EXPLANATORY MEMORANDUM TO

THE ADOPTION SUPPORT AGENCIES (ENGLAND) (AMENDMENT) REGULATIONS 2010

2010 No. 465

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families ("the Department") and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1 The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005 (SI 2005/2720) ("the 2005 Regulations") place a range of requirements on adoption support agencies in England regarding the persons carrying on and managing an adoption support agency, and the conduct of an agency. The Adoption Support Services Regulations 2005 (SI 2005/691) make provision for local authorities to provide adoption support services.

2.2 The Adoption Support Agencies (England) (Amendment) Regulations 2010 ("the Regulations") amend the 2005 Regulations to provide an exception to the meaning of adoption support agency in section 8(1) of the Adoption and Children Act 2002 ("the 2002 Act"). The Regulations except from the definition in section 8(1) an undertaking if it is carried on by an individual who only provides adoption support services (otherwise than in partnership with others) under a contract for services with an adoption agency (i.e. a local authority or a voluntary adoption agency) or a registered adoption support agency.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Section 8(1) of the 2002 Act defines "adoption support agency" as an undertaking the purpose of which, or one of the purposes of which, is the provision of adoption support services. Adoption support services are defined by section 2(6) as meaning counselling, advice and information, and any other services prescribed by regulations.

4.2 Sections 9 and 10 of the 2002 Act provide powers for making regulations to govern the conduct and management of adoption support agencies.

4.3 Section 4 of the Care Standards Act 2000 ("the 2000 Act") defines "adoption support agency" for the purposes of that Act by reference to section 8 of the 2002 Act. Section 11(1) of the 2000 Act provides that any person who carries on an adoption support agency without being registered in respect of it commits an offence. The registration authority is Her Majesty's Chief Inspector of Education, Children's Services and Skills.

4.4 Section 8(1)(b) and 8(2)(f) of the 2002 Act enable regulations to except any person or description of persons from the definition of "adoption support agency".

5. Territorial Extent and Application

5.1 This instrument applies in relation to England only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 An ”adoption support agency” is any undertaking which has as one of its purposes the provision of adoption support services. This includes any business or profession and covers individuals, partnerships, companies and other organisations. It is a criminal offence under the 2000 Act for a person to carry on an adoption support agency without being registered in respect of it by Her Majesty’s Chief Inspector of Education, Children's Services and Skills.

7.2 The intention of the adoption support agency legislation is to protect service users so that adoption support services are provided by organisations and individuals who are suitably qualified and experienced to meet the particular needs of those affected by adoption, and who understand the nature of adoption. National Minimum Standards in respect of adoption support agencies have been issued under section 23 of the 2000 Act.

7.3 The definition of an adoption support agency means that where a professional individual is providing adoption support services they fall within the definition of an adoption support agency and must register in respect of it. However, the position of those self-employed professionals who only provide adoption support services under a contract for services with an adoption agency or a registered adoption support agency – and who do not provide such services separately and independently (i.e. ‘privately’) – has been reviewed in light of the statutory obligation on the adoption agency or registered adoption support agency to ensure that all those who work for the agency, whether as an employee, as a volunteer or as an outsourced contractor, must be ‘fit and proper’ in accordance with the regulatory framework. These obligations are provided for by regulation 14 of the Voluntary Adoption Agencies and the Adoption Agencies (Miscellaneous Amendments) Regulations 2003 in respect of voluntary adoption agencies, regulation 11 of the Local Authority Adoption Service (England) Regulations 2005 in respect of local authorities and, regulation 19 of the 2005 Regulations in respect of adoption support agencies. The Government considers that it should not therefore be necessary for a professional, such as a psychotherapist, in these circumstances, themselves to be registered in respect of an adoption support agency when the individual only provides adoption support services under a contract for services with a regulated body which is itself responsible for the provision of those services. However, the Government considers that where two or more professionals are providing those services in partnership then that partnership should be required to register as an adoption support agency. Whilst it is possible to treat an individual exceptionally, it becomes more difficult when more people are involved, and we believe that the Regulations manage the risks in a proportionate way.

7.4 The Regulations therefore provide exemption from registration for those individuals who only provide adoption support services under a contract for services

with an adoption support agency in respect of which a person is registered under the 2000 Act or an adoption agency.

7.5 Individuals who provide any adoption support services independently of an adoption agency or registered adoption support agency will continue to be required to register in respect of the adoption support agency.

8. Consultation outcome

8.1 The issue of whether professional individuals, who only provide adoption support services under a contract for services with an adoption agency or registered adoption support agency, should themselves have to register as an adoption support agency was raised with the Department for Education and Skills, in 2006, on behalf of the British Association of Social Workers Independents Forum. It was the intention to make the proposed changes at the first available opportunity.

8.2 The Department acknowledges that there has been some delay in addressing this issue. For that reason the Department recently informally consulted the British Association for Adoption and Fostering, a leading children's charity, and the Chief Inspector of Education, Children's Services and Skills, who is the registration authority in relation to voluntary adoption agencies and adoption support agencies and inspects local authority adoption services, about the Regulations. Both organisations have advised that they support an exemption from registration as an adoption support agency for those professionals who only provide adoption support services under a contract for services with a registered adoption support agency or an adoption agency.

9. Guidance

9.1 No guidance will be produced due to the minor nature of the changes being proposed.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it does not place an additional burden on adoption support agencies or adoption agencies.

11. Regulating small business

11.1 The Regulations do not impose an additional burden on small business. They relax a burden on individuals.

12. Monitoring and review

12.1 The outcome of this amendment will not be subject to formal review.

13. Contact

Alex Ingram at the Department for Children, Schools and Families tel: 020 7340 8497 or email alex.ingram@dcsf.gsi.gov.uk