

REGULATORY APPRAISAL

CHILDREN AND YOUNG PERSONS, WALES

SOCIAL CARE, WALES

THE ADOPTION AGENCIES (WALES) REGULATIONS 2005

Background

1. These Regulations are to be made under the Adoption and Children Act 2002, which replaced the Adoption Act 1976 and modernised entirely the existing legal framework for domestic and inter-country adoption. The Adoption and Children Act 2002 legally underpins a number of the new policies for adoption set out in the White Paper '*Adoption: a new approach*', published in December 2000, which stemmed from the Review of Adoption commissioned by the Prime Minister in 2000. The Adoption Review concluded by the Performance and Innovation Unit recommended a number of measures, including a substantial increase in adoptions from care, National Adoption Standards, and new adoption legislation to modernise the adoption system.
2. In delivering these reforms, the Adoption and Children Act 2002 takes forward many of the provisions set out in the draft Adoption Bill published for consultation by the Department of Health in March 1996 and developed as a result of the Review of Adoption Law, 1991-1993.

Purpose and Intended Effect

Objective

3. The Regulations make clear to adoption agencies their duties in respect of arranging adoptions under the Adoption and Children Act 2002. The Regulations provide an essential framework within which adoption agencies are required to take certain steps before making fundamental decisions about individual adoption cases. The regulatory framework is designed to safeguard the welfare of each child and protect the rights of their parents and adopters by providing for a more rigorous decision making process.
4. The Adoption Agencies Regulations 2005 replace current regulations that mostly date back twenty years.
5. This Regulatory Appraisal assesses the impact on adoption agencies of the Adoption Agencies Regulations, which set out the arrangements that adoption agencies need to put in place, such as establishing an adoption panel, and formulating policies and procedures based on these Regulations and the significant duties adoption agencies will have:
 - where a child is being considered for adoption, counselling the

child and their parents, preparing the report for the adoption panel, the panel's recommendation and the agency decision on whether the child should be placed for adoption;

- where the agency is considering applicants as prospective adopters, conducting checks and references and collecting other information, submitting a report to the adoption panel, the panel's recommendation, and the agency's decision on whether to approve them as suitable to adopt;
- where the agency is considering matching and placing a child with prospective adopters, fully informing the prospective adopters about the child's needs and seeking their views, assessing adoption support for the placement, the panel's recommendation, and the agency's decision about whether the placement should proceed;
- where the child is about to be placed, providing the approved prospective adopters with a placement plan;
- reviewing the child's case, including where the child is placed;
- arrangements for recording, storing, safeguarding, accessing and transferring confidential adoption case records; and
- arrangements for contact, and deciding on the parental responsibility of the child's parents and prospective adopters during the adoption process.

6. The provisions set out in these Regulations for adoption agencies fall into three categories:

- provisions that replicate satisfactory current requirements into the new legislative framework;
- provisions that modify and improve current requirements, some substantially; and,
- provisions that implement completely new requirements.

7. All three categories fit together to provide for a new, coherent system. The first category – those provisions that simply transfer current requirements over to the new legislation – are not described in this Regulatory Appraisal, as they have no new impact.

8. The Regulations will apply to all adoption agencies – 22 local authorities and 3 voluntary adoption agencies (VAAs) – in Wales. Most of the requirements in these Regulations will have no impact on the voluntary business sectors, and there will be no impact on the business sector.

Some new obligations will affect all adoption agencies.

Risk Assessment

9. A decision that a child should be adopted is one of the most fundamental decisions that may be taken for a child. It is also a fundamental decision for the child's parents, as an adoption order removes their parental responsibility and gives full parental responsibility to the adopters. Such radical changes to people's lives require that the risk of making the wrong decision should be kept to the absolute minimum, and that other options for the child are properly explored first. Thus, checks and balances are required to safeguard the welfare of the child and protect the rights of parents and adopters.
10. The Regulations are designed to reduce the risk of current problems continuing to occur under the new legislation. These include:
 - inadequate collection, provision and assessment of information essential to decisions made by adoption panels and adoption agencies. Where such decisions are based on inadequate information and assessment there is a significant risk that the wrong decision could be made about whether a child should be placed for adoption, whether prospective adopters should be approved as suitable to adopt, whether a child should be placed with particular prospective adopters, and whether adoption continues to be in the child's interests. The consequences for the individuals concerned of a flawed decision in adoption are often traumatic and far reaching. Examples include prospective adopters being approved who lack the capacity to care for children, of adoption placements disrupting, and even of children being placed with prospective adopters who have caused them serious harm:
 - poor counselling of and information for the child's parents and prospective adopters. Where the child's parents are not provided with proper counselling and information they are unlikely to be aware of their rights and of the consequences of their child being placed for adoption. Prospective adopters may likewise be unaware of their rights, the commitment they are about to undertake and the difficulties they may face in adopting a child from care. For both groups, this leaves them at far greater risk of making decisions that they may later deeply regret, such as the parents giving consent to their child being placed for adoption and the prospective adopters agreeing to have a child placed with them. For the child this could mean that they are given up for adoption when they might have been placed with another member of their wider family or that their placement with prospective adopters is disrupted and they need to be placed with other carers, leading to further delay in providing them with a loving, caring family; and
 - deficient monitoring of adoption placements. Some adoption agencies have failed to monitor the child's placement properly by visiting the adoptive family, gathering information from the child and others, and carrying out formal reviews. This leaves adoption placements more vulnerable to disruption and breakdown, which might otherwise be avoided

if problems had been identified in time for support to be provided.

11. Within the framework set down by primary legislation, the current Regulations govern much of the process and provide checks and balances. However, the primary legislation dates back to 1976, Adoption Act 1976 when the majority of children available for adoption were relinquished for adoption when they were babies or infants. The Regulations currently in force are the Adoption Agencies Regulations 1983 (SI 1983/1964) as amended the Adoption Agencies and Children (Arrangements for Placement and Reviews) (Miscellaneous Amendments) Regulations 1997 (SI 1997/649). Adoption has changed, and most children are adopted from care, many without the consent of their parents.
12. With the wholesale reform of primary adoption legislation by the Adoption and Children Act 2002 comes the need to reform the secondary legislation so that it keeps in step with the new Act and provides for the particular safeguards necessary within the new legislative framework. The primary and secondary legislation are interdependent. Without new Regulations, the new Act cannot be implemented, and essential reforms in law and practice will be halted. These include, for example, establishing new legal processes for placing a child for adoption through an adoption agency. The Act provides two routes: a local authority may secure a placement order from the court, authorising it to place a child with adopters whom the authority selects; or, the child's parents may give consent to placement.
13. While the 2002 Act provides for the way a placement will work, the new Regulations are needed to ensure that adoption agencies will carry out specific duties necessary to comply with the new placement process. For example, the Adoption Agencies Regulations require the adoption agency to ascertain whether or not the child's parents consent to the child being placed for adoption and, if so, to notify the Children and Family Court Advisory Support Service (CAFCASS) so that a CAFCASS officer may formally witness the parents' consent. This particular function will shortly be devolved to the Assembly under the Children Act 2004.

Options

Option 1

14. Do nothing and rely on current arrangements. The Adoption Act 1976 is an outdated piece of legislation. The Adoption and Children Act 2002 has already been passed, and now needs to be implemented through Regulations if Parliament's intentions are to be delivered.

Option 2

15. Bring forward Regulations under the Adoption and Children Act 2002 that are less prescriptive than currently drafted, supported by new guidance. The risk with this option is that a simpler set of regulations would not

deliver the fundamental improvements identified by a number of reviews and requested during a number of consultations Improved statutory guidance alone could not fill the gaps left by a simpler set of regulations. On essential matters there would be inadequate legal foundation for key parts of any new guidance.

Option 3

16. Bring forward Regulations under the Adoption and Children Act 2002 as drafted, which implement a significant part of the Act's intentions. This will ensure that the range of problems identified within the Adoption Act 1976 and Adoption Agencies Regulations 1983 are tackled.

17. As a consequence of recent consultation workshops, and the written consultation responses, new flexibilities and options have been introduced without undermining any of the essential safeguards. Some provisions set out in these new Regulations will involve additional burdens and costs for local authorities and voluntary adoption agencies (VAAs), but the Regulations have been designed to minimise burdens while ensuring that essential functions are conducted properly, consistently, and within the framework provided by the 2002 Act. Where a VAA is providing a service as part of the local adoption service it will be able to recover reasonable costs from the local authority.

Costs and Benefits

Business sectors affected

18. The Regulations will affect 22 local authorities and 3 VAAs in Wales.

Benefits

Option 1

19. None.

Option 2

20. The only benefit of this option is a reduction in duties and their related safeguards. A simple set of Regulations would give adoption agencies wide discretion and allow unwelcome variation on such significant matters as informing the child's parents, and helping to ensure that vital assessments are properly conducted.

Option 3

21. The Regulations being put forward have been carefully and clearly drafted, and helpfully follow the chronological process of adoption. This option meets the fundamental principles set out in the Act. It provides safeguards for helping to ensure that children adopted in Wales are only adopted if

this is found to be in their best interests, and that prospective adopters are approved as suitable to be adoptive parents only after a rigorous assessment process.

22. Some particular benefits arising from the new Regulations - due to entirely new duties or re-definition of existing ones with the intention of improvements in performance - are listed below.

New duties and their benefits

23. *Regulation 3(3)(a): appointments to the adoption panel: two social workers.* This provides more flexibility for the adoption agency as the social workers will not have to be in its employment, as currently required and the agency will be able to appoint them if it considers they have the skills needed for the task. The agency will be able to appoint retired social workers or social workers who also work for other agencies, for example.
24. *Regulation 3(5): an adoption panel may be established jointly by any two or more local authorities.* Current Regulations only permit two or three local authorities to establish a joint adoption panel. Lifting this restriction provides more flexibility, and is intended to help small local authorities that often struggle to find the resources and members for an adoption panel. There will of course be some logistical and geographical constraints on the number of local authorities who may wish to establish a joint panel, but this change provides scope for local authorities to share a resource, and so reduce their own costs. These will vary around the country. However, local authorities are best placed to decide whether it is in their interests to establish a joint adoption panel, so the regulation sets no ceiling on the number of local authorities. Appointments to the joint panel will be made by agreement between the authorities that established the panel.
25. *Regulation 4(1): panel tenure: adoption panel members shall be appointed for up to two terms, each term being up to five years.* This provides flexibility over the current Regulation which restricts panel tenure to two terms of only three years each. This additional flexibility stems from the need to help agencies who wish to retain experienced panel members, while still retaining a ceiling to ensure that panels benefit from both experienced and new members. Additionally, panel members who have served two terms may be reappointed if at least three years have elapsed since their previous term of office.
26. *Regulation 8: appoint an agency adviser to the adoption panel.* This will require the provision of personnel, recruitment and training support to adoption panels, helping agencies to maintain panels, and monitor their performance. Many agencies already provide this role as a matter of good practice; this Regulation is designed to ensure that all agencies will.
27. *Regulation 13(1)(c): ascertain the child's wishes and feelings.* To be carried out as far as is reasonably practicable, this is an important measure to help put children's interests at the heart of the process by

ensuring that their views are listened to and taken into account. It reflects existing best practice in applying current legislation, and ensures that this will be implemented across the board.

28. *Regulation 14(1)(b)(ii)(aa): explain and provide written information on the legal implications of consent to placement for adoption; Regulation 14(1)(b)(ii)(bb): information on the legal implications of consent to future adoption order; and, Regulation 14(1)(b)(ii)(cc): information on the legal implications of a placement order.* Provides a safeguard to ensure that when parents or guardians are making difficult and fundamental decisions about a child's adoption they are properly informed about the consequences of the new adoption process and their views are sought.
29. *Regulation 18(2) and Regulation 33(1)(c): adoption panel to have regard to section 1 of the Act.* This emphasises the most fundamental provision in the Act. In this example, it requires the adoption panel – when considering whether to recommend that a child should be placed for adoption or that a particular child should be placed for adoption with particular prospective adopters – to have regard to the duties imposed by Section 1 on the adoption agency. These are that the agency must have as its paramount consideration the welfare of the child, throughout its life. Section 1 also incorporates a welfare checklist that the agency, and the Court, must have regard to, including issues such as the child's wishes; needs and characteristics, including race and religious persuasion; and their relationships with relatives.
30. *Regulation 20: appointment of a Welsh family proceedings officer.* The Adoption and Children Act 2002 incorporated provisions that provide for the placement of children for adoption where the parents give their full and signed consent. This removes the need for a placement order, which will help to avoid delays in cases where the child's parents consent to adoption. The Adoption and Children Act 2002 provides specific safeguards to protect the rights of birth parents who give consent. One key safeguard is that for consent to be effective, the birth parents must give their consent by signing a prescribed form in the presence of an independent officer. This Regulation requires the adoption agency to notify the Assembly that the child's parents wish to give consent. Under the 2002 Act and court rules, the Assembly will be required to appoint a *Welsh family proceedings officer* who will have a duty to satisfy himself that the parents give their consent in the full knowledge of its implications and that they do so unconditionally. If the officer is not satisfied that this is so, or considers that they are not competent to give consent, they must inform the agency that consent is not given, and the agency will not have the authority to place the child for adoption under section 19 of the 2002 Act.
31. *Regulation 28: information to be sent to the Independent Review Panel.* This ensures that the new independent review panel - which deals with requests for reviews from prospective adopters where an agency is minded to reject their application - receives all necessary information.

32. *Regulation 31(1)(a): provide prospective adopters with information about the child where the agency is considering placing the child with them.* This includes information about the child's background, emotional and developmental needs, health and education needs. This will help prospective adopters to decide whether they want to be matched with the child for a placement.
33. *Regulation 31(4): notify the prospective adopters that the proposed placement is to be referred to the adoption panel and send them a copy of the agency's report and invite them to send any observations on the report to the agency within ten working days.* This is to enable the prospective adopters to consider the proposed placement and to comment. Their comments would then be considered alongside the report by the adoption panel.
34. *Regulations 35(1) and 35(2): where the agency has decided to place the child with the prospective adopters, meet with them to consider the placements and send them a placement plan.* The placement plan provides prospective adopters with clarity about the process for meeting the child, and placing the child with the prospective adopters, as well as key information about the placement arrangements, such as reviews, visits and adoption support.
35. *Regulation 38: the steps the agency should take where the parent or guardian withdraws consent.* This provides an important safeguard where the child's parents have exercised their right under the 2002 Act and withdrawn their consent for placement for adoption. The Regulation requires the adoption agency to review its decision to place the child for adoption. If the adoption agency is a local authority, it may have a duty to apply for a placement order. If the local authority considers that the child is likely to suffer significant harm if returned to their parents, and that it is satisfied that the child should be placed for adoption, it will then have a duty under the 2002 Act to apply for a placement order. Regulation 38 also provides for cases where the adoption agency is a VAA; VAAs may not apply for placement orders. This Regulation requires the VAA to consider immediately whether to inform the local authority in the area where the child is living about the case, and if the local authority had concerns, it could apply for a placement order, or an order made under the Children Act 1989.
36. This Regulation requires the adoption agency to swiftly consider the child's case as the 2002 Act provides that the child is to be returned within 14 days or 7 days, depending on whether placed with prospective adopters or in the care of the adoption agency, to the parents if consent is withdrawn before an application is made for an adoption order.

The re-defining and extending of existing duties to provide improvements

37. *Regulation 17(1): this extends the current duty to prepare a report for the adoption panel.* The current Regulation provides scope for inadequate and

incomplete reports. Consequently, there is a risk of fundamental decisions about a child being based on inadequate information, with far reaching effects on the child's well-being, and unnecessary costs for adoption agencies. The new Regulation therefore sets out the information that should be included in the report, in a logical sequence. It requires, for example: details about the child; a summary of their history; a chronology of the actions and decisions taken by the agency; specialised information about their current and future health and educational needs; an overall assessment of the child's needs; and, an essential explanation of why adoption is the preferred option for the child.

38. *Regulation 21(1)(c): explanation of placement orders and consent to adoption.* This requires prospective adopters to be given a full understanding of the legal implications of various stages of the adoption process. It is essential that the prospective adopters understand the process of adoption before they commit themselves to their part in it. This is not a new burden, as a duty already exists to explain the adoption process; this Regulation helps ensure that a comprehensive explanation is given which covers placement orders, and the issue of consent.
39. *Regulation 25: gathering information for assessing prospective adopters.* This is more extensive than the current Regulations, and sets requirements to ensure that a full picture is gained of prospective adopters by adoption agencies. It also halves the maximum time that can be taken from an agency presenting the report to the prospective adopter for comment, to the agency considering any response, and then presenting the report to the adoption panel – thereby reducing a potential delay in the adoption process.
40. *Regulation 27: the agency determination/decision on whether to approve the prospective adopters.* This is more extensive than current Regulations, as it provides for the prospective adopters to ask for a review where the adoption agency has made a determination not to approve them as suitable to be adoptive parents. The right for such prospective adopters to ask for a review by the new independent review panel is an important measure to increase the confidence of prospective adopters in the fairness of the agency's decision making.
41. *Regulation 31: proposed placement.* This is more extensive than the current Regulation, which requires the agency to give the prospective adopters written information about the child only after the agency's decision to place the child has taken place. The ruling in *A and B v Essex County Council* illustrated the need to provide prospective adopters with detailed and accurate information about a child where a match is proposed. Prospective adopters need to know about the child's needs, background, and behaviour, to help them decide whether they want to be considered as potential adoptive parents for the child. The new Regulation provides that where the adoption agency is considering placing the child with approved prospective adopters, it is to provide them with a full report about the child, which is set out in schedule 5 to the regulations.

42. *Regulation 36: reviews of the placement.* This is more extensive than current regulations, now requiring that matters such as ascertaining the child's views where practicable, and adoption support for the placement, are also part of the review. It also aligns the Adoption Agencies Regulations with regulations issued for the review of children's cases under the Children Act 1989. This will ensure consistency where a child's care plan becomes one for adoption, so that the Independent Reviewing Officer will have a duty to chair reviews where the child is subsequently placed for adoption.

Quantifying and valuing the benefits

43. When children cannot live with their parents, adoption is one possible option for providing them with the permanence and stability that comes from being cared for in a loving family. Quantifying the benefits that adoption brings the individual child, and the wider community, is clearly difficult, other than in a generalised way. Some of these are set out below. It follows that it is difficult to quantify the benefits that these regulations will bring in monetary terms.

44. The new Regulations have been structured and designed thematically to set out the whole adoption process for which the adoption agency is responsible for arranging. Responses to the consultation show that this has been welcomed, with many commenting that the Regulations are clear, and clarify the processes. This should, in turn, avoid confusion and ambiguity, and help to ensure that the Regulations are more closely adhered to than current, truncated Regulations. As agencies implement the new Regulations, there should be an improvement in local practice. Changes made as a result of the consultation will also provide agencies with new flexibilities and options – potentially helping them to achieve efficiency savings – without any adverse consequences for the necessary safeguards.

45. Benefits which should stem from the new Regulations include:

- clarity about the role of the adoption panel, with provisions setting out the recommendations and the advice the panel may make and give, respectively;
- flexibility on joint adoption panels, enabling local authorities to share the resourcing of adoption panels, which play a central role in the adoption process;
- flexibility on the appointment of social workers to the adoption panel, allowing agencies to appoint recently retired social workers or social workers from other agencies;
- enhancement of the role of the agency adviser to the adoption panel,

including recruiting and training new panel members;

- integration of adoption support within the arrangements that an agency will make when matching approved prospective adopters with the child, and clarity about how the agency should consider and make arrangements for contact between the child and others, particularly relatives, as the adoption process develops;
- a more structured and clearer process for planning the placement of a child with prospective adopters;
- clarity on the various reports and other documents that are necessary for informing the recommendations made by adoption panels, and also in assisting prospective adopters to decide whether to be matched with a particular child; and,
- more focused and structured reviews of, and visits to, an adoption placement.

46. With greater clarity about the duties of an adoption agency, and with processes operating in a more coherent way, it is reasonable to expect that there will be some reduction in delays and drift.

47. The primary and secondary legislation should help adoption agencies to optimise their functions, and allow appropriate local flexibility, and so contribute to adoptions reaching a sustainable level that is consistent with the needs of the children for whom adoption is the right option.

48. It is reasonable to expect all children affected by the adoption process in the period post the implementation of the 2002 Act, and these Regulations, to benefit from the improvements they should help deliver. Prospective adopters, and adoptive parents, will also benefit from a system that has more clarity, consistency and support, for them, and the child placed for adoption.

49. Any increase in the number of adoptions will have two financial consequences for local authorities: a reduction in expenditure on care provision; and, an increase in expenditure on adoption support services. In the long term, expenditure on adoption support is likely to be less than care provision.

50. Any additional costs that local authorities are likely to incur as a result of these Regulations are intended to be met from within the additional resources provided for local authorities within the 'Children First grant' and in the revenue settlement. The budget for the 2004-05 'Children First grant' was £28,051m. The budget for 2005-06 is £27,144m with a further £13,557m being made available within the revenue settlement, which provides a total of £40,701m. This £40, 701m includes additional funding to take forward implementation of the Adoption and Children Act 2002.

51. Society and adopted children themselves will undoubtedly benefit from the better life chances gained when children are provided with loving care, permanence and stability. It is known that the outcomes for children who remain looked after are significantly lower than for other children:
52. In Wales educational outcomes for young people leaving care aged 16 or over are improving, but there is more to be done to ensure that all Looked After Children achieve to their potential. In the year ending 31 March 2003, 39% of care leavers achieved one or more GCSE/GNVQ (excluding those who were due to sit exams after leaving care and those unable to sit exams due to illness or disability the percentage was 46%. 40% had two or more GCSE/GNVQ's on this basis.
53. Work by the Office of National Statistics (H.Meltzer, 2004) found that almost 50% of Looked After Children had a mental health problem.
54. Care leavers are less likely than their peers to be in education, training or employment at age 19.
55. In comparison, the outcomes for adopted children are considerably better, being closer to the population average.
56. As some provisions in these Regulations explicitly set out new requirements for information gathering and assessment, they will require some more work and therefore entail some additional costs for adoption agencies. However, this should reduce the risk of fundamental recommendations and decisions being made on the basis of poor and inadequate information. In adoption, decisions made on unsound foundations may have a high human and monetary cost. The benefits of comprehensive information in adoption are threefold: the needs of the child are much more likely to be met; individual human rights should be better protected; and, mistakes and consequential delays will be reduced. More thorough work at the appropriate point in the adoption process should save time and money.
57. One such example is *Regulation 31: placement proposal*. Under this Regulation, the cost of preparing a fuller report and providing it earlier in the matching and placement process should help to ensure only feasible matches are pursued. Overall this should benefit the child, the prospective adopters, and the adoption agency. In a worst case scenario, the failure to make prospective adopters aware early on of the needs of the child to be placed with them could lead to a mismatch and disruption, with all of the costs this entails.

Costs

58. There is no impact on businesses. The proposals would impact solely on local authorities and the VAAs that currently carry out adoption work.

Option 1

59. None.

Option 2

60. As this would entail minimal change to the current system, few new costs would be involved. The main source of expenditure would arise if new guidance was issued and adoption agencies needed to familiarise staff with it, and ensure on an ongoing basis that it was being applied. However, this option would not provide for the provisions in the 2002 Act.

Option 3

61. The potential costs of these Regulations are outlined broadly below. A paucity of data on adoption service provision costs hampers serious attempts to forecast the financial implications of the 2002 Act and the new regulations.

62. Many provisions outlined in the new Adoption Agencies Regulations are based on current best practice or are strengthening existing requirements on VAAs and local authorities. The new Regulations are more detailed than the current Regulations, and compliance with them may involve extra costs for those agencies not already applying best practice. There may also be some additional cost where the Regulations provide new duties which are necessary for adoption agencies to comply with the 2002 Act, and so meet the needs of vulnerable children, their parents and prospective adopters. However, there should also be savings for agencies where the regulations have introduced new flexibilities.

Other key considerations

63. Clearly there will be a need to ensure agencies and their staff are informed and prepared for the implementation of new regulations; the Welsh Assembly Government is now planning a programme of development events to support implementation of the Adoption and Children Act 2002 by providing materials and opportunities to consider the impact of the new regulations and primary legislation.

64. If extra work, and therefore costs, arise from these Regulations, VAAs should be able to recover their costs from local authorities via the inter-agency fee. The inter-agency fee operates in the following manner. A payment is made by a local authority, in this example agency A, to another adoption agency, agency B - either a voluntary adoption agency or local authority. This allows agency B to recover the costs for the adoption work that it has carried out on behalf of agency A. The Consortium of Voluntary Adoption Agencies (CVAA) sets the fee for its members, which includes almost all VAAs¹.

¹ The CVAA placement fee is set at 65% of National Joint Council spinal column point 38 for

65. If there is a rise in VAA costs due to these Regulations, this fee could rise to cover the extra cost as it is unlikely that VAAs would be able to use any of their voluntary funds to subsidise a fee increase that related to their statutory duties.

Costs to the Welsh Assembly Government

66. Where these Regulations require a level of performance beyond that already achieved by existing best practice, or in order to provide safeguards required under the primary legislation, there could be some additional costs to local authorities. However, this needs to be considered in the light of increased Assembly funding for adoption.

67. The additional funding to take forward the implementation of the Adoption and Children Act 2002 is included in the additional resources provided to local authorities as Children First grant and in the revenue settlement. The budget for 2004-05 provided funding of £28,051m as Children First grant and the budget for 2006-07 provides for £27,144m Children First grant and identifies a further £13,557m in the revenue settlement, a total of £40,701m.

Costs to others

68. In the case of inter-country adoptions, adoption agencies have the discretion to charge the adopter for their services, and usually do so. Therefore any rise in these charges is likely to be passed directly to the prospective adopter.

Small Firms' Impact Test

69. There is no impact on small businesses. Vulnerable children and others involved in adoption need to be protected. Domestic and international laws seek to protect the rights of children and reduce the risk of child trafficking. The Adoption and Children Act 2002 replicates the Adoption Act 1976 in preventing any organisation making arrangements for adoption from making a profit. To be approved as a VAA, the organisation must be a not-for-profit incorporated body.

70. However, the Government has considered the impact on small VAAs. They will be in a position to recover any increase in costs that do occur, via the inter-agency fee.

the salary of local authority employees. It is currently £17,823 for all VAAs, payable in two parts; the first two thirds on placement and the remaining one third on the anniversary of the placement or on the making of an adoption order, whichever is the sooner. The fee is increased by 10% for agencies in the London area. Where sibling groups are placed for adoption, the fee is modified as follows: for two siblings, 1.5 x the fee; for three siblings, 2 x the fee; and for each additional sibling, another 0.25 x fee.

Competition Assessment

71. There are 3 VAAs in Wales and 22 local authorities with a duty to provide local adoption services. As this Regulation is deemed to be cost neutral, and VAAs may (and do) charge a uniform inter-agency fee to cover their costs in any case, competition is not affected.

Enforcement and Sanctions

72. Local authorities and VAAs will be required to comply with these Regulations. The Care Standards Act 2000 established the National Care Standards Commission (NCSC) and the Welsh Assembly as the registration authorities. The Assembly, through the Care Standards Inspectorate for Wales is responsible for the inspection and registration of VAAs, and the inspection of local authority adoption services in Wales.

73. The Welsh Assembly Government is not anticipating that any significant extra work for the regulating authorities will ensue from these Regulations; as such, it is not expected that these Regulations will result in an increase in the fees charged by the regulators to those they regulate.

74. If these Regulations are considered to have been breached, the registration authority will decide what action to take. If the breach was considered to be minor, it is likely the registration authority would note this in its inspection report and send a written warning. If the Regulations had been persistently flouted, or the breach was substantial or serious, the registration authority will be able to take enforcement action which it considers to be proportionate to the offence, such as seeking to have a fine imposed, cancellation of registration, or seeking to bring a criminal prosecution.

75. In addition, the Adoption and Children Act 2002 provides powers for Ministers to intervene in certain circumstances: the appropriate Minister may make an order containing directions to ensure that the local authority complies with the duty within the period specified in the order. Ministers will receive information about the failure of local authorities through a variety of sources, including CSIWI and SSIW.

76. These Regulations are to be made several months in advance of coming into force. This should provide ample time for adoption agencies to prepare for the new requirements, and so reduce the risk of the agencies being in breach of new requirements.

Consultation

With Stakeholders

77. The Welsh Assembly Government has consulted with other key government interests, including the Department for Education and Skills in its development of the Regulations. The Regulations were also issued for public consultation for six months from 18 December 2003 to 30 June 2004 and 30 written responses were received. Events were held in North and South Wales at which 127 people attended from Local Authorities, Health Services and the Voluntary Sector.
78. Broadly respondents agreed with the Regulations and guidance. People wanted to ensure the whole adoption process is child centred and avoids delay in the process whilst having consistency over England and Wales.
79. Concern was expressed about resource implications, particularly the limited number of medical advisors to panels and the availability of adopted people to sit on adoption panels. Respondents welcomed the suggested panel tenure and independence of the chair.
80. Respondents expressed worries about how some of the smaller Local Authorities Voluntary Adoption Agencies would meet all the requirements of adoption panel membership. Problems were also anticipated on how to ensure that the adoptive or prospective adoptive parent on the panel would be truly independent. Other aspects of the Regulations such as panel member tenure and performance review and appraisals of panel members were welcomed.
81. Preparation of adopters was seen as essential, particularly as children with more complex needs are placed. Whether the training should be mandatory or not was a source of disagreement and it was suggested that discretion should be allowed depending on circumstances.
82. Concerns were expressed around time scales, factors that militate against meeting time scales include the court system and the fact that each child is individual and may need different amounts of work and time. The term 'counselling' was thought to be too vague and in need of a definition.
83. The majority of respondents felt departments of the Local Authority as well as Social Services should be contacted to complete a report on the prospective adopters. However, there were anxieties expressed that this would lead to delays in completing the process and the amount of intrusion already faced by prospective adopters and whether this additional intrusion might act as a disincentive. But there was broad agreement that prospective adopters should be checked against the Child Protection Register and this should be in Regulations.
84. Respondents stated that referees should be checked against the child

protection register of the Local Authority where they live and the referees should also be checked with the Criminal Records Bureau. The number of referees was suggested as being from three through to a list of six from which the LA chooses four. It was questioned as to who will act as work referees for self employed and whether work referees are always relevant.

85. There was mixed response to the issue of allowing prospective adopters 14 days to comment on the agency's report but it was felt to be right.
86. Respondents stated that restricted approvals should not be left to agency's discretion. It was felt that matching with categories is a crucial part of the assessment process and should be part of approval, but exceptions should be allowed.
87. In the main respondents felt that prospective adopters should be reviewed two years after approval if a child has not been placed with them, or if there has been a change of circumstance such as a change of household composition, change of employment illness or health problems. It was suggested that this would be an ideal time to repeat background checks.
88. The majority of respondents felt the programme of post placing visits should be regulated, but that there must be some flexibility. Generally respondents suggested that visits should be the minimum that is required for Looked After Children and that social workers should see children with the prospective adopters and alone.
89. Respondents felt disclosure to the child of their adoption should be part of their ongoing story and whilst getting written agreement from adopters to inform the child of their adoption before they are 18 might help them think how they would do that, it is unenforceable part of the process. It was recognised that explicit policies and procedures relating to information about child's birth family and birth history as well as HIV testing for children going for adoption were needed.
90. It was broadly agreed that adoption records should be held for 100 years.

Response

91. The Assembly noted the response to their consultation and in re-drafting the Regulations, worked in conjunction with colleagues in DfES and the Task and Finish Group, to address these issues. The Permanence and Adoption Task and Finish Group was set up by the Welsh Assembly in 2003 in order to guide the work of the Assembly in implementing this legislation. It is made up of recognised experts in the field of fostering and adoption taken from both the public and voluntary sectors in Wales.

With Subject Committee

92. These Regulations were notified to the Health and Social Services Committee via the list of forthcoming legislation submitted on 12 January 2005 (paper No. HSS(2)-01-05, item No. HSS-49-(04)). The Regulations

were not identified for detailed scrutiny.

Summary and Recommendation

93. The Welsh Assembly Government considers that, as drafted, these Regulations will effectively govern the essential work of adoption agencies as they arrange adoptions for thousands of children and their adoptive parents. They are intended to replace current Regulations that mostly date back twenty years, and are central to modernising and improving secondary legislation for domestic adoptions.
94. The Regulations provide vital safeguards for the adoption process, and Option 3 provides the best prospect of delivering the promised reforms to secondary adoption legislation. The Regulations set out the duties of adoption agencies in a systematic and logical manner. They have been designed to assist agencies in meeting their duties.
95. The new Regulations are based on current best practice to help ensure that a quality service is provided for children, parents and prospective adopters, which they are entitled to expect. The extensive consultation has helped the Assembly Government to strike the appropriate balance between Regulation to provide reasonable, proportionate safeguards and flexibility to allow more discretion for adoption agencies on the appointments of panel members to adoption panels. Where it has been necessary to provide additional safeguards in order to ensure the secondary legislation is consistent with the 2002 Act, every effort has been made to ensure the additional duties are reasonable and consistent with the Act. Overall, these Regulations should not impose significant net extra costs. Moreover, VAAs are able - through the inter-agency fee - to recover any new costs that do arise from local authorities.
96. During debates while the Adoption and Children Act was passing through Parliament, adoption agencies and other stakeholder groups endorsed the reform programme for adoption legislation. The Adoption and Children Act 2002 was influenced and developed through many consultations with key adoption stakeholders, including VAAs and representatives of local government.