
WELSH STATUTORY INSTRUMENTS

2005 No. 2701 (W.190)

SOCIAL CARE, WALES

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

Made - - - - 27 September 2005

Coming into force - - 30 December 2005

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 2(6), 9, 98 and 144(2) of the Adoption and Children Act 2002⁽¹⁾ and with the approval of the Chancellor of the Exchequer in so far as it is required under section 98(6), hereby makes the following Regulations.

PART 1

INTRODUCTORY

Title, commencement and application

1.—(1) The title of these Regulations is the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) (Wales) Regulations 2005 and shall come into force on 30 December 2005.

(2) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

“the 2002 Act” (“*Deddf 2002*”) means the Adoption and Children Act 2002;

“the applicant” (“*y ceisydd*”) means an adopted person or a relative of an adopted person who makes an application under regulation 5;

“the appropriate adoption agency” (“*yr asiantaeth fabwysiadu briodol*”) has the same meaning as in section 65(1) of the 2002 Act;

“identifying information” (“*gwybodaeth adnabod*”) has the meaning given in regulation 7;

(1) 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.

“intermediary service” (“*gwasanaeth cyfryngol*”) and “intermediary agency” (“*asiantaeth gyfryngol*”) have the meanings given in regulation 4;

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

“relative” (“*perthynas*”) in relation to an adopted person has the same meaning as in section 98 of the 2002 Act;

“subject” (“*gwrthrych*”) in relation to an application under these Regulations means a person with whom the applicant seeks contact.

PART 2

PROVISION OF INTERMEDIARY SERVICES

Agencies that may provide intermediary services

3.—(1) A registered adoption support agency or an adoption agency may provide an intermediary service in respect of persons adopted before 30 December 2005.

(2) An intermediary service may only be provided in respect of adopted persons who have attained the age of 18.

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

(4) An intermediary service is an adoption support service for the purposes of section 2(6) of the 2002 Act.

Meaning of “intermediary service” and “intermediary agency”

4.—(1) Subject to paragraph (3) an intermediary service is a service provided for the purpose of—

- (a) assisting adopted persons to obtain information in relation to their adoption; and
- (b) facilitating contact between such persons and their relatives.

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

(3) 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 about that person’s adoption.

PART 3

APPLICATIONS FOR AN INTERMEDIARY SERVICE

Priority for adoptions before 1976

5.—(1) An intermediary agency may, in relation to an adoption on or before 30 December 2005, accept an application—

- (a) from the adopted person for assistance in obtaining information about that person’s adoption and contacting a relative; or

(b) from a relative of the adopted person for assistance in contacting that person.

(2) An intermediary agency may accept an application in relation to an adoption on or after 12 November 1975 but must give priority to applications in respect of adoptions before that date.

(3) In applications under paragraph (1) and (2) above, the applicant and the person with whom the applicant seeks contact, or about whom he or she seeks information, 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 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 veto recorded under regulation 8;

(d) 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) An intermediary agency must not disclose any identifying information about the subject to the applicant without first obtaining the consent of the subject.

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

(3) If the subject has died or the intermediary agency determines that he or she is incapable of giving informed consent, the intermediary agency may disclose such identifying information about the subject as it considers appropriate taking into consideration the matters set out in regulation 6.

(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 these Regulations where—

(a) the subject is the adopted person; and

(b) that person has notified the appropriate adoption agency in writing that—

(i) he or she does not wish to be contacted by an intermediary agency in relation to an application under these Regulations; or

(ii) that he or she only wishes to be contacted under specified circumstances or by specified persons.

(2) Where the appropriate adoption agency is notified of a veto under paragraph (1) it must keep a record of it 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.

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 the subject to the applicant.

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

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

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

(4) The intermediary agency may provide such counselling services itself or make arrangements with any of the following persons for the provision of counselling—

- (a) if the person is in Wales or England, another adoption agency or 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(3) or from any Board;
- (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 Social Services (Northern Ireland) Order 1972(4) or where the functions of a board are exercisable by a Health and Social Services Trust, that Trust.

(6) Where the only counselling services available to a subject are services for which a fee is payable and the subject chooses not to take them up, the intermediary agency must nevertheless provide support and assistance to the subject in deciding whether to consent to the disclosure of information.

(3) S.I.1987/2203 (N.I. 22).

(4) S.I. 1972/1265 (N.I. 14).

PART 4

PROCEDURE FOR APPLICATIONS

Procedure on receipt of application

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

- (a) the identity and age of the applicant and the identity of any person acting on the applicant's behalf;
- (b) that any person acting on behalf of the applicant is authorised to do so; and
- (c) 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 all 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 or she does not have that information, requesting it in writing from the court that made the adoption order; and
- (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 ascertain whether a veto under regulation 8 exists.

(4) If no veto under regulation 8 exists the intermediary agency must —

- (a) ascertain whether the subject has, at any time, expressed views about future contact with a relative or about being approached about such contact;
- (b) ascertain the agency's views as to whether the application is appropriate (having regard to the factors mentioned in regulation 6); and
- (c) seek any other information required for the purposes of—
 - (i) tracing the subject;
 - (ii) enabling the subject to make an informed decision about consent to the disclosure of identifying information about him or her, or to contact with the applicant;
 - (iii) counselling the subject in relation to that decision; or
 - (iv) counselling the applicant.

(5) Unless a veto referred to in regulation 8 applies, the appropriate adoption agency must take all reasonable steps to comply with a request from an intermediary agency under paragraph (3) and may disclose to the intermediary agency such information (including identifying information) as is necessary for that purpose.

Obtaining information from 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(4)(c), the intermediary agency may request from the Registrar General such of the following information as may assist it for those purposes—

- (a) information that he or she 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 purposes mentioned in regulation 12(4)(c) 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 13 he or she must provide the intermediary agency with written verification of that fact together with details of the court that arranged the adoption.

Court to comply with request

15.—(1) The court must disclose any information requested 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 the details of that court.

Authorised disclosures

16. An intermediary agency 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 or her to make an informed decision under regulation 7; and
- (d) to a person providing counselling in connection with an application under these Regulations.

PART 5

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 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 the provision of counselling services for that person.

(3) The Registrar General may charge £10 for providing information under regulation 13.

(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 £20 for providing information under regulation 15.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(5).

27 September 2005

D. Elis-Thomas
The Presiding Officer of the National Assembly

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 30 December 2005 to obtain information about their adoption and to facilitate contact between those persons and their birth relatives through an intermediary service. The regime for disclosure of information about adoptions after 30 December 2005 is set out in sections 56 to 65 of the Act. An adoption agency dealing merely with a request for information about an adoption for which it was the adoption agency involved will continue to deal with it under the Adoption Agencies Regulations 1983.

Part 1 confers new functions on registered adoption support agencies and adoption agencies (“intermediary agencies”) that are willing to provide an intermediary service in respect of adoptions before 30 December 2005.

Part 2 deals generally with applications for an intermediary service. An intermediary agency may receive an application for an intermediary service from an adopted person or a relative of an adopted person. Applications in respect of adoptions after 12 November 1975 may be accepted but priority must be given to applications in relation to adoptions before that date. 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 that would identify the person to the applicant or enable the person 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 to secure counselling services in relation to applications for intermediary services. Intermediary agencies must themselves provide support and assistance to a person who is the subject of an application if the person chooses not to pay for a counselling service.

Part 3 sets out the procedure to be followed by the intermediary agency in processing an application. The first steps include confirming the age and 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 find out if a veto has been registered and 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 no adoption agency was involved, the intermediary agency may seek such information from the Registrar General as may assist in processing the application (regulation 13). Regulation 14 and 15 require the Registrar General and the court to provide information when requested. Regulation 16 authorises certain disclosures for the purpose of processing an application under these Regulations.

Part 5 deals with miscellaneous matters. Regulation 17 creates an offence of disclosure of information in contravention of regulation 8. Regulation 18 provides for fees that may be charged by intermediary agencies, adoption agencies and the Registrar General in relation to applications under these Regulations.