

Statutory Document No. 2024/0153



*Adoption Act 2021*

# INDEPENDENT REVIEW OF DETERMINATIONS (ADOPTION) REGULATIONS 2024<sup>1</sup>

*Approved by Tynwald: 19 June 2024*  
*Coming into operation in accordance with regulation 2*

The Department of Health and Social Care makes the following Regulations under sections 10 and 68 of the Adoption Act 2021.

## PART 1 – GENERAL

### 1 Title

These Regulations are the Independent Review of Determinations (Adoption) Regulations 2024.

### 2 Commencement

If approved by Tynwald, these Regulations come into operation immediately upon the coming into operation of sections 10 and 68 of the Adoption Act 2021.<sup>1</sup>

### 3 Interpretation

In these Regulations —

“**the AAR**” means the Adoption Agency Regulations 2024<sup>2</sup>;

“**the Act**” means the Adoption Act 2021;

“**adoption suitability determination**” means a qualifying determination described in regulation 4(a);

“**applicant**” means —

<sup>1</sup> Under section 123(2)(b) of the Adoption Act 2021 these Regulations are subject to section 30 of the Legislation Act 2015 (approval required procedure). Section 71 of the Interpretation Act 2015 allows a power in an Act to make a public document to be exercised notwithstanding that that enabling power has not yet commenced. By virtue of section 71(4) of the Interpretation Act 2015, any public document so made cannot commence before the enabling power is itself commenced.

<sup>2</sup> SD 2024/0149.

- (a) in the case of an adoption suitability determination, a prospective adopter;
- (b) in the case of a disclosure determination, a relevant person within the meaning of regulation 16(6) of the Disclosure Regulations;

“**the central list**” is to be construed in accordance with regulation 5;

“**disclosure determination**” means a qualifying determination described in regulation 4(b) to (d);

“**the Disclosure Regulations**” means the Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2024<sup>3</sup>;

“**prospective adopter’s report**” means a report prepared in accordance with regulation 31 of the AAR;

“**qualifying determination**” means a determination described in regulation 4 of these Regulations;

“**review panel**” means a panel constituted in accordance with regulation 5(3);

“**social worker**” has the meaning given in the Regulation of Care Act 2013.

#### 4 **Qualifying determination for the purposes of section 68(2) of the Act**

The following determinations of an adoption agency are qualifying determinations for the purposes of section 68(2) of the Act —

- (a) not to approve a prospective adopter as suitable to adopt a child in accordance with regulation 33(6) of the AAR;
- (b) not to proceed with an application from any person for disclosure of protected information;
- (c) to disclose information against the express views of the person the information is about; or
- (d) not to disclose information about a person to the applicant where that person has expressed the view that the information should be disclosed.

## **PART 2 – REVIEW PANELS**

#### 5 **Constitution of panels**

- (1) The adoption agency must, on receipt of an application made by an applicant in accordance with regulation 13, pass the application to the review panel appointer.
- (2) The review panel appointer must be an independent organisation or person with the relevant adoption panel experience to conduct a review, who meets the requirements for panel members in regulation 7(1).

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<sup>3</sup> SD 2024/0154.

- (3) The review panel appointer must constitute a panel in accordance with these regulations for the purpose of reviewing the qualifying determination.
- (4) The members of the review panel must be appointed from a list of persons (“the central list”) kept by the review panel appointer.
- (5) The members of the central list must include –
  - (a) social workers who have the relevant post-qualifying experience in child care social work including direct experience in adoption work;
  - (b) registered medical practitioners; and
  - (c) other persons who are considered by the review panel appointer to be suitable as members of a review panel including, where reasonably practical, persons with personal experience of adoption and persons who are, or within the previous two years have been, a foster parent.
- (6) The review panel must have at least five members, and the review panel appointer must ensure that individual members have between them the experience and expertise necessary to effectively discharge the functions of the panel.

## **6 Appointment of review panel chair**

The review panel appointer must –

- (a) appoint to chair the review panel one of the members of the panel who has the skills and experience necessary for chairing a panel; and
- (b) appoint one of the members of the panel as vice chair to act as chair if the person appointed to chair the panel is absent or if the office of chair is vacant.

## **7 Disqualification of review panel members**

- (1) A person (“P”) must not be appointed to a review panel if –
  - (a) P is, or is related to, a member of an adoption panel of the adoption agency which made the qualifying determination;
  - (b) where the adoption agency which made the qualifying determination is the Department, P is, or is related to, a person who is, or has, within the period of one year prior to the date on which the qualifying determination was made, been a member of staff of the Department for the purposes of the Adoption Service or for the purposes of any of the Department’s functions relating to the protection or placement of children;
  - (c) where the adoption agency which made the qualifying determination is not the Department, P is, or is related to, a person

- who is, or has been within the period of one year prior to the date on which the qualifying determination was made, an employee or a trustee of that adoption agency;
- (d) the adoption agency which made the qualifying determination has placed a child for adoption with P within the preceding 12 months; or
  - (e) P knows the applicant in a personal or professional capacity.
- (2) In this regulation –
- (a) “adoption panel” means a panel constituted in accordance with regulation 5 of the AAR;
  - (b) “employee” includes a person employed whether or not for payment and whether under a contract of service or a contract for services or as a volunteer;
  - (c) P is “related” to a person (“A”) if P –
    - (i) is a member of the household of, or married to or the civil partner of, A;
    - (ii) is the son, daughter, mother, father, sister or brother of A; or
    - (iii) is the son, daughter, mother, father, sister or brother of the person to whom A is married or with whom A has formed a civil partnership.

## **8 Functions of a review panel constituted to review an adoption suitability determination**

- (1) This regulation applies where the qualifying determination being reviewed is an adoption suitability determination.
- (2) The review panel must review the adoption suitability determination and –
  - (a) where paragraph (3) applies, make to the adoption agency that made the adoption suitability determination a recommendation as to whether or not the applicant is suitable to adopt a child; or
  - (b) where paragraph (4) applies, make to the adoption agency that made the adoption suitability determination a recommendation that –
    - (i) it should prepare a prospective adopter’s report in accordance with regulation 31(2) of the AAR to include all of the information required by that regulation; or
    - (ii) the applicant is not suitable to adopt a child.
- (3) This paragraph applies where the prospective adopter’s report included all of the information required by regulation 31 of the AAR.

- (4) This paragraph applies where the prospective adopter's report, in accordance with regulation 31(3) of the AAR, did not include all of the information required by regulation 31 of the AAR.
- (5) In considering what recommendation to make, the review panel —
  - (a) must consider and take into account all of the information passed to it in accordance with regulation 34 of the AAR;
  - (b) may request the adoption agency to obtain any other relevant information which the review panel considers necessary or to provide such other assistance as the review panel may request; and
  - (c) may obtain such legal advice as it considers necessary in relation to the case.
- (6) Where the review panel makes a recommendation that the applicant is suitable to adopt a child, the panel may consider and give advice to the adoption agency about the number of children the applicant may be suitable to adopt, their age range, sex, likely needs and background.

## **9 Functions of a review panel constituted to review a disclosure determination**

- (1) This regulation applies where the qualifying determination being reviewed is a disclosure determination.
- (2) The review panel must review the disclosure determination and make to the adoption agency that made the disclosure determination a recommendation as to whether or not the agency should proceed with its original determination.
- (3) In considering what recommendation to make, the review panel —
  - (a) must consider and take into account all of the information passed to the review panel appointer in accordance with regulation 16(3) of the Disclosure Regulations;
  - (b) may request the adoption agency to obtain any other relevant information which the review panel considers necessary or to provide such other assistance as the panel may request; and
  - (c) may obtain such legal advice or advice from a registered medical practitioner included in the central list as it considers necessary in relation to the case.

## **10 Fees of panel members**

The adoption agency may pay to any member of a review panel such fees as the adoption agency considers to be reasonable.

## 11 Meetings of panels

- (1) Where the qualifying determination being reviewed is a disclosure determination, the proceedings of the review panel will be invalidated unless three members of the panel are present including at least two persons falling within regulation 5(5)(a).
- (2) Where the qualifying determination being reviewed is an adoption suitability determination, the proceedings of the review panel will be invalidated unless at least five of its members are present including –
  - (a) the chair or vice chair; and
  - (b) a person falling within regulation 5(5)(a).

## 12 Records

The adoption agency must ensure that a written record of a review panel's review of a qualifying determination, including the reasons for its recommendation and whether the recommendation was unanimous or that of a majority, is retained –

- (a) for a period of 12 months from the date on which the recommendation is made; and
- (b) in conditions of appropriate security.

## PART 3 – PROCEDURE

### 13 Application for review of a qualifying determination

All applications to the adoption agency for a review of a qualifying determination must be made by the applicant in writing and include the grounds of the application.

### 14 Appointment of panel and conduct of review

- (1) Upon receipt of an application which has been made in accordance with regulation 13, the adoption agency must –
  - (a) notify the review panel appointer that the application has been made by sending to the independent reviewer a copy of the application; and
  - (b) send a written acknowledgement of the application to the applicant and notify them of the steps taken under sub-paragraph (a).
- (2) When an application is received under paragraph (1)(a), the review panel appointer must –
  - (a) fix a date, time and venue for the review panel to meet for the purposes of reviewing the qualifying determination (“review meeting”);

- (b) after taking the steps set out in sub-paragraph (a), inform in writing the applicant and the adoption agency which made the qualifying determination of –
  - (i) the appointment of the review panel; and
  - (ii) the date, time and venue of the review meeting; and
- (c) inform the applicant in writing that the applicant may, if the applicant wishes, provide to the review panel further details of the grounds of the application in writing in the period up to three weeks before the review meeting and orally at the review meeting.

## **15 Duty to provide information and assistance**

The adoption agency which made the qualifying determination must provide, as far as is reasonably practicable, any information or assistance requested by the review panel under regulation 8(5)(b) or 9(3)(b), as the case may be.

## **16 Recommendation of panel**

- (1) The review panel's recommendation may be that of the majority.
- (2) The recommendation and the reasons for it and whether it was unanimous or that of a majority must be recorded without delay in a document signed and dated by the chair.
- (3) The review panel must send a copy of the recommendation to the adoption agency to make a decision in accordance with regulation 33(11) of the AAR.
- (4) The adoption agency must send a copy of the recommendation and the reasons for it to the applicant.

**MADE 10 MAY 2024**

## ENDNOTES

### Table of Endnote References

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<sup>1</sup> The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.