

Date: Wednesday 23 June 2004

Venue: Committee Room , National Assembly for Wales

Title: Adoption Agencies (Independent Review of Determinations) (Wales) Regulations 2004

Summary

This paper outlines the provisions of the Adoption Agencies (Independent Review of Determinations) (Wales) Regulations 2004. They provide for the establishment of panels to review the determinations of adoption panels where the adoption agency is minded to turn down applications for persons to be approved as prospective adopters.

Statutory Basis: The Adoption and Children Act 2002

1. Paragraph 5 of Schedule 4 to the Adoption and Children Act 2002 inserted a new section 9A into the Adoption Act 1976 in respect of the independent reviews of determinations. It is intended to use this transitional provision to provide prospective adopters with a right to request a referral to a panel, where an adoption agency indicates that it is minded to turn down their application to adopt.

2. Paragraph 5 of Schedule 4 to the Act reads as follows:

"Independent review mechanism

5 After section 9 of the Adoption Act 1976 (c. 36) there is inserted -"

9A Independent review of determinations

(1) Regulations under section 9 may establish a procedure under which any person in respect of whom a

qualifying determination has been made by an adoption agency may apply to a panel constituted by the appropriate Minister for a review of that determination.

(2) The regulations must make provision as to the description of determinations which are qualifying determinations for the purposes of subsection (1).

(3) The regulations may include provision as to-

(a) the duties and powers of a panel (including the power to recover the costs of a review from the adoption agency by which the determination reviewed was made),

(b) the administration and procedures of a panel,

(c) the appointment of members of a panel (including the number, or any limit on the number, of members who may be appointed and any conditions for appointment),

(d) the payment of expenses of members of a panel,

(e) the duties of adoption agencies in connection with reviews conducted under the regulations,

(f) the monitoring of any such reviews.

(4) The appropriate Minister may make an arrangement with an organisation under which functions in relation to the panel are performed by the organisation on his behalf.

(5) If the appropriate Minister makes such an arrangement with an organisation, the organisation is to perform its functions under the arrangement in accordance with any general or special directions given by the appropriate Minister.

(6) The arrangement may include provision for payments to be made to the organisation by the appropriate Minister.

(7) Where the appropriate Minister is the National Assembly for Wales, subsections (4) and (6) also apply as if references to an organisation included references to the Secretary of State.

(8) In this section, "organisation" includes a public body and a private or voluntary organisation."

3. At a later stage when the Act comes fully into force and the Adoption Act 1976 no longer applies, new regulations will be made in accordance with Section 12: Independent review of determinations.

4. There will be further consultation later this year on these new regulations, that are intended to cover

qualifying determinations made by adoption agencies concerning the disclosure of protected information.

Consultation

5. In October 2002 a fundamental review of *Adopter Preparation and Assessment and of the Operation of Adoption Panels* was issued for consultation. In that consultation exercise we proposed that the Independent Review Mechanism would include a list of people with suitable expertise who can be drawn upon to form panels to regularly consider cases, possibly on a regional basis.

6. We envisaged that the panel membership would mirror that of a normal adoption panel (though without any representation from the original agency), as they would be undertaking a *de novo* review, and would need a membership which had the relevant expertise and experience to make an informed recommendation.

7. The responses to the consultation were overwhelmingly in favour of an IRM for Wales, but against a joint mechanism for England and Wales.

8. Draft regulations were subsequently issued for consultation in October 2003. These provided the detail for the proposed review system in Wales and were generally well received, although there was some strength of feeling that the proposed panel of 10 members might be too cumbersome and could be difficult to convene, given the limited numbers of panel members in Wales who might be available for any given review.

9. A summary of the consultation responses is given at Annex A.

Number of applications for a review:

10. It is estimated that across England and Wales there will be approximately 250-300 requests per year for reviews of panel decisions on adopter determinations. In Wales the overall figure is therefore unlikely to exceed twenty per year and could be considerably fewer.

Proposed panel arrangements

11. The draft regulations (Annex B) 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 both domestic and intercountry adoption.

12. 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.

13. The proposed panel arrangements are summarised below:

- i. The issues that the panel can consider are restricted to panel recommendations that potential adopters should not be approved for adoption.
- ii. Panel members are not to consider cases where there is any actual or potential conflict of interest.
- iii. Applications for a review should be either through the agency's own review procedure or through the Independent Review Panel.
- iv. Applications to the Panel should be made within 28 days of the date on which he or she is notified of the qualifying determination.
- v. Panel decisions, where possible, are to be unanimous but, where this is not possible, will be by majority voting.
- vi. Review outcome to be notified in writing to the person(s) seeking the review and to the appropriate agency.
- vii. Review notification to include:
 - Panel recommendation
 - Reasons for recommendation
- i. Following consideration of the panel's recommendation the adoption agency should consider that recommendation and notify the applicant of its further decision and reasons for its determination.

14. Each panel will consist of no more than six persons who must (where reasonably practicable) include:

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

15. The panel is to be advised by a social worker with at least 5 years post qualifying experience in adoption; family placement work; and a medical advisor; and where appropriate, a legal advisor.

16. Panel members cannot include someone employed, at any time in the two years before the date on which the case is referred to the panel, by the agency whose decision is under review.

17. The Assembly may pay fees and reasonable expenses to panel members.

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

19. The costs of convening a panel may be recovered from the agency whose determination is the subject of a review.

Permanence and Adoption Task and Finish Group:

20. A Task and Finish Group was established last year to advise officials and Ministers on the implementation of the Adoption and Children Act. The Group is chaired by Mr Tim Brown, previously the Director of Social Services for Powys CC, and includes representatives of local authorities, voluntary adoption agencies, the health service and other interests.

21. The Group has considered and endorsed the draft regulations, including, in particular, the proposed panel structure.

Financial Implications:

22. It is expected that each panel hearing would cost in the region of £1,500 in meeting fees and expenses for panel members and advisers and for accommodation costs. These costs can be recovered from the agency whose determination is subject to review. If adoption agencies are asked by prospective adopters to undertake their own review (as they are entitled to do so) the agency would be likely to incur similar costs.

23. The financial impact on local authorities and voluntary adoption agencies is therefore minimal and it is not considered that special provision is required.

24. There are no financial implications for the NHS or other bodies.

Conclusion

25. These regulations are due to be considered by Business Committee on 2 July and by Legislation Committee on 21 September, before going to Plenary on 19 October.

Action

26. The Committee is invited to note this paper and to scrutinise the draft regulations.

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Minister for Health and Social Services

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Annex A

INDEPENDENT REVIEW MECHANISM (PHASE 1)

SUMMARY OF CONSULTATION RESPONSES

The Adoption and Children Act 2002 gives the National Assembly for Wales the power to establish a system for the independent review of adoption agency determinations concerning suitability of prospective adopters if an agency is minded to turn down their application to adopt.

The draft regulations and guidance were issued for consultation in September 2003 to ensure that all adoption stakeholders have maximum opportunity to consider the proposed content and coverage of Phase 1. Following the distribution of the regulations and guidance a consultation event was held in Mid Wales on November 3 2003 where interested parties were invited to consider and respond to the proposals. The eight week consultation period ended on 31 December 03.

General Responses

RESPONDENTS	WRITTEN	EVENT
Local Authorities	21	37
Voluntary Adoption Agencies	3	3
Health Services	13	7
Miscellaneous	7	3
TOTAL	44	50

Question 1- *Have we achieved the right coverage of issues in Phase 1. Are there, in your opinion, any key areas that have not been included bearing in mind that this is the first phase of a two –stage implementation programme.*

In general the IRM was warmly welcomed giving potential adopters an appeal system based on transparency, accountability and consistency throughout Wales. Issues were identified around the mechanics of the process and availability of Panel Members given the disparity of membership to Panels.

Question 2- *It is proposed that the review panel will consist of 10 people- Is this reasonable?*

There was some feeling that it was logical to mirror the membership of the Adoption Agencies panels with ten members. However the BAAF response on behalf of a range of agencies suggested that it would be preferable to have a tighter panel membership of only 3.

It was commented that it could be difficult to recruit 10 members for a panel.

Question 3 - *Do you think the proposed panel has a balanced, relevant membership?*

It was felt that a proposed panel should mirror an Adoption Agency panel and consist of experienced adoption panel members, ideally still sitting on current panels.

It was felt that membership of panel should always take into consideration an adopter or adopted individual and that at least one of them should attend the review for it to be considered quorate.

Question 4 - *Do you think all applications should be reviewed or should there be specific criteria to meet? If so what should that be?*

Generally it was felt that there should be specific criteria to meet in relation to applications turned down by Adoption Agency and the Agency decision maker. This should be restricted only to when approval has been refused after a full assessment has been carried out and presented to panel.

Question 5 - *Do you agree with the timetable suggested for the process?*

Most responses agreed with the proposed timescales. They provided a balance between unnecessary delay and adequate time for preparation and decision making with the 28 days notice.

Question 6 - *Are the regulations clear?*

Although most respondents answered in the affirmative to this question, there was a feeling that certain areas needed to be clarified, including membership of the panel and duties, also criteria for review by prospective adopters.

Question 7 - Individual Regulations

Reg 1 Clarify that only completed assessments can have access to IRM.

Reg 4 Clarify if Panel can sit together for more than one occasion and consider several different cases.

Reg 4(2) Will guidance state meaning of 'suitable' How will members be appointed?

Reg 5 It was suggested that with 10 members it might be too difficult to obtain quoracy. As an alternative it was suggested that the panel should have 6 members (1 adopter/adoptee, 1 legal adviser, 1 medical adviser, 2 experienced social workers and a chair with significant experience of adoption)

Reg 7 Tenure of Office: it would be more manageable and achievable if members can serve for longer than 4 years.

Reg 8 It was suggested that a Panel Adviser sits with the Panel to advise the Panel professionally.

Reg 11 This regulation could helpfully identify who can have access to the minutes of a Review Panel.

Reg 15 There is a need for guidance where there is a split Panel and there is to be a majority recommendation.

Question 8 - *General comments*

The structure proposed (10 members) is too complex/cumbersome. The process needs to be kept simple and transparent.

There is a limited pool of experienced panel members and medical practitioner and the mechanism needs to take account of the resources that are actually available.

There will be a need for training and support for panel members.

Clarity is needed on the role of the Agency Decision Maker.

Conclusions

Following consultation the feedback suggests that an IRM Panel was welcomed as a mechanism to enable prospective adopters to appeal.

The IRM structure proposed was felt to be unduly complex and needed clarification in a number of areas.

CONTRIBUTORS TO WRITTEN CONSULTATION

BAAF Cymru
Barnardo's Cymru
Bridgend CBC
Caerphilly CBC
CAFCASS
Cardiff and Vale NHS Trust
Carmarthenshire LHB
Ceredigion CC
Conwy CBC
Denbighshire CC
Family and Child Health Directorate, West Wales General Hospital
Flintshire CC
Gwent Healthcare NHS Trust
National Public Health Service for Wales
Neath Port Talbot CBC
Pontypridd and Rhondda NHS Trust
Torfaen CBC
Vale of Glamorgan CC
Wrexham CBC
Ynys Mon LHB
South Wales Adoption & Fostering Forum:-

Newport CBC,
Pathway Care,
Neath Port Talbot CBC,
Vale of Glamorgan CC,
St David's Children's Society,
After Adoption,
Bridgend CBC,
Swansea CBC,
Carmarthenshire CC,
Fostering Network

North Wales Adoption & Fostering Forum:-

Denbigh CC,
Gwynedd CC,
Adoption Matters,
Conwy CC,
Conwy & Denbighshire Trust,
Wrexham CBC,
St David's Children's Society

BAAF North Wales Legal Group

CAFCASS,
Gamlins Solicitors,
Ynys Mon CC,
Conwy CC,
NWMCC,
Margaret Powell Solicitors,
Denbigh CC.

BAAF Welsh Medical Group

Wrexham,
Bridgend,
Cardiff,
RCT,
Conwy,
Caerphilly