two of the referees should have knowledge of them together as a couple rather than just one of them. It may be helpful if referees are sent some standard information leaflets about adoption along with their letter, so that they have at least a basic understanding of what is involved in adopting a child. The letter from the agency to the referee should ask for the following information:

- How the referee knows the prospective adopter – in what capacity
- How long have they known him
- If a couple, a view as to the stability and permanence of the relationship
- A view of the prospective adopter's strengths and weaknesses in relation to caring for children
- A view as to suitability to adopt a child from the looked after system (or alternative)
- If the referee has children, what role has the prospective adopter played in relation to those children
- Any concerns about the safety of a child placed in the prospective adopter's home.
- Anything else that the referee thinks may be relevant and important
- If the prospective adopter is approved, what support (if any) does the referee think the new adoptive family might need.

A.46 The letter should explain the confidentiality of the reference – with whom the agency may share it and how the information may be used in the assessment.

Interviewing referees

A.47 Once the written reference has arrived, the agency will need to visit the referee and interview them in person, talking through the contents of the letter and coming to a view as to the weight to be attached to the reference in the light of how well the referee (a) knows the prospective adopter and (b) understands the challenges involved in adoption. If one of the nominated referees turns out not to have a good knowledge of the prospective adopter or not to have any understanding of what is involved in adoption, then the prospective adopter should be asked to nominate a further referee.

A.48 If the referee raises serious concerns about the prospective adopter which lead the agency to decide not to complete the assessment, the agency will not be able to disclose the source of the information to the prospective adopter. In these circumstances most prospective adopters work out for themselves what has happened, but this needs very careful handling by the agency. If the reference is in relation to a couple, the referee may have doubts about the stability and permanence of the relationship, may express doubts about the ability of one partner in relation to caring for children, doubts about the safety of children in the home or raise questions as to whether the partners are equally motivated to adopt. All such concerns will need to be raised and discussed during the Home Study process.

SECTION 4 – PREPARATION AND TRAINING

Training for everyone

A.49 The preparation and training that prospective adopters receive during their assessment is only the start of the learning process that will continue after approval and throughout their lives as adoptive parents. However, it is an essential part of the assessment process, ensuring that prospective adopters have had the opportunity to learn in detail about children who are waiting to be adopted and to reflect on whether caring for an adopted child is really what they want to do. The majority of adoption agencies already provide preparation and training classes for first time domestic adopters, but many inter-country adopters, foster carers and people adopting for a second time often do not have the chance to attend. Because of the importance of ensuring that prospective adopters have a good knowledge of the task awaiting them, it is government policy that all agencies should provide classes, and all prospective adopters should attend before their application can be considered by the adoption panel.

Working together to deliver training

A.50 It is recognised that this may pose practical problems for some prospective adopters in terms of employment or childcare commitments and for some agencies in terms of how often classes are run in various localities. However, it should not be too difficult to overcome these problems by way of flexibility and co-operation between agencies. Reciprocal arrangements can be made, as is already the case within existing adoption consortia. If a 'standard' syllabus for classes is agreed then:

- Agencies can cooperate together to run courses more regularly so that resources are used effectively and the wait between courses is shorter for prospective adopters
- Where prospective adopters are unable to attend a course run by the agency which is assessing them because, for example, there is illness in the family, they could attend a course in a next-door agency, secure in the knowledge that the ground covered will be the same
- Where prospective adopters move house during their course or after approval, the agency to whose area they move will be able to complete their course more easily or accept the training they have already had as equivalent
- Where particular course input is needed because of, for example, language needs, then specialist time and expertise will be available over a wider area

The nature of training

A.51 Agencies will be able to decide how to deliver preparation and training through classes, workshops, reading, 'homework' etc. Some of the process should be experiential involving prospective adopters in role play (or similar active participation) looking at their own lives and experiences and challenging them to identify what they have learnt from the various elements of the process. While some people do find participation in group work difficult because of shyness or language problems, agencies should support them to participate as far as possible so they can benefit from learning with others. As they will, if approved, need to take part in review and other meetings in relation to any child they adopt, learning to be able to contribute in a group setting is an important element in their training. The core range of issues to be covered is listed below and agencies can add to this list at their discretion and in line with the needs of particular groups of prospective adopters.

The minimum curriculum

- The adoption process, including the professional and agency network (for example, Social Services, the Adoption Register, VAAs, the legal framework), National Adoption Standards and Timescales
- Preparation for what is involved in the assessment process, including how the different parts of the process are linked and brought together in reports to panel (including the role of the IRM)

- Basic parenting skills and basic child development information
- The backgrounds of children available for adoption, including adversities experienced by children who have been looked after
- The perspective of the birth family
- Separation, loss and attachment
- The 'adoption' perspective, including children's identity, their birth heritage, openness and working with contact
- Responding to children who have been traumatised by neglect and abuse
- Caring for sibling groups
- Understanding and managing complex health care needs
- Issues of equality including ethnicity, disability, religion and sexual orientation
- Legal issues in adoption including the rights of adopters
- Adoption support including advocating for health and education services
- Availability of ongoing training for adoptive families
- Meeting and learning from experienced adopters, including managing stress and 'stickability'

Preparation for children

A.52 For those prospective adopters who are already caring for children in their household, it is crucial that those children are well prepared for the arrival of any new adoptive children. Experience tells us that failure to listen to the views and concerns of such children is often a feature of disrupted adoption placements. Some agencies already offer special 'preparation days' for birth children or previously adopted children. It is recommended that all agencies should give serious consideration to this issue.

A.53 In order to make sense of the wide range of applications for which training is needed (covering foster carers, inter-country and 'second timers', as well as newcomers), it is suggested that training is modular, so that all prospective adopters can attend core modules and then different groups can attend specialist modules as needed. Some agencies are already offering modular training and best practice on this issue can be shared. Prospective adopters who have adopted before may feel that they do not need to attend classes. The agency should use its discretion here taking into account the length of time since their last training and what contribution they could make to the learning of others. In the past many local authorities have not offered preparation and training to inter-country prospective adopters, but this practice is not acceptable and is not in the interests of vulnerable children. As with the rest of the assessment of suitability to adopt, inter-country prospective adopters should be treated in the same way as domestic prospective adopters and the same standards should apply.

Link between training and the Home Study

A.54 Many agencies have struggled with the issue of the links between the Preparation and Training element of the assessment and the Home Study element and responses to the Fundamental Review indicated no consensus on this issue. Whilst understanding the anxieties of prospective adopters who worry about 'saying the wrong thing' or raising issues which may count against them during their training, in practice it is rarely possible to completely separate the two elements completely and more honest to be clear with prospective adopters that such a separation is not possible.

A.55 It is in everyone's interests for their issues raised during training to be carried through for consideration during the Home Study, as long as prospective adopters are clear from the start that this is going to happen and get accurate feedback about what issues are going forward for exploration with their assessing social worker. The focus throughout should be on learning and understanding, not on exclusion and barriers. It may be helpful to produce a form on which prospective adopters and the trainer can together record issues that need further exploration, as well as the prospective adopters' evaluation of the training programme. This form can also be given to the worker undertaking the Home Study, if they are not involved in the training process.

SECTION 5 – THE HOME STUDY

A.56 The Home Study process looks in detail at the prospective adopters' history, present situation and likely future to try to determine whether they have the capacity (with help and support) to parent an adopted child. The Home Study also allows the social worker to explore with the prospective adopter whether, taking into account the challenges and commitment involved, they still wish to proceed with their application. Ideally, by the time the Home Study is ready to begin, the checks and references will all be available and the preparation and training will be complete so that issues and information from these can be fed into the process. Often this is not possible, in which case the order of Home Study components can be changed or the information incorporated as and when it becomes available.

Making a chronology

A.57 A complete chronology of the prospective adopter's life history should be prepared as early as possible. This could be done by the prospective adopter if he is willing and able, or by the social worker together with the prospective adopter. Possibly some aspects of early childhood may not be complete, but the chronology should enable the assessing social worker to see and understand the sequence of the prospective adopter's life as a whole, to check out gaps, inconsistencies or discrepancies and to use this as a reference point for discussions. The chronology should include a full employment history.

A.58 Sometimes during the early stages of the Home Study, or even during early counselling, information is disclosed to the worker which either indicates that the person is not suitable or that there should be an interruption to the process for a period of time. For example, the prospective adopter discloses a history of serious childhood abuse and is too distressed to continue. In these circumstances 'the clock stops ticking' so that the standard timescales are suspended while the social worker helps the prospective adopter to decide whether or not to continue and/or to access specialist help. The clock might also stop ticking if, for example, there is a death in the prospective adopter's family and time is needed to work through this.

Deciding not to proceed with the assessment

A.59 The social worker should keep in mind throughout the whole preparation and assessment process the fact that adoption may turn out not to be the right choice for that prospective adopter. Where the social worker recognises that there is no likelihood of the prospective adopter being assessed as having the necessary qualities or that adoption will not meet that person's need to be a parent, then this should be shared as soon as possible. Advice and information should be offered to try and assist the prospective adopter to accept that adoption is not for them. The prospective adopter should be encouraged to think about this carefully, discuss it with family and friends and to see it as a positive option; they will not be faced with a task that (having learnt more about it) they may regret taking on and a vulnerable child may be saved from a disrupted placement. It is to be hoped that the prospective adopter will accept the agency's view, but the decision rests with the agency. A careful record should be made of any discussions and decisions, as a prospective adopter whose application has not been discussed at Panel will not have recourse to the Independent Review Mechanism (IRM) although he can still have recourse to the Complaint Procedure.

Planning the Home Study

A.60 The objectives of the Home Study are:

- for the social worker and the prospective adopter to try to come to a joint understanding of the strengths and capacity of the latter to become an adoptive parent
- to identify areas where the prospective adopter will need further development, including the provision of adoption support, if he is approved
- for the prospective adopter to receive support, guidance and information from the social worker in becoming an adoptive parent
- to enable the social worker to write a report about the suitability of the prospective adopter to be approved as an adoptive parent, using the information gathered during the Home Study process, including evidence from CRB checks, references and reports, and from the training and preparation course
- to enable the social worker and his manager to make a recommendation to the adoption panel based on that evidence

A.61 It is important for the social worker to make a plan for the Home Study, based on the learning from the prospective adopter's preparation and training, his particular circumstances and issues already identified by the social worker. The plan, made with the prospective adopter, should identify the issues to be covered and the number and location of sessions, allowing sufficient time in between for reflection, reading, 'homework' tasks and discussion with others. Where a couple is being assessed, individual sessions with each prospective adopter will be needed as well as joint sessions. Time will also need to be set aside for discussions with any children living in the household.

A.62 The social worker's recording of the Home Study should indicate how issues that have arisen have been dealt with or how they will be dealt with later in the process. It is good practice to record an evaluation after each session with the prospective adopter of the information and evidence collected, any conclusions reached, what new issues have surfaced and how the plan for the Home Study may need to change as a result of these.

Using the Framework for the Assessment of Children in Need

A.63 The Framework for the Assessment of Children in Need and their Families was developed as a systematic way of analysing, understanding and recording what is happening to children and young people within their families and communities. It was designed primarily for the use of professionals and other staff involved in undertaking assessments of children in need and their families under the Children Act 1989. The conceptual framework it embodies is widely understood and, as statutory guidance, it is in wide use in agencies. It is hoped that there will be clear benefits from adapting this framework for use in assessing prospective adopters who may be approved to care for children in need. The social worker undertaking the Home Study should use the dimensions of the framework for planning sessions.

A.64 Social workers will need to apply the dimensions with care as the priority given to each and the depth to which each is explored will vary with the circumstances. Each agency will need to ensure that social workers undertaking the assessment of prospective adopters are prepared in the use of the Assessment Framework and receive appropriate support and supervision.

Dimensions of Parenting Capacity

A.65 Critically important to a child's health and development is the capacity of his parents or caregivers to ensure that the child's development needs are being met appropriately and to adapt to his or her changing needs over time. The parenting tasks addressed in the Dimension of Parenting capacity in the Assessment Framework are central to meeting a child's needs. They need to be considered in the context of Family and Environmental Factors and the particular task of caring for an adopted child.

Basic Care

A.66 As in the *Assessment Framework*, this area needs to include an assessment of how the prospective adopter would provide for the child's physical needs – food, drink, warmth, shelter, appropriate clothing and personal hygiene – including the provision of medical and dental care. If there are already children in the house, much information can be gained from discussion about and observation of their care. The *Home Inventory*, which focuses on assessing the quality of parenting and the home environment, includes many of these aspects of caring for a child. Even when there is no child in the house the Home Inventory does provide a systematic and detailed framework to take prospective adopters through a typical day in the life of caring for a child and this is a good way to explore the relevant issues. The *Family Assessment* can also be useful for discussing the division of roles and responsibilities between couples and observing the interaction between them during this process.

Adopted Children and basic care

A.67 Where prospective adopters have children in their household or can draw on existing experience of parenting, they can be asked how they think their 'normal' day would change if an adopted child joined them and why. For those without such experience extra skill will be required to gather evidence about their ability to live a child-centred life-style. All prospective adopters will need to discuss the special significance for adopted children of many of these areas of life. For example, a child who has been physically neglected may not be used to regular mealtimes, to knowing that there is always food in the house, to using cutlery and plates or to eating a wide variety of foods.

A.68 Every household has (usually implicit) rules about food – do you eat between meals, do you need to ask permission to take food from the fridge, when are sweets allowed? The worker will help the prospective adopter to make these rules explicit and to consider the degree of tolerance and flexibility which would be available to an adopted child. The *Family Assessment* makes use of Family Tasks as one important way of opening up discussion about crucial areas of family life and relationships to be assessed. For example, it may be helpful to provide written vignettes of children and the experiences they have had prior to being looked after and ask prospective adopters to talk about a child joining a new family and the implications for the everyday care they are likely to need.

Ensuring Safety

A.69 For all children this means ensuring that the child is adequately protected from harm or danger. The simpler aspects of this include ordinary measures to protect any child such as fireguards, gates and safe appliances. The social worker will need to explore understanding of how serious this issue may be for learning disabled children or children without a clear sense of danger. Can prospective adopters recognise hazards and dangers both in the home and elsewhere and suggest what they would need to do to keep a child safe?

Safety and adopted children

A.70 The real challenge in adoption with ensuring safety often arises with adopted children who have a history of attachment difficulties and/ or neglect or abuse. For children cared for in birth families where they have been subject to neglect, or where there has been physical, sexual or emotional abuse, the capacity to ensure safety is a crucial area to assess with prospective adopters. Such children may fail to recognise dangerous situations or relationships with adults (or other children). Alternatively, their patterns of attachment may result in inappropriate responses to strangers or a level of fear or anxiety which leads to behaviour which adoptive parents or others may find aggressive or difficult to understand as it is outside their own experience.

A.71 Components of the *Family Assessment* can be used with prospective adopters to help to explore the parenting capacity required to meet these sorts of needs, including whether the prospective adopter understands that children exposed to undesirable family interactions over a long period of time may continue to behave in a way that may evoke anger, sexual response or rejection well into the adoptive placement. A systematic exploration of the prospective adopter's own experience of being parented in their family of origin and the impact this may have had on their current views and expectations of family relationships and of being parents is important information (see the *Family Assessment* Family History section for a useful approach to this piece of work). The prospective adopter's experience of parenting their own or other people's children may also provide a basis for assessing their understanding and attitudes to ensuring the safety of adopted children (as well as other elements of parenting).

A.72 Similarly, it can be a severe test of any relationship when a child's own behaviour puts that child at risk of harm, and one example of a useful family task is to ask prospective adopters who are a couple to explore between themselves, and then with the worker, what they would need to put in place to help such a child and to keep them safe, based on their experience. This can throw light on prospective adopters' strengths, difficulties and areas of existing practice that may need reviewing.

Emotional Warmth

A.73 This includes ensuring that the child's emotional needs are met and giving the child a sense of being especially valued.

A.74 All children who have experienced separations and losses, and particularly those with attachment difficulties, will require consistent emotional warmth from their adoptive parents but may take years to respond in a way that gives something back to adopters – and some children are never able to do this. There is already a substantial body of research on attachment and adopted children. Findings from research can be used to help assess adopters' capacity to understand or to develop an understanding of the needs of children waiting for adoption and their capacity to provide for those needs.

A.75 A new piece of research⁵⁸ has given us a way of understanding how traumatised and maltreated children build trusting relationships with their new parents over a period of time. This work has direct relevance to the assessment of prospective adopters and gives clues as to the type of background history which may or may not be helpful in adopters caring for children with attachment difficulties. Many of the adoptive mothers in the study had had difficult childhoods but had been able to resolve their feelings about their experiences and move on. They demonstrated resilience, the capacity to be reflective and thoughtful about children's needs and were often particularly compassionate towards the traumatised children in placement, who made good progress. Some mothers however had not been able to 'process' their own unhappy experiences, which therefore remained 'unresolved'. As a result they were unable to focus adequately on the needs of their adopted children, who did not make good progress. The latter group of mothers had not been picked up during a thorough Home Study process. In the light of this research, workers will need to increase their sensitivity to adoptive prospective adopter's previous experience of loss and trauma and the degree to which this has or has not been resolved.

Assessing emotional warmth

A.76 Where prospective adopters have their own biological or adopted children, experience of caring as a childminder or foster carer or experience of children through family and friends, then observation and discussion around the times of day when emotional warmth has been most in evidence (for example feeding, bedtime, storytime) will assist the worker to form a picture of the care prospective adopters will be able to provide. Again the *Home Inventory* focuses in a useful way on gathering a detailed and factual picture of the actual care given to a child and level of responsiveness offered by the parent. The section on the Emotional Life of the Family in the *Family Assessment* can help with how to assess the prospective adopters' capacity to provide emotional warmth, looking at how feelings are expressed and responded to in the family and at the nature of relationships and whether they are warm, supportive and appreciative or otherwise. As well as the capacity to give warmth, the worker will need to consider the long-term commitment and resilience of the prospective adopters, as many children with attachment difficulties may take years to respond to warmth and care and some never do.

⁵⁸ Steele, Hodges, Kaniuk, Hillman and Henderson: *Attachment representations and adoption: associations between maternal states mind and emotion narratives in previously maltreated children*, Journal of Child Psychotherapy, 2003.

Stimulation

A.77 This is about the capacity of the prospective adopters to promote the child's learning and intellectual development through encouragement, cognitive stimulation and promoting social opportunities. It is not primarily about educational attainment, on which so many assessments have focused in the past, but rather the more personal interaction between the adoptive parent and child at home. Exploring with the prospective adopter what opportunities he was offered by their own parents to play and learn is usually an easy way to start this discussion. The social worker will want to discuss with the prospective adopter his understanding of child development – what help and support children might need at different stages of development – taking care to acknowledge that many children awaiting adoption have missed out on stimulation in their lives at home and may be functioning well below their chronological age.

The assessment of stimulation

A.78 Most prospective adopters will have views about how they were helped or not helped to play, learn and develop at home as children and how they might wish to repeat or avoid that situation. Prospective adopters vary widely and this will influence how they respond to this challenge; the ability to stimulate children is as much to do with being child centred and giving time and commitment as anything else. Where families already have children, tools such as the Family Activity Scale (in the Family Pack of Questionnaires and Scales) can provide a way of reviewing what is already provided within the family.

A.79 Prospective adopters benefit from reading about how to help disadvantaged children and will have had input on this subject during their preparation and training. Part of the assessment task in adoption is to find out what prospective adopters have been able to learn from the preparation and training process and elsewhere about the specific needs of adopted children. Where prospective adopters already have children, observation of how they relate to them and what materials are available in the home provides information on which to base a discussion. For other prospective adopters, a detailed look at their existing daily routine will help them to identify time that could be spent with a child listening, talking, answering questions, reading to the child, playing games and providing opportunities inside and outside the home for the child to widen their knowledge and experience.

Guidance and Boundaries

A.80 This is about enabling the child to regulate their own emotions and behaviour. The key parental tasks (for birth parents and adopters alike) are *demonstrating and modelling* appropriate behaviour, control of emotions and interactions with others, and *guidance* which involves setting boundaries so that the child is able, over time, to develop an internal model of moral values and conscience. In order to assess prospective adopter's capacity to do this task, the social worker should begin by helping the prospective adopter to articulate his own code of values. In most cases this will reflect a set of values that he perceives to have been held by his parents, modified by his own life experiences and, commonly, discussions during the training and Home Study are the first time that these have been articulated and shared. As guidance and boundaries are often the subject of disagreement between parenting couples, with unfortunate consequences for children, the assessment needs to explore the extent of differences between partners, their awareness of this and how they have or intend to reach a united front in parenting an adopted child.

A.81 As well as effective discipline and shaping of behaviour, problem solving, anger management and consideration for others are areas where prospective adopters need to show an understanding of how and why an adopted child might behave differently and need different and/or additional parenting techniques.

Values and Guidance

A.82 A conscious awareness of their own values is a necessary prerequisite to thinking through what would need to be done differently for an adopted child. Some prospective adopters will be happy and accepting of the values that were used in their family of origin, others will reject entirely the way they were parented, while most will accept some parts of their history and reject others. Where couples are being assessed, a joint session could be used to explore what each partner knows of the parenting received by the other and how they think their partner has used or modified this experience. This task throws light on models of discipline and guidance, how they are used, how well the couple work together on a challenging task and how 'far apart' they are on the key issues. Couples who have children may move on to another task in which each will evaluate the strengths and areas for development of the other in providing guidance and boundaries for their birth or adopted children. Prospective adopters need to demonstrate a clear understanding of methods of discipline that are acceptable for looked after children and the fact that corporal punishment is not. This is particularly important given that many children placed for adoption have been physically abused in their birth families.

Children from different backgrounds

A.83 Preparation and training should have given prospective adopters an understanding of the range of experiences found amongst looked after children – some will have had little or no guidance, some will have experienced extreme, cruel or violent guidance and children from chaotic households will not have had clear or consistent models of guidance. Spending time with experienced adoptive parents observing and reflecting on the challenges seen, may be as useful or more useful than reading about challenging behaviour. Building on prospective adopters' insight into their existing skills and experience, the worker could set a task where the couple or family are asked to talk about how they would respond and work together to cope with a sequence of behaviours which they may encounter. This would be a valuable source of information about their 'psychological thinking' – or understanding the inner world of the child – as well as about their skills in working together to plan how they would respond to the child's needs. In making these responses the prospective adopters may have to manage this process against a background of how they already deal with any existing children and the fact that their wider family and other support networks may have very different norms around guidance and boundaries. The assessment of skills in this area will inform the matching process, any plan for adoption support needs and any further preparation and training.

Stability for the child

A.84 Stability is providing a sufficiently stable family environment to enable a child to develop and maintain a secure attachment to the primary caregiver(s) in order to enable optimal development. For couples, it includes consideration of the stability and permanence of their relationship, the assessment of which is explored in detail in the Adoption Dimension. This part of the assessment also needs to include the prospective adopter's understanding of the importance of maintaining as many aspects of an adopted child's past life as are appropriate for that child. This may include sustaining contact with important family members or significant others, school, religious observance, friends and activities.

A.85 Prospective adopters can look back to their family of origin and evidence their own experience of stability, positive or negative, using that as a basis for exploring what they would wish to keep from the past and take into their future. If their own past family life was not stable, how have they dealt with this as an adult and with any children for whom they care? The social worker can, building on the knowledge gained from training, look with prospective adopters at case histories of children who have experienced many moves in their lives, the impact of this on the child's sense of trust and how stability could be promoted in the future. The prospective adopter will need to demonstrate an understanding of the impact of an adopted child arriving in the family, which may threaten hard-won stability in a relationship with a partner. He will need to think through strategies for nurturing family relationships during times of stress and for maintaining consistent and appropriate responses to behaviour which he finds difficult to understand.

Contact

A.86 One of the key challenges for adopters in maintaining stability is contact for any adopted child with birth family members. With the current emphasis on openness in adoption, the attitude of prospective adopters to contact is a key part of the assessment process. Preparation and training should have given an insight into why contact is so important in promoting a positive identity for a child placed for adoption. The worker will need to explore attitudes to various forms of contact with birth family members. While a positive attitude towards contact is a prerequisite for approval, not all children need or want face to face contact with birth parents, so prospective adopters who are fearful about this need not be ruled out during assessment. They may be able to be helped to deal with more than they think they can do initially and/or they could be matched to a child for whom face to face contact is not appropriate.

A.87 The social worker will need to acknowledge the uncertainty and ambivalence that many prospective adopters have about contact. Adopters should be aware that looked after children will always have a plan in relation to contact – even where the plan is for no contact – and this plan will have been worked out on the basis of the child's assessed needs now and in the future. A part of the plan will be the support needed by the child's adopters to understand the child's needs and how to implement the contact plan.

The adopter's fears about contact

A.88 The reasons for the prospective adopter's views on contact can be explored. Fears and reluctance may be revealed to be a deep-seated wish to cut off the child's past life altogether and 'start afresh'. The worker will need to make a judgement as to whether this view could be modified with the help of further preparation. Talking to adopted adults and to experienced adopters about the value of contact may be helpful. Where fears are more about how to handle contact and practical aspects then the worker can explain how contact can be approached highlighting the services available to support it. The need for contact, in whatever form, is a key aspect of the difference between birth parenting and adoptive parenting and misperceptions of birth parents may stand in the way of useful discussion. Thinking about his own family relationships and feelings engendered at difficult times can help the prospective adopter to 'stand in the child's shoes' and also think about the birth parents. This is a developmental process and prospective adopters often describe a journey on this issue through the preparation and assessment process towards empathy with the child (and birth parents) and a much better understanding of the fundamental significance of contact to the child's long term wellbeing.

A.89 Many adopters can envisage successfully managing face to face contact with birth family members other than parents and with significant others such as foster carers. Meeting birth parents during the preparation process may help prospective adopters to replace myth with reality and help the worker to open up discussion during the Home Study process of the difficult issues associated with contact.

Contact with siblings

A.90 A significant proportion of adopted children are placed separately from their siblings, some of whom may be in different adoptive homes and others may still be living with the birth parents. Most prospective adopters can empathise with the child's need for contact with siblings, but the social worker will need to use direct case material to assess the extent to which the issues involved are understood. Hearing from adopted adults and experienced adopters and reading their stories can illustrate the depth of feelings in relation to contact; the practical difficulties of, for example, caring for a child who cannot understand why he has been placed for adoption while a younger sister is still 'at home'. Even a once a year indirect contact at Christmas or on the child's birthday can dominate the adoptive family's life for several weeks. The prospective adopter will need to consider how to deal with eager anticipation of a parcel or letter which does not arrive or is disappointing in some way. As sibling contact is more likely to be face to face than that with birth parents, the willingness and capacity to deal with this will need to be clear in the Home Study.

Dimensions of Family and Environmental factors

Family History and functioning

A.91 An examination of Family History and Functioning provides the basis for consideration of the rest of this dimension. The prospective adopter will have completed a chronology of his life and this can be used as the springboard for discussion. The social worker will need to explore the chronology; is it complete, can the gaps and any inconsistencies be explained and understood, is it coherent? The information in the chronology should be cross-checked against information available from the application form, checks and references. For all groups of prospective adopters – single people, married couples and unmarried couples – the chronology tells the story of the journey up to the point of assessment and for many people it will be the first time that the story has been told in its entirety. Prospective adopters who have a good grasp of what has happened to them and why, will be better placed to consider the history of a vulnerable child and empathise with the feelings generated by a disrupted life with many moves.

Linking the past and the present

A.92 Once the social worker feels the chronology is complete, time can then be spent identifying and exploring significant events, relationships and circumstances that have influenced the way the prospective adopters – or families – relate with each other currently. In particular, the prospective adopter's history and experience of attachment and how this has carried forward into current relationships needs close examination, so that unresolved issues can be identified and traumatic and stressful events explored. The reader is referred back to the section on attachment research and the direct link between unresolved life events and inability to respond appropriately to adopted children's needs.

Individual Profiles

A.93 As well as a chronology, the social worker should compile an individual profile of each prospective adopter which describes:

- family structure (including partner) and family history
- details of significant family members, including a family tree
- the culture, ethnicity, language and religion of the family; the impact of these on the prospective adopter and his attitudes now
- schooling and attitudes to education of any child placed
- interests, hobbies, talents, friendships and ambitions/hopes for himself and any child placed
- how the prospective adopter sees himself as a person and his strengths and areas for development

A.94 Where there are children, adult children and/or other adults living in the household, then brief profiles of them, together with the inter-relationships between them and the prospective adopter, will help the social worker to explore the family system which a child may be joining. Hopefully the children and some of the adults in the family will have received information about adoption and attended some preparation discussions, so that they can use these as a basis to talk about an adopted child joining the family; what they think about adoption and how it might impact on them, positive and negative feelings.

A day in the life

A.95 Most prospective adopters enjoy writing about a day in their life and most social workers use this device to obtain a clearer picture of the individual and his current family functioning. Although the account is not meant to be an 'in-depth' analysis, it is likely to contain valuable information about culture, lifestyle, friendships and peer group which can lead into discussion about the social functioning of the household a child may be joining. Often, there are also clues about whether there is physical and emotional space for an adopted child in the family system and how the adopter is seen by his peer group. The exercise is seen by the prospective adopter as an important opportunity to make a written contribution which will be seen by the adoption panel.

A.96 The understanding by the prospective adopter of the parenting styles he has experienced and of how this has impacted on his current functioning as a parent and individual is central to assessing his suitability to adopt. He will need to demonstrate that he understands the link between what he has brought from his family of origin into his current functioning and what an adopted child will bring with them. For couples this should be done as joint work, looking at their repertoire of coping strategies and helping them to identify their strengths and areas for development. The process of the discussions will be as important as the content, with the need to assess the extent to which they can talk about sensitive issues, share experiences and feelings and move on together with a better understanding of each other.

A.97 There is no suggestion that those prospective adopters who have had a difficult or traumatic history are, in general, less suitable to adopt than those who have had relatively straightforward lives. What is important is that any traumatic and particularly stressful events have been 'processed' and integrated into their history, so that emotional and practical challenges posed by an adopted child will be responded to appropriately and not by a response which only reflects the needs of the adoptive parent. There is a view that people who have faced and overcome severe problems in their lives have better internal resources and better developed coping strategies. It may be easier to judge how such people will respond to being put under stress and pressure. The assessment process should be able to help the prospective adopters identify lessons learnt from the past and how these could be used with a child joining the family.

A.98 Recent events and prospective adopters' recent history as a couple or, if a single person, recent significant relationships are as important as the past; the Family History dimension of the *Family Assessment* and the Recent Life Events questionnaire can help to understand these. As well as the way people describe themselves, the social worker should be concerned with the way they go about the crucial interactions and operations of family life, for example, decision making, problem solving and managing and resolving conflict. In the context of assessing prospective adopters for a task they are not currently undertaking (ie. caring for an adopted child), it is helpful to be able to assess such interactional processes which are directly relevant in responding effectively to children's needs. The assessment should focus on identifying family strengths (as well as difficulties), which is appreciated by those being assessed and is very relevant for those taking on a task which will test out any areas of vulnerability they may have.

Infertility and adoption

A.99 While it is not possible to explore here every variant of history and its impact on the adoptive process, an understanding of infertility issues is fundamental to many adoption applications. A significant proportion of prospective adopters are infertile or have not, so far, been able to have biological children of their own. Many make enquiries about adoption while they are still trying to conceive naturally or still undergoing treatment for assisted conception. Where prospective adopters are undergoing infertility investigations, they should be expected to disclose this information and discuss it fully with the worker. Experience suggests that following investigations and treatment that is unsuccessful, people need time and space to address their loss before they can fully embrace the positive benefits of adoption. Where treatment is successful, prospective adopters may decide not to pursue adoption or to wait until their family life has adjusted to the new baby before proceeding with any application to adopt.

The timing of the assessment process in relation to infertility

A.100 Responses to the *Fundamental Review* on this issue indicate unanimous agreement that people should not begin the process of becoming approved adopters until any treatment is complete, they have come to terms with the fact that they will not have any biological children and are ready to move on. By this we mean that the prospective adopters are able to be emotionally available and responsive to a child who is socially and genetically different from the child for whom they had planned when they decided to become parents. Are they ready to accept a child who doesn't look like them, has a different inheritance, different attributes? If prospective adopters wish to pursue fertility investigations and an application to adopt at the same time, they should be made aware that the agency will take a very close interest in the progress of such investigations and may prioritise other applications, the outcome of which is more certain.

A.101 The circumstances surrounding this area of life are so varied that it would not be appropriate to try to encompass this within a regulation, nor would it be appropriate for guidance to forbid agencies from taking applications from those whose medical treatment may not yet be complete. However, there will be very few circumstances where this would be appropriate. Local guidance produced by agencies should not encompass a complete ban. There are also a significant number of cases where couples conceive during their adoption assessment or immediately after approval. Agencies must use their common sense and discretion to decide how to go forward in each individual case, basing their decisions on the paramount welfare of the children involved.

A.102 In a world where most people expect and want to have children, a history of infertility or partial infertility will always be a fundamental consideration in the assessment of couples as adopters. Individuals and couples are likely to experience this as striking at their individual and social identities as adults, their relationship as a couple and at their relationships with wider family, friends and work colleagues. Time is needed to explore the history with them, its meaning in their lives and the degree of resolution which they have achieved; in particular whether or not they have accepted that they will not have a genetic link to any children who join their family. Both infertility and adoption have different meanings in different cultures and account must be taken of this when working with people to see if they are ready to move on to adoption. The sadness associated with their losses will always be in the background, but the worker must judge the extent to which it is integrated into their history as a couple and assess whether they have developed strengths as a result of living through adverse experiences together.

The Wider Family

A.103 The next section looks at who are considered to be members of the wider family of the prospective adopter/s, including related and non-related people, those nearby and far away. It is intended to clarify their role and importance to the adopters and any children who may be placed with them. This section should be read in conjunction with the section on contact, as members of the child's birth family will also form part of the wider family to whom the adopters and the child will relate after adoption. In looking at wider family, we are interested in who they are, how they are related to the prospective adopters, what is their attitude towards the application and any child placed and what support – emotional and/or practical – they are prepared and able to give to the adoption.

A.104 Many applications to adoption panel are accompanied by genograms and ecomaps, but these do not always give a clear picture of how close relatives and friends are to the adopters and what significance they have, if any, in terms of support. During the home study the worker should explore these questions in detail. The assessment should map the quality and nature of support that may be available. Some prospective adopters choose not to tell family members that they are applying to adopt for a variety of reasons; they might not wish to face questions about infertility, may worry that others will not 'approve' of the idea of adopting a child from the looked after system or may not want to face embarrassment if the application is not successful.

Telling others about the plan to adopt

A.105 Prospective adopters should be encouraged to share the fact that they are applying with close family and friends in order to test out attitudes and potential support. Bringing others with them to any public information meetings that they attend is a good way to help wider family understand about adoption and to enlist their support both during the assessment process and looking to the future. The parents of prospective adopters may have spent years looking forward to becoming grandparents in the ordinary way; they may need time and help to acknowledge that this will not happen but that their role in fully accepting and loving an adopted child is vital. Where a couple are being assessed, one person's family may be more positive than those of the other partner. This could be a source of conflict between them and the worker should explore how they intend to deal with this. Referees are often chosen because they are or are expected to be positive about adoption and the worker can explore their potential support as well as their evaluation of the prospective adopters during the interview process.

Who may be available to help

A.106 Family and friends do not all need to be geographically close, as being able to 'unload' on the phone to a good listener who is not judgmental is as important as having a trusted person nearby who can provide practical support and child-sit. The prospective adopters themselves may be surprised at which of their wider circle turn out to be helpful and positive. Any exploration of this should cover not only attitudes to any child who may be placed but also to the child's birth family and any potential contact arrangements. Given that many adopted children are very disruptive of ordinary family and friend relationships, prospective adopters will need to be encouraged to work out how they will manage to meet the needs of the child in placement whilst still maintaining as many of their wider circle as they wish. The application should show clearly what attitudes are in the wider family towards adoption; if they are hostile how will this be dealt with by the prospective adopters and if they are positive exactly how will this be harnessed to provide support during and after the adoption process.

Housing

A.107 Regulation 23(3)(b) of the Suitability Regulations requires the agency to report on the accommodation where the adopted child will live. The assessment will need to consider the physical environment into which the child will come; its size, layout and location. Is the house or dwelling large enough to accommodate an adopted child and will he be able to have his own bedroom? If there isn't a spare bedroom, then how will the sharing arrangement work out with the child already in the house and how will the adopters ensure that a child joining the household can have their own physical and emotional space, as well as space to keep precious belongings safe?

A.108 The significance of 'having your own room' is different in different cultures and this will need to be taken into account. This may be a matching issue but, in any case, prospective adopters need to show an understanding of how an adopted child's need for space will be related to his history and how they might help a child to settle in to a home environment that is different to the one with which they are familiar. There should also be consideration of how the prospective adopter actually uses the space and facilities now and how this may have to change. Rooms or spaces that are currently used as a study or hobby room may have to be given up or used differently, putting an end to much-valued activities. This may impinge on one partner more than the other and is just one example to be explored of how the dynamics of a couple's relationship may be affected.

A.109 While the majority of prospective adopters appreciate that their lives will have to change a great deal when a child joins the household, the actual practical significance of this may not be apparent to them, especially the fact that the sacrifices required may not impinge upon them equally. The worker will need to know to whom the house belongs and, if a couple are applying, what this information tells them about the relationship. If it is rented, is the tenancy secure and is it in joint names? If the prospective adopters are owner occupiers, is the mortgage in joint names? Their exploration of their 'housing status' together may throw light on the stability and permanence of their relationship. For example, if only one of them owns the house this may just reflect the fact that one partner moved into a house already owned by the other. It would still be relevant to ask whether both are equally happy with this situation, whether they have any plans to change the status quo and why.

A.110 At the time they apply to adopt many childless adopters have well-established homes containing treasured furniture, carpets and ornaments. It is difficult through discussion alone to bring home how much a lively child (or children) may alter a home environment. Visits to the homes of experienced adopters and foster carers to observe how these very practical issues are dealt with will help. The *Home Inventory* looks at the physical environment of the household and how it can meet a child's developmental needs. A child-free home may also not be a child-friendly and safe home. People whose own children have grown up or who do not have children need to work closely with the worker on this issue and the guidelines used in assessing a child-minder's home for safety may be of use. The worker must consider whether the home is clean and has the basic facilities, including somewhere for a child to play. If the house does not have all the necessary amenities or space at the time of the assessment, a discussion will need to take place as to how this will be remedied, in what time-scale and how it will be funded. In the context of this and other cost considerations of adoption, the worker may need to look with the prospective adopters at the new Adoption Support Regulations and Guidance.

Employment

A.111 This section of the assessment looks at who is currently working in the household, their pattern of work and how this may need to change after placement. The assessment will need to focus on finding out whether prospective adopters are really aware of the possible impact of an adopted child's inherent difficulties, psychological or physical impairments on employment considerations. It can be very helpful for a child if prospective adopters are able to use their rights for adoption leave or in other ways provide for a full time carer in the initial stages of a placement. On the other hand, adopters may, in contrast to some birth parents, have a greater capacity to care for and to meet children's needs while managing to balance employment and care at the same time, providing a positive role model for a child or young person.

A.112 A child joining the family will inevitably mean changes and adjustment in employment patterns to ensure that extra needs can be met. The prospective adopters may think that the pattern of care they would provide to a birth child, or their own expectations of good enough care, would be sufficient to ensure that an adopted child can achieve at the same level and reach the same potential as a child living in their birth family. The *Home Inventory*, usually carried out with a birth parent or foster carer, can be adapted to provide a systematic and detailed picture of the care a child may need and the challenges presented, which can help the worker and the prospective adopters to decide whether their present employment patterns fit with the needs of a child.

A.113 Where the prospective adopters are a couple, the need to reconsider employment can be a very major factor in their application. Where both partners have studied, qualified and worked for some years it can be hard to decide whose career will be put on hold, with all that that implies in terms of lost opportunities and income. Often, prospective adopters will have already explored this issue and offer a solution to which they have agreed but which may not have resolved the feelings between them. If it is proposed that one partner gives up work to care for a child, the discussions need to consider how to ensure that the transition is gradual enough to allow adjustment. Prospective adopters must consider what arrangements are most likely to prove effective in meeting the needs of an adopted child and in meeting their needs as individuals. Roles and responsibilities within the home will need to be renegotiated and redefined; what seems simple at first requires a lot of flexibility and commitment in the long-term. The way in which a couple deal with this issue provides information about the stability and permanence of the relationship and also, perhaps, whether they both are equally committed to adoption. To some extent this is a matching issue, where the worker must help prospective adopters to judge how they could meet a child's special needs with the pattern of employment they have or the one to which they can move.

Child care arrangements

A.114 Given that many adopters, whether single people or couples, intend to go on working after a child has joined them, a discussion about child care arrangements is essential. Adoption agencies may have views and policies on this issue already but should not automatically exclude people who wish to continue working after adoption. Most children placed for adoption will benefit from an extended settling-in period but can then cope with an adoptive parent working outside the home as long as the child care arrangements made are sensitive and carefully planned. Older adopted children will be at school for much of the day and after school and holiday care arrangements can be made in the usual way, so that the child is not 'different' in this respect from his peer group. Details of proposed arrangements should be included in the report to panel.

Income

A.115 The question of income for many prospective adopters is closely linked with employment considerations as above. Implicit in the Government's drive to increase adoption as a means of achieving permanence for children is encouragement for adopters from all walks of life to come forward, whatever their income levels, if they can meet the needs of a child from the looked after system. Questions to be explored then are not just about how much money is coming into the household but the sufficiency of income to meet a family's needs and how well the family manage the income they have. Are they good money managers or not; do they live within their income or have substantial debts, do they make financial plans for the future or leave things to chance?

A.116 The worker will need to explore the income that will be available, given possible changes in employment, to meet requirements and the capacity of the prospective adopters to adjust their financial arrangements to the changes in their circumstances which caring for an adopted child is likely to present. For prospective adopters on a low income, the worker will need to ensure they are aware of all benefits and entitlements. The new adoption support arrangements should ensure that no placement is prevented solely for financial reasons and also that foster carers adopting a child already living with them get help with the transition period.

A.117 As the management of money and decisions about how it may be spent are often a major source of conflict in relationships, exploration of this issue is very important for the assessment. Prospective adopters must be encouraged to look realistically at the costs of keeping a child and advice from experienced adopters is very helpful, especially for prospective adopters who are currently childless. The lifestyle the prospective adopters have when they apply may not be sustainable after placement, so they must negotiate difficult decisions about what must be given up and the process of doing this as a family task will provide information about the stability and permanence of the relationship as well as income. Do they currently have a successful method of resolving conflicts in their relationship, does it work for this issue and, if not, how will they need to change?

A.118 For the majority of prospective adopters, their income level and lifestyle are above those of most birth parents of looked after children and this has implications for a child joining their home. The assessment will need to tease out how sensitive they are to this issue, both at the time of placement and in the long-term, particularly where there is regular contact with birth family members. Children will need time to get used to a household where poverty is not a feature but also realise that they cannot have everything they want; prospective adopters need to have strategies to help children learn this balance.

The Family's Social Integration

A.119 The Family's Social Integration is an exploration of the wider context of the local neighbourhood and community and its impact on the prospective adopters and any child who may join them. It includes the degree of the family's integration or isolation, their peer groups, friendships and social networks. The assessment of this aspect of the prospective adopters' lives needs to cover, in particular, their appreciation yet again of the difference both in type and degree between being birth parents and adoptive parents. The worker will explore with the prospective adopters the extent to which they are integrated into their local community and whether they have a local peer group with whom they can relax and enjoy activities. Do they relate to their neighbours, many of whom will come into contact with any child joining the family? Both single prospective adopters and couples are likely to spend more time around the home locality after placement, so this aspect of their lives will increase in importance.

A.120 Local people provide friendships but also social acceptance and both of these factors may be challenged as a result of an adopted child joining the home. Adoptive parents are to some extent marginalised anyway as compared to local people who have had their own children. The assessment will need to explore the level of understanding and coping strategies that the prospective adopters have to deal with the possible impact on their relationships with people in their local network, given that children coming into placement may be isolated, have poor social skills and be defensive as a method of survival and may be from a different racial and social group from the local neighbourhood.

A.121 If the prospective adopters are expecting to take on an older child and they are childless themselves, they will come 'late' to parenting networks. The worker will assess the extent to which they will be able to make relationships with other parents despite having 'missed' the pre-school and early years when these friendships are usually forged. Support from other adoptive parents is helpful, but prospective adopters need personal qualities of strength and resilience to negotiate these social relationships with other adults, qualities they will also need to advocate on behalf of an adopted child and help them to achieve a degree of social integration. This is also the point in the assessment to look again at the friendships and any local support networks available to prospective adopters. Their friends and neighbours may be entirely positive and supportive around the issue of adoption, but this is not always the case if they have misconceptions about children waiting for adoption or if a valued pattern of social interaction may have to come to an end.

Community Resources

A.122 This includes all the facilities and services in a neighbourhood (universal, targeted and specialist) which may be available to prospective adopters and an adopted child who comes to join them; this will include primary health care, day care and schools, places of worship, transport, shops and leisure activities. The worker will need to assess how much the prospective adopters know and understand about the availability, accessibility and standard of such resources. Many will already have researched this before they come forward; others will need to demonstrate they can be resourceful and do this themselves. A key point for prospective adopters is their understanding of the normality/special services dilemma. Most adopters start out on their journey wishing to give a child 'a normal life' but must come to an understanding that most children from the looked after system will need extra special help and support throughout their childhood and beyond.

A.123 Resourceful prospective adopters will have thought through how they can find out more, who can help them and what barriers might lie in the way of them being able to care for particular types of children. Families already caring for adopted children may be the best source of such information, not only about what is available but also how suitable and useful a service has proved to be for dealing with particular challenges.

Providing an Adoption Perspective

A.124 In adding an extra 'Adoption Perspective' to the Assessment Framework, the guidance reflects the fact that an adopted child joining a family presents extra challenges and requires particular parenting skills not normally required by birth children. A life span approach to adoption is needed. The fact of being adopted – or having to parent an adopted child or adult – lasts a lifetime with the issue of adoption always being there in the background and coming to the fore at various significant points in the life of the family. Prospective adopters will need to show evidence of strengths which will help them in the task, the resilience to deal with challenges and disappointments and the capacity to learn and develop new strategies and coping mechanisms over time.

A.125 The core capacities for successful adoptive parenting are described in this section and, whilst people may fall short in some other areas of the assessment, significant difficulties in this section may rule them out. Prospective adopters cannot be expected to have all the competencies they will eventually need at the beginning of their application, but the worker must be confident in their potential to develop those they do not have. By this stage in the assessment a wealth of information about prospective adopters and how they might manage aspects of adoption has already been collected.

A.126 A number of ways of assessing the strengths and capacities of prospective adopters have been suggested – including training and preparation, using case examples, adapting elements of the *Home Inventory* and the *Family Assessment*, looking back at their past in the family of origin, and the parenting they may already have given to birth or other children, listening to referees and using information from checks. Workers will already be using other tools designed locally to help them.

Recovery for adopted children

A.127 When a child is placed for adoption the process of recovery that started in their earlier placements continues – and some aspects begin again. This includes recovery from neglect and abuse that they have suffered, bereavement and loss issues in relation to their birth family and previous life and repair to their ability to make secure emotional attachments. As well as loss of birth parents, many children have also lost contact with siblings, grandparents, school, friends and community. As they move into their adoption placement they will also lose their current carers and their first experience of their needs being responded to and met. The worker will need to assess, using some read-across from the Preparation and Training course, the prospective adopters' understanding of these issues and of the responsibility of adopters to help a child move on from this point in their life.

A.128 Prospective adopters may find it helpful to refer back to their own experiences of bereavement and loss, for example their infertility, and think through how they lived through the key times of loss, stress and trauma and understood them. Were they able to integrate these experiences into their history and eventually able to move on to a more positive phase of life? The assessment can then focus with them on ways in which this recovery can be encouraged to happen, what their role with an adopted child would be, what help would be available to them and how they will recognise progress and improvement in the well-being of the child.

The impact of neglect and abuse

A.129 Some prospective adopters will have experienced neglect and abuse in their own lives, but many will not and all will need detailed information during their preparation and training to understand the impact of these factors on the development of children who are available for adoption and on the task of adoptive parenting. Access to experienced adopters and professionals such as psychologists can help to develop their understanding of what is needed to help repair the damage which can result from such experiences. The worker can build on this to look with prospective adopters at their capacity to provide, for example, consistent good quality basic care, provide emotional warmth to a child who rejects them, provide support to help a child improve low self esteem and a positive sense of self. The worker can explore the willingness and capacity of the prospective adopter to look after a child who does not initially respond to boundaries and routines, who has learnt to relate in ways that promote rejection and who has learnt how to cause difficulties in family relationships.

Building secure attachments

A.130 As the building of secure attachments is the key to the child's long-term survival and recovery, the capacity of prospective adopters to understand this complex area (at an instinctual and/or intellectual level) and to have the capacity to respond is fundamental to their assessment as suitable to adopt. Hopefully the preparation and training process will have provided information and insight into the different emotional and behavioural patterns that children present as a result of their disrupted or dysfunctional attachments. While these can be difficult areas for non-professionals to understand, it is possible for the worker to explore the question of attachments (secure and insecure) by using case histories to bring to life the internal world of the child and the consequences of that for adoptive parents and their life with a child in the future.

Capacity to promote the child's well-being

A.131 This includes promoting the child's physical and emotional development and the development of a positive identity. Some aspects of promoting physical development have been covered in the section on Parenting Capacity. Fundamentally, prospective adopters should be able to show understanding of this task based on the notion that adopted children have all the usual needs for physical care, plus extra needs to reflect deficits from their previous life, their inheritance and any impairments or health special needs they already have. Do prospective adopters understand that there may be very limited or inaccurate information about a child's medical history (particularly for children coming here from abroad for adoption) and about the medical history of the birth parents? Although the child will have had some of those information gaps filled while in previous care placements, have had an adoption medical and should have had good physical and medical care in the looked after system, this is not always the case.

A.132 The prospective adopters' ability to live with uncertainty is important, given that some genetic conditions may not be apparent at the time of placement, the full impact of poor care in early life on developmental milestones may not be clear and disclosures of abuse may not take place until after placement. Straightforward qualities such as being well organised about health, patience, diligence in making sure things get done and the ability to carry with them a positive and hopeful long-term view of the future are necessary.

Developing a positive identity

A.133 In addition to what has already been said about warmth and emotional attachments, the other key aspect of development is the ability to help the child develop a positive sense of personal identity. The *Assessment Framework* defines identity as the child's growing sense of self as a separate and valued person, including the child's view of self and abilities, self image and self esteem and having a positive sense of individuality. Also important is belonging – to family, peer group and groups in the wider society.

A.134 Most prospective adopters are able, given time and encouragement, to give an account of the development of their own identity defined in these terms and so are able to remember what it feels like to belong or not and know whether and to what extent they felt and feel positive about themselves as individuals. Prospective adopters can be asked what they have learnt from this and how they might apply this learning. Couples can be asked to discuss how they see that aspect of their partner and whether they understand from their partner's history why the partner's self esteem or sense of identity is as it is. Building on what has been learnt in preparation and training, the techniques for helping an adopted child to understand who they are in relation to those around them and to feel positive and optimistic about themselves are an extension of parenting any child, although the context is different and the work will have to go on for longer. Prospective adopters can be asked to provide examples of how they have done this for any child they have parented or a friend or member of their family.

The child and their birth family

A.135 The context for an adopted child's identity is the birth family they have left behind and how that is viewed by the child and by their new family. Despite the fact that the child's difficulties originated in the birth family, what the child needs most is acceptance of their history and acknowledgement of the positives and strengths of that history. Many adoption prospective adopters have ambivalent views of such birth families, at least at the beginning of their 'assessment journey', but will need to show they can learn from their training and think through what that would mean for a child coming to live with them and learn from their training. The chance to meet birth parents, or at least to see and hear their stories, is a very important learning opportunity on which the worker can build in assessing whether prospective adopters can empathise with the child and their history. How will the prospective adopters help the child to understand what has happened to them and to bring forward into their new life as many positives as possible?

A.136 Based on the generally accepted view that most adopted children will benefit from some form of contact with their birth family, the social worker will need to discuss with prospective adopters whether they understand the purpose of contact, its importance, its significance for a successful adoption placement and what their role might be. Questions to be covered include whether the prospective adopters can manage the feelings engendered by contact, whether they can put their own feelings aside if this is in the child's best interests and whether they can manage the practical arrangements in a positive and helpful way.

Valuing Diversity

A.137 It is likely that many children waiting for adoption will belong to different groups from many prospective adopters – different religion, culture, language, ethnicity, perceived social class sexual orientation. Children or prospective adopters may have impairments of different kinds. This section of the guidance looks at the key issues to be addressed during the assessment process in terms of Valuing Diversity. We are looking for prospective adopters who, whatever their own background, are open to caring for children from a variety of different backgrounds whose parenting needs they can meet. There are obvious advantages for children to move into new families whose background closely matches their own, but this is not always possible.

A.138 LAC (98) 20, 'Adoption – Achieving the right balance' sets out the current government policy on this issue. This circular has served us well and the policy will remain the same.

"A child's ethnic origin, culture, language and religion are significant factors to be taken into account when adoption agencies are considering the most appropriate placement for a child; however, such consideration has to take account of *all the child's needs*...

... Where no family can be identified which matches significantly closely the child's ethnic origin and cultural heritage, the adoption agency's efforts to find an alternative suitable family should be proactive and diligent; this work should also include setting agreed and realistic time limits to avoid a child having to wait indefinitely for a new family. A child's concept of time differs considerably from that of an adult. The Government has made it clear that it is unacceptable for a child to be denied loving adoptive parents solely on the grounds that the child and the adopters do not share the same racial background.

All families should assist children placed with them to understand and appreciate their background and culture and to this end enlist the help and support of others; this can include providing opportunities for children to meet others from similar backgrounds, to practice their religion – both in a formal place of worship and in the home."

Stability and Permanence

A.139 For the first time, the Adoption and Children Act 2002 will allow unmarried couples to apply jointly for an adoption order. The Act defines a couple as:

(a) a married couple, or

(b) two people (whether of different sexes or the same sex) living as partners in an enduring family relationship

A.140 This means that marital status, in itself, will not include or exclude people from becoming prospective adopters. Whether people are single, married or unmarried, they will be equally valued and respected as prospective adopters and what will matter is their capacity to parent a child joining their home by adoption. Whatever their marital status, why have they chosen this status and are they happy with it? Where the prospective adopters are a couple, it will be relevant to discuss why they have decided not to marry on the basis that an adopted child will need to understand why they have made a joint legal commitment to the child but not to each other.

Single Adopters

A.141 The contribution of single prospective adopters has long been undervalued in the adoption world despite the fact that experience shows that adoptions by single people work well and for some children that one to one relationship with a single person, whether male or female, is more suited to their particular needs. For some children living with a couple is more challenging as they bond more closely with one partner and feel in competition with the other partner for affection. They may find it impossible to trust one partner because of previous experience of abuse. With this in mind, the contribution of single prospective adopters should be assessed on the facts of their circumstances and the nature of what they have to offer is a matching issue.

A.142 When assessing single people, as with couples, the nature of their relationships and support systems is fundamental to what they can offer an adopted child. If the prospective adopter is not currently in a relationship outside of the home, the worker will wish to explore any previous significant relationships, why they ended and how the prospective adopter obtains companionship, practical and emotional support. Do they have good friends and support from family members which would sustain them through the challenges of caring for an adopted child and provide the child with any role models or aspects of parenting that one person cannot provide? Some single people are more than happy with their single status and are not looking for any sort of relationship with a partner. Where the prospective adopter is open to the possibility of a future partner, then the assessment will need to cover the detail of how that might impact on the adopted child whose needs must remain paramount.

A.143 Where the single adopter is in a significant relationship outside of the home, then the social worker will need to explore what contact and what role the partner might have with an adopted child; also whether a CRB check, references and other reports may be needed, with the consent of the partner.

A.144 Where the prospective adopters are a couple, whether married or unmarried, and whether of the same sex or different sexes, the core of the assessment of their relationship will be the same. The agency needs to know that the relationship is stable and permanent so that it can withstand the stresses of adopting a child and that the partners can jointly meet the parenting needs of a child joining the family by adoption. This guidance has not set a 'benchmark' length of time for which a relationship must have lasted to 'qualify' as permanent because of the great difficulty of defining what that length of time should be and from what point it should begin. The quality and strength of the relationship, although more difficult to evidence, are more important than its length and agencies should think carefully before requiring that couples must have lived together for a particular number of years before being accepted as prospective adopters.

A.145 It is reasonable for all joint applicants to be asked to demonstrate an enduring commitment to each other, evidenced through the conduct of their partnership to date and to demonstrate a similar commitment into the future. The assessing social worker will need to explore the following topics with couples:

- the history of this and any previous significant relationships the partners have had, including the length of time together
- what makes the current relationship work
- whether the relationship has been tested and how it survived
- how the couple go about resolving difficulties
- how the prospective adopters perceive 'commitment'
- where the couple see themselves in 20 years time
- how decisions are made within the partnership
- what issues are a cause of conflict in that relationship and how conflict is dealt with in the relationship
- whether and how both partners support each other and meet each other's needs, including their sexual and emotional needs
- how the couple adapt to changing circumstances and remain flexible

A.146 Based on the premise that adoptive parenting requires 'extra' stability and permanence as compared to birth parenting, this aspect of the assessment is of particular importance. While the assessing social worker will have a focus on stability and permanence during the Home Study process, much information and evidence about the nature and strength of the relationship (and its vulnerabilities) will become available throughout the assessment process and should be gathered together for discussion with the couple in specific interviews. For example, referees will have commented on the relationship and how well they see it being able to sustain and nurture an adopted child; the nature of the couples' financial arrangements and home ownership or tenancy arrangements are relevant to understanding the nature and depth of their commitment.

A.147 In this guidance stability is taken to mean 'stable enough to carry out parenting and other family tasks and stay on an even keel despite stresses and difficulties', while permanence is seen as 'the ability to sustain the relationship so it will carry on for the foreseeable future until the adopted child is old enough and strong enough to be independent'. The relationship is the springboard for the child's development, including his ability to develop lasting attachments. The worker will need to judge whether they have a clear identity as a couple and how they sustain and develop this. The couple will need to communicate effectively to be good adoptive parents and the worker will have ample opportunity to observe them communicating, making decisions, dealing with conflict, learning, working together and cooperating during the assessment process.

A.148 While the core of the assessment of all couples is the same there are also differences. Unmarried couples have a different legal status in relation to each other, to property and to inheritance. This is important to explore and understand. Different types of couples are seen differently by the local community, by work colleagues, friends, other agencies and by an adopted child. Couples will need to show that they understand how these differences are viewed, how this can impact on a child coming into their home and what they would need to do to ensure that the child was able to deal with this in his daily life outside the home. Whatever the nature of the prospective adopters' relationships, the child will need some aspects of nurturing from outside the relationship and prospective adopters will need to consider what these aspects might be in their case and how the extras will be provided; for example, two women living together might want to identify a male role model so that a child coming into their home can experience a positive relationship with a male figure.

A.149 As prospective adopters live in a world where the majority of people and the majority of adopters are heterosexual, same sex couples will need to consider with the social worker how they will explain their sexuality and their relationship to an adopted child coming to live with them. They will need to be able to help the child feel at ease with their sexuality, be able to help the child explain this to his friends at school and in the neighbourhood if it becomes an issue and ensure that the child has contact with positive role models from the opposite sex.

A.150 A clear judgement will be needed in respect of all couples as to whether their relationship is seen as stable and permanent, in order to meet the requirements of Regulation 5 of the Suitability of Adopters Regulations which states that, 'In determining the suitability of a couple to adopt a child, an adoption agency shall have proper regard to the need for stability and permanence in their relationship.'

SECTION 6 – WORKING WITH FOSTER CARERS, INTERCOUNTRY ADOPTERS AND PEOPLE ADOPTING FOR A SECOND OR THIRD TIME

Foster carers adopting a child for whom they are currently caring

A.151 In the past many agencies have had strict rules which precluded foster carers from applying to adopt any children placed with them on a short term fostering basis, however long those children had been in placement. This is no longer acceptable practice. Obviously, it is to be hoped that applications from foster carers to adopt children placed with them as foster children will always be the result of joint discussion and agreement with the agency. However, in accordance with Section 42(4) and Section 44 of the Adoption and Children Act 2002, foster carers who have had a fostered child living with them for one year will be able to give notice of their intention to apply to adopt that child and will be able to apply direct to the Court without going through the local authority which is responsible for the looked after child.

A.152 The National Adoption Standards specify the timescale for dealing with foster care applications. In most cases the agency will already know much about the foster carers, having assessed and approved them previously; they will still need to go through the assessment process for adoption, although some parts of the process can be left out or cut short. Fostering and adoption are very different and the second assessment will need to reflect the lifelong nature of the adoption task.

A.153 If a year has elapsed since a CRB check, references and reports were done then these will need to be repeated. New references will be needed to ask referees about suitability to adopt the particular child that is placed. Foster carers should be invited to those elements of the preparation and training which will add to their existing knowledge and skill base, recognising also that they will have much to contribute to such groups about caring for a child from the looked after system. The Home Study process can be modified in that the history of the foster carers will be the same, although the assessment will need to concentrate on their transferable skills and their capacity to deal with the adoption task.

A.154 Agencies may be concerned that if there are a number of adoptions of this sort, then their short term fostering resources will be significantly affected. This disadvantage is outweighed by the great advantage to the child in placement, who is able to gain a permanent home through adoption by people he already knows and loves, without losing close attachments already in place, friends, school and community. It is likely that the foster carers will know the child's birth parents and may be better able to deal with contact issues, although the context of contact will change through the adoption process.

Concurrent Planning

A.155 The concurrent planning mechanism can be used to avoid the need for some children to move placement, after the decisions have been made that they will not be returning home to their birth family and the plan for them is to be adoption. People who care for children in these circumstances will have been approved as both foster carers and adopters before the child is placed with them. Their training and preparation will need to cover the work they will need to do in their foster care capacity to work with birth parents towards rehabilitation, as well as the tasks associated with adoption. They will also need to be very flexible and able to cope with great uncertainty.

Intercountry Adopters

A.156 All local authorities are reminded that they are required to provide an Intercountry Adoption service under the 2002 Act. They may do this directly through their own Adoption Agency or may delegate this duty to another Adoption Agency, which may be a VAA. The agency may make a charge for the service. Some adoption agencies use social workers who are not employed by them (independent social workers). This is only acceptable where:

- the social worker concerned has the same level of qualification and skills as the workers employed by the agency to undertake domestic adoption work
- the social worker is managed and supervised by a suitable manager in the agency while undertaking the work
- the reports produced as a result of the assessment are submitted to the agency's adoption panel in the usual way and the subsequent recommendation is considered by the agency decision maker

A.157 Whether the work is carried out in-house, by another adoption agency or with the use of an independent social worker, it should be of the same standard as the domestic adoption work carried out by the agency. Intercountry prospective adopters should be made to feel welcome when they approach the agency, given appropriate information or signposted to where this is available, invited to information meetings, included in preparation and training and generally treated in the same way as domestic adopters. When prospective intercountry adopters first make an approach, it is open to the agency to discuss with them whether they might be interested in domestic adoption and to share with them which children are waiting for an adoptive family in that locality or elsewhere. No pressure should be put on them if, having received information about domestic adoption, they do not wish to pursue it.

Children from abroad

A.158 The need for agencies to undertake intercountry adoption work to the same standard as domestic work reflects the extreme vulnerability of children who are either adopted abroad and then brought here or brought to this country and adopted under English legislation. All of these children have suffered loss of their birth parents and families, as well as everything with which they are familiar. Many have had multiple changes of placement and have lived in very institutional settings where they did not have the opportunity to make secure attachments. Most will be of a different ethnic origin from their prospective adopters, who will have very little information about their early life or their medical history. Where intercountry adoption arrangements disrupt, the child almost inevitably becomes a looked after child. There are therefore practical reasons for ensuring that the intercountry service is of a high standard.

A.159 The preparation and training and the Home Study of intercountry adopters, as well as following the 'core curriculum', will need to pay particular attention to caring for a child from a different ethnic group and to the fact that the concept of 'open adoption' works rather differently for children from abroad. The majority of intercountry adopters will be taking a trans-racial placement and many live in areas where there are very few other children from the country of origin from which they wish to adopt. The worker will need to spend extra time and attention exploring their understanding of the difficulties this may cause, both for them and a child. In these circumstances the adopters will need to think hard about how they will help a child to settle into their local community whilst still maintaining links with his country and culture of origin. The assessment of the prospective adopters will also need to address their capacity to assist the child during teenage years, when interest in the birth parents and country of origin are often highlighted but the family will have very little information to help them.

Prospective Adopters who have adopted before

A.160 Many adopters do return to the agency seeking to adopt a second or subsequent child. They should be welcomed in the same way as any other prospective adopters and the process through which they will need to go explained carefully to them. In counselling them, the agency will wish to discuss carefully with them the position of the adopted child they already have, to try and ascertain the possible impact on that child of a further adoption. Whilst many adopters are keen to adopt again fairly quickly, with a gap that reflects the gap they envisaged between any birth children they might have had, adopted children often need much longer before they can contemplate or are able to deal with another child joining the family. The views of the adopted child should be sought, if he is of a sufficient age and understanding, and taken into account.

A.161 The nature of their assessment will depend on how long has elapsed since their last adoption. If they adopted some years ago then the assessment process and the children needing adoptive homes may be very different. In these circumstances the agency should repeat the whole process, recognising that their early history, as recorded in the Home Study, will be the same, although their recent history will need updating. Where the last adoption was, for example, in the last five years then the agency should use its discretion as to how to adapt the assessment process to suit the circumstances, although all checks will need to be done again. Where the adopters are hoping to adopt a sibling of the child they already have, then the advantages and difficulties of this will need to be carefully explored with them during the assessment.

SECTION 7 – ARRIVING AT A RECOMMENDATION AND PREPARING A REPORT TO PANEL

Checking information and documentation

A.162 As the Home Study process nears completion, the agency will wish to ensure that all the information required by regulation has been gathered in and account taken of it. Sometimes a reference or report from the local authority is late in arriving or a complication occurs, entailing a request for further information or follow up. If the reports arrive at adoption panel with something vital missing then the panel's time is wasted and prospective adopters are, rightfully, very unhappy with a delay that could have been avoided. This is particularly important as the prospective adopters will be attending panel themselves.

Drafting the report

A.163 The assessing social worker should prepare a report, highlighting any remaining issues of concern or for clarification and setting out clearly the strengths and areas for development for the prospective adopters. The draft should be discussed with the relevant manager so that his view is obtained of any further work needing to be done. It is recommended that a visit should then be made to the prospective adopters by another worker, someone who did not undertake the original assessment. This person could be the manager but could also be another worker in the adoption team. The purpose of this visit is to:

- obtain a different perspective on the assessment as a whole
- check whether the issues of concern or clarification are the right ones
- try to deal with the issues above and obtain answers
- obtain a different perspective as to the strengths and areas for development of the prospective adopters
- obtain another opinion on the draft recommendation to panel

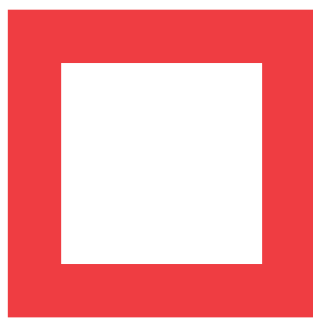
A.164 Many agencies already follow this practice and find it useful, recognising that otherwise the majority of the assessment (and the whole of the Home Study) is based on the views of one person, with their particular point of view. Where agencies 'co-work' assessments using two workers together to share the Home Study, this may not be necessary. Prospective adopters may feel nervous about having to meet another worker late on in the assessment process; however, many are reassured by this practice.

A.165 After the 'second visitor', the draft report can be amended as needed and the recommendation to the adoption panel should be countersigned by the manager. Many workers find the report difficult to draft because of the volume of material obtained and many panel reports are very descriptive, lacking the critical analysis and evaluation of information which is vital. The panel are only interested in what the information tells them about the capacity of the prospective adopters to undertake adoption.

A.166 Once complete, the reports are sent to the prospective adopters in accordance with regulations 23(6) and (7) of the Adoption Agency Regulations for their comments. The prospective adopters are not entitled to see the references, the reports of interviews with referees, CRB checks relating to anyone except themselves and any other third party information. The prospective adopters have 14 days to comment. The agency must decide whether it agrees with any comments they have and the report to panel should indicate clearly whether there is agreement or not between the agency and the prospective adopters.

A.167 There should be no surprises in the reports for the prospective adopters, as areas of concern should have been raised with them and dealt with as the assessment progressed. They should already have an understanding with the agency of their strengths and areas for development. There should be few instances where the recommendation to panel is not to approve the prospective adopters, as it would be in the best interests of all parties for any such assessment to have been ended well before any panel hearing.

Appendix B:



Partial Regulatory Impact Assessment

1. TITLE OF REGULATORY PROPOSAL

The Adoption Agency Regulations; The Suitability of Adopters Regulations.

2. PURPOSE AND INTENDED EFFECT

The Objective

B.1 These regulations are to be made under the Adoption and Children Act 2002, which received Royal Assent in November 2002. This Act represents the culmination of efforts made by the Government to modernise the existing adoption primary legislation that pre-dates the Children Act 1989, and as such is in urgent need of amendment in key areas (for example, in making the child's welfare the paramount consideration in all decisions made by adoption agencies and courts).

B.2 *The Adoption Agency Regulations* are a substantial package that cover the arrangements for the establishment of adoption panels and the duties agencies have in respect of: considering and deciding whether a child should be placed for adoption; collecting information and deciding whether a prospective adopter should be approved to adopt; considering and deciding on the proposed placement of a child with an approved prospective adopter; making placements, dealing with consent and conducting reviews; maintaining proper records; and considering arrangements for contact. As such they form the basic framework for the entire adoption process and the intent of the Adoption and Children Act 2002.

B.3 These regulations seek to ensure proper processes for adoption, which protects the welfare of children who may be adopted. In developing an adoption system that is more consistent and transparent to users, we hope that it will encourage more prospective adopters to come forward. By improving the efficiency of the system, our aim is for delays in the adoption process to be reduced.

B.4 *The Suitability of Adopters Regulations* provide for the matters to be taken into account by an adoption agency in assessing prospective adopters and preparing a report for the adoption panel in respect of the suitability of the prospective adopters to adopt. Building upon the requirements set out in regulation 23 of the Adoption Agency Regulations on the range of information that agencies must collect prior to making an assessment, the Suitability of Adopters Regulations detail how the information gathered should be used in making an assessment of suitability to adopt. A duty is also created for authorities to provide preparation and training services for prospective adopters. In particular, the regulations make provision for the purpose of securing that, in determining the suitability of a couple to adopt a child, proper regard is had to the need for stability and permanence in their relationship. This consideration should already be fundamental to the assessment process, but is given further prominence by the fact that the Adoption and Children Act 2002 allows for unmarried couples to apply jointly to adopt.

B.5 These regulations are designed to further improve the quality of adopter assessment and ensure consistent application of clear criteria nationally. The intent is to help ensure that prospective adopters are assessed thoroughly and fairly; this will prevent unsuitable persons getting any further in the process; will facilitate more appropriate matching with children and therefore encourage more successful placements; and will promote confidence in the assessment process that should make more prospective adopters come forward.

The nature of the regulations

B.6 The regulations covered by this RIA fall into three categories:

- Those that replicate satisfactory current requirements into the new legislative framework
- Those that modify and improve current requirements (some substantially)
- Those that implement completely new requirements

B.7 All three categories have been designed to combine together to form a coherent, interdependent new system. The first category (those regulations that simply transfer current requirements over to the new legislation), are not discussed in this RIA as they have no new impact.

B.8 All of these regulations will apply to all adoption agencies in England, including the 31 in England that are run by the voluntary sector (Voluntary Adoption Agencies or VAAs). The majority of the measures in the regulations will have no impact on the voluntary and business sectors. There are however some new obligations that will affect all adoption agencies.

Background

B.9 The Adoption and Children Act 2002 legally underpins a number of the new policies for adoption set out in the White Paper *Adoption: a new approach*, published in December 2000 (which itself followed on from the Review of Adoption commissioned by the Prime Minister in 2000). The new measures included in the Act are set out below:

- a duty on local authorities to make arrangements to provide adoption support services, including financial support, according to a framework to be set out in regulations;
- a new right to an assessment of needs for adoption support services;
- an independent review mechanism in relation to the approval of prospective adopters;
- a more consistent system for access to information for adopted people about their background and their adoption, and the disclosure of protected information by adoption agencies;
- the obligation for courts to fix and monitor timetables in adoption cases so that they are dealt with at the appropriate speed, and to support better case management;
- a new 'Special Guardianship' order to provide permanence for children for whom adoption is not a suitable option.

B.10 The Adoption and Children Act will also:

- align adoption law with the relevant provisions of the Children Act 1989 to ensure that the child's welfare is the paramount consideration in all decisions to do with adoption;
- require adoption support agencies to register with the registration authority under Part 2 of the Care Standards Act 2000 to ensure that services are provided to a high standard;
- replace the now dated process of "freeing" children for adoption with new measures for addressing the issue of parental consent, including placement orders;
- extend eligibility to apply to adopt jointly to unmarried couples
- incorporate the majority of the Adoption (Intercountry Aspects) Act 1999 with legislation on domestic adoption to create a single consolidated legal framework for adoption;
- strengthen the safeguards within the adoption system by improving the legal controls on intercountry adoption and advertising children for adoption, and making clear the steps in relation to adoption which may only be taken by adoption agencies;

- legally underpin the Adoption Register to suggest matches between children waiting to be adopted and approved adoptive families waiting to adopt.

B.11 In delivering the above, the Adoption and Children Act 2002 will take forward many of the provisions set out in the draft Adoption Bill published for consultation by the Department of Health in March 1996 and developed as a result of the Review of Adoption Law 1991-1993.

B.12 The Adoption Agency Regulations deal with adoption agencies. Their role in the adoption process is pivotal and spans the point from which adoption is considered for a child or prospective adopters first enquire about adopting, through to providing ongoing and often lifelong support for adoptive families. In the context of these regulations adoption agencies: arrange adoptions by counselling the child and his parents; consider and decide whether the child should be placed for adoption; assess and decide whether applicants should be approved as prospective adopters; review the child's case; and match and place the child with approved prospective adopters.

B.13 The Suitability of Adopters Regulations deal in detail with the stages of the adoption process where an assessment is made of prospective adopters to ascertain whether they have the capacity to parent a child who has been put forward for adoption. These considerations are initially made by the adoption agency social worker who will gather background information, carry out checks and visits, prepare a report based on their findings and then submit this to the agency Adoption Panel. Panels then consider the report, and make a recommendation to the agency decision-maker – usually a senior manager in the authority's social services arm.

Risk assessment

B.14 Both the Prime Minister's Review of Adoption and the subsequent White Paper underlined the value of adoption for children who might otherwise be looked after, and concluded that the current practice and legislation needed to be improved upon. Stretching new targets and standards have been set for adoption services. The 2002 Act completely modernises existing adoption legislation and will provide a framework for better adoption services.

B.15 The Adoption Agency Regulations implement a significant portion of the 2002 Act and as such a key risk is that without them the Adoption and Children Act 2002 cannot be put into effect as intended, and its benefits reduced or lost. The Adoption Agency Regulations cover almost the entire adoption process and strengthen it throughout; a risk is that without thorough and effective processes, delays can occur and children can be mismatched with adoptive parents, which can lead to trauma and distress for both (and in the worst cases actual harm to the child). If placements disrupt children experience a lack of stability and permanence and possibly, a return to local authority care.

B.16 For the Suitability of Adopters Regulations, the main risk currently is that inappropriate people may possibly be approved as prospective adopters, and this can have serious consequences for children. Also, some people may choose not to apply to adopt because of what they perceive as unfairness and a lack of transparency in the existing system. It is likely that inconsistent practice leads to some prospective adopters not being approved to adopt on the basis of factors which would not have been considered in their assessment had their application to adopt been considered by a different agency. In cases where these risks are realised, children waiting for adoption are potentially being denied a safe and loving adoptive home and good applicants to adopt are turned away.

3. OPTIONS

Option 1 – to do nothing and rely on current arrangements.

B.17 This is effectively not an option. The Adoption Act 1976 is an outdated piece of legislation. The Adoption and Children Act 2002 has already been passed, and now needs to be implemented through regulations if Parliament’s intentions are to be delivered.

Option 2 – to bring forward Regulations for England under the Adoption and Children Act 2002 that are less prescriptive than drafted (and therefore akin to the 1983 and 1997 regulations used currently), supported by new guidance.

B.18 The risk here is that a more ‘basic’ set of regulations would not ensure that the improvements identified by reviews, demanded in consultation and promised by Ministers in Parliament would be implemented on a national basis. Whilst there is some excellent best practice amongst adoption agencies, current experience shows that the existing regulations are not ensuring a high enough standard of service across the board.

B.19 Recent statutory guidance, the foremost being the National Adoption Standards, has sought to clarify our expectations of the performance levels of adoption agencies across England which users can expect to receive. However, agencies have found it challenging to deliver the standards expected, at least in part, because they are not underpinned by a modern legislative framework. We have given careful thought to the balance that needs to be struck between new guidance and new regulations and in order to meet the concerns of users and providers have decided that an updating and expansion of the legislative base is required, on which new guidance can be based in future.

Option 3 to bring forward Regulations for England under the Adoption and Children Act 2002 as drafted, which implement a significant part of the Act’s intentions. This will deliver Ministerial commitments to Parliament and ensure that the range of problems identified within the Adoption Act 1976 and Adoption Agencies Regulations 1983 are tackled.

B.20 There is a risk that these new regulations will involve extra burdens and costs for adoption agencies including VAAs, but these should be minimal and will not ultimately fall on the VAAs themselves.

4.(i) BENEFITS

- *Option 1* – no perceived benefits.
- *Option 2* – the only benefit of this option is that adoption agencies retain a greater discretion on how to interpret the regulations, giving them more flexibility in how they work. But as recent reviews and consultations have shown, service users and agencies want more certainty and clarity in the regulations and guidance.

B.21 The regulations being put forward under our preferred option have been carefully and clearly drafted, and helpfully follow the chronological process of adoption. This will be welcomed by service users.

- *Option 3* – this option is the most effective away of meeting the principles set out in the Act, which were based on the findings of the Prime Minister’s Review and the White Paper. They give the best chance of ensuring that children adopted in England are only adopted if this is found to be in their best interests and the prospective adopters are assessed to be suitable to adopt. Some particular benefits arising from regulations that involve *new* obligations (due to entirely new duties or re-definition of existing ones with the intention of improvements in performance) are listed below:

THE ADOPTION AGENCY REGULATIONS:

(a) New duties and their benefits

Regulation 8: appoint an agency adviser to the adoption panel – this will require the provision of administrative, personnel and policy support to adoption panels, increasing their effectiveness. Most agencies already provide this role as a matter of good practice; this regulation is designed to ensure that all agencies will.

Regulation 13(1)(c): ascertain the child’s wishes and feelings – to be carried out as far as is reasonably practicable, this is an important measure to help put children’s interests at the heart of the process by ensuring that their views are listened to and taken into account. It reflects existing best practice in applying current legislation and ensures that this will be implemented across the board.

Regulation 14(b)(ii)(aa): counselling on consent to placement for adoption; Regulation 14(b)(ii)(bb): counselling on consent to future adoption order; and Regulation 14(b)(ii)(cc): counselling on a placement order – provides a safeguard to ensure that when parents or guardians are making difficult and fundamental decisions about a child’s adoption they are properly counselled about the process.

Regulation 17(2) and Regulation 28(2): adoption panel to have regard to Section 1 of the Act – this reinforces the most fundamental provision in the Act; that when considering adoption for a child and considering a proposed placement, the adoption agency (in this example, its adoption panel) must have as its paramount consideration the welfare of the child, throughout its life. Section 1 also incorporates a welfare checklist (as in the Children Act 1989) which the adoption agency, and the court, must have regard to, and this includes issues such as the child’s wishes, needs and characteristics (including race and religious persuasion); and his relationships with birth relatives.

Regulation 18(3)(a)(i): ascertain whether the parent or guardian are prepared to consent to placement for adoption; and Regulation 18(3)(a)(ii): ascertain whether the parent or guardian are prepared to consent to the making of a future adoption order – these mean that when appropriate, advance consent to placement and adoption can be given by relinquishing parents that enables the adoption process to continue without the need for a court hearing for a placement order.

Regulation 19: appointment of an officer of the Children and Family Court Advisory and Support Service (CAFCASS) – Following extensive consultation, the Adoption and Children Act 2002 incorporated provisions that provide for the placement of children for adoption where the parents give their full and signed consent. This removes the need for a freeing order, which will help speed up the adoption process in cases where the parent(s) consent to adoption.

B.22 The Adoption and Children Act 2002 provides specific safeguards to protect the rights of birth parents who give consent. One important safeguard is that for consent to be effective the birth parents must give their consent by signing a prescribed form in the presence of an independent officer. This regulation places this responsibility on the Children and Family Court Advisory and Support Service (CAFCASS). Under court rules, the CAFCASS officer will have a duty to satisfy himself that the birth parents give their consent freely, without condition and in the full knowledge of its implications. If the CAFCASS officer is not satisfied that this is so, he must inform the agency that consent is not given and the agency will not have the authority to place the child for adoption, unless they obtain a placement order.

Regulation 26: information to be sent to the Independent Review Panel – this ensures that the new review panel (which deals with appeals from prospective adopters where an agency is minded to reject their application) receives all necessary information in a timely manner.

Regulations 30(2), 30(3), 30(5), 30(6), 30(7) and 30(8): provide prospective adopters with a placement plan, notify prospective adopters of changes, provide confirmation and notification – the placement plan gives prospective adopters more clarity as to the process ahead and the adoption agency’s commitment regarding services they can rely upon to meet the needs of the child, and their needs when the child is placed with them.

Regulation 32: the steps the agency should take where the parent or guardian withdraws consent – this provides an important safeguard for parents, allowing them the right to withdraw consent until the point where the application for an adoption order is made, and for the adoption agency to return the child to them (if it is deemed that the child is not at significant risk of harm if returned to the parents or guardian).

(b) Re-defining and extending of exiting duties to provide improvements

Regulation 16(1): this extends the current duty to prepare a report for the adoption panel – the generality of the current regulation provides scope for inconsistency and incomplete reports, which we understand happens in practice. Consequently the current regulation carries with it the significant risk of fundamental decisions about a child being based on inadequate information. The new regulation therefore sets out the information that should be included in the report, in a logical sequence. It requires, for example: details about the child; a summary of his history; a chronology of the actions and decisions taken by the agency; specialised information about his current and future health and educational needs; an overall assessment of the child's needs; and an essential explanation of why adoption is the preferred option for the child.

Regulation 20(1)(b): explanation of placement orders and consent to adoption – requires prospective adopters to be given a full understanding of the legal implications of various stages of the adoption process. It is essential that the prospective adopters understand the process of adoption before they commit themselves to their part in it. This is not a new burden as a duty already exists to explain the adoption process; this regulation helps ensure that a comprehensive explanation is given which covers placement orders and the issue of consent.

Regulation 23: assessing the prospective adopters – this is more extensive than the current regulations and establishes requirements to ensure that a full picture is gained of prospective adopters by adoption agencies. It also halves the maximum time that can be taken from an agency presenting the report to the prospective adopter for comment, to the agency considering any response and then presenting the report to the adoption panel (thereby reducing delays in the adoption process). The reduction in delay will also be welcomed by prospective adopters, who are usually keen to adopt as a soon as is feasibly possible.

Regulation 25: the agency determination/decision on whether to approve the prospective adopters – this is more extensive than current regulations, and provides for the prospective adopters to ask for a review of the Agency's determination. The recourse to a new Independent Review Mechanism is an important measure to increase the confidence of prospective adopters in the fairness of proceedings.

Regulation 27: referral of proposed placement to adoption panel – this is more extensive than the current regulation, which requires the agency to give the prospective adopters written information about the child only after the agency's decision to place the child has taken place. The recent ruling in *A and B vrs Essex County Council* highlighted the importance of the provision to prospective adopters of timely and accurate information about a child where a match is proposed, as it is important that they are aware of the scale of undertaking that is involved in a proposed placement as early as possible.

B.23 The new draft regulation provides that where the adoption agency is considering placing the child with approved prospective adopters, it is to provide the prospective adopters with a full report about the child, which is set out in schedule 5 to the regulations. This is to ensure that the prospective adopters are as fully informed as possible about the child and his needs and are therefore better placed to indicate whether they think they can meet the child's needs for an adoptive home.

Regulation 31: reviews of the placement – this is more extensive than current regulations, and importantly requires that the child's views be ascertained where practicable, and clarifies the method for doing this (e.g. in confidence).

THE SUITABILITY OF ADOPTERS REGULATIONS:

B.24 In summary, these will make the process of carrying out an assessment of a prospective adopter more thorough, consistent and transparent. They have four main new beneficial aspects:

- 1) These regulations clarify the range of checks and references that agencies must make, and ensure that basic information that applicants give about themselves is verified. Experience shows that had checks of this nature been carried out in certain past cases, harm to a child could have been avoided.
- 2) The regulations require preparation and training services to be provided. It is essential that prospective adopters understand the needs of the children that they may be taking on, particularly as most of these may be coming from the looked after system and have complex needs.
- 3) The regulations require a standard 'menu' of areas of assessment to be covered in assessments. Whilst allowing flexibility for local implementation, this will provide a core standard template; this will promote confidence in systems across agencies in England and make comparisons easier. The result of this should be a greater facilitation of cross-agency adoptions.

4) Finally, the regulations ensure that the assessment mechanism and tools build upon the existing Framework for the Assessment of Children in Need and their Families. This provides for continuity for the majority of social workers and managers who are familiar with this Framework. It will also make information easier to feed into the Integrated Children's System records, a key aspect of the Department's move towards electronic data capture in children's services and the implementation of the electronic social care record.

B.25 The main new requirements in these regulations are:

- New safeguards – requirements to carry out checks with former partners, adult children and employers.
- Removal of any 'blanket bans' when assessing suitability to adopt (for example, not considering people over the age of 50)
- Compulsory provision of preparatory and training services to help with the parenting of traumatised and abused children
- Use of a standard curriculum of training
- Covering a standard set of issues when making assessments
- Use of the Framework for the Assessment of Children in Need and their Families when assessing.

4.(ii) QUANTIFYING AND VALUING THE BENEFITS.

B.26 The benefits of protecting children who may be considered suitable for adoption and of ensuring that all those who wish to adopt are assessed fairly and openly will largely not manifest themselves in monetary terms. The value will be seen in improving the safety and welfare of children who are adopted and in the resulting improvements in their life chances.

B.27 In addition, these regulations should create an increased confidence in the adoption process (via measures such as access to an Independent Review Mechanism), potentially leading to an increase in the number of prospective adopters. This may not of course necessarily lead to more adoptions, firstly because not all applicants may be suitable. Many children that are put forward for adoption from the looked after system have had difficult backgrounds and therefore have complex needs, which not all prospective adopters will be able to deal with, even with access to support services.

B.28 It is nevertheless expected that these regulations will contribute to sustaining the higher number of adoptions of looked after children that have been achieved in recent years; the focus on adoption generated by the Prime Minister's Review and the White Paper in 2000 provided a boost for the prioritisation of adoption services locally and these regulations could be seen as continuing this drive.

B.29 It is not possible to make accurate estimates of how many new adoptions there may be or how many children will benefit from these regulations more generally. What the table below does show is the recent trends in numbers of adoptions of looked after children and in total. The Government has a target of increasing by 40% the number of looked after children who are adopted, and aim to exceed this by achieving, if possible, a 50% increase by 2006, up from 2700 in 1999/00. Considering the complex needs of many children in the looked after system, we do not expect there to be a continuing increase in the number of adoptions; this legislation should however consolidate the progress made to date and help ensure high quality adoptions.

Year	1995	1996	1997	1998	1999	2000	2001	2002
No. of adoptions from looked after children	2000	1900	1900	2100	2200	2700	3067	3400
Total number of adoption orders	5797	5962	5307	4387	4316	4942		

B.30 We might expect all of those children affected by the adoption process, in the period following on from these regulations coming into force, to benefit to a varying extent from the improvements they produce. The figures represented by the current trends and Government targets can be seen as a minimum indication of benefit, as they do not include those children who did not reach the final adoption order stage of the process but who still should benefit from the changes being made. Furthermore, prospective adopters and adoptive parents will also benefit from a more effective and transparent system.

B.31 Any increase in the number of adoptions will have two financial consequences for local authorities: a reduction in expenditure on care provision and an increase in expenditure on adoption support services. In the long term, expenditure on adoption support is likely to be less than care provision. The Government has provided £70m in ring-fenced funding for local authority adoption support services from 2003 to 2006, which was based on assumptions that local authorities will provide more financial support to families in future and an improved range of support services, including the more expensive ones that address complex needs; and that more people will be eligible to receive this support. As yet we are not able to provide a figure for the overall saving (although research has been commissioned and the results will be available shortly, and will inform the final RIA for these regulations).

B.32 Overall society will benefit from the better life chances children gain from adoption than being left in care.

- 70% of young people leave care without having gained any GCSE or GNVQ qualifications
- 25% of looked after children aged 14-16 do not attend school regularly and many have been excluded and have no regular educational placement

- compared to the general population, those who have been looked after are 60 times more likely to be homeless.

B.33 In comparison, the outcomes for adopted children are considerably better, being closer to the population average.

B.34 Finally, it may be tempting to conclude that as many of these regulations explicitly set out new information gathering and assessment requirements, they might therefore involve more cost. However, we do not think the requirements necessarily mean more work, but rather a different way of doing existing work. Furthermore, more investment up-front in the process is likely to pay dividends later on with the potential for cost-savings in the longer term.

B.35 Take for example *Regulation 27: referral of proposed placement to adoption panel*. Under this regulation, the cost of preparing a fuller report and providing it earlier in the matching and placement process should help to ensure only feasible matches are pursued. This will save time for adoption agency staff. In a worst case scenario the failure to make prospective adopters aware early on of the needs of the child to be placed with them could lead to a mismatch and disruption, with all of the costs this entails.

5. COSTS

5(i) Compliance costs for business, charities and voluntary organisations

B.36 There is no impact on businesses. The proposals would impact solely on local authorities and the 31 VAAs that currently carry out adoption work.

- *Option 1* – none, but this option has been dismissed.
- *Option 2* – as this would entail minimal change to the current system few new costs would be involved. The main source of expenditure would arise if new guidance was issued and adoption agencies needed to familiarise staff with it and ensure on an ongoing basis that it was being applied. However, this option has effectively been removed, as it does not meet the objectives.
- *Option 3* – in general terms, the potential costs of each set of regulations are scoped below. A lack of data and research in this field makes it difficult to make monetary assessments at this stage. This shortage of information is the result of an historic lack of recording and storing of data on adoption services and their specific costs within wider children’s services spending. The consultation on these regulations will seek to draw out more of this information where it is available. The implementation of the Adoption and Children Act 2002 more generally should instigate a greater collection of financial information on adoption; for example in the requirements it makes for authorities to have strategic plans, including evaluation mechanisms, for their adoption services (not covered in these regulations).

ADOPTION AGENCY REGULATIONS

B.37 Many of the new duties and improvements that these regulations make to the existing legislation are already required by the National Adoption Standards, which came into effect from April 2003, and they should therefore already be common practice in agencies. Many of the new regulations are replacing existing obligations that fall on adoption agencies (both voluntary and local authority led). In their being more detailed in part than the current legislation, compliance with them may possibly involve extra cost for those agencies not already achieving the service level expected under the NAS. It is however reasonable to expect a uniform, excellent standard of service for every vulnerable child who may be adopted. Also, being more prescriptive doesn't necessarily mean a new burden; it may simply mean that existing practice is carried out in a different way, and more consistently.

SUITABILITY OF ADOPTERS REGULATIONS

B.38 These will make the process of carrying out an assessment of a prospective adopter more thorough and effective, and as such may mean more cost for those not already meeting the standards through their own best practice.

B.39 A key issue considered by these regulations is that they reflect section 45(2) of the Adoption and Children Act 2002 which, for the first time, directly states that proper regard is given when determining the suitability of a couple to adopt to the need for stability and permanence in their relationship. This should not be a new burden however, as this consideration is already fundamental to the assessment process.

OTHER KEY CONSIDERATIONS

B.40 Many of the changes that these new regulations seek to impose may in reality have a minimal impact on many adoption agencies including VAAs, which are already meeting the standards required through their own policies and procedures. As discussed in section 3) above, from April 2003 the National Adoption Standards came into force following the White Paper and a consultation exercise. These standards are statutory guidance for local authority adoption agencies and good practice guidance for VAAs, and describe the performance that should be expected of an adoption service; as such they reflect many aspects of these regulations. Adoption agencies are already expected to comply with this guidance and we might therefore expect that many agencies should not experience a significant impact from all aspects of this legislation.

B.41 Whilst some of these regulations are more prescriptive than those currently in place, compliance with them does not necessarily entail extra cost; it may simply be the case that existing effort is refocused or redirected into the new requirements.

B.42 In other instances, costs incurred by new duties are expected to be approximately the same as those they replace. For example, the fee that agencies will be charged for a convening of a new Independent Review Panel should be of a similar level to the costs of dealing with an appeal under the current rules.

B.43 It is not expected that these regulations will impose significant new training costs on agencies above those which they already incur in ensuring staff follow good practice. Clearly there will be issues initially for staff around familiarisation with the new requirements and framework, and the Government will be organising a programme of training to support implementation of the Adoption and Children Act 2002.

B.44 If extra work (and therefore cost) were to arise from the regulations that increase the demands around reporting, assessing and approving prospective adopters, and more detailed processes for matching children with adopters, VAAs would be able to recoup costs from local authorities via an inter-agency fee.

B.45 The inter-agency fee is a payment currently made by an adoption agency (local authority) to another adoption agency (voluntary adoption agency or local authority), which has carried out part of an adoption process on its behalf. This serves to recompense for work undertaken. The way in which this fee is calculated is described in the information below, which illustrates how the Consortium of Voluntary Adoption Agencies (CVAA) sets the fee for its members (which constitute almost all of the VAAs):

B.46 The CVAA placement fee is set at 65% of National Joint Council spinal column point 38 for the salary of local authority employees. It is currently £17,823 for all VAAs, payable in two parts; the first two thirds on placement and the remaining one third on the anniversary of the placement or on the making of an adoption order, whichever is the sooner.

B.47 The fee is increased by 10% for agencies in the London area.

- Sibling groups – for 2 siblings, 1½ times the fee
for 3 siblings, 2 times the fee
for each additional sibling, another ¼ fee
- Post Adoption Module – this is set at 1/6 of the full fee for *each* child placed. It is a one-off payment, made at the time the adoption order is granted. It purchases access to the CVAA member's post adoption services for adopted children and adopters indefinitely.

B.48 If there was any rise in VAA costs due to these regulations, this fee may possibly need to rise to cover the extra cost (it is unlikely that VAAs would be able to use any of their voluntary funds to subsidise a rate increase that pertained to statutory work). However, we do not expect the regulations to have a significant impact in this regard, for the reasons outlined in this section.

B.49 The Prime Minister's Review looked at the accusation that the inter-agency fee acts as a factor inhibiting recruitment of prospective adopters between areas. It concluded that the fee was not in itself a significant barrier.

B.50 Through the consultation process on these regulations we are seeking views from VAAs on potential costs, what this will mean for the level of the inter-agency fee in future, and the knock-on effects that may have.

5(ii) Costs to Government

B.51 Where these regulations result in the need for a level of performance beyond that already achieved by existing best practice, or in the need to implement new obligations, there could be some additional costs to local authorities (which fund their own adoption agencies and also pay the inter-agency fee to VAAs, which could increase). For the reasons outlined in the previous section we do not expect this to be the case.

B.52 Local authorities have received an overall 42.9% total increase in children's social services resources between 1996-97 and 2003-04. This includes £66.5m over the three years 2001-02 to 2003-04 delivered mainly through the Quality Protects grant to secure sustained improvements in adoption services, fund the White Paper implementation agenda and meet the costs of implementing the National Adoption Standards. This funding will be mainstreamed from 2004-05 into the children's services baseline. The extra £70m for adoption support and special guardianship support services from 2003-04 to 2005-06 has been ring-fenced and is only intended to cover new support service demands on local authorities.

B.53 Start-up costs for the Independent Review Mechanism will be borne centrally from existing funds. The scope of this will be ascertained through the tendering process currently underway, which is expected to conclude in December 2003.

We will be asking specific questions during the consultation on these regulations to establish what the impact on costs for local authorities, and the potential knock-on effects.

5(iii) Costs to others

B.54 In this context, inter-country adoption is the process by which prospective adopters in the UK seek to adopt children from overseas. Adoption agencies have a central role to play in assessing suitability, matching and placing for permanence and fulfilling all of their duties therein. In the case of inter-country adoptions, Adoption Agencies have the discretion to charge the adopter for their services, and usually do so in practice. Therefore any rise in these charges are likely to be passed directly to the prospective adopter. Again, we do not anticipate any change in costs.

6. IMPACT ON SMALL BUSINESS

B.55 There is no impact on small businesses. Due to the vulnerability of those affected by adoption and the international law that seeks to protect the rights of children and reduce the incidence of child trafficking, the Adoption and Children Act 2002 replicates the Adoption Act 1976 in preventing any organisation making arrangements for adoption from making a profit. To be approved as a VAA the organisation must be a not-for-profit incorporated body.

B.56 However, we have considered the impact on small VAAs. They will be in a position to recoup any increase in costs that does occur, via the inter-agency fee.

7. COMPETITION ASSESSMENT

B.57 We have considered the market for VAAs and found that there are 31 VAAs in England. In addition, 150 local authorities with social service responsibilities have a duty to provide local adoption services. As this regulation is deemed to be cost neutral and VAAs may (and do) charge a uniform inter-agency fee to cover their costs in any case, competition is not affected.

8. CONSULTATION

B.58 The Department for Education and Skills has consulted with other key Government interests including the Department for Constitutional Affairs and the National Assembly for Wales in its development of the regulations.

B.59 The Regulations are now being issued for full public consultation with those with an interest being given the opportunity to consider the Regulations over the next 6 months. It will be possible for those with an interest to write in with comments on the Regulations either via the internet or by post. There will also be the opportunity to attend consultation workshops. The Regulations will be finalised taking account of the comments received.

B.60 As stated earlier, the consultation will raise specific questions about the potential cost implications of these Regulations.

9. ENFORCEMENT, SANCTIONS, MONITORING AND REVIEW

B.61 Local authorities and VAAs will be required to comply with these regulations. The Care Standards Act 2000 established the National Care Standards Commission (NCSC) and the Welsh Assembly as the registration authorities. The NCSC is an independent and non-departmental public body. From 30 April 2003 the registration authorities assumed responsibility for the inspection and registration of VAAs and the inspection of local authority adoption services in England and Wales. From April 2004 the new Commission for Social Care Inspection (which merges the relevant functions of the NCSC with the Social Services Inspectorate) will carry out these duties.

B.62 We are not anticipating that any significant extra work for the regulating authorities will ensue from these regulations; as such we do not expect these regulations themselves to result in an increase in the fees charged by the regulators to those they regulate. We will be discussing this with the NCSC during the consultation period.

B.63 The current registration and annual NCSC fees are subsidised by way of a transitional period for those regulated. For a VAA the registration fees are £1,100 or £300 depending on the size of the principal office; if they have other branches these each pay either £1100 or £300, again depending on their size. Annual fees are £500 or £250 depending on the size of the principal offices, with a further £500 or £250 payable for each branch, depending on its size. Local authority adoption agencies do not need to register but pay an annual £500 fee. There will be a rise in these fees due to the fact that the NCSC is intended to be self-financing in due course and will therefore need to gradually increase fees until they reach full cost recovery.

B.64 Any new burden to VAAs that might possibly be directly attributable to increases in regulatory fees caused by these regulations should be minimised, as they would pass on these higher inspection charges via the inter-agency fee. The Government has said in the 2001 NCSC Frequencies of Inspection and Regulatory Fees consultation document that it expects funding authorities to pay higher commissioning fees for social care as service providers pass on increases in regulatory fees

B.65 If regulations are judged to be breached, the registration authority must still decide what action, if any, to take. In practice, if the regulations were not being met in few respects, it is likely the registration authority would note this in its inspection report and send a written warning. If the regulations are persistently flouted and/or they were substantially or seriously disregarded, the registration authority may decide to take enforcement action either in terms of fines, cancelling registration or in terms of a criminal prosecution.

B.66 There should not be an initial peak in offences committed due to the extensive introduction period for the regulations, which will allow sufficient time for adoption agencies to familiarise themselves with the new requirements and equip themselves to carry them out.

B.67 The Adoption and Children Act 2002 also provides powers for Ministers to intervene in extreme circumstances; the appropriate Minister may make an order containing directions to ensure that the local authority complies with the duty within the period specified in the order.

B.68 Ministers will receive information about the failure of local authorities through a variety of routes, one of which is the NCSC. There is also a comprehensive performance assessment system for social services, the performance assessment framework, based on in-year and end-year monitoring, performance indicators and a range of inspection reports.

B.69 Work is ongoing as to the range of offences involved in the Adoption and Children Act 2002 and the likelihood of increased prosecutions. We will be consulting carefully with the NCSC (on running costs and enforcement options) as part of the six month long consultation exercise for these regulations. We will be sharing our findings with the DCA and other stakeholders during the consultation process.

B.70 Regulations relating both to the general power to regulate adoption agencies and the management of agencies will be made under Section 9 of the Adoption and Children Act 2002. These will have their own RIA and full consultation process, and as such there will be ample opportunity to more fully discuss regulation and enforcement at a later date.

10. SUMMARY AND RECOMMENDATION

B.71 The Government has indicated its intention to bring forward regulations to implement the Adoption and Children Act 2002, of which these regulations form a significant part. Our recommended approach is *Option 3*.

B.72 We consider that these regulations as drafted will meet the objectives; Option 3 gives the best guarantee that the reform to the system identified as needed will be implemented. The regulations represent a coherent package that follow the chronology of the adoption process and strengthen it throughout in a systematic manner.

B.73 Existing practice means that these new regulations will not involve a significant level of additional work for adoption agencies; but they will help ensure that a high quality service both for children and parents is available across England. Where additional net costs are incurred they should be relatively low and justifiable when compared to the benefits they will produce. The regulations will not impose significant extra overall costs on VAAs who can pass on any new costs that do arise to local authorities, via the inter-agency fee.

B.74 The potential scale of any rise in costs (for VAAs and local authorities) associated with the regulations will be investigated in detail as part of the consultation process.

B.75 During discussion around the Adoption and Children Act's passage through Parliament, the adoption sector widely welcomed this programme of reform. The Adoption and Children Act 2002 was developed in a consultative way and key adoption stakeholders, including VAAs and representatives of local government, gave evidence to the Select Committee which greatly influenced the shape of the legislation.

B.76 These two sets of regulations have been covered in the Partial RIA as they are interdependent and there are presentational benefits in treating them as a coherent package to stakeholders in the consultation exercise. Both will eventually have their own SI and accompanying Final RIA.

11. DECLARATION

B.77 I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Date:

Contact point: Richard Vaughan or Brendan Clark

Placement and Permanence Division

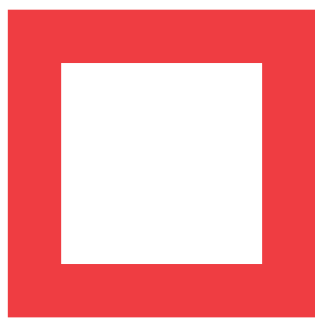
Wellington House

135-155 Waterloo Road

London SE1 8UG

0207 972 3970

Appendix C:



Feedback form

Consultation on Adoption Agency Regulations and Adopter Assessment Regulations

CONSULTATION RESPONSE FORM

The closing date for this consultation is 01/05/2004

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual consultation responses. This will extend to your comments unless you inform us that you wish them to remain confidential.

Please tick if you want us to keep your response confidential

Name _____

Organisation and job title (if applicable) _____

Address _____

Return completed forms to: Placement, Permanence and Child Protection Division

Area 121 Wellington House

133-155 Waterloo Road

London

SE1 8UG

Telephone: 020 7972 2000

Fax: 020 7972 4179

email: adoptionagencies.consultation@dfes.gsi.gov.uk

Please indicate whether you are responding:

As an individual On behalf of an organisation

Please tick one box from the following list of options that best describes you as a respondent. This enables views to be presented by group type.

Local Authority Voluntary Adoption Agency Representative Group

Social Worker Adopter Prospective Adopter

Academic Other (please specify) _____

A. ADOPTION AGENCIES REGULATIONS & GUIDANCE

Question One – Independence of adoption panel chairs

(a) Regulation 3(2) requires agencies to appoint a person as the chair of the adoption panel who is independent of the agency. Is this feasible?

- Yes No No view

If not, please comment on why this would not be feasible:

Comment:

Question Two – Tenure of panel members

(a) The draft Regulations provide that a panel member may not be appointed to a panel for more than two consecutive terms of five years. Is this the right length of time?

- Yes No No view

(b) If no, what would be a more appropriate length of time?

Maximum of two terms of three years

Maximum of two terms of four years

Other (please specify) _____

Comment:

Question Three – Social worker panel members

(a) Reflecting current requirements, draft Regulation 3(3)(a) provides that the two social workers appointed to the panel should be in the employment of the adoption agency. Should this be relaxed?

Yes No No view

(b) If yes, should we: Yes No

Require that only one of the two social workers
be in the employment of the agency

Allow the agency discretion as to whether the two
social workers should be in its employment

Adopt an alternative approach (please specify in the
comments box below)

Comment:

Question Four – Restrictions on independent panel members

(a) Where the adoption agency is a local authority Regulation 3(6)(a) prevents a person being appointed as an independent member of the adoption panel if they are in the employment of the social services department. Does this sufficiently protect the panel's independent element?

Yes No No view

(b) If no, should the Regulation be amended to reflect the current restriction that prohibits the appointment of any person in the employment of the local authority?

Yes No No view

Comment:

Question Five – Targets for baby placements

(a) Should the guidance set targets or benchmarks where the agency is considering adoption for a relinquished baby aged 6 weeks or less?

Yes No No view

(b) If yes, should these cover:

	No	Yes	If yes, do you have a suggested target?
--	----	-----	---

Preparing a report for panel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
------------------------------	--------------------------	--------------------------	--------------------------

The panel's consideration and recommendation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
--	--------------------------	--------------------------	--------------------------

The time for the agency decision maker to make a decision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
---	--------------------------	--------------------------	--------------------------

Matching with prospective adopters once decision made	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
---	--------------------------	--------------------------	--------------------------

Placement with prospective adopters once match made	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
---	--------------------------	--------------------------	--------------------------

(please specify) _____

(please specify) _____

Comment:

Question Six – Legal advice to panels

(a) Regulation 17(2)(c) states that the adoption panel may obtain legal advice as it considers necessary in relation to the case. Is this sufficient?

Yes

No

No view

(b) If No, should there be a requirement for the panel to obtain legal advice in every case?

Yes

No

No view

Comment:

Question Seven – Preparation of prospective adopters

(a) Is it sufficient to set out an expectation in guidance that all prospective adopters should receive preparation?

Yes No No view

(b) If no, should there be a requirement in Regulations that stipulates that an adoption agency may not proceed with an application unless the prospective adopters participate in preparation sessions?

Yes No No view

(c) Should there be a standard form for trainers and prospective adopters to complete together during the preparation sessions and share with the social worker undertaking the home study?

Yes No No view

(d) If yes, should it cover:

	Yes	No
Issues that should be followed up in the home study	<input type="checkbox"/>	<input type="checkbox"/>
The prospective adopter's evaluation of the preparation they have received	<input type="checkbox"/>	<input type="checkbox"/>
Areas requiring further preparation/training	<input type="checkbox"/>	<input type="checkbox"/>

Other (please specify) _____

Comment:

Question Eight – Checks with local authorities

- (a) Adoption agencies are required to obtain a report from the local authority where the adoption agency is not the local authority in the area where the adopters have their home, or where the agency is the local authority, a report from its social services department. Should this requirement be extended to include other parts of the local authority?

Yes No No view

- (b) If yes, which parts?

Education department Housing department Other (please specify)

Comment:

Question Nine – Checks on prospective adopters

- (a) Should prospective adopters be checked against the Child Protection Register of the Local Authority where they live?

Yes No No view

- (b) If yes, should this be covered in:

Regulations Guidance

- (c) The draft guidance asks agencies to write to adult children and ex-partners of prospective adopters to ask about any child protection concerns. Are agencies given appropriate discretion on this issue?

Yes No No view

Comment:

Question Ten – Referees

(a) Regulation 23(2) and Schedule 4 of the draft Regulations require personal references to be provided by three referees, not more than one of whom may be a relative. The agency will also be expected to write to the current employer of prospective adopters who are in work. Should this be amended?

- Yes No No view

(b) If yes, how should it be changed?

Require two referees

Require four referees

Remove restriction on the number of referees who may be relatives

Prevent any relatives from being referees

Other (please specify) _____

(c) Should referees be checked against the Child Protection Register of the Local Authority where they live?

- Yes, recommended in guidance Yes, required in Regulations
 No No view

Comment:

Question Eleven – Sending prospective adopters a copy of the report to panel

(b) Does the requirement in regulation 23(6) to allow 14 days for the applicants to comment on the agency's report allow the prospective adopters sufficient time to read and respond to the report?

Yes

No

No view

Comment:

Question Twelve – Referring cases back to panel when the agency is minded not to approve prospective adopters

(a) As most applicants that agencies are minded not to approve as prospective adopters are likely to choose to go to the independent review panel is it necessary to also retain the option for them to submit representations to the adoption agency rather than seek an independent review in Regulation 25?

Yes

No

No view

(b) If yes, can you offer examples of when would it be helpful for prospective adopters to have their case re-considered by the agency rather than the independent review panel?

Comment:

Question Thirteen – Restricted approval of prospective adopters

The draft Regulations do not provide for the approval of adopters to specify the characteristics, number, or age range of children they would be able to care for. However, it is considered good practice for the agency to indicate the number and age range that the prospective adopter would be qualified to care for.

(a) Should restricted approvals be left to the agency's discretion as now?

Yes No No view

(b) Should restricted approvals be recommended in the guidance?

Yes No No view

(c) Should restricted approvals be required in the Regulations?

Yes No No view

Comment:

Question Fourteen – Reviews of approved adopters

(a) Where prospective adopters have not had a child placed with them or where their circumstances have changed should the Regulations impose an obligation on the adoption agency to review the adopters' approval?

Yes No No view

(b) Should the approval be reviewed at a particular point in time?

Yes, after one year Yes, after two years Yes, after three years
 Yes, after a different time No No view
(please specify) _____

(c) Should the approval be reviewed when the agency becomes aware of a change in the circumstances of the prospective adopters?

Yes (please give examples below) No No view

(d) Should the review include:

	Yes	No
Making further enquiries	<input type="checkbox"/>	<input type="checkbox"/>
Obtaining further information	<input type="checkbox"/>	<input type="checkbox"/>
Preparing a report for the adoption panel	<input type="checkbox"/>	<input type="checkbox"/>
A chance for prospective adopters to comment on the report	<input type="checkbox"/>	<input type="checkbox"/>
Panel consideration and recommendation	<input type="checkbox"/>	<input type="checkbox"/>
Making a decision	<input type="checkbox"/>	<input type="checkbox"/>
Notifying prospective adopters of the decision	<input type="checkbox"/>	<input type="checkbox"/>
(please specify) _____		
(please specify) _____		

Comment:

Question Fifteen – The placement plan

(a) Regulation 27(3) requires the agency to ascertain the views of the prospective adopter about the proposed placement. Regulation 30(2) requires that the agency must provide the prospective adopter with the placement plan at least 7 days before the child is placed with them. Is this appropriate?

Yes No No view

(b) If no, when should the agency be required to share the plan with the prospective adopters?

Before it is completed
 On the day of the placement (with the agreement of the prospective adopters)
 Other (please specify) _____

(c) Should the requirement for placement plans be treated differently if the child is a baby aged under 6 weeks?

Yes No No view

(d) If yes, how should it be different?

Comment:

Question Sixteen – Visits

(a) Regulation 31(5) stipulates that the agency must visit the child and the prospective adopter within one week of the placement and on such other occasions as the agency considers necessary. Is this sufficient?

Yes No No view

(b) Should the Regulations specify that the agency must carry out further visits at a specified frequency?

Yes No No view

(c) If yes, should we require: Yes No

Weekly for the first four weeks

Fortnightly for the following four weeks

And then monthly until such a time as the adoption order is made

Plus such other occasions as the agency considers necessary

Weekly for the first eight weeks

Fortnightly for the following eight weeks

And then monthly until such a time as the adoption order is made

Plus such other occasions as the agency considers necessary.

Other (please specify) _____

Comment:

Question Seventeen – Complaints

Section 117 of the Adoption and Children Act 2002 extends the Children Act 1989 complaints procedure, which is more child focused, to all complaints and representations about the exercise of functions under the Adoption and Children Act 2002. Which child focused functions carried out by adoption agencies under the Adoption and Children Act should be subject to the Children Act complaints procedure?

Comment:

Question Eighteen – Informing the adopted person of his adoption

Should the Regulations require adoption agencies to ask prospective adopters to give a written undertaking to inform the child (at a time and manner considered appropriate by the adopter) of his adoption before he reaches 18?

Yes

No

No view

Comment:

Question Nineteen – Arrangements Required

To what extent do the Regulations and guidance together make clear what arrangements adoption agencies must put into place (such as establishing an adoption panel and formulating policies and procedures)?

Very clear

Largely clear

Not very clear

Not at all clear

How could this be improved?

Comment:

Question Twenty – Adoption Agency Duties

Do the Regulations and guidance together make clear what duties adoption agencies have and the actions they must take to implement these?

Yes

No

No view

In relation to:

Are the Regulations and guidance:

Considering a child for adoption

Very
clear

Largely
clear

Not very
clear

Not at all
clear

Considering applicants as prospective adopters

Matching children with approved adopters

Reviewing placements

Recording, storing, safeguarding, accessing and transferring confidential adoption case records

Contact

Handling parental responsibility

How could they be improved?

Coverage of:

Suggested improvements:

Considering a child for adoption

Considering applicants as prospective adopters

Matching children with approved adopters

Reviewing placements

Recording, storing, safeguarding, accessing and transferring confidential adoption case records

Contact

Handling parental responsibility

Question Twenty One – Transitional Issues

What arrangements need to be put into place to ensure the transition between the old and the new systems work effectively?

What are the key issues needing to be addressed?

Question Twenty Two – Overall Detail

Overall, is the level of detail provided by the Regulations and guidance:

Too much About right Too little

Comment:

What additional issues need to be covered and where?

Additional Issues (please list)	Regulations (please tick)	Guidance (please tick)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comment:

Question Twenty Three – Overall View of the Guidance

Overall, in assisting you in interpreting the requirements set out in the Regulations do you find the guidance

Very helpful Helpful Not very helpful Not at all helpful

Comment:

How could we make the guidance more helpful and accessible?

Comment:

B. SUITABILITY OF ADOPTERS REGULATIONS & GUIDANCE

Overall, do you find the guidance

Very helpful Helpful Not very helpful Not at all helpful

Do you have any general comments about the best way to make the guidance more helpful and accessible?

Comment:

Question One – The assessment

(a) Should it be a requirement that all children being placed for adoption should have their own bedroom in the adoptive home?

- Yes, recommended in guidance Yes, required in Regulations
 No No view

(b) Some agencies are using “Adult Attachment Interviews” to explore the extent of unresolved attachment issues in the history of prospective adopters. In your experience are these currently used:

- Extensively A reasonable amount Occasionally
 Not used No view

(c) In your experience, when they are used are they:

- Very effective Effective Occasionally effective
 Rarely effective Ineffective

Comment:

Question Two – Standard documents and tools to assist local implementation

(a) Should the Department provide standards of the following documents to assist with local implementation:

	Yes, using existing documents (please give details)	Yes, commission new documents	No
Application form to ensure that everyone is collecting the same information in the same way	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Letter to referees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Letter to adult children of prospective adopters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Letter to ex-partners of prospective adopters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prospective adopter preparation/training review form to record key issues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify) _____			

(b) The guidance quotes the tools produced to accompany the Framework for the Assessment of Children in Need and their Families. Please list below other tools that would be helpful to social workers assessing prospective social workers:

Tools already in existence that should be disseminated (please provide details of where these can be obtained from)	New tools that the Department should commission
_____	_____
_____	_____
_____	_____

Comment:

Question Three – Status of guidance

Should the guidance be:

Statutory guidance

Good practice guidance

Comment:

Question Four – Overall Detail

(a) Overall, is the level of detail provided by the Regulations and guidance:

Too much

About right

Too little

Comment:

(b) What additional issues need to be covered and where?

Additional Issues
(please list)

Regulations
(please tick)

Guidance
(please tick)

Comment:

Question Five – Overall View of the Guidance

Overall, do you find the guidance

Very helpful Helpful Not very helpful Not at all helpful

Do you have any general comments about the best way to make the guidance more helpful and accessible?

Comment:

C. PARTIAL REGULATORY IMPACT ASSESSMENT

Question One – Impact of the Regulations

(a) Do you agree with the assessment made on the likely impact of the draft Regulations?

- Yes No, assessment too high No, assessment too low No view

(b) When compared to the level of work required under the Adoption Act 1976 will the Regulations and their accompanying guidance require:

- Less work for adoption agencies
 About the same amount of work for adoption agencies
 More work for adoption agencies
 Significantly more work for adoption agencies

(c) Where are the key differences?

Comment:

Question Two – Costs

Is the assessment of the costs of the draft Regulations:

- Too high About right Too low

Comment:

Question Three – Benefits

Is the assessment of the benefits of the Regulations

Too positive About right Too negative

Comment:

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Comments:

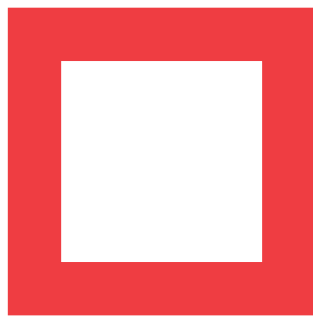
Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you tick the box below.

Please acknowledge this reply

Here at the Department for Education and Skills we carry out our research on many different topics and consultations. As your views are valuable to us, would it be alright if we were to contact you again from time to time either for research or to send through consultation documents?

Yes No

Appendix D:



The Adoption and Children Act 2002

This Appendix covers:

Section 1 and the welfare checklist	198
Placement for adoption	200
Consent to placement and advance consent to adoption	200
Withdrawal of consent	202
Placement orders	202
Effect of Placement Order	204
Authority to place a child for adoption	205
Removal and recovery from placement	205
Reports to the court	206
Applications for adoption orders	207
Adoption orders	207
Children Act orders	209
Step parents and the acquisition of parental responsibility	209
Changing the child's name	210

This part of the draft guidance is intended to explain the general operation of the placement process under the Adoption and Children Act 2002. Please consider whether it provides appropriate and sufficient advice.

SECTION 1 OF THE ACT

D.1 The Adoption and Children Act 2002 ('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 courts and adoption agencies in all the decisions relating to his 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 the court and adoption agencies.

D.2 Section 1(2) of the Act (see the text box below) sets out this general and overriding duty on adoption agencies and the courts: that in coming to any decision relating to the adoption of a child the paramount consideration should be the welfare of the child, throughout his life. With the application of the paramountcy principle, adoption legislation will be aligned with the Children Act 1989 (the '1989 Act').

D.3 It is essential that the adoption agency, in so far as is reasonably practicable, involves and consults the child at all stages of the adoption process, ascertaining and taking into account his views in a way which is sensitive to, and consistent with, his age and understanding. Section 1(4)(a) of the Act places a duty on the court and the adoption agency to have regard to the child's ascertainable wishes and feelings about the decision (considered in the light of the child's age and understanding).

The Adoption and Children Act 2002

Section 1: Considerations applying to the exercise of powers

- (1) This section applies whenever a court or adoption agency is coming to a decision relating to the adoption of a child.
- (2) The paramount consideration of the court or adoption agency must be the child's welfare, throughout his life.
- (3) The court or adoption agency must at all times bear in mind that, in general, any delay in coming to the decision is likely to prejudice the child's welfare.
- (4) The court or adoption agency must have regard to the following matters (among others) –
 - (a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding),
 - (b) the child's particular needs,
 - (c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,
 - (d) the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant,
 - (e) any harm (within the meaning of the Children Act 1989) which the child has suffered or is at risk of suffering,

- (f) the relationship which the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including –
 - (i) the likelihood of any such relationship continuing and the value to the child of its doing so,
 - (ii) the ability and willingness of any of the child’s relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child’s needs,
 - (iii) the wishes and feelings of any of the child’s relatives, or of any such person, regarding the child.
- (5) In placing the child for adoption, the adoption agency must give due consideration to the child’s religious persuasion, racial origin and cultural and linguistic background.
- (6) The court or adoption agency must always consider the whole range of powers available to it in the child’s case (whether under this Act or the Children Act 1989); and the court must not make any order under this Act unless it considers that making the order would be better for the child than not doing so.
- (7) In this section, “coming to a decision relating to the adoption of a child”, in relation to a court, includes –
 - (a) coming to a decision in any proceedings where the orders that might be made by the court include an adoption order (or the revocation of such an order), a placement order (or the revocation of such an order) or an order under section 26 (or the revocation or variation of such an order),
 - (b) coming to a decision about granting leave in respect of any action (other than the initiation of proceedings in any court) which may be taken by an adoption agency or individual under this Act, but does not include coming to a decision about granting leave in any other circumstances.
- (8) For the purposes of this section –
 - (a) references to relationships are not confined to legal relationships,
 - (b) references to a relative, in relation to a child, include the child’s mother and father.

PLACEMENT FOR ADOPTION

D.4 Chapter 3 in Part 1 of the Act establishes new legal processes for placing a child for adoption through an adoption agency. An agency may not place a child for adoption with prospective adopters (except in the case of a child who is less than six weeks old and has been relinquished for adoption) unless the parents or guardian have given consent to placement under Section 19 of the Act or the agency has obtained a placement order, authorising it to place the child with any prospective adopters chosen by the agency. Where the local authority is satisfied that a child should be placed for adoption, but the parents⁵⁹ do not consent to placement or have withdrawn their consent, the authority must apply for a placement order if the authority considers the threshold criteria in Section 31(2) of the 1989 Act are met.

D.5 To help achieve greater certainty and stability for the child the Act is intended to ensure that fundamental decisions – whether adoption is the right option for the child and whether the parents consent – are made earlier in the adoption process than at present, with court involvement where necessary. The issue of parental consent is intended to be settled so far as is possible before a child is placed for adoption, the uncertainty for prospective adopters is minimised, and the potential for birth families to be faced with a ‘fait accompli’ at the final adoption hearing is reduced.

CONSENT TO PLACEMENT AND ADVANCE CONSENT TO ADOPTION

D.6 Section 19 of the Act provides for parents to be able to give their consent to their child being placed for adoption through an adoption agency. The parents or guardian may consent to the child being placed with specific identified prospective adopters, or with adopters chosen by the adoption agency. Consent to placement for adoption may be combined with advance consent to the making of the adoption order itself, under Section 20 of the Act. The parents or guardian may decide at this point or subsequently that they do not wish to be notified of the final adoption order hearing. Section 20(4) provides that the parents or guardian need to inform the adoption agency where they do not wish to be notified of the final adoption order hearing.

D.7 Specific adopters do not have to be identified by name, so that where appropriate their anonymity may be safeguarded. For example, they could be identified as adopters ‘A’ and their family and home could be described in general terms to give the parents an impression of the family with whom their child may be placed.

⁵⁹ “Parents” means a parent with parental responsibility for the child.

D.8 Consent to placement – the signing of a prescribed form – must be witnessed⁶⁰ by an officer from the Children and Family Court Advisory and Support Service (CAFCASS) to ensure that it is properly given, and that the parents fully understand its implications. The adoption agency will need to notify the CAFCASS office that is closest to the parents' address of the need for CAFCASS to appoint a CAFCASS officer to witness consent. In making the request to CAFCASS, the agency will need to send information to CAFCASS about the case, and this information is set out in Schedule 2 to the Adoption Agency Regulations.

D.9 For consent to be effective, a CAFCASS officer will need to satisfy himself that the parents or guardian fully understand the consequences of giving consent and that they do so unconditionally. The CAFCASS officer will then need to witness the formal signing by the parent or guardian of the consent to placement form, which will be a prescribed form, sign the form himself and then notify the agency, including the signed consent form with his notification. The adoption agency must keep the signed consent form and any notice given to the agency that the parents or guardian do not wish to be informed of any application for an adoption order⁶¹ on the child's case record. A parent or guardian who has given consent under Section 19 of the Act may subsequently give consent to the making of the adoption order⁶² by signing the prescribed form. This must be witnessed by a CAFCASS officer.

D.10 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, he should notify the agency. In these circumstances consent under Section 19 of the Act cannot be given.

D.11 Where consent is given under Section 19 of the Act, the adoption agency is authorised to place the child for adoption. With authority to place the child for adoption, parental responsibility is shared between the agency and parents to the extent decided by the agency under Sections 25(1) & (2) of the Act. The following also apply: the contact provisions in Sections 26 and 27 of the Act; and the restrictions on removing the child from the placement in Sections 30 to 33 of the Act. Where the adoption agency is authorised to place the child for adoption any existing Children Act contact order ceases to have effect; parents and others may apply to the court for a contact order under Section 26 of the Act. Where the adoption agency is authorised to place a child for adoption, parents or guardians may not apply for a residence order in respect of the child, other than at the final adoption order hearing with the court's leave to oppose the making of the adoption order. If an application for an adoption order has been made, a guardian may not apply for a special guardianship order unless he has obtained the Court's leave to oppose the making of the adoption order.

⁶⁰ This is to be provided for by forthcoming rules to be made under section 102 of the Act.

⁶¹ Section 20(4)(a) of the Act.

⁶² Under section 20(1) of the Act.

D.12 The agency may place a child who is less than six weeks old and has been relinquished for adoption without consent under Section 19 of the Act or a placement order, but the agency must have the parents' written consent. In the latter case, the agency may place the child but is not authorised to place the child for adoption within the meaning of the Act, and the agency must seek formal written consent from the parents when the child reaches the age of six weeks.

WITHDRAWAL OF CONSENT

D.13 The Act allows the child's parents or guardian to withdraw their consent to the child's placement for adoption at any time up to the point where the prospective adopters apply for an adoption order. In such cases, the child should be returned to the parents (see the section on the removal provisions), unless the adoption agency is a local authority and the authority still considers that the child should be placed for adoption. In such a case, the local authority would need to apply for a placement order.

D.14 An application for a placement order would prevent the child's removal until such time as the court had decided whether to make the placement order. Where the agency is a voluntary adoption agency, it must consider whether it is appropriate to inform the relevant local authority social services, who may then take whatever action they think is necessary under the Children Act, such as applying for an Emergency Protection Order⁶³. Also see 'Removal and recovery from placement'.

D.15 Where parents have given consent to their child being placed for adoption and have not withdrawn it before the prospective adopters apply for the adoption order, they may only oppose the final adoption order with the leave of the court, and the court may only grant leave if there has been a change of circumstances since parents gave consent to placement.

D.16 The Act therefore strikes a careful balance between the rights of the parents and stability and security for a child and prospective adopters, where consent to placement has been given.

PLACEMENT ORDERS

D.17 A placement order is a court order authorising a local authority to place a child for adoption with any prospective adopters who may be chosen by the authority. It continues in force until it is revoked, an adoption order is made in respect of the child or the child marries or reaches the age of 18. Only local authorities may apply for placement orders.

D.18 Where a local authority has made an earlier care order application and while this is still pending the authority decides that the child should be placed for adoption, Section 22(2) of the Act places a duty on the authority to apply for a placement order⁶⁴.

⁶³ The voluntary adoption agency could apply for the Emergency Protection Order, though it cannot institute care proceedings.

⁶⁴ Sections 22(1) to (3) do not apply if an application for an adoption order has been made but not disposed of or if anyone has given notice of their intention to adopt the child, unless they have not applied for the adoption order in the four months since, or their application has been withdrawn or refused (see Section 22(5) of the Act).

D.19 Where a child is the subject of a care order and the local authority decides that the child should be placed for adoption, the authority may either apply for a placement order or it may place the child for adoption with consent if the parents are prepared to give their consent under Section 19 of the Act. This provides the authority with flexibility and in the latter case avoids unnecessary court proceedings if consent is forthcoming. However the authority will have to consider whether it can rely on the parents' consent remaining in place or whether it would be in the child's best interests to apply for a placement order.

D.20 The Act also provides the flexibility for the local authority to apply for a placement order or make concurrent care order and placement order applications. The latter would give the court the option of making both orders so that the child is still protected should the placement order be revoked, as the care order will automatically reactivate, or of making a care order instead of a placement order⁶⁵.

D.21 If the local authority makes an application to the court for a placement order, the child may not be removed from its current placement, whether voluntarily accommodated by the authority or placed with adopters, unless the court gives leave for the child's removal by the authority or a person specified in the court's leave.

D.22 The court will appoint in the proceedings a CAFCASS officer to safeguard the interests of the child. The local authority should then prepare and submit a report to the court on the case in accordance with Section 43 of the Act and the forthcoming court rules that will be issued in due course for consultation.

D.23 Section 21 of the Act provides that a court may not make a placement order unless the child is already subject to a care order or the court is satisfied that the conditions in Section 31(2) of the 1989 Act (conditions for making a care order – threshold criteria) are met or the child has no parent or guardian. The former means that the court must be satisfied that the child is suffering, or is likely to suffer significant harm, and that this is attributable to the care being given to him, or likely to be given to him, or that the child is beyond parental control. If the court is satisfied that the 'significant harm' threshold is met, it will then consider whether a placement order should be made. The child's welfare will be the paramount consideration, and the court will be obliged by Section 1 of the Act to apply the welfare checklist.

D.24 The court will therefore have to consider the full range of alternatives available to it (whether under the Act or the 1989 Act), and may only make the order if:

- it is satisfied that the parents consent, as they may choose to do so at this stage
- or the child has no parent or guardian
- or it is satisfied that the consent of the parent or guardian should be dispensed with
- and that it considers making the placement order is better for the child than not doing so.

⁶⁵ Under section 29(1) of the Act, the care order does not have effect at any time when the placement order is in force.

D.25 If the court decides not to make a placement order, and the parents of the child indicate that they want the child back, as soon as the child is returned to the authority it must return the child to the parent or guardian. If a placement order is not subsequently revoked, it will continue in force until the final adoption order hearing, or until the child marries or reaches the age of 18.

D.26 In cases where there are concurrent placement order and care order applications in respect of the child, the court will first consider whether it can make the care order, including whether 'significant harm' threshold is met, and then consider whether to make the placement order. The court may make both orders, but the effect of a placement order is that the care order is suspended for the duration of the placement order, under Section 29(1) of the Act. The court may choose to make a care order instead of a placement order if both were applied for, or may make both orders so that the child is still protected should the placement order be revoked, as the care order will automatically reactivate.

D.27 Placement orders may be revoked. The child or the local authority may apply to the court at any time for the placement order to be revoked. This is to allow, for example, for a situation where the authority has reviewed a child's case and considers the child should no longer be adopted. Anyone else may only apply to revoke the placement order with the court's leave and only if the child has not yet been placed with prospective adopters. The court may only grant leave if there has been a change of circumstances since the placement order was made.

D.28 Where the court revokes a placement order, the child must be returned to parents at a time determined by the court, unless a care order has also been made as the care order is reactivated when the placement order is revoked. Under section 34(3) of the Act, where a court revokes the placement order and determines that the child is not to remain with the prospective adopters, they must return the child to the authority within the period specified by the court. Under section 34(4) of the Act, where a court revokes the placement order and determines that the child is to be returned to the parent or guardian, the authority must return the child to the parent or guardian as soon as the child is returned to the authority, or at once if the child is accommodated by the authority.

EFFECT OF PLACEMENT ORDER

D.29 If a placement order is made, parental responsibility is shared between agency and parents to the extent decided by the agency under Section 25 of the Act, the contact provisions in Sections 26 and 27 of the Act apply, and no one other than the local authority may remove the child from his current placement, either in pre-placement accommodation or in the adoptive placement.

D.30 Any existing residence order or supervision order ceases to have effect. A placement order restricts other orders. Prohibited steps orders, specific issues orders, supervision orders or residence orders may not be applied for in respect of the child, though applications for residence orders and special guardianship orders may be made at the final adoption order hearing, if the the court gives leave for the parents or guardian to oppose the making of the adoption order.

AUTHORITY TO PLACE A CHILD FOR ADOPTION

D.31 An adoption agency has authority to place a child for adoption when the parents give their formal consent to the placement of their child for adoption under Section 19 of the Act or the court makes a placement order.

D.32 With consent, the agency is either authorised to place the child for adoption with specific adopters identified in the consent or with any adopters the agency may select. A placement order authorises the local authority to place the child with any adopters the authority may select.

PARENTAL RESPONSIBILITY

D.33 With authority to place, the adoption agency has parental responsibility for the child, and is able to determine the extent to which the parents and prospective adopters may exercise parental responsibility.

D.34 Where the child is placed the sharing of parental responsibility should help make it clear that the agency and the prospective adopters have responsibility for the child and can make day to day decisions. Some prospective adopters may be reluctant to take full parental responsibility for the child when the child is placed with them, and may prefer to take increasing parental responsibility over time as the child settles into the placement.

REMOVAL AND RECOVERY FROM PLACEMENT

D.35 Sections 30 to 35 of the Act place restrictions on the removal of children where the agency has been authorised to place the child for adoption or the child is placed for adoption and is less than six weeks old. The Act makes it an offence for anyone other than the agency to remove a child where the child:

- is placed for adoption with the parents' consent under Section 19 of the Act
- is placed and either the child is less than 6 weeks of age or the agency has at no time been authorised to place the child for adoption
- is not yet placed with prospective adopters and is being accommodated by the local authority and the authority has applied for a placement order
- is not yet placed but the agency is authorised under Section 19 of the Act or would be if consent is not withdrawn.

D.36 The Act requires that in cases where a child is placed for adoption by consent and that consent is withdrawn the child should then be returned to the parents, unless the adoption agency is a local authority and the authority still considers that the child should be adopted. In such a case, the local authority would need to apply for a placement order. An application for a placement order would prevent the child's removal until such time as the court had decided whether to make the placement order. Where the agency is a voluntary adoption agency, it should consider whether it is appropriate to inform the relevant local authority social services, who may then take whatever action they think is necessary under the Children Act, such as applying for an Emergency Protection Order.

D.37 Where a child is placed for adoption by consent under Section 19 of the Act and that consent is withdrawn, then the child should be returned to the parents within 14 days. Where consent to placement has been given and withdrawn but the child has not actually been placed, then the agency must return the child within 7 days. The additional time allowed for returning a placed child is to allow for the preparation needed for the child's separation from the carers with whom he is placed. Therefore if the local authority considers that the child should be placed for adoption, it must make the application for the placement order within the 7 or 14 day period or return the child to his parents. The local authority may consider the child would be at risk of harm and should not be returned to the parents, but no longer considers that the child should be placed for adoption. In such cases, it should consider the full range of its powers under the Children Act 1989.

D.38 The Act makes provision in Section 30 for circumstances where the removal restrictions are not applied, such as where the child is arrested, removed, or where the local authority is exercising a power provided by another Act. For example, where the local authority considers that it needs to invoke child protection powers under the Children Act 1989. Section 30(4) of the Act provides for the restrictions on removal from placement in Sections 30 to 33 not to apply where the child is still under a care order.

D.39 The right that parents have under the Children Act to remove a child who was voluntarily accommodated under section 20 of the Children Act is restricted. Where a child has been in voluntary accommodation and the parents consent to placement for adoption, then if they withdraw their consent, only the local authority may remove the child.

REPORTS TO THE COURT

Agency adoptions

D.40 Section 43 of the Act maintains the current obligation in agency placements for adoption agencies to provide the court with a report on the suitability of the applicants, on any other matters relevant to the welfare checklist (see the welfare checklist section), and to assist the court in any manner the court directs.

D.41 Such reports are intended to provide the court with the background information it needs to inform its decision about making the adoption order, just as the current 'schedule 2' reports assist the court, which are prepared by agencies under the 1976 Act.

D.42 The report must explain why the agency considers the child should be adopted – considering the factors set out in section 1 of the Act – and set out the agencies' assessment of the suitability of the prospective adopters and the background to the placement.

The adoption agency must assist the court in any manner the court directs.

APPLICATIONS FOR ADOPTION ORDERS

D.43 Section 49 of the Act provides that both single people and couples can apply for an adoption order to be made. Joint applications by couples are subject to the conditions in section 50, and those by single people by the conditions in section 51. The term "couple" is defined in section 144(4).

D.44 Section 49 provides in subsections (2) and (3) that at least one of the applicants for an adoption order must be domiciled in the British Islands, and that the applicant, or both if the applicants are a couple, must have been habitually resident in the British Isles for a year before the adoption application is made.

D.45 Section 49 also provides that an application for adoption cannot be made unless the person to be adopted is under the age of 18.

ADOPTION ORDERS

D.46 Section 46 of the Act sets out the legal effect of adoption orders. An adoption order removes the parents' parental responsibility and gives full parental responsibility for the child to the adopters. The natural parents cease to be the child's parents in law⁶⁶. When the adoption order is made it also extinguishes any order under the Children Act, such as a contact order, a residence order or a special guardianship order.

D.47 Where the agency has placed the child for adoption, the prospective adopters may apply for an adoption order provided they have had the child placed with them for at least 10 weeks before applying. This minimum time requirement ensures that in all cases the child and the prospective adopters have the opportunity to form a relationship and for the adoption agency to assess that placement before the adoption order application is made.

D.48 A placement order, any duty in an agreement or an order of a court to make maintenance payments also ceases on the making of an adoption order. Once an adoption order is made, any liabilities of the natural parent under the Child Support Act 1991 will cease to have effect.

⁶⁶ Chapter 4 of the Act provides for the status of the adopted child.

D.49 Where consent has been given under section 19 of the Act or there is a placement order, the parents may only oppose the making of the adoption order with the leave of the court. Leave will be granted only if the court considers there has been a change of circumstances since the consent was given, or since the placement order was made. Such a change in circumstances might be where a parent has recovered from a mental illness, or completed successful drug rehabilitation.

D.50 If leave to oppose is not granted, the court will consider whether to make the adoption order, having regard to Section 1 of the Act. Section 1(2) makes the child's welfare the paramount consideration for the court or adoption agency in making any decision relating to the adoption of a child. The court is also to have regard to Section 1(4). Section 1(6) provides that the court may only make an adoption order where it considers that doing so is better for the child than not doing so. The court must consider all the powers it has under the Act and the Children Act, including the alternative courses of action open to the court.

D.51 If leave to oppose the making of the adoption order is granted, the court must decide first whether an adoption order is in the child's best interest. The court must then decide whether or not to dispense with parental consent to adoption.

D.52 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, as it is now under current legislation, to make a Section 8 Children Act contact order, where it considers that to be in the best interests of the child.

D.53 While the section 46(6) places an explicit duty on the court to consider *whether* there should be contact – it is not a presumption that this must be the case. At all times it must be the child's welfare and best interests that drive any arrangements for contact. There should be no presumption that there must be contact, and indeed it could be harmful in some cases.

D.54 Before the adoption order hearing, a social worker, preferably the child's adoption social worker, should prepare a letter for the adopted child that explains the child's history from birth to how he came to be adopted. The letter should be sufficiently detailed so that in the future the adolescent child, or young adult, will know about his natural family and be able to understand why he could not return to them and why he was adopted. The child's natural family could be asked by the agency to write either their own letters to the child or contributions for the agency's letter, if the agency considers either of these methods appropriate.

D.55 If the adoption order is made, the letter should be given by the social worker to the child at the conclusion of the adoption order hearing if the agency and the adopters consider he is of sufficient age and understanding to receive it. Otherwise the letter should be handed to the adopters at the conclusion of the hearing so that they may pass it to the child when they consider it most appropriate to do so.

CHILDREN ACT ORDERS

D.56 Where the parents or guardian has consented to the placement of the child for adoption under Section 19 of the Act, or where they have also given advance consent to adoption, they may not apply for a residence order or a special guardianship order in respect of the child. This provides stability and security for the adoptive placement. Where a parent or guardian has given consent to placement for adoption, and they then wish to reverse the position, they may withdraw their consent to the placement. (See section on consent.)

D.57 Where a placement order is in force, Section 29 of the Act also provides that no supervision order, child assessment order, specific issue or prohibited steps order may be made under Section 8 of the Children Act in respect of the child. Where a placement order has been made the court has taken a decision that the child ought to be placed for adoption, and has considered all the alternatives. Applications for residence orders or special guardianship orders, which seek to reverse the placement decision, are not appropriate while a placement order is in force. Section 29(2) of the Act provides that where a placement order is made any order under section 8(1) of the Children Act 1989 ceases to have effect.

D.58 Section 29 ensures that placement orders are in line with care orders under the Children Act. Where the local authority has been entrusted with the care of the child by the court, it is for the authority to take responsibility for the child, to decide what placement is in their best interests and to manage that placement on a daily basis.

D.59 However, where the parent or guardian has the court's leave, under Section 47 of the Act, to oppose the making of the final adoption order, they may make an application for a residence order or, in the case of guardians, for a special guardianship order, to be considered at the final adoption order hearing, as an alternative to the proposed adoption. Anybody else entitled to do so may apply for a residence order or a special guardianship order in respect of the child. Such persons may also apply for other Section 8 Children Act orders to be made in respect of the child, other than a contact order.

STEP PARENTS AND THE ACQUISITION OF PARENTAL RESPONSIBILITY

D.60 Section 112 of the Act inserted a new section 4A into the Children Act 1989 to enable a step-parent to acquire parental responsibility for a child of his spouse. He may obtain parental responsibility for the child by agreement with the child's parents who have parental responsibility for the child, or by an order of the court. Where the other parent does not agree to the step-parent's acquisition of parental responsibility, the step-parent could apply for a court order. So where the step-parent is married to parent A and parent B is not prepared to agree to a parental responsibility agreement with the child's step-parent, the step-parent may apply to the court and the court may order that he is given parental responsibility for the child.

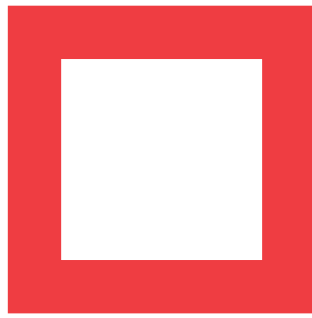
D.61 This provides an alternative to adoption where a step-parent wishes to acquire parental responsibility for his or her step-child. It has the added advantage of not removing parental responsibility from the other parent and does not legally separate the child from membership of the family of the other parent. A person with parental responsibility for a child has all the rights, duties, responsibilities and authority that a parent of a child has under the law.

D.62 A parental responsibility agreement will need to be recorded on a form to be prescribed in regulations that will be made by the Department for Constitutional Affairs, and these regulations will also be consulted on in due course.

CHANGING THE CHILD'S NAME

D.63 Section 28 of the Act, subsections (2) and (3)(a), provides that a person may not "cause a child to be known by a new surname" where the child has been placed for adoption under section 19 or the adoption agency has authority to place the child, unless the court gives leave or each parent or guardian has given written consent.

Appendix E:



Glossary

CARE ORDER (SECTION 31, AND SECTION 33 OF THE CHILDREN ACT 1989)

An order made on the application of a local authority and granted where the court finds the child has suffered, or is likely to suffer, significant harm and that harm is attributable to either the care given to the child or likely to be given to the child if the order is not granted or the child being beyond parental control.

The child is placed in the care of the local authority and the authority have parental responsibility for the child and can restrict the exercise of a parents parental responsibility where they consider it necessary to do so to safeguard or promote the child's welfare.

CONTACT ORDER (SECTION 8 OF THE CHILDREN ACT 1989)

Sets out arrangements to provide for child to be visited by or stay with named individuals.

CONTINGENCY PLANNING

Where the assessment identifies that the child's parents may be unlikely to make and sustain the necessary changes in their parenting, contingency plans should be made to avoid delay in securing a permanent family for the child.

A number of contingency planning models are emerging that can help to ensure early permanence plans for the minority of looked after children who are in this position. Two of these models are Concurrent Planning and Parallel Planning, which is also known as Twin Track Planning. Under Concurrent Planning the child is placed with foster carers, who as well as providing temporary care for the child, act as a support to the birth parents in meeting the objectives of any rehabilitation plan. These carers have also been identified as available to be the child's prospective adopters if the rehabilitation plan should be unsuccessful.

Under Parallel or Twin Track Planning the child remains with the parents or is placed with foster carers. A rehabilitation plan with timescales is in place. At the same time, the agency puts in place elements of a plan for an alternative permanence placement if the rehabilitation plan is unsuccessful.

EMERGENCY PROTECTION ORDER (SECTION 44 OF THE CHILDREN ACT 1989)

Provides that where a court has reasonable cause to believe that a child is likely to suffer significant harm it may be removed from his parents or guardians and placed in the care of the local authority. Parental responsibility passes to the local authority. The court may set conditions in the order, covering issues such as contact with the child's parents.

Emergency protection orders are limited to a duration of eight days, though the court may subsequently rule that the first period be extended once more only by another seven days.

FREEING ORDER (SECTION 18 ADOPTION ACT 1976)

A freeing order can be applied for by a local authority or voluntary adoption agency. If granted, parental responsibility for the child passes to the agency until either the freeing order is revoked or an adoption order is granted.

An adoption order can be granted on the basis of a freeing order without further evidence of parental consent. Under the Adoption and Children Act 2002, placement will replace freeing in England and Wales.

Freeing orders leave the child legally without parents as parental responsibility is transferred to the adoption agency. Under placement, the natural parents remain the child's parents until the adoption order, but once they have consented to placement, and providing they have not withdrawn that consent before the application to adopt is made, or once a placement order has been made the parents can only oppose the final adoption order with the leave of the court if there has been a significant change in circumstances.

INTERIM CARE ORDER (SECTION 38 CHILDREN ACT 1989)

Where the court proceedings are adjourned and a court has reasonable cause to believe that a child is likely to suffer significant harm if the child is returned to his parents, the court may make an interim care order.

An interim care order has effect for the period specified by the court in the order but must expire within eight weeks or for other reasons set out in subsection (4) of section 38.

INTEGRATED CHILDREN'S SYSTEM

The Government has developed a system to help social services managers and practitioners improve the outcomes of their work with children and families. The conceptual framework is known as the Integrated Children's System (ICS). It builds upon previous developments such as the Assessment Framework and the Looking After Children materials and offers a single approach to undertaking the key processes of assessment, planning, intervention and review based on an understanding of children's developmental needs in the context of their families and communities.

LOOKED AFTER CHILD (SECTION 22 CHILDREN ACT 1989)

A child in the care of the local authority or provided with accommodation by the local authority in the exercise of its social services functions, for example a fostered child or accommodated by the local authority in a children's home.

PARENTAL RESPONSIBILITY (SECTIONS 2 AND 3 OF THE CHILDREN ACT 1989)

All the rights, duties, powers and responsibilities and authority which by law the parent has in relation to the child.

PROHIBITED STEPS ORDER (SECTION 8 OF THE CHILDREN ACT 1989)

Provides that no step that could be taken by a parent in fulfilling his parental responsibility for a child could be taken by any person without the court's consent.

RESIDENCE ORDER (SECTION 8 OF THE CHILDREN ACT 1989)

Provides for the arrangements as to where a child is to live.

SPECIFIC ISSUES ORDER (SECTION 8 OF THE CHILDREN ACT 1989)

Sets out arrangements regulating any specific issue brought before the court.

SUPERVISION ORDERS (SECTIONS 31 AND 35 OF THE CHILDREN ACT 1989)

An order placing a child under the supervision of a local authority where the court finds the child has suffered, or is likely to suffer, significant harm and that harm is attributable to either the care given to the child or likely to be given to the child if the order is not granted.

