EXPLANATORY MEMORANDUM

1. The Independent Review of Determinations (Hague Convention Adoptions and Miscellaneous Amendments) Regulations 2004 No.1868

This explanatory memorandum is laid before Parliament by Command of Her Majesty

Department for Education and Skills

Summary

Regulations 2 and 3 of these Regulations apply to prospective adopters in England who wish to adopt a child under the Hague Convention[1] (Hague Convention prospective adopters). These amendments made by these two regulations make provision for the review by an independent review panel of a determination made by an adoption agency that it does not propose to approve a Hague Convention prospective adopter as suitable to be an adoptive parent (known as a "qualifying determination"). Hague Convention prospective adopters can choose to apply to the independent review panel for a review of the qualifying determination or to make representations to their adoption agency (the latter under regulation 10 of the Intercountry Adoption (Hague Convention) Regulations 2003) but they cannot do both. Regulation 4 of these Regulations makes a minor amendment to the Adoption Agencies Regulations 1983.

2. Legislative background

Section 9A of the Adoption Act 1976 makes provision in relation to the Independent Review Mechanism. Section 9A was inserted by section 139(2) of, and paragraph 5 of Schedule 4 to the Adoption and Children Act 2002 (c.38) and was brought fully into force on 1 April 2004, by article 2(4)(a) of The Adoption and Children Act 2002 (Commencement No. 4) Order 2003 (SI 2003/30079) (C117).

The Independent Review Mechanism is a review process for prospective adopters whose adoption agency has given them a qualifying determination. The review panel's function is to consider the case *de* nova and to make a fresh recommendation to the adoption agency on the prospective adopter's suitability to be an adoptive parent. The adoption agency must take the recommendations of both the review panel and the initial adoption panel in to account when making a final decision about a person's suitability to be an adoptive parent.

[1] Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption. A list of countries that have ratified or acceded to the Hague Convention is available from http://www.hcch.net/e/status/adoshte.html The list also identifies those countries to which the UK has raised objections to their accession to the Hague Convention.

The Independent Review of Determinations (Adoption) Regulations 2004 (SI 2004/190), as amended by the Independent Review of Determinations (Adoption) (Amendment) Regulations 2004 (SI 2004/1081), do not apply to cases where Hague Convention prospective adopters are being assessed to be adoptive parents under the Intercountry Adoption (Hague Convention) Regulations 2003 (SI 2003/118) This is not in accordance with the policy intention.

The amendments made by regulations 2 and 3 of the Independent Review of Determinations (Hague Convention Adoptions and Miscellaneous Amendments) Regulations 2004 give Hague Convention prospective adopters the same right to apply to the independent review panel as all other prospective adopters assessed by an adoption agency in England if they receive a qualifying determination and the most recent consideration by the adoption agency's adoption panel of their suitability to be adoptive parents was on or after 20 August 2004.

Regulation 11A of the Adoption Agencies Regulations 1983 (SI 1983/1964), amongst other things, makes provision for adoption agencies to provide information about the Independent Review Mechanism to prospective adopters, and to provide documents and assistance to the independent review panel. Regulation 4 of the Independent Review of Determinations (Hague Convention Adoptions and Miscellaneous Amendments) Regulations 2004 makes a minor tidying amendment to regulation 11A of the Adoption Agencies Regulations 1983.

3. Extent

These Regulations apply to England only.

4. ECHR compatibility

In the Minister's view the instrument is compatible with Convention rights.

5. Policy Background

The Adoption and Children Act 2002 reforms adoption law, implements the proposals in the White Paper *Adoption: a new approach* that require primary legislation, and underpins the Government's programme to improve the performance of the adoption service and promote greater use of adoption. Amongst other things, the Adoption and Children Act 2002 amends the Adoption Act 1976 to make provision for the independent review of "qualifying determinations". The Independent Review of Determinations (Adoption) Regulations 2004, as amended provide for the meaning of a qualifying determination and for the establishment and operation of review panels.

The Independent Review Mechanism was welcomed by Parliament during the passage of the Adoption and Children Bill and by many respondents to the consultation document *Adopter Preparation and Assessment and the Operation of Adoption Panels: A Fundamental Review.*

The Government's policy is that all prospective adopters, irrespective of which country they wish to adopt from, should be able to apply to the independent review panel if their adoption agency in England has made a qualifying determination. These Regulations ensure that this policy is achieved.

6. Impact

The Regulatory Impact Assessment prepared for the Independent Review of Determinations (Adoption) Regulations 2004 has been amended to make reference to the Intercountry Adoption (Hague Convention) Regulations 2003 thus clarifying the Government's policy that all prospective adopters assessed by an adoption agency in England (irrespective of which country they wish to adopt from) who receive a qualifying determination can apply to the Independent Review panel for a review of that determination. A copy of the amended RIA is attached.

7. Contact

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