

**EXPLANATORY MEMORANDUM TO
THE ADOPTED CHILDREN AND ADOPTION CONTACT REGISTER
REGULATIONS 2005**

2005 No. 924

1. This explanatory memorandum has been prepared by the General Register Office (Office for National Statistics) and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Adopted Children and Adoption Contact Register Regulations 2005 are made by virtue of the powers in sections 78-80 and Schedules 1 and 2 of the Adoption and Children Act 2002.

2.2 The Regulations prescribe the form of an entry in the Adopted Children Register and, in relation to registrable foreign adoptions, who may apply and the manner in which they should do so and the maintenance of the Adoption Contact Register and who may apply and the manner in which they should do so. In addition the Regulations provide for how an application should be made for certificates from the Adopted Children Register and for other adoption records held by the Registrar General by adopted persons and agencies.

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

3.1 None.

4. Legislative Background

4.1 The Registrar General has maintained the Adopted Children Register for the registration of all adoptions in England and Wales since the Adoption of Children Act 1926. Entries are made on the authority of a court order which specifies the details to be entered in the Register. A certified copy of the entry in the Register is to be received as evidence of the adoption to which it relates and where it contains the date of birth of the adopted person as evidence of that date of birth. Any link the Registrar General might make between the original birth entry and the later adoptive entry was closed to public access until the provisions of the Children Act 1975. These gave adopted people - but no one else - access to their birth records via the Registrar General and therefore the potential to find out more about their former families.

4.2 The right for an adopted person to have access to his or her birth records on reaching age 18 was consolidated in section 51 of the Adoption Act 1976 and a local authority and Registrar General counselling service set up. Applications for the latter are governed by the Adopted Persons (Birth Records) Regulations 1991. The Children Act 1989 amended the 1976 Act by providing for overseas counselling and introducing the Registrar General's Adoption Contact Register in 1991. This is a means by which adopted persons and birth relatives who wish to make contact can register on separate parts of the Register and, where a link is made, contact be facilitated at the behest of the adopted person. This was the first opportunity for birth parents to take initial steps to make contact with the adopted child, but was limited from their perspective by the veto of the adopted person.

4.3 In February 2000, the Prime Minister announced that he would lead a thorough review of adoption policy and practice. 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 reported in July 2000 and made a number of recommendations to

Government, including several related to changes in adoption legislation. These included changes to the Registrar General's administration of adoption registration services.

4.4 In December 2000, the Department of Health published a White Paper "Adoption – a New Approach" which took on board many of the PIU's recommendations. Paragraph 6.44 of the White Paper acknowledged that "all adopted people should be able to find out about their family history if and when they wish to do so". Based on this, the Government made a specific commitment to legislate to set out what should be contained in adoption agency files to which an adopted person will have access, and the circumstances in which they may have access to that file. In addition the Government recognised during policy debates over the Bill that the Registrar General's Access role needed to change, as his primary role was one of data ownership and dissemination. By contrast the Adoption Contact Register was ripe for expansion in the services it offered.

4.5 Section 77 to 82 and schedules 1 and 2 of the Act together with the Adopted Children and Adoption Contact Register Regulations 2005 set out the amended parameters within which the Registrar General will operate, complementing the new agency Access framework at sections 56-64 and 98 of the Act. He will continue to make entries of adoptions in the Adopted Children Register on the authority of court orders and issue certificates to applicants who have identified appropriate entries from the index in the Family Records Centre or wish the search to be done for them, but aspects of this service will be newly automated. The format of entries will be expanded to fully integrate the 2003 provision of registrable foreign adoptions and to allow for new arrangements for step-parent adoptions. The Adoption Contact Register will be expanded to permit adopted persons to specify with which relative they desire contact and to allow both adoptees and birth relatives to specify a desire for no contact. Publicity will be enhanced.

4.6 The Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005 sets out the new framework for managing adoption information in respect of any adoption where the adoption order is made on or after 30 December 2005. The adoption agency will become the main gateway for access to information, including birth record information. The Registrar General will in future signpost adopted adults to the appropriate adoption agency, which is better placed to disclose sensitive identifying information, to seek the views of interested parties and to arrange for the provision of counselling. Where the Registrar General does not have information about the adoption agency he will point adopted adults towards the appropriate court for this information. Where an adopted adult applies to the adoption agency for the information needed to obtain a copy of his original birth record and the agency does not hold this information (for whatever reason) it may obtain it from the Registrar General on the adopted person's behalf. The Adopted Children and Adoption Contact Regulations will not affect those adoptions that have already taken place before the regulations come into force, as under Schedule 2 of the Act an adopted adult retains the right to apply directly to the Registrar General for the information needed to obtain a certified copy of the original birth record.

4.7 The Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005 prescribe a framework in respect of all adoptions made before 30th December 2005. Registered agencies are to operate an intermediary service to facilitate contact between adopted adults and their adult birth relatives. This registered bodies may apply to the Registrar General for confidential linking information and for up-to-date addresses and statements of intention from the Adoption Contact Register. For the first time this has widened the rights of access to include birth relatives and will in effect over time provide a local alternative to the national Contact Register.

5. Extent

5.1 These Regulations extend to England and Wales.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

7.1 The Registrar General's role as custodian of the Adopted Children Register will continue, with enhancements. The current secondary adoptions legislation and guidance which gives adoption agencies discretion in relation to disclosure of information has led to inconsistent practice across the country in respect of the retention safeguarding and disclosure of information. To fill the vacuum there has been a danger that the Registrar General, as the only provider of a national Access and Counselling service, has been drawn to into using his discretion, which is inappropriate for a custodian of data.

7.2 While the Act and Access Regulations redress this balance, an adopted person has retained the right to apply to the Registrar General for the information necessary to obtain a certificate of his or her original birth record.

7.3 Society and adoption practice has moved on significantly since the 1976 Act, with transparency and openness having replaced secrecy. This is partly why the Adoption Contact Register was set up in 1991, opening the door for the first time for birth relatives to seek contact although there is scope for this service to be enhanced. The new legislative regime for the disclosure of information reflects the increased culture of openness in adoption but recognises that checks and balances are essential to safeguard the welfare, wishes and interests of all concerned but primarily the adopted person. It is for this reason that the most significant addition to the Contact Register provisions is the notification of a desire for non-contact. In addition these Regulations set conditions for application for certificates from the Adopted Children Register relating to minors, following judicial concerns that the indexes were being used by birth parents to circumvent existing contact provisions and potentially disrupt placements.

7.4 Under the new framework at sections 56-64 of the Act, the adoption agency will be the main "gateway" for access to information, including birth record information. The adopted adult will no longer have the direct route of access to the Registrar General for access to birth record information. Although section 51 of the 1976 Act has generally worked well, the Government was concerned not that the Registrar General as mere data custodian did not have sufficient information about the adopted person or his birth family to be well placed to reach a considered decision about withholding this information where there was a possibility of a serious crime being committed. The adoption agency is best placed to disclose sensitive identifying information, to seek the views of interested parties and to arrange for the provision of counselling. The Registrar General's counselling role will however continue for those adopted prior to 30 December 2005 and his provision of linking information, albeit to an intermediary body rather than an individual maintains his role as the lynchpin of the birth to adoption link. The response to the Consultation process as to his continuing role in Access to Birth Records provisions was very positive.

7.5 The functions of the Registrar General as provided for under the Adopted Children and Adoption Contact Registers Regulations 2005 are to both maintain and improve his existing legitimate Registration role and to complement the new Access to Birth records framework in both the Pre- and Post-Commencement Regulations. This delivers the Government's following policy objectives:

- To maintain central national standards of recordkeeping and certification in the registration of adoptions in England and Wales and to enhance public access to the Adopted Children Register indexes by increased automation, while protecting adopted minors from inappropriate application for information via the certificate application service.

- To enhance the Adoption Contact Register service by allowing applicants to specify with whom they desire contact but protecting individual right to privacy by permitting the registration of a desire for no contact.
- To support adoption agencies and intermediary bodies with a clearer framework for divulging information to adopted persons and birth relatives by standardising the Registrar General's legitimate role as custodian of birth, linking and adoptive information and disseminator of such information on payment of a fee where appropriate.

8. Impact

- 8.1 A document explaining the lack of a need for a Regulatory Impact Assessment is attached to this memorandum.
- 8.2 Any effect on the public sector relates to those of 150 local authority adoption agencies and 31 voluntary adoption agencies in England who may approach the Registrar General, to those Courts who may grant and process adoptions, and to those members of the public who may form part of the 'adoption triangle'.

9. Contact

Roger Errington, Head of Adoptions at the General Register Office on 0151 471 4230 or e-mail: roger.errington@ons.gov.uk can answer any queries regarding the instrument.

CONSIDERATION OF REGULATORY IMPACT ASSESSMENT (RIA) FOR THE ADOPTED CHILDREN AND ADOPTED CONTACT REGISTER REGULATIONS 2005

TITLE OF PROPOSAL

The Adopted Children and Adoption Contact Register Regulations 2005.

PURPOSE AND INTENDED EFFECT OF MEASURE

Objective

These Regulations are to be made under sections 78-81 and Schedules 1 and 2 of the Adoption and Children Act 2002. The Regulations first prescribe the form of entry in the Adopted Children Register and, in relation to registrable foreign adoptions, who may apply and the manner in which they should do so. Secondly they prescribe who may apply and the manner in which they should do so for entry onto both parts of the Adoption Contact Register (Part 1 for adopted persons and Part 2 for birth relatives). Thirdly they prescribe the particulars required for application for a certificate from the Adopted Children Register of the adoption of a minor, the manner in which adopted persons and agencies must apply for information from the Registrar General's adoption and related records, and the manner in which an adopted minor must apply for information where they intend to marry or form a civil partnership.

The parts of the Regulations governing the administration of the Adopted Children Register and Adoption Contact Register confirm and in the latter case slightly expand the services provided by the Registrar General since 1927 and 1991 respectively. The third part of the Regulations sets out the Registrar General's contribution to the provisions of the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005 and the Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005. These are made by the Department for Education and Skills and govern the Registrar General's actions in the Access to Birth Records Information part of the 2002 Act provisions.

Need for Risk Assessment

Given that such risk assessment is not usually carried out for registration provisions, which are administrative and service-driven, the Registrar General has consulted his own Regulatory Impact Unit within ONS and past guidance from the central Cabinet Office Regulatory Impact Unit as to whether a full Regulatory Impact Assessment [RIA] is required. It is the advice of both units that a full RIA is not required for the Adopted Children and Adoption Contact Registers Regulations 2005. This is because the minimal changes to procedures governing registrations in the Adopted Children Register and the enhanced service provided by improvements to the Adoption Contact Register do not constitute a burden on business, charities the voluntary sector or even the members of the public who are the users of these services. Adopted persons are charged a fee of £15 for entry onto the Adoption Contact Register and birth relatives £30 (to cover the greater administrative costs of establishing their relationship to the adopted person). These fees are to remain the same even though the additional features will be provided of specifying with which relative an adopted person wants contact and – for both adoptees and birth relatives – the expression of a desire for no contact.

The remaining part of the Adopted Children and Adoption Contact Registers Regulations 2005 concerns four specific areas where the manner in which applicants approach the Registrar General for information connected with adoption needs to be specified.

The first concerns the need for applicants to specify details relating to the adopted person and their parents before they are permitted to apply for a birth certificate from the Adopted

Children Register relating to a minor. Ministers were anxious to protect adoption placements from the disruption that can sometimes take place as a result of birth relatives using access to the Adopted Children Register index to illicitly track down the adopted child. The new arrangements only place a burden on those who have been using the index in a way Parliament never intended. In addition most of the key years which receive the bulk of applications will be computerised, thereby reducing a current burden on legitimate applicants.

Another area concerns the manner in which an adopted minor should approach the Registrar General for information if they intend to marry and may be related to their partner within the prohibited degrees of relationship. This is an existing rarely-used service and the only addition is that it is to be expanded to include an adopted minor who intends to form a civil partnership.

The remaining two areas concern applications from adoption agencies and adopted persons regarding the linking information which might enable them to apply for a certificate of the pre-adoptive birth entry and information from the Adoption Contact Register which may assist agencies in facilitating contact between adopted persons and birth relatives. The latter is a new service, for which a flat-rate fee of £10 is to be charged and will primarily be taken up by new intermediary agencies which have yet to be appointed. There are not expected to be more than a 100 of these. The impact of this charge on such customers should be negligible but is in any case governed by Regulation 18(3) of DfES' Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005. and not the Registrar General's regulations.

A full Regulatory Impact Assessment has been carried out by the DfES Minister on these Regulations which takes into account the Registrar General's role (the traditional one of providing information on payment of a reasonable fee). In the circumstances the Registrar General considers even a partial Regulatory Impact Assessment of this aspect of his new duties would duplicate risk assessment which has already been carried out with a wider remit and the Regulatory Impact Unit agrees with this reasoning.

In addition a comprehensive RIA was initially produced by the Department of Health (as it then was) for the Adoption and Children Act 2002, the primary legislation which is the driver for the package of Regulations provided by both DfES and the Office for National Statistics under the Access to Birth Records heading. Moreover the package, which included the draft Adopted Children Register and Adoption Contact Register Regulations and comprehensive guidance notes, was subject to full public consultation.

Conclusion

The Registrar General is satisfied that the small changes to his duties provided by the Adopted Children and Adoption Contact Registers Regulations 2005 impose negligible costs or savings to businesses, charities, the voluntary sector and the general public. He is also satisfied that the one additional charge imposed is governed by DfES' Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations, whose full Regulatory Impact Assessment has taken the Registrar General's role into account. For this reason he sees no requirement for a full Regulatory Impact Assessment to be carried out.

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