# EXPLANATORY MEMORANDUM TO

# THE LOCAL AUTHORITY ADOPTION SERVICE (ENGLAND) (AMENDMENT) REGULATIONS 2005

## 2005 No. 3339

**1.** This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

## 2. Description

2.1 The Local Authority Adoption Service (England) (Amendment) Regulations 2005 amend the Local Authority Adoption Service (England) Regulations 2003 (the principal Regulations) and come into force on 30 December 2005 when the Adoption and Children Act 2002 (c.38) (the 2002 Act) is fully implemented.

2.2 The principal Regulations form the basis of the regulatory framework for the regulation by the Commission for Social Care Inspection of local authorities in England who make arrangements for the adoption of children. The Local Authority Adoption Service (England) (Amendment) Regulations 2005 impose additional obligations on a local authority in relation to the provision of adoption support services.

2.3 Annex A sets out the adoption support services.

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

3.1 None.

## 4. Legislative Background

4.1 The 2002 Act modernises entirely the existing legal framework for domestic and intercountry adoption. This statutory instrument is one of a series of statutory instruments that have been laid to implement the provisions of the 2002 Act. The legislative and policy background for the core provisions of the 2002 Act is set out in the overarching explanatory memorandum on the implementation of the 2002 Act that was laid before Parliament on 2 March 2005. A copy of this memorandum is attached at Annex B.

4.2 The 2002 Act makes provision for adoption support services. Sections 9 and 10 of the 2002 Act enable regulations to be made for the regulation and management of adoption agencies (defined in section 2 of the 2002 Act as local authorities or registered adoption society) for any purpose relating to the exercise by local authorities of their functions in relation to adoption (including the provision of adoption support services). Part 3 of the 2000 Act

provides the framework for the regulation of local authorities' adoption services.

4.3 The Local Authority Adoption Service (England) (Amendment) Regulations 2005 are made under sections 9(1)(a) and 140(7) and (8) of the 2002 Act.

## 5. Extent

5.1 This instrument applies to England only.

## 6. European Convention on Human Rights

6.1 No statement is required

## 7. Policy background

7.1 Adoption support services are currently provided by: local authorities, voluntary adoption agencies and independent providers of adoption support services. Given the particular vulnerability of children and adults affected by adoption, it is considered essential that independent adoption support providers are regulated. The 2002 Act will require independent providers of adoption support services to register with the Commission for Social Care Inspection as Adoption Support Agencies (ASAs). ASAs will have to meet Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005 (SI No. 2720) and the Adoption Support Agencies National Minimum Standards. Regulation of these services will raise standards and protect service users by ensuring that service users are provided with appropriate and quality services by suitably qualified and experienced staff.

7.2 Although the registration authorities already regulate arrangements made by local authorities and VAAs for the adoption of children, there are no specific requirements in relation to the provision of adoption support services. The Government is keen to ensure insofar as is possible that there is a level playing field amongst different providers of adoption support services in terms of regulation. The Regulations and NMS governing the regulation of local authorities are therefore revised to incorporate elements of the Regulations and NMS for ASAs.

7.3 The Government and National Assembly for Wales undertook a public consultation exercise on the Regulations and National Minimum Standards for the independent providers of adoption support services, now called Adoption Support Agencies. Local authorities and VAAs, as well as ASAs were consulted. The consultation lasted for 12 weeks and made clear that local authorities and VAAs providing adoption support services would be subject to the same regulatory requirements in relation to the provision of adoption support services as ASAs. The principal Regulations and the Standards impose requirements on local authorities that reflect the Regulations

for Adoption Support Agencies and Standards. This is to raise the standard of adoption support provision across the board.

7.4 Seventy-five written responses to the consultation document were received and were positive overall. Responses were received from independent providers of adoption support services, VAAs and local authority adoption services. We carefully considered the consultation responses and took them into account in finalising the Regulations for Adoption Support Agencies and carried forward the revised policy into the Voluntary Adoption Agency (Amendment) Regulations 2005, and the Local Authority Adoption Service (England) (Amendment) Regulations 2005.

7.5 The Local Authority Adoption Service (England) (Amendment) Regulations 2005 extend the requirements in the principal Regulations to impose requirements relating to the provision of adoption support services. These requirements relate to: managing and staffing the agency appropriately, the conduct of the agency in relation to the protection of children, providing services appropriate to meet the service users needs, providing a written guide for children setting out the adoption support services offered by the agency to children, maintaining records, and providing a complaints procedures.

## 8. Impact

8.1 A Regulatory Impact Assessment (RIA) is attached to this memorandum. The RIA explains the impact on the public sector.

## 9. Contact

9.1 Ruth Wilson at the Department for Education and Skills, telephone: 0207 273 5827 or email: ruth.wilson@dfes.gsi.gov.uk can answer any queries regarding the instrument.

ANNEX A

**ADOPTION SUPPORT SERVICES**

- Counselling* in relation to adoption, including birth records counselling.

- Providing advice and information in relation to adoption*.

- Assistance, including mediation services, in relation to arrangements for contact for adoptive children.

- Services in relation to the therapeutic needs of an adoptive child (e.g. art therapy, play therapy).

- Assistance for the purpose of ensuring the relationship between an adoptive child and his adoptive parent continues, including: (a) training for adoptive parents for the purpose of meeting any special needs of the child: (b) respite care.

- Assistance where an adoption disruption has occurred or is in danger of occurring, including (a) mediation services (b) organising meetings to discuss disruptions.

- Intermediary services (i.e. assisting adopted adults, who were adopted before 30 December 2005, to obtain information in relation to their adoption and facilitating contact between such persons and their birth relatives).

- Assistance to adopted adults or their birth relatives to facilitate contact between the adopted adult and his/her birth relatives.

- Assistance to adoption agencies in preparing and training adoptive parents.

- Financial support (payable under Part 3 of the Adoption Support Services Regulations 2005)

* out with making arrangements for the purposes of adoption.

'Adoption support services' are defined in section 2(6)(a) of the Adoption and Children Act 2002, and prescribed in regulation 3 of the Adoption Support Services Regulations 2005, regulations 3(3) and 4 of the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005 and regulation 3 of the Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005.

**ANNEX B**

# EXPLANATORY MEMORANDUM ON THE IMPLEMENTATION OF THE ADOPTION AND CHILDREN ACT 2002

**1.** This explanatory memorandum has been prepared by the Department for Education and Skills and is submitted voluntarily.

## Description

**2.** This is an overarching explanatory memorandum which explains the context of the Adoption and Children Act 2002[1] ("the 2002 Act"), and relates to a series of Statutory Instruments, as set out in paragraphs 14 and 15, which are intended to be made and laid during 2005 to implement the 2002 Act.

## Matters of special interest to the Joint Committee on Statutory Instruments

**3.** Three of these Statutory Instruments will be subject to the affirmative resolution procedure. These are The Restriction on the Preparation of Adoption Reports Regulations 2005, The Suitability of Adopters Regulations 2005 and an Order to be made under section 142 of the 2002 Act to amend the statutory adoption pay provisions as a consequence of unmarried couples being able to apply to adopt jointly.

## Legislative background

**4.** Following a review of adoption law carried out by the Department of Health between 1991 and 1993, a draft Adoption Bill was published in 1996. The Bill was generally well received, but was never introduced into Parliament. In February 2000, the Prime Minister announced that he would lead a thorough review of adoption policy. He commissioned the Performance and Innovation Unit (PIU) to carry out a review of adoption and make recommendations to the Government for future action. The PIU review reported in July 2000 and made a number of recommendations to Government, including several related to changes in adoption legislation.

**5.** In December 2000, the Department of Health published a White Paper *Adoption: a new approach*, which took on board many of the PIU recommendations. The Government made a commitment to legislate in 2001 to 'overhaul and modernise the legal framework for adoption.'[2]

---

[1] 2002 c.38.

[2] *Adoption: a new approach*, White Paper, December 2000, p.25.

**6.** The Adoption and Children Bill was subsequently introduced in 2001, and received Royal Assent in November 2002. The 2002 Act:

- aligns adoption law with the relevant provisions of the Children Act 1989[1] to ensure that the child's welfare is the paramount consideration in all decisions relating to adoption;
- places a duty on local authorities to maintain an adoption service, including arrangements for the provision of adoption support services;
- provides a new right to an assessment of needs for adoption support services for adoptive families and others;
- sets out a new regulatory structure for adoption support agencies (requiring them to be registered under the Care Standards Act 2000[2]);
- enables the appropriate Minister to establish an independent review mechanism in relation to qualifying determinations made by an adoption agency;
- makes provision for the process of adoption including new measures for placement for adoption with consent and placement orders;
- provides for adoption orders to be made in favour of single people, married couples and, for the first time, unmarried couples (amended by the Civil Partnership Act);[3]
- provides for a new framework designed to ensure a more consistent approach by adoption agencies in respect of access to information held about adoptions which take place after the 2002 Act comes into force;
- provides for a new regulatory framework within which intermediary agencies (registered adoption support agencies or adoption agencies) will be able to assist adopted adults to obtain information about their adoption and facilitate contact between them and their adult birth relatives, where the person was adopted before the 2002 Act came into force;
- provides additional restrictions on bringing a child into the UK in connection with adoption;
- provides for restrictions on arranging adoptions and advertising children for adoption other than through adoption agencies;
- makes provision enabling the Secretary of State to establish a statutory Adoption and Children Act Register to suggest matches between children waiting to be adopted and approve prospective adopters; and
- amends the Children Act 1989 to introduce a new special guardianship order, intended to provide permanence for children for whom adoption is not appropriate.

---

[1] 1989 c.41.
[2] 2000 c.14.
[3] The definition of couple in section 144(4) of the 2002 Act has been amended by the Civil Partnership Act 2004 (2004 c.33) to include a civil partnership.

**7.** The 2002 Act provides the framework for the new approach to adoption, which is to be complemented by secondary legislation.

*Early implementation*

**8.** In accordance with commitments made by Ministers during the passage of the 2002 Act through Parliament, the 2002 Act included provisions to amend the existing Adoption Act 1976[1] to enable important elements of the new adoption framework to be implemented in advance of the full implementation of the 2002 Act (see Schedule 4 of the 2002 Act).

**9.** In June 2003 the Intercountry Adoption (Hague Convention) Regulations 2003[2] and Adoption (Bringing Children into the United Kingdom) Regulations 2003[3] came into force. These Regulations put in place the necessary provisions to give effect to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption concluded at the Hague on the 29 May 1993 ("the Hague Convention") and provide an increased level of protection to children coming into the UK from other countries.

**10.** The first phase of the adoption support services framework was implemented on 30 October 2003 when the Adoption Support Services (Local Authorities) (England) Regulations 2003[4] came into force. These Regulations give adoptive families an entitlement to receive an assessment of their adoption support needs and give birth relatives an entitlement to receive an assessment in relation to support for contact arrangements. They also require local authorities to make arrangements for the provision of a range of adoption support services, including financial support, and to appoint an adoption support services adviser to act as a first port of call for enquiries and signpost families to services.

**11.** The independent review mechanism in respect of qualifying determinations made by adoption agencies, where they consider that a prospective adopter is not suitable to be an adoptive parent and does not propose to approve him as suitable to be an adoptive parent was introduced in April 2004 when the Independent Review of Determinations (Adoption) Regulations 2004[5] came into force.

**12.** As the early implementation relates to the current Adoption Act 1976 scheme for adoption, similar provision in secondary legislation needs to be made in the context of the 2002 Act scheme for adoption in respect of those elements of the Act which have been implemented

[1] 1976 c.36.
[2] SI 2003/118.
[3] SI 2003/1173.
[4] SI 2003/1348.
[5] SI 2004/190 as corrected, and as amended by SI 2004/1081 and 2004/1868.

early.

**13.** The annex summarises the position regarding implementation of amendments to the Children Act 1989 made by the 2002 Act which relate to areas other than adoption and special guardianship.

*Implementation*

**14.** The statutory instruments necessary to implement the 2002 Act are to be made in two main stages. The first series of statutory instruments will be as follows, and each will be accompanied by an individual explanatory memorandum setting out the detail of the SI, and a regulatory impact assessment:

- **The Adoption Agencies Regulations 2005** will provide for the duties agencies will have in relation to arranging adoptions under the 2002 Act, including agency arrangements for adoption work, considering whether a child should be placed for adoption, approval of prospective adopters and whether a particular child should be placed with prospective adopters.
- **The Adoptions with a Foreign Element Regulations 2005** will provide additional requirements for, and set out additional procedures in relation to, the adoption of children from abroad by British residents and the adoption of children in England and Wales by persons resident abroad. This includes adoptions falling within the scope of the Hague Convention and non-Convention adoptions.
- **The Suitability of Adopters Regulations 2005 (affirmative)** will prescribe the matters which must be taken into account by an adoption agency in preparing reports on and determining the suitability of a person wishing to adopt a child.
- **The Restriction on the Preparation of Adoption Reports Regulations 2005 (affirmative)** will specify who may prepare reports in specified circumstances in connection with adoption.
- **The Adoption Support Services Regulations 2005** will build on the framework established through the 2003 Regulations, widening the pool of people entitled to an assessment of their need for adoption support services and extending the list of adoption support services that local authorities are required to maintain to explicitly include services to assist with disruption. The 2005 Regulations also further refine the process for assessment of need and for the planning and review of service provision as well as further clarifying the role of the adoption support services adviser.
- **The Adoption Support Agencies Regulations 2005** together with accompanying national minimum standards issued under section 23 of the Care Standards Act 2000 will govern the management and general operation of adoption support agencies, including making provision for their registration.
- **The Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005** will apply to adoptions made after the 2002 Act came into force and will provide adoption agencies

with a framework within which they are required to consider certain issues, such as the adopted person's welfare, before making a determination as to whether to disclose sensitive identifying information which would identify persons affected by an adoption.

- **The Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005** will enable registered adoption support agencies and adoption agencies to operate a regulated intermediary service so that adults adopted before the 2002 Act comes into force can obtain information about their adoption and contact between adopted adults and their adult birth relatives can be facilitated where appropriate.
- **The Adopted Children and Adoption Contact Registers Regulations 2005** will prescribe the form of entry in the Adopted Children Register, requirements etc. in relation to registrable foreign adoptions, information for the purposes of the Adoption Contact Register and for obtaining information from the registers and information about adopted persons and their relatives for the purposes of the Adoption Contact Register.
- **The Special Guardianship Regulations 2005** will prescribe the list of special guardianship support services which local authorities are required to maintain, the process for assessing special guardianship support needs, and requirements in respect of the planning, delivery and review of special guardianship support services. The Regulations will also prescribe the matters that local authorities are required to include in the report that the court must receive before it can make a special guardianship order.

**15.** The second series of statutory instruments will be as follows:

- **The Independent Review of Determinations (Adoption) Regulations 2005** will provide for the continued operation of an independent review mechanism in respect of qualifying determinations made by adoption agencies under the new scheme for adoption.
- **Adoption Agencies (Prescribed Fees) (England) Regulations 2005** will provide that fees may be charged by adoption agencies for their services in certain circumstances, for example, fees local authorities may charge for the preparation and assessment of prospective adopters who wish to adopt a child who is not resident in this country.
- Regulations made under section 108 of the 2002 Act regarding corresponding provisions in the Channel Islands and the Isle of Man. This will allow us to make the new adoption system work with the adoption system in the Channel Islands and the Isle of Man, for example in terms of mutual recognition of orders.
- Regulations made under section 87 of the 2002 Act prescribing the requirements that ought to be met by an adoption for it to be an "overseas adoption". An overseas adoption is an adoption of a description specified in an order (to be made under section 87), being a description of an adoption effected under the law of any

country or territory outside the British Islands. The status of children adopted under an overseas adoption is recognised by virtue of section 66 of the 2002 Act.

- **Non-Agency Adoptions Regulations 2005** will prescribe the local authority responsible for assessing the suitability of prospective adopters and providing a report to the court where the child is already living with the applicants and they give notice of their intention to apply for an adoption order, such as foster carers or relatives of the child and require the local authority to carry out CRB checks in respect of the applicants.
- Regulations making provision for any necessary consequential and transitional provisions.
- Regulations under section 2(2) of the European Communities Act 1972 to ensure the 2002 Act is consistent with Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services.
- An order (affirmative) made under section 142 of the 2002 Act will amend the statutory adoption pay provisions as a consequence of unmarried couples being able to apply to adopt jointly.

**16.** The intention is that all of the SIs set out in paragraphs 14 and 15 above will come into force on 30 December 2005.

**17.** As noted above, the White Paper recommended the establishment of a statutory adoption register – the Adoption and Children Act Register – for which provision was made in the 2002 Act. This provision is not being implemented at present. Ministers have decided to continue with a non-statutory register for the next three years. This will give a stronger evidence base on which to assess the effectiveness of a non-statutory register and the desirability of moving to a statutory register.

**Extent**

**18.** Regulations will apply either in England only or in England and Wales. Each individual explanatory memorandum will set out the application of each statutory instrument.

**Policy background**

**19.** The total number of adoption orders made in England has declined from 5,657 in the year ending 31 December 2001, to 4,479 in 2003. At the same time, the number of adoptions in respect of looked after children in England has increased from 3,400 in the year ending 31 March 2002, to 3,700 in 2004. The number of applications to adopt a child from overseas processed by the DfES has remained relatively steady at around 300 each year (330 in year ending 31 December 2004).

**20.** The PIU review of adoption in 2000 and the White Paper *Adoption: a new approach* identified some key problems which meant the needs of

looked after children were not consistently being met, including:

- wide variation by councils in the use and practice of adoption;
- to the detriment of children, the adoption process was widely seen as prone to delay, with clear concerns over the consistency, quality and clarity of the process;
- a lack of consistency in the law;
- the review mechanism for those applying to adopt was seen as unfair and not impartial;
- little support was available for adopters; and
- delays in the court processes over adoption.

**21.** Implementation of the 2002 Act will fulfil the Government's intention to reform adoption law and implement the proposals in the 2000 White Paper which require legislation. The overriding aim of improving the adoption service and promoting greater use of adoption will be furthered by the implementation of the SIs.

*Public Consultation*

**22.** There has been extensive public consultation upon the adoption procedures set out in the regulations. The explanatory memorandum to accompany each statutory instrument will give further details of the public consultations.

**23.** Five consultation packages on draft regulations and draft guidance to be made under the 2002 Act were published in 2003 and 2004. A further consultation document will be issued in early 2005 to cover the key draft SIs in the second series set out in paragraph 15 above which introduce the final changes. The numbers of respondents for each package are listed below. The overall number of written responses was 422.

- Arranging Adoptions and Assessing Prospective Adopters – (115 responses)
- Adoption Reports and Adoptions with a Foreign Element – (50 responses)
- Access to Information (including the Registrar General's functions) – (124 responses)
- Adoption Support and Adoption Support Agencies (75 responses)
- Care Planning and Special Guardianship (58 responses)

**24.** The responses to these documents together with the information gathered at 14 regional consultation events and 15 focus groups and numerous other meetings held earlier in the year have informed the development of the Regulations and implementation arrangements. The explanatory memorandum in relation to the individual SIs will provide more detail.

## Impact

**25.** Each Statutory Instrument will have a regulatory impact assessment attached.

## Contact

**26.** Helen Steele, Head of Adoption, 4th Floor, Caxton House, Tothill Street, London, SW1H 9NA.

**Annex: Implementation of amendments to the Children Act 1989 that are not adoption or special guardianship related**

The Government has already implemented the following key provisions of the Adoption and Children Act 2002:

- On Royal Assent (7 November 2002): provision in respect of local authorities' power to provide accommodation for children in need under section 17 of the Children Act 1989.
- 1 December 2003: parental responsibility for unmarried fathers who jointly register the birth of their child with the mother.
- 1 April 2004: advocacy services for children and young people. Amendment and widening of the application of, the procedure for making representations under that Act and to impose a duty on local authorities to make arrangements for the provision of advocacy services to children or young people making or intending to make representations.
- 27 September 2004: Independent Reviewing Officers, responsible for chairing statutory reviews of all looked after children.
- 31 January 2005: Amendment to the definition of 'harm' in the 1989 Act to make clear that harm includes any impairment of the child's health or development as a result of witnessing the ill treatment of another person.

The remaining provisions will be implemented as follows:

- 30 December 2005: Amendment enabling the acquisition of parental responsibility by a step-parent either by agreement of both parents or a court order.
- 30 December 2005: Amendment enabling local authority foster carers to seek leave of the court to apply for an order under section 8 of the 1989 Act (including a residence order) if the child has been living with them for one year, rather than the current three years.
- 30 December 2005: Amendment enabling courts to make residence orders that have effect until the child reaches the age of 18.
- DfES have consulted on the draft Regulations required to implement the provisions in respect of inquiries by local authorities into representations. Ministers are considering the timetable for implementation in the light of the responses to that consultation.

**FULL REGULATORY IMPACT ASSESSMENT (RIA) FOR THE LOCAL AUTHORITIES ADOPTION SERVICE (ENGLAND) (AMENDMENT) REGULATIONS 2005**

## TITLE OF PROPOSAL

This Regulatory Impact Assessment considers the options for ensuring (a) that local authorities in England meet national minimum standards ("NMS") for the provision of adoption support services and (b) there is a level playing field amongst different providers of adoption support services in terms of regulation by the registration authorities[1] in England and Wales. (The Local Authorities Adoption Service (England) (Amendment) Regulations 2005).

## PURPOSE AND INTENDED EFFECT OF MEASURE

### Objective

To meet the stated policy of the Government and the Welsh Assembly Government that, insofar as is possible, there is a level playing field amongst different providers of adoption support services in terms of regulation by the registration authorities.

The Local Authorities Adoption Service (England) Regulations 2003 ("the principal Regulations") form the basis of the regulatory framework for local authorities in England who make arrangements for the adoption of children. The principal Regulations set out a range of requirements which a local authority must meet and by which the Commission for Social Care Inspection ("CSCI") inspects the Adoption Service. The Local Authorities Adoption Service (England) (Amendment) Regulations 2005 ("the Amendment Regulations") amends the principal Regulations by extending the requirements local authorities have to meet to include adoption support services.

This RIA applies to local authorities in England. This proposal is required to come into force on 30 December 2005 when the Adoption and Children Act 2002 is fully implemented.

### Background

The Adoption and Children Act 2002 ("the 2002 Act") makes statutory provision in respect of a number of new policies for adoption set out in the White Paper *Adoption: a new approach*, published in December 2000 (which itself followed on from the Review of Adoption commissioned by the Prime Minister in 2000).

Adoption support services are provided by local authorities, voluntary adoption agencies ("VAAs") and independent providers. Adoption support services are not currently regulated by the registration authorities although local authorities and VAAs are regulated in respect of making arrangements for the adoption of children.

[1] The registration authority In England is the Commission for Social Care Inspection, and in Wales, the National Assembly for Wales.

In order to protect vulnerable service users, many of whom have complex needs, it is important that adoption support services are provided by those suitably qualified and experienced to meet the needs of those affected by adoption and who understand the impact of adoption. Regulation of these services by the registration authorities will raise standards and protect service users by ensuring that they are provided with appropriate and quality services by suitably qualified and experienced staff.

Regulation of independent providers of adoption support services has already begun. From 30 December 2005 all independent providers of adoption support services must apply to the registration authorities for registration as an Adoption Support Agency ("ASA"). These providers must meet the requirements set out in the Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005 and the ASA NMS. From 30 December 2005 VAAs will be treated as registered with the registration authorities in respect of providing adoption support services unless it is a condition of its registration that it does not provide that facility.

## Consultation

The Department for Education and Skills has consulted the National Assembly for Wales in its development of the Amendment Regulations.

Draft Adoption Support Agencies Regulations and ASA NMS, from which the Amendment Regulations have been developed, were issued for a full public consultation in the document *Draft Regulations and guidance for consultation: Adoption Support and Adoption Support Agencies* on 28 May 2004. The consultation closed on 31 August 2004. The consultation document made it clear that the Government and the Welsh Assembly Government are keen to ensure insofar as is possible that there is a level playing field amongst different providers of adoption support services in terms of regulation. It has therefore been the intention that the Regulations[1] and Adoption NMS governing the regulation of local authorities and VAAs are revised to incorporate elements of the Regulations[2] and NMS for ASAs. This will ensure that services are provided to an appropriate standard and by those who are appropriately qualified and experienced. Local authorities and VAAs were included in this consultation and indeed they responded to it. In view of this consultation exercise no separate consultation was considered necessary for the Amendment Regulations.

## Risk Assessment

Adoption support services are designed to meet the needs of all those affected by adoption, including children placed for adoption, adopted children and adults, and their adoptive and birth families. Adopted children for example, may need support to come to terms with the loss of their birth family and with issues of identity arising as a result of their adoption. Birth parents may need some help to deal with their feelings about the adoption of their child. Services can range from giving advice in relation to adoption on a single occasion to a comprehensive tailored package of intensive

[1] The Local Authority Adoption Service (England) Regulations 2003 and the Voluntary Adoption Agencies and Adoption Agencies (Miscellaneous Amendments) Regulations 2003

[2] The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005, SI 2005/2720

therapeutic services for an adoptive child and their family which could last until the child reaches adulthood.

Formal provision of adoption support services is a relatively recent phenomenon following the acknowledgement that adoption has life-long implications and the significant shift in the kinds of children who are adopted. Adoption today is less about providing homes for relinquished babies and more about providing secure, permanent relationships for children in the looked after system. Service users may be extremely vulnerable and have complex needs, particularly formerly looked after children who may have experienced a traumatic childhood. In order to protect service users, it is important that adoption support services are provided by those suitably qualified and experienced to meet the needs of those affected by adoption and who understand the impact of adoption.

Over the last few years, some concerns have been expressed by practitioners in the adoption field and people affected by adoption about the practice of some unregulated independent adoption support providers. The concerns focused on areas such as the skills and qualifications of staff, some areas of the practice of providers (such as the methods of counselling and therapeutic services being used) and the lack of peer review. The ASA Regulations and ASA NMS have therefore been put in place to ensure that inappropriate and unqualified independent providers cease to operate, thus safeguarding service users.

The Local Authorities Adoption Services (England) (Amendment) Regulations and extended Adoption NMS will ensure that local authorities are regulated to the same standards as ASAs and VAAs and provide assurance to service users as to the quality of service they can expect.

## OPTIONS

### Option 1

*Do nothing and maintain the situation where local authorities are not subject to any additional form of regulation by the registration authorities in respect of those services.*

This option undermines the stated objective of the Government and Welsh Assembly Government to have a level playing field amongst providers of adoption support services.

Although local authorities currently provide adoption support services there are no national minimum standards which they need to meet. Consequently the quality of the services across England varies. The Government wishes to raise standards to give confidence to service users that the services they receive, irrespective of where they live, have been inspected by independent regulators and that the local authority has met national minimum standards.

**Option 2**

*To bring forward Regulations to include local authorities' adoption support services in the inspection and regulation regime of CSCI.*

This option would fully meet the objective. Regulation should ensure that adoption support services are provided to an acceptable standard and are only provided by those suitably qualified and experienced to meet adoption-related needs. It is clearly important that services are professional and effective and that vulnerable service users are protected, and regulation should achieve this.

Local authorities will have to meet the principal Regulations as amended by the Amendment Regulations and extended Adoption NMS. The CSCI will continue to inspect each local authority once every 3 years.

## COSTS AND BENEFITS

### Business sectors affected

These Regulations will apply to approximately 150 local authorities whose adoption support services are currently unregulated.

### Benefits

**Option 1**

The only perceived benefit of this option is for local authorities whose adoption support services would remain unregulated. This is not a strong enough reason for the Government not to put in place a system which would provide assurances and safeguards for vulnerable individuals and families affected by adoption.

**Option 2**

This option would fully meet the objective. Regulation should ensure that adoption support services are provided to an acceptable and consistent standard and that service users are protected, whereas Option 1 will not.

Including the adoption support services in the inspection regime using the well recognised framework of regulations and NMS will provide services users with the assurance that a particular local authority has been inspected against and meets the nationally agreed minimum standards.

*Quantifying and valuing the benefits*

The benefits of ensuring that adoption support service provision is suitably regulated and provided to NMS will not largely manifest themselves in monetary terms. The value will be seen particularly in improving the stability of adoptive placements where timely intervention and appropriate and professionally provided adoption support services can be the key determinant as to whether a placement continues or

disrupts. This ultimately influences the outcomes for many vulnerable looked after children who would otherwise be in the looked after system.

In the longer term there are clearly financial benefits to ensuring that adoptions succeed as local authority expenditure on supporting adoptive families is likely to be significantly less than care provision which would be necessary if an adoption disrupted. As yet we are not able to provide a figure for the overall saving but the cost will depend on the cost of adoption support services provided and the numbers and types of children adopted.

**Costs**

**Option 1**

None

**Option 2**

There will be no increase in the annual fee payable by local authorities as a result of the CSCI including adoption support services in its inspection of local authorities.

*Costs to Government*

It has been estimated that there will be 150 local authorities under option 2, which will be subject to additional inspection by the CSCI. The costs of inspection and other regulatory activity will be partly met by central government. We estimate that costs to central government of regulatory activity over the first 3-year period (from 2005-06) will be in the region of £95k.

We do not expect the compliance costs of meeting the Regulations and NMS under option 2 to be significant for local authorities as they are already required to, for example provide training, supervision and appraisal of their staff, to keep records and advise service users of the services provided. £70m of extra adoption support services funding has already been provided by central government to local authorities to cover these increased costs and the higher fees VAAs and ASAs will charge for providing an adoption support service on behalf of local authorities.

*Costs to others*

In some cases, those affected by adoption may seek support services themselves rather than go through a local authority, and will pay for the service themselves. The cost obviously depends on the service accessed and could range from a few pounds for written material to thousands of pounds for intensive therapeutic services.

The new national framework for adoption support services places a duty on local authorities to complete an assessment of need for adoption support services. This means that in the majority of cases where adoptive families are seeking services, they will be able to approach their local authority for an assessment of their needs through the new framework. Where the local authority decides that services are to be provided it will be the local authority that will fund the provision of those services.

## COMPETITION ASSESSMENT

We have assessed the impact that these Regulations may have on competition and consider the impact to be low.

Adoption support services are currently provided by 150 local authorities, approximately 32 VAAs and approximately 60-100 unregulated independent providers in England. It is a statutory requirement for local authorities to provide adoption support services. VAAs and independent providers of adoption support services must be registered with the appropriate registration authority.

Access to support services for those affected by adoption will normally be through a local authority which may choose to provide services itself or secure their provision for a fee from another local authority, a VAA or an independent provider. It is often the case that local authorities prefer to commission services from VAAs, rather than the unregulated independent support providers, even though the VAA's services are only partly regulated.

From 30 December 2005 VAAs and independent providers registered as ASAs will equally be able to give assurance to local authorities as to the quality of their services. It is anticipated that this is likely to lead to an increase in business for ASAs. However as there are costs associated with regulation, this will also mean that the cost of ASA services will have to rise.

The increase in business for ASAs may affect the business of VAAs in that both types of providers will be in direct competition in securing contracts to provide adoption support services with local authorities. However, VAAs have a well-established reputation in the adoption service sector and it is unlikely they will lose out significantly through the introduction of regulation of the independent sector. If anything, it will encourage both VAAs and ASAs to consider how they can best provide tailored services to local authorities in a more cost effective way.

## ENFORCEMENT AND SANCTIONS

It is a statutory duty for local authorities to provide adoption support services and these services will be inspected by the CSCI and comply with Regulations and the Adoption NMS. If the CSCI considers a local authority has failed to satisfy the regulatory requirement and that failure is not substantial, it must either report that fact to the Secretary of State or, if it considers that it is not appropriate to make such a report at that stage, given the local authority which specifies why the CSCI considers the local authority has failed to satisfy the regulatory requirements. The notice must set out the action which needs to be taken and the time by which the failure should be remedied. The CSCI will notify the Secretary of State that a notice has been issued and after the expiry of the time limit must notify the Secretary of State whether or not the local authority has remedied the failure.

## MONITORING AND REVIEW

The impact of the Regulations will be monitored and reviewed as follows:

Ministers will receive information about local authorities and the impact of the Regulations through a variety of routes, one of which is the registration authority, who will be responsible for inspecting local authorities.

A new research project, the Adoption Research Initiative, will fund research to measure the effect of the 2002 Act on outcomes for children and prospective adopters. Some of this is expected to run for up to five years after the Act is implemented.

## SUMMARY AND RECOMMENDATION

The 2002 Act represents a radical overhaul of adoption law, replacing the outdated Adoption Act 1976 and modernising the legal framework for adoption. The Government has indicated its intention to bring forward regulations to implement the 2002 Act, of which the Local Authorities Adoption Service (England) (Amendment) Regulations 2005 form part.

Our recommended approach is Option 2, to bring forward these Regulations as drafted. This will meet the objective, driving up standards in the provision of adoption support services and ensuring that service users are protected. The Regulations will implement a system for local authorities which is consistent with the regulation of independent providers of adoption support, VAAs and other social care establishments.

## MINISTERIAL DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

*Maria Eagle*…… Date…3rd December 2005……

## CONTACT POINT

Ruth Wilson
Looked After Children Division
Department for Education and Skills
Caxton House
Tothill Street
London SW1H 9NA
Tel: 020 7273 5827