

2005 No. 888

CHILDREN AND YOUNG PERSONS, ENGLAND

SOCIAL CARE, ENGLAND

**The Disclosure of Adoption Information (Post-Commencement
Adoptions) Regulations 2005**

Made - - - - 22nd March 2005

Laid before Parliament 7th April 2005

Coming into force - - 30th December 2005

ARRANGEMENT OF REGULATIONS

PART 1

GENERAL

1. Citation, commencement and application
2. Interpretation

PART 2

KEEPING OF INFORMATION ABOUT ADOPTIONS

3. Application of this Part
4. Information to be kept about a person's adoption
5. Storage and manner of keeping of section 56 information
6. Preservation of section 56 information
7. Transfer of section 56 information

PART 3

DISCLOSURE OF INFORMATION - GENERAL

8. Disclosure for purposes of agency's functions or for research
9. Disclosure required for purposes of inquiries, inspection etc
10. Requirements relating to disclosure
11. Agreements for the disclosure of protected information

PART 4

APPLICATIONS FOR DISCLOSURE OF PROTECTED INFORMATION

12. Manner of application
13. Duties of agency on receipt of application
14. Record of views
15. Independent review

PART 5
COUNSELLING

16. Information about the availability of counselling
17. Duty to secure counselling
18. Disclosure of information for the purposes of counselling

PART 6
THE REGISTRAR GENERAL

19. Seeking information from the Registrar General
20. Registrar General to disclose information regarding the appropriate adoption agency and the Adoption Contact Register

PART 7
MISCELLANEOUS

21. Offence
22. Fees charged by adoption agencies

The Secretary of State in the exercise of the powers conferred on her by sections 9(3), 11(4), 12(2), 56 to 64, 140(7) and (8), 142(4) and (5) and 144(2) of the Adoption and Children Act 2002(a), with the approval of the Registrar General(b) and the Chancellor of the Exchequer(c), hereby makes the following Regulations:—

PART 1
GENERAL

Citation, commencement and application

1.—(1) These Regulations may be cited as the Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005 and shall come into force on 30th December 2005.

(2) These Regulations apply to England only.

(3) These Regulations apply only in relation to adoptions on or after 30th December 2005.

Interpretation

2. In these Regulations—

“the Act” means the Adoption and Children Act 2002;

“appropriate adoption agency” has the same meaning as in section 65(1) of the Act;

“independent review panel” means a panel constituted under section 12 of Act;

“registered adoption support agency” means an adoption support agency in respect of which a person is registered under Part 2 of the Care Standards Act 2000(d);

“the registration authority” means the Commission for Social Care Inspection (e);

“relative” in relation to an adopted person means a person who, but for the adoption, would be related to him by blood (including half-blood) or marriage;

(a) 2002 c.38. These powers are exercisable by the appropriate Minister, who is defined in section 144(1) of the Act in relation to England as the Secretary of State, in relation to Wales as the National Assembly for Wales and in relation to England and Wales as the Secretary of State and the National Assembly for Wales acting jointly.

(b) The Registrar General’s approval is required for regulation 19(2) by virtue of section 65(5) of the Act.

(c) The approval of the Chancellor of the Exchequer is required for regulation 20(2) by virtue of section 65(4) of the Act.

(d) 2000 c.14.

(e) See section 42 of the Health and Social Care (Community Health and Standards) Act 2003 (c.41).

“section 56 information” means the information prescribed by regulation 4.

PART 2

KEEPING OF INFORMATION ABOUT ADOPTIONS

Application of this Part

3. The requirements of this Part in relation to the keeping of information about a person’s adoption apply—

- (a) to the adoption agency that placed the person for adoption; or
- (b) to an adoption agency to which the case record in respect of the adopted person (or any information mentioned in regulation 4(3)) has been transferred.

Information to be kept about a person’s adoption

4.—(1) Paragraphs (2) and (3) prescribe, for the purposes of section 56 of the Act, the information that an adoption agency must keep in relation to a person’s adoption (“section 56 information”).

(2) The adoption agency must continue to keep the case record that was set up in respect of the adopted person under Part 3 of the Adoption Agencies Regulations 2005^(a) or under the Adoption Agencies Regulations 1983^(b).

(3) Subject to paragraph (4) the adoption agency must also keep—

- (a) any information that has been supplied by a natural parent or relative or other significant person in the adopted person’s life, with the intention that the adopted person may, should he wish to, be given that information;
- (b) any information supplied by the adoptive parents or other persons which is relevant to matters arising after the making of the adoption order;
- (c) any information that the adopted person has requested should be kept;
- (d) any information given to the adoption agency in respect of an adopted person by the Registrar General under section 79(5) of the Act (information that would enable an adopted person to obtain a certified copy of the record of his birth);
- (e) any information disclosed to the adoption agency about an entry relating to the adopted person on the Adoption Contact Register;
- (f) any information required to be recorded in accordance with regulation 10, 14 or 18;
- (g) the record of any agreement under regulation 11.

(4) The adoption agency is not required to keep any information falling within paragraph (3)(a) to (c) if the adoption agency considers—

- (a) that it would be prejudicial to the adopted person’s welfare to keep it; or
- (b) that it would not be reasonably practicable to keep it.

Storage and manner of keeping of section 56 information

5. The adoption agency must ensure that section 56 information in relation to a person’s adoption is at all times kept in secure conditions and in particular that all appropriate measures are taken to prevent theft, unauthorised disclosure, damage, loss or destruction.

^(a) S.I. 2005/389.
^(b) S.I. 1983/1964.

Preservation of section 56 information

6. The adoption agency must keep section 56 information in relation to a person's adoption for at least 100 years from the date of the adoption order.

Transfer of section 56 information

7.—(1) Where a registered adoption society(a) intends to cease to act or exist as such, it must transfer any section 56 information which it holds in relation to a person's adoption—

- (a) to another adoption agency, having first obtained the approval of the registration authority for such transfer;
- (b) to the local authority in whose area the society's principal office is situated; or
- (c) in the case of a society which amalgamates with another registered adoption society to form a new registered adoption society, to the new body.

(2) A registered adoption society that transfers its records to another adoption agency by virtue of paragraph (1) must, if its activities were principally based in the area of a single local authority, give written notification of the transfer to that authority.

(3) An adoption agency to which records are transferred by virtue of paragraph (1) must give written notification of the transfer to the registration authority.

PART 3

DISCLOSURE OF INFORMATION - GENERAL

Disclosure for purposes of agency's functions or for research

8.—(1) An adoption agency may disclose section 56 information that is not protected information(b) as it thinks fit for the purposes of carrying out its functions as an adoption agency.

(2) An adoption agency may disclose section 56 information (including protected information) to—

- (a) a registered adoption support agency or another adoption agency which provides services to the adoption agency in connection with any of its functions under section 61 or 62 of the Act (disclosing protected information about adults or about children); or
- (b) a person who is authorised in writing by the Secretary of State to obtain information for the purposes of research.

Disclosure required for purposes of inquiries, inspection etc.

9. An adoption agency must disclose section 56 information (including protected information) as may be required—

- (a) to those holding an inquiry under section 17 of the Act or section 81 of the Children Act 1989(c) for the purposes of such an inquiry;
- (b) to the Secretary of State;
- (c) to the registration authority;
- (d) subject to the provisions of section 29(7) and 32(3) of the Local Government Act 1974(d) (investigations and disclosure), to the Commission for Local Administration in England, for the purposes of any investigation conducted in accordance with Part 3 of that Act;

(a) See section 2(2) of the Act.

(b) See section 57(3) of the Act for the meaning of "protected information".

(c) 1989 c.41.

(d) 1974 c.7.

- (e) to any person appointed by the adoption agency for the purposes of the consideration by the agency of any representations (including complaints);
- (f) to a panel constituted under section 12 of the Act to consider a qualifying determination in relation to the disclosure of section 56 information;
- (g) to a court having power to make an order under the Act or under the Children Act 1989.

Requirements relating to disclosure

10. The adoption agency must make a written record of any disclosure made under regulation 8 or 9, which must include—

- (a) a description of the information disclosed;
- (b) the date on which the information is disclosed;
- (c) the person to whom the information is disclosed;
- (d) the reason for disclosure.

Agreements for the disclosure of protected information

11.—(1) A prescribed agreement for the purposes of section 57(5) of the Act is—

- (a) an agreement made between the adoption agency and a person aged 18 or over at the time the agreement is made as to the disclosure of protected information about him; or
- (b) an agreement made between the adoption agency and each of the following persons as to the disclosure of protected information about them or about the adopted person—
 - (i) the adoptive parent, or in the case of adoption by a couple, both adoptive parents, of the adopted person;
 - (ii) each person who, before the adoption order was made, was a parent with parental responsibility for the adopted person.

(2) The adoption agency must keep a written record of any such agreement and that record must include—

- (a) the full names and signatures of the persons who are parties;
- (b) the date on which it is made;
- (c) the reasons for making it;
- (d) the information that may be disclosed in accordance with the agreement;
- (e) any agreed restrictions on the circumstances in which information may be disclosed.

PART 4

APPLICATIONS FOR DISCLOSURE OF PROTECTED INFORMATION

Manner of application

12. An application to an adoption agency for the disclosure of protected information under section 61 or 62 of the Act must be in writing and must state the reasons for the application.

Duties of agency on receipt of application

13. On receipt of an application for the disclosure of protected information under section 61 or 62 of the Act an adoption agency must take reasonable steps to confirm—

- (a) the identity of the applicant or of any person acting on his behalf; and
- (b) that any person acting on behalf of the applicant is authorised to do so.

Record of views

14. An adoption agency must ensure that any views obtained under section 61(3) or 62(3) or (4) of the Act are recorded in writing.

Independent review

15.—(1) The following determinations by the appropriate adoption agency in relation to an application under section 61 of the Act are qualifying determinations for the purposes of section 12 of the Act (independent review of determinations)—

- (a) not to proceed with an application from any person for disclosure of protected information;
- (b) to disclose information against the express views of the person the information is about;
- (c) not to disclose information about a person to the applicant where that person has expressed the view that the information should be disclosed.

(2) The adoption agency must give the relevant person written notification of the determination, which must—

- (a) state the reasons for it; and
- (b) advise the relevant person that he may apply to the Secretary of State within 40 working days, beginning with the date on which the notification was sent, for a review by an independent review panel of the qualifying determination.

(3) If the adoption agency receives notification from the Secretary of State that the relevant person has applied for a review by an independent review panel of the qualifying determination, the agency must, within 10 working days of receipt of that notification, send to the Secretary of State—

- (a) a copy of the application for disclosure of information;
- (b) a copy of the notification given under paragraph (2);
- (c) the record of any views obtained by the agency under section 61(3) of the Act; and
- (d) any additional information requested by the panel.

(4) The adoption agency must not take any action in accordance with its original determination before—

- (a) the independent review panel has made its recommendation; or
- (b) if the person has not applied for a review within that 40 day period, the end of that period.

(5) The adoption agency must have regard to any recommendation of the independent review panel in deciding whether to proceed with its original determination.

(6) In paragraph (3)—

- (a) the reference to an independent review panel is to a panel constituted for the purposes of section 12 of the Act; and
- (b) “working day” means any day other than a Saturday or Sunday, Christmas day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971^(a).

(7) In this regulation “the relevant person” is—

- (a) in the case of a qualifying determination mentioned in paragraph (1)(a) or (c), the applicant;
- (b) in the case of a qualifying determination mentioned in paragraph (1)(b), the person the protected information is about.

^(a) 1971 c.80.

PART 5

COUNSELLING

Information about the availability of counselling

16.—(1) An adoption agency must provide written information about the availability of counselling to any person—

- (a) who is seeking information under section 60, 61 or 62 of the Act;
- (b) whose views have been sought as to the disclosure of information about him under section 61(3) or 62(3) or (4) of the Act;
- (c) who enters into, or is considering entering into, an agreement with the agency under regulation 11.

(2) The information provided under paragraph (1) must include information about the fees that may be charged by persons providing counselling.

Duty to secure counselling

17.—(1) Where a person mentioned in regulation 16(1) requests that counselling be provided for him, the adoption agency must make arrangements to secure counselling for that person.

(2) The adoption agency may provide the counselling itself or make arrangements with any of the following persons for provision of counselling—

- (a) if the person is in England or Wales, another adoption agency or a registered adoption support agency;
- (b) if the person is in Scotland, a Scottish adoption agency;
- (c) if the person is in Northern Ireland, an adoption society which is registered under Article 4 of the Adoption (Northern Ireland) Order 1987^(a) or any Board; or
- (d) if the person is outside the United Kingdom, any person or body outside the United Kingdom who appears to the agency to correspond in its functions to a body mentioned in paragraphs (a) to (c).

(3) In this regulation “Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972^(b) or, where the functions of a Board are exercisable by a Health and Social Services Trust, that Trust.

Disclosure of information for the purposes of counselling

18.—(1) An adoption agency may disclose any information (which may include protected information) which is required for the purposes of providing counselling to any person with whom it has made arrangements to provide counselling.

(2) An adoption agency must make a written record of any disclosure made by virtue of this regulation.

PART 6

THE REGISTRAR GENERAL

Seeking information from the Registrar General

19.—(1) Where—

^(a) S.I. 1987/2203 (N.I. 22)
^(b) S.I. 1972/1265 (N.I. 14).

- (a) an adopted person who has attained the age of 18 years requests information from an adoption agency under section 60(2)(a) of the Act that would enable him to obtain a certified copy of the record of his birth; and
 - (b) the agency does not have that information,
- the agency must seek that information from the Registrar General.
- (2) Where an adoption agency seeks information from the Registrar General under paragraph (1) the agency must provide him in writing with the following information, so far as it is known—
- (a) the name, date of birth and country of birth of the adopted person;
 - (b) the names of that person's adoptive father and mother;
 - (c) the date of the adoption order.

Registrar General to disclose information regarding the appropriate adoption agency and the Adoption Contact Register

- 20.—**(1) The Registrar General must—
- (a) disclose to any person (including an adopted person) at his request any information that the person requires to assist him to make contact with the adoption agency which is the appropriate adoption agency in the case of the person specified in the request (or, as the case may be, in the applicant's case); and
 - (b) disclose to the appropriate adoption agency any information that the agency requires, in relation to an application under section 60, 61 or 62 of the Act, about any entry relating to an adopted person on the Adoption Contact Register.
- (2) The appropriate adoption agency must pay any fee that the Registrar General determines is reasonable for the disclosure of information under paragraph (1)(b).

PART 7

MISCELLANEOUS

Offence

21. A registered adoption society which discloses any information in contravention of section 57 of the Act (restrictions on disclosure etc. of information) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Fees charged by adoption agencies

- 22.—**(1) Subject to paragraph (2) an adoption agency may charge a fee which it determines to be a reasonable fee—
- (a) in respect of the disclosure of information under section 61 or 62 of the Act;
 - (b) for providing counselling in connection with the disclosure of information under those sections; or
 - (c) for making arrangements to secure counselling in accordance with regulation 17 where the counselling is provided by a person outside the United Kingdom.
- (2) No fee shall be payable by an adopted person in respect of any information disclosed to him under section 60, 61 or 62 of the Act in relation to any relative of his or for any counselling provided to him in connection with any such disclosure.
- (3) An adoption agency must, before providing a service to any person for which it may charge a fee under this regulation, give the person information about its fees.

22nd March 2005

Filkin
Parliamentary Under Secretary of State
Department for Education and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe certain matters for the purposes of the regime set out in sections 56 to 65 of the Adoption and Children Act 2002 (“the Act”). The regime provides for adoption agencies to keep information about each adoption and to deal with applications for disclosure of such information. The regime will apply in relation to persons adopted on or after 30th December 2005. In relation to persons adopted before that day, the Adoption Agencies Regulations 1983 (S.I. 1983/1964) will continue to have effect.

Part 2 provides for the keeping of information in relation to persons adopted on or after 30th December 2005. Regulation 4 prescribes the information that must be kept (“section 56 information”). Part 2 also deals with storage and transfer of section 56 information. Regulation 6 requires that section 56 information be kept for at least 100 years from the date of the adoption order.

Part 3 makes general provision for the disclosure of section 56 information and protected information (which is defined in section 57(3) of the Act). Under regulation 8 an adoption agency may disclose section 56 information that is not protected information as necessary for the purpose of its functions or for research. It may also disclose any section 56 information, including protected information, to persons providing services in relation to its functions under section 61 or 62 of the Act (for example a registered adoption support agency carrying out enquiries on its behalf). Regulation 9 provides for disclosure of information to specified persons including persons holding inquiries, the Commission for Social Care Inspection and the Secretary of State. Regulation 10 requires a written record to be kept of any disclosure. Regulation 11 prescribes the requirements for an agreement under section 57(5) of the Act.

Part 4 relates to applications for disclosure of protected information under section 61 (information about adults) and 62 (information about children). Regulations 12 to 14 deal with procedural matters in relation to such applications. Regulation 15 makes provision for independent review of certain decisions of the adoption agency in relation to applications under section 61.

Part 5 makes provision for counselling. Regulation 16 requires adoption agencies to provide information about availability of counselling for persons seeking information about an adoption or persons about whom information is being sought. Regulation 17 requires adoption agencies to secure counselling where requested by persons seeking information.

Part 6 relates to the Registrar General. Adopted adults have a right under section 60 of the Act to request information about their birth records. They must first approach the appropriate adoption agency, which then requests the information from the Registrar General (who is obliged to provide it by virtue of section 79(5) of the Act). Regulation 19 requires the appropriate adoption agency to seek that information and prescribes the manner of the application for it. Regulation 20 requires the Registrar General to disclose information to any person that may assist the person in making contact with the adoption agency that holds the records of his adoption. Regulation 20 also requires the Registrar General to disclose information from the Adoption Contact Register where requested by the appropriate adoption agency in connection with an application under section 60, 61 or 62.

Part 6 deals with miscellaneous matters. It creates an offence of disclosing information in contravention of section 57 of the Act. Regulation 22 prescribes fees that may be charged by adoption agencies in relation to disclosure of information and counselling.

A Regulatory Impact Assessment has been carried out for these Regulations and a copy has been placed in the library of each House of Parliament. Copies of the Regulatory Impact Assessment can be obtained from the Department for Education and Skills' website <http://www.dfes.gov.uk/ria/>.

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CHILDREN AND YOUNG PERSONS, ENGLAND

SOCIAL CARE, ENGLAND

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