

**EXPLANATORY MEMORANDUM TO**  
**THE ADOPTION INFORMATION AND INTERMEDIARY SERVICES (PRE-  
COMMENCEMENT ADOPTIONS) (AMENDMENT) REGULATIONS 2014**

**2014 No. 2696**

**1.** This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 To allow all relatives of a person who was adopted before 30 December 2005, including but not limited to their children, grandchildren and great grandchildren, access to an intermediary service to facilitate contact (and in some cases disclosure of information) between such persons and the birth relatives of the adopted person.

**3. Matters of special interest to the [Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments]**

3.1 None.

**4. Legislative Context**

4.1 The Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005 were made under the powers in sections 2(6), 9(1) and (3), 98, 104(7) and (8) and 144(2) of the Adoption and Children Act 2002. Section 98(1A) of the Adoption and Children Act 2002 was inserted by section 1 of the Children and Families Act 2014. The Adoption Information and Intermediary Services (Pre-Commencement Adoptions) (Amendment) Regulations 2014 are made under the powers in sections 9, 98 (1), (1A), (2) and (3) and 140(7) and (8) of the Adoption and Children Act 2002.

**5. Territorial Extent and Application**

5.1 These regulations apply to England.

**6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**7. Policy background**

- What is being done and why

7.1 Under current regulations, an intermediary service provides services only to adopted persons aged 18 or over who were adopted before 30 December 2005, and to certain “relatives” of the adopted person. “Relatives” are defined as anyone who, but for his adoption, would be related to the adopted person by blood, including half-blood, marriage or civil partnership (birth relatives). This does not include the children or other descendants of an adopted person. An intermediary service is able to obtain information about the adoption and share this with the adopted person, and can facilitate contact between such persons and their birth relatives.

7.2 There has been growing pressure to change the law to allow the direct descendants and other relatives of adopted persons, who may have a legitimate wish or reason to find out about their family history, to access such services. In February 2013 the House of Lords Select Committee on Adoption Legislation recommended that the Government amend section 98 of the Adoption and Children Act 2002 (which enables adopted persons once they reach the age of 18 to obtain information in relation to their adoption and facilitate contact between such persons and their relatives) to bring within its scope the direct descendants of adopted persons.

7.3 During the passage of the Children and Families Act the Government introduced a clause to extend access to intermediary services to ‘persons with a prescribed relationship’ to the adopted person. The Government committed to define ‘persons with a prescribed relationship’ in regulations and to include, as a minimum, the direct descendants (i.e. children and grandchildren) of adopted persons. Further, the Government committed to undertake public consultation about which further groups it might be appropriate to include within the definition.

7.4 A public consultation was held between 10 April and 29 May. A high proportion of responses emphasised the complexity and emotional sensitivity of cases within this area. Additionally, many respondents advocated a case by case approach which enables professionals to make decisions based on the individual circumstances of each case, rather than being overly prescriptive about who has access on the sole basis of legal relationships.

7.5 The Government has therefore amended the regulations to extend intermediary services to all other relatives of an adopted person. This is defined in the regulations as anyone who is related to the adopted person by blood (including half-blood), marriage or civil partnership (but who does not already have access to intermediary services), or by virtue of their adoption. It therefore includes, but is not limited to, the children, grandchildren and great grandchildren of an adopted person.

7.6 As this change would open up intermediary services to a wider range of relatives, the regulations make provision for adopted persons to retain a strong degree of control over their own personal information and history. The regulations require an intermediary agency to obtain the consent of an adopted person before contact or information sharing is

facilitated between persons with a prescribed relationship and birth relatives, unless the adopted person has died, or lacks capacity. Also, where spouses or children of an adopted person seek non-identifying medical information from birth relatives of the adopted person and this can be shared by the intermediary agency without sharing identifying information, the adopted person's consent is not required. Similarly, if a person with a prescribed relationship is apply for assistance in contacting a birth relative and the adopted person cannot be found despite reasonable steps being taken, the application can proceed without the adopted person's consent.

## **8. Consultation outcome**

8.1 The Government held a public consultation between 10 April and 29 May to seek the views on which groups of people should be granted access to intermediary services and what safeguards should be put in place to balance the desire of relatives accessing such services against the privacy of people who were adopted before 30 December 2005.

8.2 A large majority of respondents (88%) to the consultation felt that the direct descendants (children and grandchildren) of adopted adults should be able to access intermediary services. Around half of respondents felt that access should be extended to other relatives. However, views with respect to other relatives were less clear cut and there was a strong response that the law should not discriminate on the basis of legal relationships alone, but instead allow intermediary services to consider each case on its individual merits.

8.3 The Government agrees that intermediary agencies are best placed to make decisions using their professional judgment and expertise based on the individual circumstances of each case. Based on the consultation responses, the regulations therefore enable intermediary agencies to take on cases from a wide range of relatives whilst ensuring adopted people retain a strong degree of control over their own personal information and history

## **9. Guidance**

9.1 Statutory guidance, under section 7 of the Local Authority Social Services Act 1970, will be issued to accompany these Regulations in autumn 2014.

## **10. Impact**

10.1 Intermediary services can be delivered by voluntary adoption agencies, voluntary support agencies or local authorities. However not all of these agencies provide intermediary services.

10.2 The impact on those voluntary adoption agencies, adoption support agencies and local authorities that provide intermediary services, has been assessed by the department and we have concluded that intermediary agencies are likely to see an increase in applications. However intermediary agencies have discretion to supply the service and to charge a fee for the service at a level they see fit which means the benefits to business of the measure will at least equal the costs.

10.3 The impact on the public sector is a potential increase in applications to the General Registrar Office from intermediary agencies requesting birth records. The department has worked closely with the General Registrar Office who provide a chargeable service for recovering birth records, and counselling to adults accessing such records. The impact is likely to be small.

10.4 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 Local authority children's services and voluntary adoption agencies are inspected every three years by HM Chief Inspector for Standards in Education, Children's Services and Skills (HMCT). HMCI is independent of the Department for Education. These inspections include local authority practice in complying with the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005.

12.2 The department will monitor the change through representative organisations and departmental stakeholder groups and, if there are issues with implementation, will consider what further review of policy may be necessary.

## **13. Contact**

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