

NATIONAL ASSEMBLY FOR WALES

STATUTORY INSTRUMENTS

2004 No. (W.)

SOCIAL CARE, WALES

**CHILDREN AND YOUNG
PERSONS, WALES**

The Independent Review of
Determinations (Adoption) (Wales)
Regulations 2004

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations establish independent review panels whose function is to review determinations made by adoption agency panels not to approve applicants as suitable to become adoptive parents of children in relation to domestic adoption.

The review panel cannot overturn a determination of an adoption agency panel. It can review the information before the adoption agency panel and request further information. It can then make a recommendation to the adoption agency panel as to the suitability of the prospective adopters. The adoption agency must take into account the review panel's recommendation when making its final decision as to the prospective adopters' suitability.

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The Independent Review of
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Regulations 2004

Made 2004

Coming into force 2005

ARRANGEMENT OF REGULATIONS

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 9(2) and (3), 9A(1) to (3) and 67(5) of the Adoption Act 1976(a), having consulted such persons as it considers appropriate, hereby makes the following regulations:-

PART 1

GENERAL

Citation, commencement and application

1.—(1) These Regulations may be cited as the Independent Review of Determinations (Adoptions)

(a) 1976. c.36. Section 9A of the Adoption Act 1976 (“the Act”), was inserted by section 139(2) of, and paragraph 5 of Schedule 4 to, the Adoption and Children Act 2002 (c.38) (“the 2002 Act”). These powers are exercisable by the appropriate Minister, who is defined in section 9(5) of the Act in relation to England, as the Secretary of State, in relation to Wales as the National Assembly for Wales and in relation to England and Wales, as the Secretary of State and the National Assembly for Wales acting jointly. Section 9(5) of the Act was inserted by section 139(2) of, and paragraph 4(1)(b) of Schedule 4 to, the 2002 Act.

(Wales) Regulations 2004 and shall come into force on 1st January 2005.

(2) These Regulations apply in relation to Wales.

(3) These Regulations shall apply to cases where the prospective adopter's suitability to be an adoptive parent is considered by an adoption panel for the first time on or after 1st April 2005 only.

Interpretation

2.—(1) In these Regulations —

“the Act” means the Adoption Act 1976;

“the 1983 Regulations” (*“Rheoliadau 1983”*) means the Adoption Agencies Regulations 1983(a);

“adoption agency” means an appropriate voluntary organisation or local authority;

“adoption panel” (*“Panel Mabwysiad”*) means a panel established in accordance with regulation 5 of the 1983 Regulations;

“National Assembly” (*“Cynulliad Cenedlaethol”*) means the National Assembly for Wales;

“prospective adopter” means a person who proposes to adopt a child;

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971”.

(2) In these Regulations, unless the context requires otherwise, a reference —

(a) to a numbered regulation is to the regulation in these Regulations bearing that number;

(b) in a regulation to a numbered paragraph is to the paragraph in that regulation bearing that number;

(c) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.

Qualifying determinations

3. For the purposes of section 9A(1) of the Act, a qualifying determination is a determination that has been made by an adoption agency in accordance with the 1983 Regulations, where the agency do not propose to approve a prospective adopter as suitable to be an adoptive parent.

(a) S.I 1983/1964, the relevant amendments to which are contained in S.I 1997/649, S.I 1997/2308, S.I 2001/3443, S.I 2002/808, S.I 2003/367, S.I 2003/710, S.I2003/3223

PART 2

PANELS

Constitution and functions of panels

4.—(1) The National Assembly shall, at the request of a prospective adopter, constitute a panel for the purpose of reviewing a qualifying determination in relation to the prospective adopter.

(2) The members of the panel shall be drawn from a list of persons appointed and serving as members of adoption agency panels in Wales (in these Regulations referred to as “the central list”), kept by the National Assembly who are considered by the National Assembly to be suitable, by virtue of their skills, qualifications or experience to be members of a panel.

(3) A panel established under paragraph (1) shall —

- (a) review the qualifying determination; and
- (b) make a recommendation to the adoption agency which made the qualifying determination as to whether or not a prospective adopter is suitable to be an adoptive parent.

Membership of panels

5.—(1) Subject to paragraphs (2) and (3), the National Assembly will appoint no more than six persons as members of the panel, who must (where reasonably practicable) include:

- (a) an adoptive parent; and
- (b) an adopted person who has attained the age of 18 years.

(2) The panel shall be advised by:

(a) a social worker within the meaning of Part IV of the Care Standards Act (a) and has at least 5 years post qualifying experience in adoption and family placement work;

(b) a registered medical practitioner with expertise in adoption work; and

(c) where the panel considers it appropriate, a legal advisor with knowledge and expertise in adoption legislation.

(3) No person will be appointed, either as a member or an advisor, to a panel which is convened to review a qualifying determination made by an adoption agency by which he or she was employed at any time in the

(a) 2000 c14

two years before the date on which the case is referred to the panel.

(4) In this regulation reference to having been employed includes being employed by an adoption agency whether or not for payment and whether under a contract of services or a contract for services or as a volunteer.

Chair and vice chair

6. When constituting a panel in accordance with regulation 4, the National Assembly will appoint:

- (a) to chair the panel a person who has —
 - (i) expertise in adoption work; and
 - (ii) the skills and experience necessary for chairing a panel; and
- (b) one of the members of the panel as vice chair to act as chair if the person appointed to chair the panel is absent or his office is vacant.

Administration of Panels

7. The panel will be administered by the National Assembly, who will make suitable provision for clerking services to the panel.

Expenses of panel members

8. The National Assembly may pay to any member of a panel such sum in respect of expenses as the National Assembly considers to be reasonable.

Meetings of panels

9. A panel cannot conduct any business unless at least four of its members including the chair or vice chair meet as a panel.

Records

- 10.** A panel must —
- (a) keep a written record of its reviews of qualifying determinations, including the reasons for its recommendations; and
 - (b) ensure that such records are kept in conditions of appropriate security .

PART 3

PROCEDURE

Application by prospective adopter for review of qualifying determination

11.—(1) A prospective adopter can within 28 days of the date on which he or she is notified by the adoption agency of the qualifying determination in relation to him or her, make a request to the National Assembly for a panel to be constituted to review that determination in accordance with regulation 4.

(2) A request under paragraph (1) must —

- (a) be in writing; and
- (b) state the reason for the request.

Acknowledgement of application

12. The National Assembly must acknowledge in writing within 5 working days, receipt of any request made in accordance with regulation 11.

Appointment of panel and notification of review

13.—(1) The National Assembly must, within 25 working days of receipt of a request which has been made in accordance with regulation 11 appoint a panel and set a date for the panel to meet and review that qualifying determination.

(2) The date fixed for the review shall be no later than 3 months after the date that the determination is referred.

(3) The National Assembly must inform the adoption agency and the prospective adopter of the date, time and place for the review no less than 5 working days before the date fixed for the review.

(4) The National Assembly will ensure that the panel receive all relevant papers relating to the review no less than 5 working days before the date fixed for the review.

Recommendation of panel

14.—(1) The panel's recommendation must be that of the majority.

(2) The recommendation may be made and announced at the end of the review or reserved.

(3) The recommendation and the reasons for it must be recorded without delay in a document signed and dated by the chair.

(4) The recommendation must be treated as having been made on the date on which the chair signed the document referred to in paragraph (3).

(5) The Secretary must without delay and in any event no later than 10 working days after the date on which the recommendation is made send a copy of the recommendation to -

- (a) the adoption agency which made the qualifying determination; and
- (b) the prospective adopter.

Order for payment of costs

15. The panel may make an order for the payment by the adoption agency by which the qualifying determination reviewed was made of such costs as the adoption panel considers reasonable.

Amendment of the Adoption Agencies Regulations 1983

16.—(1) The 1983 Regulations are amended in accordance with the following provisions of this regulation.

(2) In regulation 1(3) (interpretation) —

- (a) at the appropriate place there must be inserted the following definitions—

““independent review panel” means a panel constituted under section 9A of the Act”;

“National Assembly” means the National Assembly for Wales;

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971”

- (b) in the definition of “registration authority”, after the second “the”, there must be inserted [the number] “ 2000”;

(3) In regulation 11A (adoption agency decisions and notifications- prospective adopters) —

- (a) in paragraph (2), after the word “panel” there must be inserted the words “or an independent review panel,”;

- (b) for sub-paragraph (4)(c) there shall be substituted the following sub-paragraph —

“(c) notify the prospective adopter in writing that he may within [5] working days inform the agency [in writing] either that —

- (i) he wishes his case to be referred to a differently constituted adoption panel; or
 - (ii) he intends to apply to the National Assembly for a review by an independent review panel of the agency's proposal not to approve him as suitable to be a prospective adopter.”
- (c) After paragraph (4) there shall be inserted —
- “(4A) If within the period of [5] working days the prospective adopter has notified the agency that he wishes to have his case referred to a differently constituted adoption panel, the agency shall invite him to submit any representations he wishes to make within 28 days.”
- (d) for paragraph (5) there shall be substituted —
- “(5) If the agency —
- (a) has not received notification from the prospective adopter in accordance with sub paragraph(4)(c); or
 - (b) has received notification that the prospective adopter wishes his case to be referred to a differently constituted adoption panel but has not received representations in accordance with paragraph (4A),

it may proceed to make its decision and shall notify the prospective adopter in writing of its decision together with the reasons for that decision”.

- (e) after paragraph (5) there shall be inserted —
- “(5A) If the agency receive notification in accordance with sub-paragraph (4)(c)(ii) or receive notification from the independent review panel that a prospective adopter has applied for a review of the agency's proposal not to approve him as suitable to be an adoptive parent, it shall within 28 working days submit to an independent review panel —
- (a) the written report referred to in regulation 8(2)(g);
 - (b) any written representations made by the prospective adopter in accordance with regulation 8(2)(h);and
 - (c) all of the information obtained by the agency under regulation 8.”
- (f) for paragraph (8) there shall be substituted —
- “The agency shall make a decision on the case but if the case has been referred to —

- (a) an independent review panel it shall make the decision only after taking into account any recommendation of the panel made in accordance with the The Independent Review of Determinations (Adoption) (Wales) Regulations 2004 (“the 2004 Regulations”); or
- (b) an adoption panel under paragraph (6), it shall make the decision only after taking into account any recommendation of the adoption panel made by virtue of paragraph (7)”;
- (g) In paragraph (9) —
 - (a) for the words “As soon as possible” there must be substituted “Without delay and in any event no later than 10 working days”; and
 - (b) after the word “panel’s” there shall be inserted the words “or independent review panel’s”.
- (h) After regulation 11A (adoption agency decisions and notifications- prospective adopters) there must be inserted —

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(a)

Date

The Presiding Officer of the National Assembly

(a) 1998 c. 38.