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SOCIAL CARE, ENGLAND

CHILDREN AND YOUNG PERSONS, ENGLAND

The Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005

Made - - - - - *22nd March 2005*
Laid before Parliament *7th April 2005*
Coming into force - - - *30th December 2005*

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The Secretary of State, in exercise of the powers conferred on her by sections 2(6), 9(1)(a) and (b) and (3), 98, 140(7) and (8) and 144(2) of the Adoption and Children Act 2002^(a), with the approval of the Chancellor of the Exchequer^(b), hereby makes the following Regulations:—

PART 1

INTRODUCTORY

Citation, commencement and application

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

(2) These Regulations apply to England only.

Interpretation

2. In these Regulations—

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

“applicant” means an adopted person or a relative of an adopted person who makes an application under regulation 5;

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

“identifying information” has the meaning given in regulation 7;

“intermediary agency” and “intermediary service” have the meaning given in regulation 4;

“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^(c);

“relative”, in relation to an adopted person, has the same meaning as in section 98 of the Act;

“subject”, in relation to an application under regulation 5, is a person with whom the applicant seeks contact.

Provision of intermediary services

3.—(1) A registered adoption support agency or an adoption agency may provide an intermediary service.

(2) The service must be provided in accordance with these Regulations.

(3) An intermediary service is an adoption support service for the purposes of section 2(6) of the Act.

Meaning of “intermediary service” and “intermediary agency”

4.—(1) For the purposes of these Regulations an intermediary service is a service provided for the purposes of—

(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.
(b) The approval of the Chancellor of the Exchequer is required in relation to regulations which relate to the Registrar General by virtue of section 98(6) of the Act.
(c) 2000 c.14.

- (a) assisting adopted persons aged 18 or over, who were adopted before 30th December 2005, to obtain information in relation to their adoption; and
- (b) facilitating contact between such persons and their relatives.

(2) But an adoption agency does not provide an intermediary service for the purposes of these Regulations if it is the appropriate adoption agency in relation to an adopted person and only provides information in relation to that person's adoption.

(3) A registered adoption support agency or an adoption agency that provides an intermediary service is referred to in these Regulations as an "intermediary agency".

PART 2

APPLICATIONS FOR INTERMEDIARY SERVICES

Applications that may be accepted

5.—(1) Subject to paragraphs (2) and (3) an intermediary agency may accept an application—

- (a) from a person adopted before 30th December 2005 for assistance in contacting a relative of his; or
- (b) from a relative of a person adopted before 30th December 2005 for assistance in contacting that person.

(2) Where the intermediary agency has limited capacity to deal with such applications, it must give priority to applications in respect of adoptions before 12th November 1975.

(3) The applicant and the person with whom the applicant seeks contact ("the subject") must be aged 18 or over.

No obligation to proceed if not appropriate

6.—(1) An intermediary agency that accepts an application under these Regulations is not required to proceed with it, or having begun to proceed with it is not required to continue, if the intermediary agency considers that it would not be appropriate to do so.

(2) In deciding whether it is appropriate to proceed (or continue proceeding) with an application the intermediary agency must have regard to—

- (a) the welfare of—
 - (i) the applicant;
 - (ii) the subject; and
 - (iii) any other persons who may be identified or otherwise affected by the application;
- (b) any views of the appropriate adoption agency obtained under regulation 12;
- (c) any information obtained from the Adoption Contact Register under regulation 13,

and all the other circumstances of the case.

(3) In relation to any decision under paragraph (2) the intermediary agency must have particular regard to the welfare of any person mentioned in paragraph (2)(a)(iii) who is under the age of 18.

(4) If, at any time, the intermediary agency ascertains that the subject of an application is under the age of 18 it must not proceed further with the application in relation to that subject.

Consent of subject to disclosure etc.

7.—(1) Subject to paragraph (2) an intermediary agency must not disclose to the applicant any identifying information about the subject without the subject's consent.

(2) If the subject has died or the agency determines that he is incapable of giving informed consent, the agency may disclose such identifying information about him to the applicant as it considers appropriate, having regard to the matters referred to in regulation 6(2).

(3) The agency must take all reasonable steps to ensure that any person whose consent to disclosure is required under this regulation has sufficient information to make an informed decision as to whether to give his consent.

(4) In this regulation and in regulations 9 and 12, “identifying information” means information which, whether taken on its own or together with other information possessed by the applicant, enables the subject to be identified or traced.

Veto by an adopted person

8.—(1) A veto applies in relation to an application under regulation 5 where—

- (a) the subject is the adopted person; and
- (b) that person has notified the appropriate adoption agency in writing—
 - (i) that he does not wish to be contacted by an intermediary agency in relation to an application under these Regulations; or
 - (ii) that he only wishes to be contacted in specified circumstances.

(2) Where the appropriate adoption agency is notified of a veto under paragraph (1) it must keep a written record of it on the adopted person’s case record and ensure that it is made known to any intermediary agency that contacts it in relation to an application under these Regulations.

(3) Where an intermediary agency is aware that a veto applies, it must not proceed with the application except in the circumstances referred to in paragraph (1)(b)(ii).

Provision of background information where consent refused etc.

9. In a case where the consent of the subject is refused or cannot be obtained under regulation 7 or a veto applies under regulation 8, nothing in those regulations prevents the intermediary agency from disclosing to the applicant any information about the subject that is not identifying information and that the agency considers it appropriate to disclose.

Counselling

10.—(1) An intermediary agency must provide written information about the availability of counselling to any person who—

- (a) makes an application to it under these Regulations; or
- (b) is the subject of such an application and is considering whether to consent to disclosure of information about himself to the applicant.

(2) The information provided under paragraph (1) must include details of—

- (a) persons offering counselling; and
- (b) fees that may be charged by such persons.

(3) If a person mentioned in paragraph (1) requests that counselling be provided for him, the intermediary agency must secure the provision of counselling for that person.

(4) The intermediary 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).

(5) 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.

PART 3

PROCEDURE FOR HANDLING APPLICATIONS

Procedure on receipt of application

11. The intermediary agency must, on receipt of an application under regulation 5, take reasonable steps to confirm—

- (a) the identity of the applicant or of any person acting on his behalf;
- (b) the age of the applicant;
- (c) that any person acting on behalf of the applicant is authorised to do so;
- (d) in the case of an application by a relative of the adopted person, that the applicant is related to that person.

Contacting the appropriate adoption agency

12.—(1) The intermediary agency must (unless it is the appropriate adoption agency) take reasonable steps to establish whether an adoption agency was involved in the adoption and, if so, to identify the appropriate adoption agency.

(2) The steps referred to in paragraph (1) include—

- (a) requesting that information in writing from the Registrar General;
- (b) if the Registrar General certifies that he does not have that information, requesting it in writing from the court that made the adoption order;
- (c) making enquiries of the local authority for the area where the adoption took place.

(3) Where the appropriate adoption agency has been identified, the intermediary agency must contact that agency in order to—

- (a) ascertain whether a veto under regulation 8 exists;
- (b) if no veto exists—
 - (i) ascertain whether the subject has, at any time, expressed his views to the agency about future contact with any relative of his or about his being approached with regard to such contact;
 - (ii) ascertain the agency’s views as to whether the application is appropriate having regard to the matters mentioned in regulation 6; and
- (c) seek any other information required for the following purposes—
 - (i) tracing the subject;
 - (ii) enabling the subject to make an informed decision as to whether he consents to the disclosure of identifying information about him or to contact with the applicant;
 - (iii) counselling the subject in relation to that decision;

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

(iv) counselling the applicant.

(4) Unless a veto under regulation 8 applies, the appropriate adoption agency must take reasonable steps to provide the information sought from it under paragraph (3) and may disclose to the intermediary agency such information (including identifying information) as is necessary for that purpose.

Obtaining information from the Registrar General

13.—(1) If, in any of the cases mentioned in paragraph (2), the intermediary agency has not obtained from the appropriate adoption agency sufficient information for the purposes mentioned in regulation 12(3)(c), the intermediary agency may make a request in writing to the Registrar General for such of the following information as may assist it for those purposes—

- (a) information he may hold that would enable an application to be made for a certificate from the Adopted Children Register;
- (b) information from the Adoption Contact Register.

(2) The cases mentioned in paragraph (1) are—

- (a) where the intermediary agency is unable to identify the appropriate adoption agency or ascertains that no adoption agency was involved in the adoption;
- (b) where the intermediary agency contacts the appropriate adoption agency and ascertains that it does not hold the necessary information.

(3) Where the intermediary agency is the appropriate adoption agency and does not hold sufficient information for the purpose mentioned in regulation 12(3)(c)(i) it may request from the Registrar General such of the information mentioned in paragraph (1)(a) and (b) as may assist it for those purposes.

Registrar General to comply with request

14.—(1) The Registrar General must take reasonable steps to comply with a written request for information from an intermediary agency under regulation 12 or 13.

(2) If the Registrar General does not have the information about the appropriate adoption agency requested under regulation 12 he must provide the intermediary agency with written confirmation of that fact together with details of the court that made the adoption order.

Court to comply with request

15.—(1) The court must disclose any information requested in writing by the intermediary agency under regulation 12(2)(b) that is contained in court records.

(2) If the court does not have the information requested under regulation 12(2)(b) it must inform the intermediary agency of that fact in writing, specifying the searches made of court records and, if the court considers that the information may be found in the records of another court, provide the intermediary agency with details of that court.

Authorised disclosures

16. An intermediary agency must treat information obtained or held for the purposes of these Regulations as confidential, but may disclose such information (including information that identifies any person) as is necessary—

- (a) to the Registrar General or to the court for the purpose of obtaining information under regulation 12 or 13;
- (b) to the appropriate adoption agency for the purposes of ascertaining its views or seeking information under regulation 12;
- (c) to the subject to enable him to make an informed decision under regulation 7;

- (d) to a person providing counselling in connection with an application under these Regulations.

PART 4 MISCELLANEOUS

Offence

17. An intermediary agency that discloses information in contravention of regulation 7 without reasonable excuse is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Fees

18.—(1) An intermediary agency may charge the applicant any fee it determines is reasonable in connection with the processing of an application under these Regulations.

(2) An intermediary agency may charge a person mentioned in regulation 10(1) such fee as it determines is reasonable in respect of—

- (a) the provision of counselling services for that person; or
- (b) making arrangements to secure counselling where the counselling is provided by a person outside the United Kingdom.

(3) The Registrar General may charge a fee of £10 for providing information under regulation 14.

(4) An adoption agency may charge an intermediary agency such fee as it determines is reasonable for providing information or giving its views in accordance with a request under regulation 12.

(5) A court may charge an intermediary agency a fee not exceeding £20 for providing information under regulation 15.

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 make provision under section 98 of the Adoption and Children Act 2002 (“the Act”) for the purposes of assisting persons adopted before 30th December 2005 to obtain information about their adoption and to facilitate contact between those persons and their birth relatives. The regime for disclosure of information about adoptions on or after 30th December 2005 is set out in sections 56 to 65 of the Act and regulations under those sections.

Part 1 confers functions on registered adoption support agencies and adoption agencies (“intermediary agencies”) that are willing to provide intermediary services in respect of adoptions before 30th December 2005. Agencies providing such services are required to do so in accordance with these Regulations.

Part 2 deals generally with applications for intermediary services. An intermediary agency may accept an application for an intermediary service from an adopted person or a relative of an

adopted person in respect of any adoption before 30th December 2005 but they must give priority to applications in respect of adoptions before 12th November 1975. The intermediary agency is not required to proceed with an application where it does not consider that it would be appropriate. Regulation 6 sets out the factors that the intermediary agency should take into account in making that decision. Regulation 7 requires the intermediary agency to obtain the informed consent of the subject of the application before disclosing information about him that would identify him to the applicant or enable him to be traced. Regulation 8 enables the adopted person to register a veto with the appropriate adoption agency in relation to an application under these Regulations. Regulation 10 requires the intermediary agency to provide information about counselling and secure counselling services in relation to applications for intermediary services.

Part 3 sets out the procedure to be followed by the intermediary agency in processing an application. The first steps include confirming the identity of the applicant and establishing that he is related to the subject. The intermediary agency should then identify the adoption agency that holds the records relating to the adoption (seeking assistance where appropriate from the Registrar General and the court). It should then contact that agency to seek its views on the application and to seek such information as may be necessary to trace the subject of the application (regulation 12). Where that information cannot be obtained from the adoption agency, the intermediary agency may seek such information from the Registrar General as may assist in processing the application (regulation 14). Regulations 14 and 15 require the Registrar General and the court to provide information when requested. Regulation 16 authorises certain disclosures for the purpose of an application under these Regulations.

Part 4 deals with miscellaneous matters. Regulation 17 creates an offence of disclosure of information in contravention of Regulation 7. Regulation 18 provides for fees that may be charged by intermediary agencies, adoption agencies, the Registrar General and the court in relation to applications under these Regulations.

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/>.

£3.00

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