



STATUTORY INSTRUMENTS.

S.I. No. 524 of 2010



ADOPTION ACT 2010 (ACCREDITED BODIES) REGULATIONS 2010

(Prn. A10/1643)

ADOPTION ACT 2010 (ACCREDITED BODIES) REGULATIONS 2010

I, BARRY ANDREWS, Minister of State at the Department of Health and Children, in exercise of the powers conferred on me by sections 150 and 151 of the Adoption Act 2010 (No. 21 of 2010) and the Health and Children (Delegation of Ministerial Functions) Order 2010 (S.I. No. 508 of 2010) and after consultation with the Adoption Authority of Ireland, hereby make the following regulations:

Citation, collective citation and construction

1. (1) These regulations may be cited as the Adoption Act 2010 (Accredited Bodies) Regulations 2010.

(2) The Adoption Act 2010 (Consent to Adoption Order) (Forms) Regulations 2010 (S.I. No. 519 of 2010), Adoption Act 2010 (Pre-Placement Consultation Procedure) Regulations 2010 (S.I. No. 520 of 2010), Adoption Act 2010 (Register of Intercountry Adoptions) Regulations 2010 (S.I. No. 521 of 2010) and these regulations shall be construed as one and may be cited as the Adoption Regulations 2010.

Commencement

2. These Regulations come into operation on 4 November 2010.

Requirements for registration in register of accredited bodies

3. The Authority shall not register any body of persons in the register of accredited bodies in respect of any activity unless satisfied that the body of persons meets the requirements set out in Regulations 5 to 9 in respect of that activity.

Entries in register of accredited bodies

4. The form of, and the particulars to be contained in, the entries in the register of accredited bodies are set out in the Schedule.

Structure, obligations, etc. of accredited body

5. (1) (a) The Authority shall satisfy itself that the organisational structure of an accredited body is in a position to perform the functions for which it is seeking registration.

(b) Members of the body's board of directors and staff shall have a background, expertise, qualifications and experience of the standard required by the Authority.

(2) The Memorandum and Articles of Association of the body shall provide that it is to be solely concerned with assisting in the adoption process on a not for profit basis.

Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 9th November, 2010.

- (3) Its directors shall not receive compensation, other than reasonable reimbursement, as approved by the Authority, for expenses incurred by them.
- (4) (a) Employees or agents of the body, or consultants or independent contractors engaged by it, may receive reasonable remuneration for services actually rendered.
- (b) In determining what is reasonable remuneration, the Authority shall take into consideration the location where the person concerned is based, number of staff, workload requirements, size in financial terms of the body and norms in relation to remuneration applicable in other adoption agencies or in comparable child welfare agencies.
- (5) No actual or promised payment or other consideration, except payment of agreed salaries or of fees agreed for services actually rendered to an accredited body, may be made by the body to any person directly or indirectly involved in the provision of an adoption service, whether the person is acting as an employee or agent of the body, a consultant or an independent contractor.
- (6) An accredited body shall, in engaging any person to provide a service, do so only on a fee-for-service basis.
- (7) An accredited body shall have a written policy prohibiting involvement in any activity or programme which could be construed or used as an inducement to ensure a supply of children for adoption and shall ensure operation and enforcement of the policy.
- (8) An accredited body shall observe and comply with the terms of any international adoption agreements entered into by the State.
- (9) An accredited body shall maintain contact, as appropriate to its functions, with the Authority, national central authorities in other countries and other organisations and bodies involved in the adoption process.
- (10) An accredited body shall report, on request, to the Authority on the body's activities, including any functions which should be performed by the accredited body but which it has delegated to other bodies or persons, and shall furnish the information so requested in a timely manner.
- (11) An accredited body shall facilitate and cooperate with any inspection of its activities by the Authority.
- (12) An accredited body shall provide to the Authority any information, documentation and statistical data requested by the Authority.
- (13) (a) An accredited body shall disclose to the Authority any investigations, criminal charges or convictions, and any revocations or suspensions or other changes in licensing or accreditation status by authorities in the State or any other jurisdiction, that may have occurred in relation to adoption services provided by the accredited body or any such services provided to the accredited body by a third party.

- (b) Such disclosure shall be made to the Authority by the accredited body within five working days of any such matter coming to the attention of the body.

(14) An accredited body shall disclose to the Authority, at the time of application for registration or renewal of registration, any past or pending investigations, criminal charges, convictions, malpractice, complaints or lawsuits, and any revocations or suspensions or other changes in licensing or accreditation status by authorities in the State or any other jurisdiction, that may have occurred in relation to services provided by the body.

(15) An accredited body shall have appropriate policies and procedures to enable it to provide an adoption service in accordance with the standards provided for in the Hague Convention, the Adoption Act 2010 and any regulations made under that Act.

- (16) (a) An accredited body shall provide the range of adoption services in respect of which it is registered in the register of accredited bodies, either directly or through agencies acting under contract to it or under its control and supervision and for whom it takes responsibility.

- (b) The manner in which those services are to be provided shall be set out in the body's written policies.

(17) An accredited body shall have a written policy in regard to proposed ratios of cases on hand per member of its professionally qualified social worker staff providing adoption services.

(18) An accredited body shall provide adoption services only in accordance with written policies and procedures approved by the Authority.

- (19) (a) An accredited body shall regularly and systematically review its adoption services to ensure adherence to appropriate standards and best practice, using methods appropriate to its size and circumstances.

- (b) The body shall carry out ongoing reviews of its operations and, in particular, ensure that its structure of payments and fees is within acceptable norms.

- (20) (a) An accredited body shall, on request, make available to members of the public information on its policies, procedures, activities and services and on the fees charged for adoption services.

- (b) In particular, an accredited body shall, when requested, disclose fully and in writing:

- (i) its policies and procedures, including general eligibility criteria, fees (including forms of payments and receipting systems) and the respective rights and responsibilities of—

- (I) the prospective adoptive parents,

- (II) birth parents,
 - (III) adopted persons,
 - (IV) adoptive parents, and
 - (V) the accredited body as provider of an adoption service;
- (ii) the agreement, or a sample of the agreement, that the individuals referred to in clause (i) are expected to sign should they wish to proceed.
- (21) An accredited body shall ensure—
- (a) that its staff are suitably qualified and experienced for the provision of adoption services,
 - (b) that members of staff, volunteers or other agents are vetted by an appropriate authority before taking up employment with the body, and
 - (c) that each such member is trained in respect of the activities for which the body is registered in the register of accredited bodies.

Financial reporting, fees and charges

6. (1) An accredited body shall submit audited accounts for each year to the Authority within three months after the end of the year concerned.

(2) An accredited body, or any of its directors or employees, shall not have been convicted of any offence involving financial irregularity or shall not have filed for bankruptcy in the five-year period prior to its application for registration.

(3) An independent auditor shall be appointed by an accredited body to provide an annual audit of its finances.

(4) The auditor's report shall be made available to the Authority by the accredited body.

(5) An accredited body shall have in place public liability and employer liability insurance policies.

(6) An accredited body shall submit to the Authority for prior approval its schedule of fees and any subsequent increases in fees or additions to the schedule.

- (7) An accredited body shall—
- (a) disclose fully the fees charged by the body for adoption services—
 - (i) to the general public on request, and

- (ii) to the individuals referred to in Regulation 5(20)(b)(i) on initial contact,
- (b) make available to applicants at the outset of the adoption process a written statement of fees and of estimated and actual expenses, and
- (c) include in the statement the conditions under which fees and costs may be charged, waived, reduced or refunded and when and how fees are to be paid.

Records of accredited body

7. (1) (a) Subject to the requirements of the Data Protection Acts 1988 and 2003, an accredited body shall establish a records system to record relevant details of individuals referred to in Regulation 5(20)(b)(i) who have retained the accredited body to provide adoption services.
- (b) The record shall include:
- (i) a copy of applications by those individuals to the accredited body, and
 - (ii) a copy of any written agreements between them and the body.
- (2) An accredited body shall safeguard its records and files.
- (3) An accredited body shall ensure that a personnel record is kept of each member of its staff involved in adoption services, containing particulars of his or her professional expertise, qualifications, experience, continuing professional development and vetting record.
- (4) An accredited body shall ensure that, in relation to adoption, professional services are performed only by professionally qualified persons with appropriate experience and that those persons are registered with the relevant professional body.
- (5) An accredited body shall ensure that, if it enters into a relationship with a body or organisation abroad which already has a relationship with another body accredited by the Authority, there is no conflict of interest involved and that the quality of the service to the user is not compromised.
- (6) An accredited body's records system shall record and preserve all information supplied in relation to the child, including his or her family and medical history.
- (7) An accredited body shall provide a copy of its record of the individuals referred to in Regulation 5(20)(b)(i) to the Authority on request.

Services to be provided by an accredited body making arrangements for adoption

8. (1) This Regulation does not apply to accredited bodies registered in respect of an activity mentioned in paragraph (e), (f), (g) or (k) of section 4 of the Adoption Act 2010.

(2) An accredited body shall disclose fully and in writing the persons with whom the prospective adoptive parent(s) may become involved both in the State and in the child's country of origin and the respective responsibilities of those persons.

(3) An accredited body shall have a written policy and procedures that determine the order in which prospective adoptive parent(s) are matched to a child.

(4) An accredited body shall have a written policy and procedures that ensure that its board members, employees, agents, consultants, independent contractors or volunteers do not receive preferential placement decisions.

(5) (a) An accredited body shall have a written policy prohibiting money or other consideration from being paid or given or promised in return for placement of a child.

(b) The policy shall state that no individual shall give or promise money or any other consideration, either directly or indirectly, to a child's parent(s), another individual or an entity as payment for the child or inducement to release the child for placement or adoption.

(c) The policy shall make it clear that only reasonable, required and documented payments may be made for activities related to the adoption process.

(6) An accredited body shall have a written policy that expressly forbids payments for pre-birth medical services being used to influence or persuade natural mothers to give consent to an adoption.

(7) An accredited body shall not have a policy or engage in a practice of requiring prospective adoptive parent(s) to sign any form of waiver or otherwise limit the legal liability or responsibility of the accredited body in connection with the provision of adoption services.

(8) An accredited body shall have a written policy describing its approach to matching a child's needs with the capabilities of its prospective adopters.

(9) (a) An accredited body shall, before providing an adoption service, identify, itemise and disclose in its agreement with the prospective adoptive parent(s) each separate category of fees and costs to be charged and the adoption expenses, whether arising in the State or in the child's country of origin, including, as applicable—

(i) translation and document costs,

(ii) travel and accommodation expenses, and

(iii) any contribution to child protection or child welfare services in the child's country of origin.

(b) The agreement shall specify—

- (i) a fixed amount to be contributed by the prospective adoptive parent(s),
 - (ii) the intended use of the contribution, and
 - (iii) the manner in which the contribution will be recorded and accounted for.
- (10) (a) An accredited body shall have a policy of stating that additional fees, costs or expenses beyond those disclosed at the initiation of an adoption service will not be charged, save in exceptional circumstances where unforeseen additional costs are incurred in the child's country of origin.
- (b) Where such circumstances occur, the accredited body shall—
- (i) immediately disclose the additional fees, costs or expenses in writing to the prospective adoptive parent(s),
 - (ii) obtain the consent of the prospective adoptive parent(s) to incur any additional fees or expenses in excess of €300, prior to expending any funds,
 - (iii) provide written receipts for any fees or expenses paid in the child's country of origin, and
 - (iv) retain copies of such receipts for inspection by the Authority.
- (11) An accredited body shall—
- (a) have a written policy of returning any unexpended fees, costs or expenses to the prospective adoptive parent(s) and ensure that the policy is enforced,
 - (b) provide for prompt itemisation to those parent(s) of all fees, costs or expenses incurred during the process,
 - (c) where, at any stage in the adoption process, the accredited body becomes aware of any unexpended funds which should be refunded to the prospective adoptive parent(s), ensure that those funds are refunded as soon as practicable,
 - (d) identify and disclose to those parent(s) in advance any exceptional charge for special services, and fully account to the Authority for any such charge,
 - (e) record all funds transferred to pay for adoption services provided in other countries,
 - (f) ensure that direct cash transactions by prospective adoptive parent(s) in breach of these regulations do not occur, and

- (g) not pay fees for adoption services in a child's country of origin which are not in line with normal remuneration levels in that country.
- (12) (a) An accredited body shall keep a record of the efforts made to obtain information about prospective adoptive parents and prospective adoptees and, if such information is not obtained, a record of why it was not obtained.
- (b) The accredited body shall forward any such information obtained—
- (i) about prospective adoptive parents, to the relevant authorities in the child's country of origin, and
 - (ii) about prospective adoptees, to the relevant authorities and those parents.
- (13) An accredited body shall keep a file on each case containing all information obtained about a child and copies of all documents presented on the entry of the child into the State.
- (14) An accredited body shall assist prospective adoptive parents in relation to the procedures to be followed in both the child's country of origin and the State for the placement and adoption of the child in its country of origin and for acquiring the documentation necessary for admitting the child into the State.
- (15) An accredited body shall forward notification of a placement, with supporting documentation, to the Authority.
- (16) An accredited body shall provide prospective adoptive parent(s) with a timeframe for the completion of the adoption process and shall keep them informed of progress.
- (17) An accredited body shall comply with requests for information on an adoption with which it is involved from authorities in the child's country of origin.
- (18) An accredited body shall match the child's needs with the capacities of the prospective adoptive parent(s) as described in their assessment report.
- (19) (a) An accredited body shall use the assessment report for the purpose of matching the capacities of the prospective adoptive parent(s) with the child's identified needs.
- (b) The matching process shall—
- (i) be conducted on the basis of full information regarding the child's emotional, medical, developmental and other needs being available to the body,
 - (ii) provide the prospective adoptive parent(s) with a sufficient amount of time, taking into account the child's age and best

interests, to consider carefully the needs of the child and their capacity to meet those needs and to obtain their own independent medical review of the medical information and other descriptive information, including any video recording or photograph of the child: any such recording or photograph should indicate the date on which it was made or taken,

- (iii) not involve the placing of pressure on those prospective adoptive parent(s),
 - (iv) be undertaken by professionally qualified staff in accordance with best international practice and any directives issued by the Authority, and
 - (v) be the subject of a formal report to the Authority.
- (c) If the prospective adoptive parent(s) agree to proceed with the placement or adoption, the report should be submitted by the accredited body to the Authority for approval before the placement or adoption proceeds further.
- (20) (a) The report mentioned in paragraph (19)(b)(v) shall include—
- (i) relevant consents obtained in the child's country of origin,
 - (ii) summary information on the child, including age and date of birth,
 - (iii) a medical report on the child,
 - (iv) summary information on the applicants, including age and assessment recommendations,
 - (v) full details regarding the matching process, including the process employed and a statement of costs for all aspects of the process, and
 - (vi) verification, by means of documentation from the relevant authorities in the child's country of origin—
 - (I) that the child has been properly relinquished by the birth parent(s) or guardian(s),
 - (II) that other suitable arrangements, in the best interests of the child, did not exist in that country, and
 - (III) that those authorities have agreed to the placement of the child with the prospective adoptive parents.
- (b) Where an adoption does not take place, the accredited body shall return the originals of all documents concerning the child to the central authority in the child's country of origin.

(21) An accredited body shall require that the individual in the child's country of origin who is responsible for obtaining medical or social information on the child on its behalf uses all reasonable efforts to obtain all available information on the medical and social history of the child, including:

- (a) evidence that consents have been obtained in accordance with Article 4 of the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption;
- (b) a determination by the relevant authorities in the country of origin, on the basis of reports on the child and prospective adoptive parents, in relation to whether the envisaged placement is in the best interests of the child;
- (c) a report on the child, including information about his or her identity, eligibility for adoption, social environment, family history, medical history and any special needs and also about the medical history of the child's family;
- (d) consideration of the child's upbringing and his or her ethnic, religious and cultural background;
- (e) the date of, and medical condition of the child on admission to care; growth data, developmental status at the time of referral and history of any significant illnesses, hospitalisations or changes in the child's condition since entry into care;
- (f) the name, address and qualifications of the person performing the medical examination of the child;
- (g) the date(s) of any such medical examination(s);
- (h) identification of any references, descriptions or observations made by any individual other than the examining physician that are included in the information on the medical and social history of the child provided under this paragraph, clearly identifying his or her source and training and stating whether those observations are objective or subjective;
- (i) information about the entry of the child into the most recent and any other previous form of care;
- (j) a review of any hospitalisations of the child and accurate information about any significant illnesses and the full range of tests performed on the child, including tests addressing known health and medical risk factors in the child's country of origin, and current health information;
- (k) significant events in the course of the care of the child and their effects (if known) and the reasons or causes of such events.

(22) An accredited body shall obtain and provide the prospective adoptive parent(s) with a copy of the medical records of the child (which shall, where appropriate, be accompanied by an English language translation of those records) at least two weeks prior to the date on which the prospective adoptive parent(s) travel to the child's country of origin with a view to completing all procedures in that country relating to the adoption.

(23) (a) An accredited body, on request, shall supply prospective adoptive parent(s) with contact information, where available, relating to the medical practitioner who prepared the medical report.

(b) The information shall be made available by the body to any medical practitioner engaged by those parent(s).

(24) An accredited body shall ensure that the meeting between the prospective adoptive parent(s) and the child is designed to facilitate the transfer of the child in accordance with best practice.

(25) An accredited body shall make every effort to arrange for the prospective adoptive parent(s) to meet with the birth parent(s) and, as far as possible, shall endeavour to collect any relevant video recordings, photographs or other information concerning places and people of importance in the child's life.

Making arrangements for adoption with agencies and persons outside the State

9. This Regulation does not apply to accredited bodies registered in respect of an activity mentioned in paragraph (e), (f), (g) or (k) of section 4 of the Adoption Act 2010.

(2) An accredited body shall abide by the laws of any other country relating to the entities that may provide adoption services in that country.

(3) If the other country requires the exclusive use of bodies it has accredited or public authorities for the provision of adoption services, the accredited body shall use only those entities.

(4) (a) An accredited body shall use the public authorities or bodies accredited by the other country as far as possible, even where exclusive use of those authorities or bodies for adoption purposes is not required by that country.

(b) Where such use is not so required, an accredited body may, if permitted by the other country, use other agencies and persons only where they act under the direct supervision of the authority or body accredited by the other country and that authority or body assumes responsibility for their actions.

(5) An accredited body shall not work with any agency or person outside the State whose accreditation has been revoked or which is the subject of an investigation by the relevant authorities or has been the subject of other negative sanctions.

(6) An accredited body shall require that any agency or person outside the State with which it proposes to work discloses in advance and on an ongoing basis information in relation to any of the following matters affecting it:

- (a) any debarments by the accreditation authorities from providing adoption services, as well as the reasons therefor;
- (b) any other business or activity carried out by it or its management that may be, or may appear to be, inconsistent with its ability to conduct adoption services in a manner consistent with the Hague Convention;
- (c) any disciplinary actions by the accreditation authorities and the basis for such actions;
- (d) any past or pending investigations, criminal charges, convictions, malpractice, complaints or lawsuits;
- (e) any complaints made and any prior conduct of its employees or representatives that resulted in disciplinary proceedings and the outcome of those proceedings;
- (f) any offence involving financial irregularities.

(7) An accredited body shall ensure that any agency or person with whom it is making arrangements for adoption—

- (a) provides the adoption service in compliance with the terms of the Hague Convention,
- (b) has a written policy—
 - (i) providing that no individual shall give or promise money or other consideration, whether directly or indirectly, to the child's parent(s) or any other individual or entity as payment for the child or inducement to release the child,
 - (ii) making it clear that only reasonable and itemised payments for activities relating to the adoption process, such as pre-birth medical treatment, care of the child or the provision of child welfare or child protection services, may be made in respect of the adoption, and
 - (iii) providing that employees of the agency or person shall be fully familiar with the policy and be trained in relation to it,
- (c) complies with international standards in relation to obtaining medical or social information relating to the child, and
- (d) where the required information cannot be obtained, records and documents the efforts made to do so, as well as the reasons why the information was not obtainable.

(8) An accredited body shall ensure that an agency or person in the child's country of origin with whom it proposes to work has a bond or liability insurance sufficient to cover the liability and risks involved in providing adoption services.

(9) An accredited body shall enter into a written agreement with the agency or person in the child's country of origin with whom it proposes to work and shall ensure that the agreement complies with, and requires observance of, the requirements under the Adoption Act 2010 and these regulations.

Supervisory role of Authority

10. (1) The Authority shall maintain a supervisory role over each accredited body.

(2) The Authority may subject an accredited body to an external evaluation assessment, including an audit of random cases.

(3) The Authority may establish an independent investigation panel to deal with any particular issues that may arise in relation to an accredited body.

(4) The Authority, on request, may access any records of an accredited body, its employees or agents.

(5) An accredited body shall submit to the Authority an annual report in relation to its activities within three months after the end of the year concerned.

SCHEDULE

Form of, and particulars to be contained in, entries in register of accredited bodies

The columns of the register of accredited bodies shall contain the following particulars:

Serial number.

Name of accredited body.

Address of its registered office.

Name and address of its secretary.

Date of registration.

Activity or activities in respect of which the body is registered.

Remarks.

GIVEN under my hand,
4 November 2010.

BARRY ANDREWS,
Minister of State at the Department of Health and Children.

EXPLANATORY NOTE

(This Note is not part of the Instrument and does not purport to be a legal interpretation).

These regulations set out the standards which must be met by accredited bodies in order to satisfy the requirements of the Adoption Authority under the Adoption Act 2010 (No. 21 of 2010) for entry in the register of accredited bodies.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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