

2014 No. 2696

SOCIAL CARE, ENGLAND

CHILDREN AND YOUNG PERSONS, ENGLAND

The Adoption Information and Intermediary Services (Pre-Commencement Adoptions) (Amendment) Regulations 2014

<i>Made</i> - - - -	<i>2nd October 2014</i>
<i>Laid before Parliament</i>	<i>9th October 2014</i>
<i>Coming into force</i> - -	<i>31st October 2014</i>

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by sections 9(1), 98(1), (1A), (2) and (3) and 140(7) and (8) of the Adoption and Children Act 2002(a):

Citation and commencement

1. These Regulations may be cited as the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) (Amendment) Regulations 2014 and come into force on 31st October 2014.

Amendment of the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005

2. The Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005(b) are amended as follows.

3. In regulation 2 (interpretation)—

- (a) after the definition of “the Act” insert—
 - ““adopted person” means a person who was adopted before 30th December 2005 and has attained the age of 18 years;”;
- (b) for the definition of “applicant” substitute—
 - ““applicant” means a person who makes an application under regulation 5 and is—
 - (a) an adopted person;
 - (b) a person with a prescribed relationship; or
 - (c) a relative of an adopted person;”;

(a) 2002 c.38. For the definition of “regulations” see section 144(1). Section 98(1A) was inserted by section 1 of the Children and Families Act 2014 (c.6) (“the 2014 Act”) and section 140(7) was amended by section 7(6) of the 2014 Act.
(b) S.I. 2005/890 as amended by S.I. 2005/2720 and S.I. 2005/3482.

- (c) after the definition of “intermediary agency” and “intermediary service” insert—
““prescribed relationship” has the meaning given in regulation 2A;”.

4. After regulation 2 (interpretation) insert—

“Prescribed relationship

2A. For the purposes of section 98(1A) of the Act, a prescribed relationship is a relationship whereby a person (who is not a relative of the adopted person) is related to an adopted person—

- (a) by blood (including half-blood), marriage or civil partnership; or
- (b) by virtue of the adopted person’s adoption.”.

5. In regulation 4 (meaning of “intermediary service” and “intermediary agency”) for paragraph (1)(a) and (b) substitute—

- “(a) assisting adopted persons to obtain information in relation to their adoption;
- (b) facilitating contact between adopted persons and their relatives; and
- (c) facilitating contact between persons with a prescribed relationship to an adopted person and relatives of the adopted person.”.

6. In regulation 5 (applications that may be accepted)—

- (a) for paragraph (1) substitute—

“(1) Subject to paragraph (3) an intermediary agency may accept an application from—

- (a) an adopted person for assistance in contacting a relative of his;
- (b) a relative of an adopted person for assistance in contacting—
 - (i) the adopted person; or
 - (ii) a person with a prescribed relationship to the adopted person; or
- (c) a person with a prescribed relationship to an adopted person for assistance in contacting a relative of an adopted person.”; and

- (b) omit paragraph (2).

7. After regulation 5 (applications that may be accepted) insert—

“Restrictions on proceeding with an application

5A.—(1) Where an intermediary agency accepts an application from a relative of an adopted person for assistance in contacting the adopted person, it must not proceed with the application if a veto applies under regulation 8(1), except in the circumstances referred to in regulation 8(1)(b)(ii).

(2) Where an intermediary agency accepts an application from a relative of an adopted person for assistance in contacting a person with a prescribed relationship to the adopted person, it must not proceed with an application if—

- (a) a veto applies under regulation 8(1), except in the circumstances referred to in regulation 8(1)(b)(ii); or
- (b) the adopted person does not consent to the application proceeding.

(3) Subject to paragraphs (4) to (6), where an intermediary agency accepts an application from a person with a prescribed relationship to an adopted person for assistance in contacting a relative of the adopted person, it must not proceed with the application if the adopted person does not consent to the application proceeding.

(4) An intermediary agency may proceed with an application under paragraph (3)—

- (a) if the intermediary agency has taken all reasonable steps to locate the adopted person but has been unable to do so; or

(b) where—

- (i) the applicant is either the spouse, child, grandchild or great grandchild of the adopted person; and
- (ii) the applicant is seeking to contact the relative of the adopted person only to obtain information about the medical history of the adopted person's relatives.

(5) Where paragraph (4)(b) applies, the intermediary agency must not disclose any information which, whether taken on its own or together with other information possessed by the person to whom it is being disclosed, would enable the adopted person, any relative of the adopted person or any person with a prescribed relationship to the adopted person to be identified or traced.

(6) Any requirement under this regulation for the adopted person to consent to an application proceeding does not apply if—

- (a) the adopted person has died; or
- (b) the intermediary agency determines that the adopted person is incapable of giving informed consent.

(7) Where the consent of the adopted person is required under this regulation, the intermediary agency must take all reasonable steps to ensure that the adopted person has sufficient information to make an informed decision.”.

8. In regulation 8 (veto by an adopted person)—

(a) for paragraph (1)(a) substitute—

“(a) the subject is either the adopted person or a person with a prescribed relationship to the adopted person; and”;

(b) in paragraph (1)(b) for “that person” substitute “the adopted person”;

(c) omit paragraph (3); and

(d) at the end insert—

“(4) A veto which applies by virtue of a notification given before 31st October 2014 is deemed to apply to any application made by a relative of the adopted person under these Regulations.”.

9. For regulation 9 (provision of background information where consent refused etc) substitute—

“9. Nothing in these 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.”.

10. In regulation 10 (counselling)—

(a) in paragraph (1)(a) omit the word “or”;

(b) in paragraph (1)(b) at the end insert—

“; or

(c) is an adopted person considering whether to consent to an application proceeding.”
;

(c) for paragraph (4)(c) substitute—

“(c) if the person is in Northern Ireland, an appropriate voluntary organisation within the meaning of Article 2(2) of the Adoption (NI) Order 1987(a) or the Regional Board or any Health and Social Care Trust; or”; and

(d) for paragraph (5) substitute—

(a) 1987/2003 (N.I.22).

“(5) In this regulation “Regional Board” means the Regional Health and Social Care Board established under Section 7 of the Health and Social Care (Reform) Act (Northern Ireland) 2009^(a) and a Health and Social Care Trust” means a “Health and Social Care Trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991^(b).”.

11. In regulation 11 (procedure on receipt of application) at the end insert—

“(e) in the case of an application by a person with a prescribed relationship to the adopted person, that the applicant does have a prescribed relationship with that person.”.

12. In regulation 12 (contacting the appropriate adoption agency)—

(a) for paragraph (3)(b)(i) substitute—

“(i) ascertain whether the adopted person has, at any time, expressed his views to the agency about—

(aa) any future contact with any relative of his;

(bb) any future contact between people with a prescribed relationship to him and his relatives; or

(cc) his being approached with regard to such contact; and”;

(b) for paragraph (3)(c) substitute—

“(c) seek any other information required for the following purposes—

(i) tracing the adopted person and, where the adopted person is not the subject, any other subject;

(ii) enabling the adopted person to make an informed decision as to whether he consents to—

(aa) the disclosure of identifying information about him;

(bb) an application proceeding to facilitate contact between a relative of his and a person with a prescribed relationship to him; or

(cc) contact with the applicant;

(iii) enabling any other subject to make an informed decision as to whether he consents to—

(aa) the disclosure of identifying information about him; or

(bb) contact with the applicant;

(iv) counselling the subject and, where they are not the subject, the adopted person in relation to that decision; and

(v) counselling the applicant.”.

13. In regulation 16 (authorised disclosures) at the end insert—

“(e) to the adopted person to enable him to make an informed decision about whether to consent to an application under these Regulations proceeding.”.

2nd October 2014

Edward Timpson
Parliamentary Under Secretary of State
Department for Education

(a) 2009 c.1.
(b) 1991/194 (N.I.1).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005 (“the 2005 Regulations”), which make provision under section 98 of the Adoption and Children Act 2002 for the purposes of assisting persons adopted before the 30th December 2005 to obtain information about their adoption and to facilitate contact between those persons and their birth relatives.

Regulations 4 and 5 of the 2005 Regulations, which set out the services that an intermediary agency may provide and applications that such agencies may accept, are amended to provide that intermediary agencies may accept applications from a person with a prescribed relationship (as defined in new regulation 2A) to an adopted person for assistance in contacting a relative of an adopted person and vice versa (regulations 4 to 6).

Regulation 5A is inserted into the 2005 Regulations to prescribe the circumstances in which an intermediary agency must not proceed with an application and to set out the circumstances in which a veto registered under regulation 8 of the 2005 Regulations will apply (regulation 7).

Regulation 8 of the 2005 Regulations is amended to provide that an adopted person’s veto also applies when the subject of an application is a person with a prescribed relationship to the adopted person (regulation 8).

Regulation 9 of the 2005 Regulations is amended so that the 2005 Regulations do not prevent an intermediary agency from disclosing information that is not identifying information to an applicant if the agency considers it to be appropriate to do so (regulation 9).

Regulation 10 of the 2005 Regulations is amended to require an intermediary agency to provide written information about the availability of counselling to an adopted person who is considering whether to consent to an application proceeding (regulation 10).

Regulation 11 of the 2005 Regulations is amended to require an intermediary agency to take reasonable steps to confirm that the applicant does have a prescribed relationship when it receives an application from such a person (regulation 11).

Regulation 12 of the 2005 Regulations is amended to require the intermediary agency to ascertain from the appropriate adoption agency whether the adopted person has at any time expressed his views about contact and to require the intermediary agency to seek other information from the appropriate adoption agency (regulation 12).

Regulation 16 of the 2005 Regulations is amended to enable an intermediary agency to disclose information (including information that identifies any person) as is necessary to the adopted person to enable him to make an informed decision about whether to consent to an application proceeding (regulation 13).

A validation impact assessment of the effect that extending access to intermediary services will have is available alongside the Explanatory Memorandum for this instrument on www.legislation.gov.uk.

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