EXPLANATORY MEMORANDUM TO

THE ADOPTION SUPPORT AGENCIES (ENGLAND) (AMENDMENT) REGULATIONS 2023

2023 No. 1261

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The purpose of the Adoption Support Agencies (England)(Amendment) Regulations 2023 ("the Regulations") is to amend existing regulations to exempt certain providers of adoption support services working under stated conditions from registering with His Majesty's Chief Inspector of Education, Children's Services and Skills (Ofsted). This will make it easier for persons affected by adoption to access help and support.

2.2 The Regulations specifically amend the Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005 ("the ASA Amendment Regulations 2005") and the Adoption Support Services Regulations 2005 ("the ASSR Regulations 2005") to exempt providers of adoption support services from registering with Ofsted when they are working under contract with a registered adoption support agency or a registered adoption agency, i.e. a local authority or voluntary adoption agency; or are merely providing counselling to persons who have attained the age of 18 and over. Where counselling is provided in the context of Intermediary Services, registration as an adoption support agency is required under regulation 3(3) of Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005 (AII(PCA) Regulations 2005). Intermediary Services is support provided to an adopted person aged 18 or over, who was adopted prior to 30 December 2005, to obtain information in relation to their adoption and facilitate contact between them and their birth relatives, as defined by Regulation 4 of the AII(PCA) Regulations 2005.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Joint Committee on Human Rights (JCHR) published a report in March 2023 from the Inquiry it held into the 'The Violation of Family Life: Adoption of Children of Unmarried Women 1949-1976'. One of the main findings from the Inquiry was that the shortage of counsellors able to provide post-adoption support and the requirement to register was a barrier to those wanting to work in this area. The Government committed in its response to the Inquiry to consult publicly on removing the requirement of providers of counselling services to adults to register with Ofsted. These Regulations are the outcome of that public commitment from the Government.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Adoption support agencies provide assistance to adopted children and adults, such as counselling or help to trace their birth relatives. An adoption support agency is defined under section 8 (1) of the Adoption and Children Act 2002 ("the 2002 Act") as an undertaking, the purpose of which is the provision of adoption support services. In turn section 2(6) of the 2002 Act defines adoption support services as counselling, advice and information, as well as any other services prescribed by regulations in relation to adoption. A prescribed list of adoption support services is set out in Regulation 3(1)(a-f) of the ASSR Regulations 2005 and Regulation 3(1)(a-c) of the ASA Amendment Regulations 2005 and Regulation 3(3) of the AII(PCA) Regulations 2005. By virtue of the definition in section 4(9) Care Standards Act 2000 an adoption support agency is an agency for the purposes of that Act.

7. Policy background

What is being done and why?

7.1 The purpose of the Regulations is to amend the existing framework relating to adoption support services to remove barriers to people wanting to work in the area. The Regulations will remove the duty to register for anyone providing adoption support services who is working under a contract with a registered adoption support agency or a registered adoption agency, i.e. a local authority or voluntary adoption agency; or who is merely providing counselling to persons aged 18 and over affected by adoption. This should have the effect of increasing the number of adoption support providers.

7.2 Adoption support agency legislation aims to protect service users by ensuring that organisations and individuals are suitably qualified and experienced to meet their needs. However, the time and cost it takes to register is a barrier to registration, which has made it more difficult for individuals affected by adoption to access vital help and support. Also there are duplications in the system because safeguards for service users also exist elsewhere in the regulatory framework, for example in the Local Authority Adoption Service (England) Regulations 2003 and also the Voluntary Adoption Agencies and the Adoption Agencies (Miscellaneous Amendments) Regulations 2003.

Explanations

What did any law do before the changes to be made by this instrument?

7.3 Providers of adoption support services are required under section 11(1) of the Care Standards Act 2000 to register with Ofsted as adoption support agencies. However, section 8(2)(f) of the 2002 Act enables regulations to except persons or any description of persons providing adoption support services from being classed as adoption support agencies, meaning they do not need to register. This is the enabling power for the Regulations.

7.4 Regulation 4 of the ASA Amendment Regulations 2005, as amended by the Adoption Support Agencies (England) (Amendment) Regulations 2010, excepts from registration any undertaking carried on by an individual who only provides adoption support services (otherwise than in a partnership with others) working under a contract for services with an adoption agency. Section 2(6) of the 2002 Act defines adoption support services as counselling, advice and information, which in turn means that all counselling services provided to a person of any age would be deemed to be an adoption support agency, so fall under the requirement to register with Ofsted.

7.5 In addition, Regulation 5(1) of the ASSR Regulations 2005 sets out the prescribed persons that are permitted to deliver adoption support services on behalf of an authority in respect of adoption. This includes those persons excepted under Regulation 4(4) of the ASA Amendment Regulations 2005.

Why is it being changed?

7.6 The Government considers that regulations for adoption support services should be simplified to increase capacity within the market and reduce duplication. Other legislative protections will ensure suitable safeguarding and quality checks. More detail is set out in paragraph 7.2 above.

7.7 Counsellors for anyone affected by adoption need to register as adoption support agencies because they provide adoption support services. It has been identified that this registration requirement has restricted access to counselling services by adopted adults. As supported by the recent JCHR inquiry, it was found that the requirement to register to provide adoption support acted as a disincentive to many counsellors, and consequently there is a shortfall in the number of counsellors available to undertake this work. For birth parents and adopted adults in particular, it is sometimes difficult to determine whether counselling will centre around the adoption before the intervention starts. The problem has arisen where an adoption-related issue emerges after counselling has been established, then under current rules the counsellor is prevented from continuing to work with the individual, if not already registered. This can increase feelings of separation and loss. These Regulations will resolve this issue for adults seeking to access, or who are already receiving, counselling related to adoption.

What will it now do?

7.8 The ASA Amendment Regulations 2005 are further amended by these Regulations so that anyone working under a contract with an adoption support agency, local authority or registered adoption society is excluded from the requirement also to register with Ofsted. This reduces duplication in the system because all employees of a voluntary adoption agency or a local authority adoption service must be "fit and proper" in

accordance with other regulatory protections. This should also increase capacity within the market for persons affected by adoption to access help and support.

7.9 Those providing counselling services to persons who have attained the age of 18 and over for adoption related issues will also be exempt from registering with Ofsted. This will allow adults to choose which service provider to use, as is the case for other counselling services. Service providers can seek accreditation from professional bodies, such as the British Association for Counselling and Psychotherapy, to provide oversight of their services.

7.10 Counselling provided in the context of intermediary services does not fall within this exemption and providers are still required to register with Ofsted. This is because an Intermediary Service is deemed an adoption support service for the purposes of s.2(6) of the 2002 Act as prescribed under Regulation 3(3) of the AII(PCA) Regulations 2005. Any Intermediary Service is required to register with Ofsted, even if it provides counselling as part of their service. Counselling for adults must, be offered as part of the intermediary service under Regulation 10(1) of the AII(PCA) Regulations 2005. Counselling in this area will be very specific to adoption, associated with contact with birth families, and requires particular skills and expertise.

7.11 Providers of adoption support services who are not working under a contract of services with a registered adoption society or an adoption support agency are still required to register with Ofsted, unless they fall within one of the other exceptions. Counsellors and therapists offering adoption support services to children, i.e. individuals under the age of 18, must also continue to register with Ofsted, unless working under a contract of services with a registered adoption society or an adoption support agency

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument does not need to include a consideration of consolidation, as this is the only intended change to the relevant sets of regulations at this time.

10. Consultation outcome

10.1 The Government held a public consultation on the amendments from 9 January to 20 March 2023. The consultation was conducted online, with the option to respond by email or letter. This consultation sought to gather the views of people from the adoption sector, and people with experience of adoption, on the proposed changes to the regulations.

10.2 The consultation received 341 responses from a wide range of organisations and individuals, including Regional Adoption Agencies, local authorities, counselling/ therapeutic service providers, Ofsted and adopted adults.

10.3 The responses to the consultation were very strongly supportive of the proposed amendments. A large majority of the respondents (77%) was supportive of the amendment to exempt providers of adoption support services from the requirement to register with Ofsted if they are working under contract with an agency. There was support from Ofsted, and across the adoption sector, including from adopted adults,

adoptive parents and counselling and therapeutic service providers. It was also supported by the majority of adoption agencies and local authorities, who would be responsible for conducting the checks.

10.4 A large majority of respondents (89%) supported the amendment to exempt adoption support service providers from the requirement to register with Ofsted when they are providing adoption-related counselling services to persons aged 18 and over. This support included from Ofsted, adoption agencies, the British Association for Counselling and Psychotherapy, counselling and therapeutic service providers and adopted adults.

10.5 The full government consultation response is available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1184162/Adoption_Support_Agencies_Consultation_Response_-_September_2023.pdf.

11. Guidance

11.1 Ofsted will review all published guidance relating to registration and inspection in response to this change.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector. There is a potential that applications to register with Ofsted may fluctuate. The department has worked closely with Ofsted and Ofsted is prepared for this change. The impact is likely to be low.

12.3 A full Impact Assessment has not been prepared for this instrument because there is a low level of impact per business and not many businesses will be affected by these amendments. A Low Impact Assessment has been prepared.

12.4 An Environmental Impact Assessment has not been prepared for this instrument as there is no impact on the environment.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 The impact on small businesses will be to reduce administrative and financial burdens placed on them by current regulatory requirements.

14. Monitoring & review

14.1 This change will not affect a large number of businesses, but will benefit some because it means that they will not need to go through the time and expense of regular registration.

14.2 The department will monitor the change through representative organisations and departmental stakeholder groups and, if there are issues with implementation, will consider what further review of policy may be necessary.

14.3 The instrument does not include a statutory review clause because these changes do not amount to regulatory provision and therefore are not within scope of the requirement in the Small Business, Employment and Enterprise Act 2015 for a review clause.

15. Contact

15.1 Helen Walker at the Department for Education Telephone: 020 7227 5194 or email: Helen.Walker@education.gov.uk can be contacted with any queries regarding the instrument.

15.2 Daniel Foster, Deputy Director for Adoption, Family Justice and Alternatives to Care, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 David Johnston MP at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.