

**EXPLANATORY MEMORANDUM TO
THE SPECIAL GUARDIANSHIP REGULATIONS 2005**

2005 No.1109

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 Special Guardianship Regulations 2005 ('the Regulations') form part of the legislative framework for the new special guardianship order provided for in sections 14A to 14G of the Children Act 1989 ('the Act'). They relate mainly to the special guardianship support services which local authorities are required to provide by virtue of section 14F of the Act. They prescribe the services which are special guardianship support services. They also state which bodies other than local authorities can provide services on the local authority's behalf and which local authority should be responsible for providing special guardianship support services in cross-border arrangements.

2.2 The Regulations set out the circumstances in which financial support is payable and the considerations that a local authority must have regard to when deciding on the amount of that financial support.

2.3 The Regulations set out the procedure for an assessment of special guardianship support needs, those entitled to an assessment and how those assessments should be carried out and the steps a local authority must take following assessment to notify persons affected of the outcome of their assessment, and in relation to planning and review of service provision where appropriate.

2.4 The Regulations 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. They also specify which local authority is to be the relevant local authority where the child becomes entitled to advice and assistance under the provisions relating to care leavers.

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

3.1 None.

4. Legislative Background

4.1 The Adoption & Children Act 2002 (the 2002 Act) overhauls the Adoption Act 1976, modernises the whole existing legal framework for adoption and makes significant amendments to the Children Act 1989, including the provision of the legal framework for special guardianship orders and special guardianship support services. This statutory instrument is one of a series of statutory

instruments to be laid to implement the core provisions of the 2002 Act. The legislative and policy background for the core provisions of the 2002 Act are 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.

- 4.2 The Special Guardianship Regulations are made under powers in the Children Act 1989. Sections 14A to 14G of the Children Act 1989 make provision in relation to special guardianship and were inserted by section 115 of the Adoption and Children Act 2002.

5. Extent

- 5.1 These Regulations apply to England only.

6. European Convention on Human Rights

- 6.1 Not applicable.

7. Policy background

- 7.1 The Prime Minister's Review of Adoption (July 2000) identified that there was a significant group of children who did not wish to make the absolute legal break with their birth family that is associated with adoption. The Review suggested that, although planned long-term fostering might suit some children, it lacked security and a proper sense of permanence in a family. The report identified the need for an intermediate legal status between adoption and residence orders that offered greater legal security but without absolute legal severance from the child's birth family. The report recommended providing a new legal option for providing permanence short of adoption. This was strongly supported in the public consultation that followed.

- 7.2 In the White Paper *Adoption: a new approach* (December 2000), the Government committed to creating a new private law order called special guardianship that would provide legal permanence short of adoption. The White Paper stated that special guardianship orders would:

- give the carer clear responsibility for all aspects of caring for the child and for taking the decisions to do with their upbringing;
- provide a firm foundation on which to build a lifelong, permanent relationship between the child and their carer;
- be legally secure;
- preserve the basic link between the child and their birth family; and
- be accompanied by proper access to a full range of support services including, where appropriate, financial support.

- 7.3 Draft Special Guardianship Regulations and accompanying guidance were issued for full public consultation in March 2004 in accordance with the Cabinet Office guidelines on consultations. 58 written responses were received and feedback on the draft regulations was also provided at consultation events/focus groups. These consultation played a central role in the helping the Department to identify problems and develop improvements in the regulations and guidance.

7.4 The Department for Education and Skills has also consulted with the Department for Constitutional Affairs and the National Assembly for Wales in relation to the development of the Regulations.

8. Impact

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

9. Contact

9.1 Nicola Sams at the Department for Education and Skills Tel: 0207 273 5248 or e-mail: nicola.sams@dfes.gsi.gov.uk can answer queries regarding the instrument.

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 2002¹ (“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 the 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 1989³ 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 2000⁴);
- 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);⁵
- 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.

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

³ 1989 c.41.

⁴ 2000 c.14.

⁵ 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.

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 1976⁶ 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 2003⁷ and Adoption (Bringing Children into the United Kingdom) Regulations 2003⁸ 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 2003⁹ 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 2004¹⁰ 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 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.

⁶ 1976 c.36.

⁷ SI 2003/118.

⁸ SI 2003/1173.

⁹ SI 2003/1348.

¹⁰ SI 2004/190 as corrected, and as amended by SI 2004/1081 and 2004/1868.

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 for the Merits Committee (for the first four these will be joint memoranda for the Merits Committee and the JCSI) 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 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.

FULL REGULATORY IMPACT ASSESSMENT (RIA) FOR THE ADOPTION SUPPORT SERVICES SPECIAL GUARDIANSHIP (ENGLAND) REGULATIONS) 2005

TITLE OF PROPOSAL

The Special Guardianship Regulations 2005

PURPOSE AND INTENDED EFFECT OF MEASURE

Objective

To introduce a new legal option to meet the needs of children for whom adoption is not appropriate, but who could still benefit from a permanent, legally secure placement. This new option should be a viable permanence option with support services attached which are consistently provided across the country.

Special guardianship might be appropriate for the following:

- some older children who do not wish to be legally separated from their birth parents, but could benefit from greater legal security and permanence;
- some children being cared for on a permanent basis by members of their wider family;
- some minority ethnic communities have religious or cultural difficulties with adoption as set out in law

Special Guardianship Orders (SGOs) are intended to be flexible enough to work in a range of situations, for example, where there is extensive and regular contact with the birth family, and instances where that would not be appropriate but where nevertheless it is desirable to retain the basic legal link between the child and the parent.

A SGO gives the special guardian parental responsibility for the child. The intention is that the special guardian will have clear responsibility for all the day-to-day decisions about caring for the child or young person and for taking any other decisions about their upbringing, for example their education. A special guardian may exercise parental responsibility to the exclusion of others with parental responsibility, such as the birth parents, and without needing to consult them in all but a few circumstances.

Unlike adoption, under a SGO the parents remain the child's parents and retain parental responsibility, though their ability to exercise their parental responsibility is extremely limited.

The Special Guardianship Regulations 2005 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 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.

Background

The Prime Minister's Review of Adoption (July 2000) identified that there was a

significant group of children who did not wish to make the absolute legal break with their birth family that is associated with adoption. The Review suggested that, although planned long-term fostering might suit some children, it lacked security and a proper sense of permanence in a family. The report identified the need for an intermediate legal status between adoption and residence orders that offered greater legal security but without absolute legal severance from the child's birth family. The report recommended providing a new legal option for providing permanence short of adoption. This was strongly supported in the public consultation that followed.

In the White Paper *Adoption: a new approach* (December 2000), the Government committed to creating a new private law order called special guardianship that would provide legal permanence short of adoption. The White Paper stated that special guardianship orders would:

- give the carer clear responsibility for all aspects of caring for the child and for taking the decisions to do with their upbringing;
- provide a firm foundation on which to build a lifelong, permanent relationship between the child and their carer;
- be legally secure;
- preserve the basic link between the child and their birth family; and
- be accompanied by proper access to a full range of support services including, where appropriate, financial support.

The Adoption & Children Act 2002 (the 2002 Act) overhauls the Adoption Act 1976, modernises the whole existing legal framework for adoption and makes significant amendments to the Children Act 1989, including the provision of the legal framework for special guardianship orders and special guardianship support services.

The provisions on special guardianship will come into effect when the Adoption & Children Act 2002 comes fully into force on 30 December 2005

Risk assessment

Special guardianship orders will be an option for children who would benefit from a permanent, legally secure relationship with their carer but where it is desirable to retain the basic legal link between the child and their birth family. Special guardianship support services are intended to support and encourage the use of special guardianship orders as well as helping special guardianship arrangements to continue where they may otherwise disrupt. Special guardianship support services are expected to play a central role in making special guardianship orders workable. An inadequate range of special guardianship support services increases the risk of special guardianship arrangements breaking down where access to sufficient support may have allowed them to continue. An arrangement that breaks down will mean a lack of stability and permanence for the child and could result in the child being taken into local authority care. Where a special guardianship order may be in a child's best interests the unavailability of appropriate support services could prevent an order being pursued.

A decision between adoption and special guardianship should be made in the best interests of the child. In this way it is vital that the scope for special guardianship support services and adoption support services be equivalent so as to avoid creating unhelpful incentives.

Options

Option 1 – to do nothing (i.e. to not bring section 14F into force) and rely on existing family support services provided by local authorities.

Option 2 – to bring forward regulations to require that local authorities provide financial support to special guardians.

Option 3 – to bring forward regulations to require that local authorities provide financial support to special guardians and recommend in guidance that local authorities should provide a full range of support services as a matter of good practice.

Option 4 – to introduce the Special Guardianship Regulations 2005 which require that local authorities make arrangements to provide a full range of support services, including financial support.

COSTS AND BENEFITS

Business sectors affected

150 local authorities.

Benefits

Option 1

No perceived benefits in terms of encouraging the use of special guardianship orders or supporting children and special guardians. This option does not meet the objective.

Option 2

This option would partially meet the objective of supporting and encouraging the use of special guardianship orders. It would also meet the commitment in the 2002 Act to ensure that local authorities provide financial support for special guardians. However, it would not take into account any of the wider needs of those who may request support services, which may not be addressed by financial support alone. Although local authorities would be able to offer financial support to those affected by special guardianship to allow them to buy support services this is likely to have a negative impact in terms of access to support services.

Option 3

This option would partially meet the objective of supporting and encouraging the use of special guardianship orders. It would also meet the commitment in the 2002 Act to ensure that local authorities provide financial support for special guardians. However, guidance is likely to be interpreted and implemented differently in each local authority, possibly leading to widely differing approaches between local authorities. This could result in substantial regional variations in the provision of special guardianship support services.

Option 4

This option would meet the policy objectives in full.

This option would recognise that the range of support needed by children and their special guardians and others affected by special guardianship may well extend beyond financial support. Requiring local authorities to make arrangements for the provision of a specific range of services should also ensure that each local authority

takes a consistent approach to the range of support services that they provide.

Costs

Option 1

No direct costs to local authorities but, as set out above, this option would not meet the objective to encourage the use of special guardianship orders. This option may also risk a greater number of special guardianship arrangements breaking down and increase the possibility of children having to be taken into local authority care. This would increase costs to local authorities substantially.

Option 2

Special guardianship orders are not yet available and so the potential numbers of orders and the cost of providing special guardianship support services is difficult to estimate with any degree of accuracy. It should be possible for the costs to local authorities to be met from their existing allocated funds. Local authorities have received an overall 41.5% increase in children's social services funding since 1997. Furthermore, an extra £70m for adoption support and special guardianship support services for the period 2003/04 to 2005/06 has been ring-fenced and is intended to contribute towards new support service demands on local authorities. It is also important to consider that many children becoming the subject of special guardianship orders will previously have been looked after children cared for by foster parents, and some of the savings that local authorities make from this transition should be redirected towards special guardianship support services

The relative direct costs of this option are not expected to be significantly different from options 3 and 4. However, the narrow range of services may decrease the opportunities for children to leave local authority care via a special guardianship order. The absence of support services could also increase the risk of children being taken into care at a potentially much greater cost to the local authority.

Option 3

The costs of this option are not expected to be significantly different from options 2 and 4. However, the likely differences in approach between local authorities to providing special guardianship support services may decrease the opportunities for children to leave local authority care via a special guardianship order. The absence of support services in some local authorities could also increase the risk of children being taken into care at a potentially much greater cost to the local authority.

Option 4

The costs of this option are not expected to be significantly different from options 2 and 3. The wider range of support services that local authorities would be required to arrange for the provision of and the uniformity between all local authorities under this option is the most effective way of encouraging and supporting the use of special guardianship orders, as well as minimising the number of relationships that may break down without access to appropriate support.

The Special Guardianship Regulations 2005 do place some additional duties on local authorities, and the new duties are important, but they do not represent a significant new burden.

Any financial cost associated with new requirements should be met from existing resources. The Government has provided ring-fenced funding over 3 years (for the period 2003-04 to 2005-06) to support the implementation of the framework for

adoption and special guardianship support services. For 2005-06 this is just under £32million.

SMALL FIRMS' IMPACT TEST

There is no negative impact on small businesses. The Special Guardianship Regulations 2005 will impact solely upon the 150 local authorities with social services responsibilities in England.

COMPETITION ASSESSMENT

As the Special Guardianship Regulations 2005 affect only local authorities, there is no impact on competition between firms in the private sector.

ENFORCEMENT AND SANCTIONS

Local authorities will be required to comply with the Special Guardianship Adoption Support Services (Local Authorities) (England) Regulations 2005. Compliance with the Regulations will be inspected as part of the local authority adoption service inspection by the Commission for Social Care Inspection (CSCI). If in practice the Regulations were not being met in a few respects, it is likely that CSCI would note this in its inspection report and send a written warning. If the Regulations were persistently flouted and/or substantially or seriously disregarded, CSCI may decide to take enforcement action either in terms of fines or through the courts in terms of a criminal prosecution.

Complaints from service users about special guardianship support services will be heard in the first instance through the local authority complaints procedures.

If a complaint is not resolved within the local authority the complainant will be able to request an independent review from the CSCI.

CONSULTATION

The Department for Education and Skills has consulted with other key Government interests including the National Assembly for Wales and the Department for Constitutional Affairs in the development of the draft 2005 Regulations.

Draft Special Guardianship Regulations and accompanying guidance were issued for full public consultation in March 2004 in accordance with the Cabinet Office guidelines on consultations. 58 written responses were received and feedback on the draft regulations was also provided at consultation events/ focus groups.

92% of those who responded in writing found the draft guidance and regulations clear and helpful. Concerns were raised about the number of people entitled to an assessment of need for special guardian support services and the burden on local authorities. Clarification was requested in some areas, for example, placing and receiving authority responsibilities when there are moves across local authority borders. Several respondents asked for simplification where possible and for consistency where appropriate with the Adoption Support Services Regulations 2005.

The Government has tried to respond to these and other detailed points in finalising the 2005 Regulations.

SUMMARY AND RECOMMENDATION

The Government has indicated its intention to bring forward these Regulations to fully implement the provisions in the 2002 Act for the framework for adoption support services. The Government's recommended approach is Option 4. This meets the objective of ensuring that special guardianship is a valid legal option and that special guardianship support services are consistently provided across the country.

Introducing the Special Guardianship Regulations 2005 which require that local authorities make arrangements to provide a full range of support services, including financial support ensures that local authorities put in place an appropriate range of services to encourage the use of special guardianship orders and to support children looked after in arrangements supported by a special guardianship order, as well as meeting commitments made in the White Paper and during the passage of the 2002 Act.

Although the 2005 Regulations may introduce some extra costs for local authorities, the Government has provided ring-fenced funding to support implementation of the new framework alongside existing allocated resources.

Special guardianship orders will provide a new legal route to permanence for children where adoption is not suitable and facilitate children to leave local authority care. The new orders will allow special guardians greater responsibility for decisions concerning the child's day-to-day life. An appropriate range of special guardianship support services will support and encourage the use of special guardianship orders and contribute to minimising the risk of relationships breaking down. The Government has indicated its intention to bring forward Regulations to require local authorities to arrange for special guardianship support services. Introducing the Special Guardianship (England) Regulations 2005 (option 4) is the most effective way to achieve the objective.

MINISTERIAL DECLARATION

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

Filkin..... Date.....4.4.05.....

CONTACT POINT

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