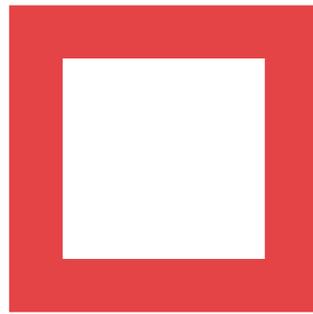


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Foreword by Margaret Hodge



I am delighted to be able to publish the third major consultation package of draft regulations and guidance as part of our work to implement the Adoption and Children Act 2002. The Act represents the most radical overhaul of adoption law and practice for a generation, replacing the Adoption Act 1976 and modernising the entire legal framework for domestic and inter-country adoption.

Much progress has already been made on implementing the Act. Some of the Act's key provisions have already been implemented in the context of the existing Adoption Act 1976; for example, the introduction of new adoption support services in England for adoptive families from 31 October 2003. We have also introduced new restrictions on the adoption of children from outside the British Islands from 1 June 2003. A new independent review mechanism to allow prospective adopters to ask for a review of their case when an adoption agency is minded not to approve them as suitable to adopt will be operational from 1 April 2004.

We are now a significant way through developing and consulting on the various packages of regulations and guidance that are needed to implement the 2002 Act in full and repeal the Adoption Act 1976. We are committed to developing them with the full involvement of all those with an interest – not just adoption agencies and professional organisations but service users and individuals whose lives have been affected by adoption in some way. This consultation exercise is an important opportunity to influence the development of future adoption practice and the Government is keen to hear as wide a range of views as possible.

We have already published the draft regulations and guidance that are intended to overhaul the operation of the adoption service by adoption agencies. Draft regulations and guidance on adoptions with a foreign element and the preparation of adoption reports were published on 31 January 2004. We have just published a consultation document on the introduction of new special guardianship orders. In the coming months we will be publishing further consultation drafts covering:

- Adoption support services and the regulation of Adoption Support Agencies;
- Mechanisms and structures (including phase 2 of the Independent Review Mechanism); and
- The e-Commerce Directive.

I know that these draft regulations and guidance on access to information are eagerly awaited by stakeholders. Sharing information about a person's adoption is both a complex and emotive area. The Government's White Paper "Adoption – a New Approach" recognised that "all adopted people should be able to find out their family history if and when they wish to do so". That has not always been the case, with some evidence that adoption agencies have in the past been inconsistent in their approach to the information they keep and the way it is disclosed. One of the key aims of the 2002 Act, therefore, is to introduce a framework to provide adopted people with consistency of access to information about their adoption and family history – should they wish to know it. The legislation also recognises that other people involved in adoption – particularly birth relatives and adoptive families – will also benefit from consistency of access to information held in adoption agency files.

Arguably one of the most significant aspects of the 2002 Act was the inclusion of retrospective provisions to create a scheme providing for contact between birth relatives and adopted adults. This gives birth relatives – including the many thousands of young mothers who relinquished their babies for adoption in the 1950s, '60s and '70s – a new statutory right to request an intermediary service to trace an adopted adult and establish if contact would be welcome. This represents a major shift in adoption law recognising the need of many birth relatives to seek information about children from whom they were separated by adoption many years ago. An adopted adult would be able to request the same service if he or she wished to trace a birth relative. These new provisions are based on persons giving informed consent to their details being passed on and therefore take careful account of a person's right to privacy.

This guidance also explains the Registrar General's duties and functions in respect of maintaining the Adopted Children Register, the Adoption Contact Register and his role in Access to Birth Records (i.e. disclosing information about adoptions). Colleagues in the General Register Office at the Office for National Statistics (ONS) have contributed to this consultation draft and the draft Registrar General's regulations form part of the package. It is intended that the various sets of regulations will come into force in September 2005.

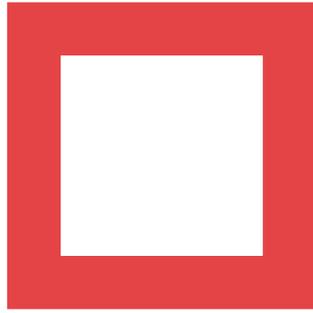
The proposals in this consultation document seek to address some very difficult and sensitive issues and to balance the interests and wishes of all those involved in an adoption. In order to achieve the best outcomes, we again need the help of service users, adoption agencies and others with an interest. I am therefore issuing this document today for a **four-month consultation period**. I trust that this extended consultation period will give ample time for our proposals to be considered carefully by all those with an interest. We have asked you a number of specific questions on how to tackle some of the more difficult issues and would welcome written comments on these as well as your comments on the document as a whole.

We have already begun a series of regional events to discuss the issues arising from our various consultation documents on the implementation of the Act. Access to information will be the focus of some of these events. We hope that this will allow you to contribute your views even if you do not wish to send written comments. I guarantee that all responses will be carefully considered before the regulations and guidance are finalised and published. Thank you for your assistance.

A handwritten signature in blue ink that reads "Margaret Hodge". The signature is written in a cursive, flowing style.

Margaret Hodge

Minister for Children, Young People and Families



Executive Summary

Implementation of the Adoption and Children Act 2002 requires the detail to be set out in regulations and guidance. This consultation document is one of a series of consultation exercises on different aspects of the Act.

This consultation document includes draft regulations and guidance setting out the new framework for the disclosure of information in relation to a person's adoption. It comprises three related sets of regulations and guidance. These are:

- The Access to Information (Pre-Commencement Adoptions) Regulations 2004
- The Access to Information (Post-Commencement Adoptions) Regulations 2004
- The Adopted Children and Adoption Contact Registers Regulations 2004

As part of this consultation, the Registrar General has set out his new duties and functions in relation to maintaining the Adopted Children Register, the Adoption Contact Register and access to birth records. For example, the circumstances in which the Registrar General must disclose information to an adopted person and the way in which he may assist an adoption agency or a registered Adoption Support Agency (ASA).

The Department for Constitutional Affairs will be consulting separately on revised court rules and regulations setting out the new duties and obligations placed on the courts in relation to instructions to the Registrar General regarding new adoptions and the disclosure of information about past adoptions. For example, the information that an adopted person may receive from the court that made the adoption order or the circumstances in which the court may disclose information to an adoption agency or registered Adoption Support Agency.

When the consultation exercises have been completed, the regulations and guidance finalised, and the parliamentary procedures complied with, the intention is that the final regulations will be published together and will come into force in September 2005.

THE DISCLOSURE OF INFORMATION

The 2002 Act provides for two separate regimes for access to, and the disclosure of, information about a person's adoption. The framework for disclosure of information set out in sections 56–65 of the Act and the draft Access to Information (Post-Commencement Adoptions) Regulations 2004 will apply to any person adopted **after** the regulations have come into force. This is referred to in the guidance as *"a person adopted after commencement"*. We currently expect the "post-commencement" regulations to come into force in September 2005.

The framework provided for in section 98 of the Act, the Access to Information (Pre-Commencement Adoptions) Regulations 2004, and the disclosure of birth record information by the Registrar General in Schedule 2 of the Act, will apply to any person adopted **prior to** the regulations coming into force. In effect this means any past adoption since the Adoption of Children Act 1926. This is referred to in the guidance as *"a person adopted before commencement"*. These regulations are currently expected to come into force in two stages with stage 1 coming into force in September 2005.

A Person Adopted after Commencement

In relation to a person adopted after commencement, the Act and the draft regulations introduce new requirements on the information that adoption agencies must keep in relation to the adoption and the way in which that information must be kept. There are also new requirements as to the information that adoption agencies must disclose to adopted adults on request, the information that an adopted adult has a right to request from the court, the information that adoption agencies may release to adopted adults, birth relatives and others and the information that the Registrar General must pass to adoption agencies. The Act provides for adoption agencies to be the single gateway for access to identifying information, including birth records. Therefore, where an adopted adult does not already know it, he must now apply to an adoption agency for the information needed to obtain a certified copy of his record of birth. Where an adopted adult does not know the appropriate adoption agency, he may apply to the Registrar General for this information.

The overarching aim of this framework is to ensure greater consistency in relation to the retention, safeguarding and disclosure of sensitive information about a person's adoption. The framework also restores the Registrar General to his principal role as custodian and disseminator of vital records, rather than as arbiter of what information should be released and to whom.

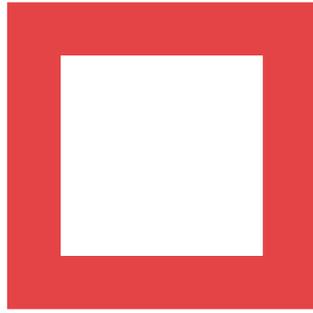
A Person Adopted before Commencement

In relation to a person adopted before commencement, section 98 and the draft Access to Information (Pre-Commencement Adoptions) Regulations 2004 set out a framework which enables Adoption Support Agencies (ASAs) to operate an intermediary service to provide for contact between adopted adults and their adult birth relatives.

The Act therefore provides birth relatives with a statutory right to request an intermediary service. This means that in the future a registered ASA may be able to establish the identity of an adopted adult, seek to trace them and – **subject to obtaining their informed consent** – disclose identifying information about them to the birth relative. Where requested, the ASA will be able to facilitate contact between them and provide counselling. An adopted adult would be able to request the same service from an ASA if he wished to trace a birth relative and establish contact. The regulations confer functions on registered Adoption Support Agencies, place new duties on adoption agencies and the Registrar General, and set out the circumstances in which these bodies will be able – or required – to disclose information to each other to facilitate the tracing of individuals involved in an adoption. Revised regulations will set out the circumstances in which the court may disclose information to a registered ASA.

The Government anticipates that the demand for intermediary services is likely to be high. There have been around 875,000 legal adoptions since 1926 and the introduction of the Registrar General’s Adoption Contact Register in 1991, the first legal opening for a birth relative to seek contact with an adopted person, has revealed a potentially vast reservoir of untapped need. This consultation document therefore seeks the views of stakeholders on the Government’s intention to implement the scheme in two phases. This would, as envisaged, allow for the scheme to apply first to all adoptions made before 12th November 1975. Phasing in the scheme is intended to help registered ASAs, adoption agencies, the Registrar General and the courts manage the demand from applicants for this new service. It also recognises that those birth relatives who placed a child for adoption many years ago and are now elderly, will benefit from having access to the scheme first, should they wish to do so.

The two systems for the disclosure of information are underpinned by different principles and are therefore set out in two separate sets of regulations, which dovetail with the Registrar General’s regulations. Any further connections between the two sets of regulations are explained in the guidance.



The Consultation Process

- These draft regulations and their accompanying guidance are being issued for consultation to local authorities, to voluntary adoption agencies and to other adoption stakeholders. But anyone with an interest in adoption is entitled to ask for a free copy of this document and is welcome to comment on it. The document may also be downloaded from the Department for Education and Skills' adoption website:

www.dfes.gov.uk/adoption

- The draft guidance is intended to explain and amplify the draft regulations, which have been placed in a wallet at the back of this document. While reading the guidance, please consider whether it provides appropriate and sufficient guidance for each regulation.

HOW TO RESPOND

- If you wish to comment on any aspect of the draft regulations or draft guidance in this document, please complete the electronic feedback form which can be found at <http://www.dfes.gov.uk/consultations>. Alternatively, you may complete and return the hard copy of the feedback form that can be found at the back of this document, or write to us at:

Looked After Children Division
Department for Education and Skills
Room 121
Wellington House
133–155 Waterloo Road
London SE1 8UG

- You may also fax your views to 0207 972 4179 or e-mail your comments to us at accesstoinformation.consultation@dfes.gsi.gov.uk
- Regardless of the way you choose to respond, the deadline for responses is **31 July 2004**.

- If you choose not to reply using the feedback form, please ensure your letter, fax or e-mail includes the following information:
 - Your name
 - Your job title or your interest in adoption
 - Your telephone number
 - Whether your comments represent your own view, the corporate view of your organisation,¹ or the view of a group or team within your organisation
 - Your specific comments on the draft regulations, guidance or the specific consultation questions set out in Appendix A. Please ensure you quote the relevant paragraph number
 - Any general comments you wish to make
 - Whether your comments may be made available to the public when the final regulations and guidance are published, or whether you wish your comments to remain confidential.
- Remember – if you want your comments or views to be considered we need to receive them by **31 July 2004**.

ADDITIONAL COPIES

Anyone with an interest in adoption may ask for a free copy of this document and is welcome to comment on it. Copies can be obtained from:

DfES
PO Box 5050
Sherwood Park
Annesley
Nottingham
NG15 0DJ

Tel: 0845 602 2260

Fax: 0845 603 3360

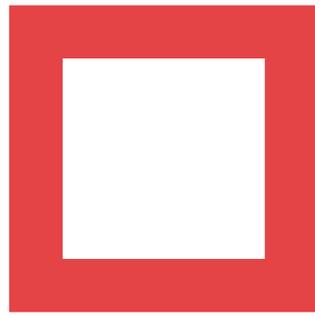
E-mail: dfes@prolog.uk.com

Please quote reference: ACA200203

The document may also be accessed from the Department for Education and Skills' website at: www.dfes.gov.uk/consultations

¹ We welcome responses from individuals and organisations. Where an organisation is considering responding to this consultation, in the context of its own policies, procedures and practice, an internal consultation exercise on these regulations and their accompanying guidance may help to involve staff usefully in shaping the corporate response.

4



Background and Context

Secrecy shrouded adoption for much of the 20th Century. Most adopted people were babies or infants when they had been adopted. Many were never told. And many had siblings that they never knew about. It was not until the Children Act 1975 that they were given access to their birth records and the opportunity to find out more about their former families.

The right for an adopted person to have access to his birth records when he reached the age of 18 was consolidated by section 51 of the Adoption Act 1976. Nothing more was said in primary legislation. Regulations and guidance introduced in 1984 gave adoption agencies a measure of discretion to disclose the information they held as they thought fit. But there was scant advice on when it might be appropriate or inappropriate to disclose. Unsurprisingly, practice varied from agency to agency. Adopted people, adopters and birth relatives were inevitably confused by inconsistent practice.

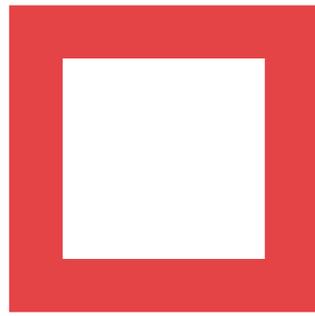
In December 2000 the Government published an Adoption White Paper: "Adoption – a New Approach". It recognised that "all adopted people should be able to find out about their family history if and when they wish to do so".² The White Paper acknowledged the inconsistencies across the country and pledged that the Government would provide adopted people with consistency of access to information about their family history and their adoption. It said new legislation would set out the information that an adopted person would have access to from adoption agency records.

² Paragraph 6.44 "Adoption – A New Approach" [Cm5017,Dec 2000]

Soon after the White Paper, the Government introduced the Adoption and Children Bill. It became an Act when it received Royal Assent in November 2002. The Bill on introduction made provision only for access to information in post-commencement adoptions, striving to achieve a balance between confidentiality and openness. A new framework would govern the way adoption agencies should consider each case and then decide whether it would be appropriate to disclose sensitive identifying information. But many thought the Bill did not go far enough. There were many who wanted a similar framework to apply to all past adoptions, all the way back to the first Adoption Act in 1926.

Around 875,000 people have been adopted since 1926 and the Government was concerned that adoption agencies could be faced with a wave of applications and many cases of people seeking contact with former relatives. In recognition of the need to listen to the wishes and feelings of those separated by adoption over past decades, the Bill was amended to provide a second framework. This would allow Adoption Support Agencies to process applications, obtain and protect information, trace a person and ask if they would give their consent to the disclosure of their identifying information to an applicant.

Society and adoption practice has moved on significantly since the 1970s. Transparency and openness have replaced secrecy. But not everyone welcomes contact with former relatives, and in some cases it could be distressing. Checks and balances are essential to safeguard the welfare of those separated by adoption law. The Adoption and Children Act 2002 provides the foundations for the two new access to information frameworks and their safeguards, but much of the detail needed to be set out in regulations and guidance. And that is why this document has been published for consultation.



Guidance on the Access to Information (Pre-Commencement Adoptions) Regulations 2004

PART 1 – ARRANGEMENT OF REGULATIONS

This part of the guidance explains:

Regulation 1: Citation, commencement and application

Regulation 2: Interpretation

SCOPE

1.1 These draft regulations – the Access to Information (Pre-Commencement Adoptions) Regulations 2004 – make provision under section 98 of the 2002 Act for a scheme to assist persons adopted before the appointed day³ to obtain information about their adoption and to facilitate contact between those persons and their birth relatives. The corresponding regime for the disclosure of information about adoptions made after the appointed day is set out in sections 56–65 of the 2002 Act and the draft Access to Information (Post-Commencement Adoptions) Regulations 2004.

³ The “appointed day of commencement” – the day on which sections 56–65 of the 2002 Act come into force.

1.2 The regulations confer functions on registered Adoption Support Agencies, adoption agencies and the Registrar General. The regulations set out how the scheme will operate and the circumstances in which these bodies will be able – or required – to disclose information to each other to facilitate the tracing of individuals involved in an adoption. The regulations also set out the procedure to be followed by a registered Adoption Support Agency in processing an application from an adopted adult or a birth relative of an adopted adult.

Citation, Commencement and Application

1.3 Regulation 1 sets the date on which these regulations will come into force and makes it clear that they apply to England only.

Interpretation

1.4 Regulation 2 defines certain expressions used in the draft regulations.

PART 2 – FUNCTION OF ADOPTION SUPPORT AGENCIES

2.1 This part of the guidance explains the regulations setting out the broad functions of a registered Adoption Support Agency and the basis on which it may receive an application. The regulations also set out the factors that an ASA must have regard to in considering whether to proceed with, or continue proceeding with, an application.

This part of the guidance explains:

Regulation 3: ASA may receive application from an adopted person or birth relative

Regulation 4: No obligation to proceed if not appropriate

Regulation 5: Consent of subject to disclosure etc.

REGULATION 3: ASA MAY RECEIVE APPLICATION FROM AN ADOPTED PERSON OR BIRTH RELATIVE

2.2 Regulation 3(1) provides that an Adoption Support Agency which is registered to provide intermediary services under section 98 of the Act, may receive an application from an adopted adult who is seeking information about his adoption and possible contact with an adult birth relative. An adopted adult must have been adopted prior to the day on which the relevant provisions of the 2002 Act came into force.

2.3 Regulation 3(2) permits a registered Adoption Support Agency to receive an application from an adult birth relative of an adopted adult who is seeking information about the adopted adult and possible contact with him. The Adoption Support Agency must therefore satisfy itself on receipt of an application from a birth relative that the application pertains to an adopted adult who was adopted prior to the day on which the relevant provisions of the 2002 Act came into force.

2.4 The principal function of an Adoption Support Agency is to act as an intermediary in order to facilitate contact between adopted adults and their adult birth relatives (and vice-versa). Therefore, where a person is only seeking information about an adoption, or a person involved in his adoption, but has no wish for contact, he should be advised to make an application to the appropriate adoption agency for the disclosure of information.

2.5 Regulation 3(3) sets out that where an Adoption Support Agency has decided to proceed with an application it must act in accordance with the regulations and take all reasonable steps to assist the applicant. This is subject to the provisions in regulation 4 which provides that an Adoption Support Agency is not required to proceed with an application, or continue proceeding with an application, where it determines that it is not appropriate to do so. Regulation 3(4) makes it clear that where an application is received from a birth relative by virtue of regulation 3(2), that person must have attained the age of 18.

REGULATION 4: NO OBLIGATION TO PROCEED IF NOT APPROPRIATE

2.6 Regulation 4(1) provides the Adoption Support Agency with a general discretion not to proceed, or continue proceeding, with an application where it determines that it would not be appropriate to do so. On receipt of an application from an adopted adult or an adult birth relative the Adoption Support Agency should make an initial assessment of the application. The ASA must first be satisfied that the applicant is related to the subject of the application and that the application relates to a person who was adopted before the appointed day. The applicant must therefore provide evidence to satisfy the ASA that this is the case. Where the applicant is unable to do so, the ASA may determine not to proceed with the application. The applicant must also be able to demonstrate that he has attained the age of 18.

2.7 Where the ASA has reasonable grounds to consider that the application is inappropriate or vexatious, for example where it considers that processing an application may place an individual at risk of harm, it may determine not to proceed with the application.

2.8 Regulation 4(2) requires that in deciding whether to proceed with, or continue proceeding with, an application the ASA must have regard to:

- The adopted adult's welfare;
- Any views of the appropriate adoption agency obtained under regulation 8(1)(a);
- All the other circumstances of the case.

2.9 On receipt of an application there is likely to be scant information available to the ASA to inform its decision as to whether to proceed with an application. However, the ASA may have information available to it, such as where it has received a previous application from the same person. The ASA should seek the views of the appropriate adoption agency on the proposed application and determine on the basis of those views whether or not to proceed further with the application. The ASA should therefore rely on the information it may obtain from the adoption agency and any information it may have previously obtained (i.e. in the event of a previous application) to inform the exercise of its discretion as to whether to proceed.

2.10 Where an ASA determines not to proceed with an application at this stage, the applicant is not prevented from applying again to the ASA. For example where the applicant believes that the circumstances have changed. The applicant is also free to apply to another registered ASA for an intermediary service.

REGULATION 5: CONSENT OF SUBJECT TO DISCLOSURE

2.11 Regulation 5(1) prohibits an ASA from disclosing any identifying information about the subject of the application to the applicant, or making any arrangement for contact, without having first obtained the informed consent of the subject.

2.12 Where the ASA has been able to trace the subject of an application and that person has refused to give consent to the disclosure of identifying information to the applicant, the ASA has no discretion to disclose that information. It will be an offence to do so. The ASA will be limited to disclosing background (i.e. non-identifying) information to the applicant should he or she wish to receive that information. This regulation is an important safeguard which recognises the wishes of some adopted people (and others involved in adoption) not to be traced or to have their details passed on. A person's continuing wish for privacy must therefore be respected.

2.13 Regulation 5(2) requires the ASA to take all reasonable steps to provide the subject of an application with sufficient information to enable them to make an informed decision as to whether to give consent to the disclosure of identifying information to the applicant. This will require the ASA to provide the subject with information about the application and to discuss the background of the case. The ASA should provide the subject with practical support and advice, including the provision of counselling should the subject wish to receive it.

2.14 The process of obtaining consent will need to be handled carefully and compassionately. An approach from an ASA on behalf of a birth relative may give rise to a whole range of emotions for the adopted adult. They are likely to need time to reflect on their consent decision and will need support during this process. The ASA must satisfy itself, as far as possible, that the subject fully understands the nature, circumstances and background of the application and that where consent is given this is informed consent.

PART 3 – PROCEDURE FOR APPLICATIONS

3.1 This part of the guidance explains the regulations dealing with the process that a registered Adoption Support Agency must follow on receipt of an application and the way in which that application must be processed. This part covers the ASA's duty to establish if an adoption agency was involved in the adoption, the requirements to contact the adoption agency to seek its views, and the information that the ASA may seek from the adoption agency to enable it to process an application. This part also covers the steps that an ASA must take where it has not been able to identify the appropriate adoption agency, or where the appropriate adoption agency has been identified but no longer exists, or where the agency is unable to provide information.

This part explains:

- Regulation 6: Procedure on receipt of application
- Regulation 7: Identifying the appropriate adoption agency
- Regulation 8: Contacting the appropriate adoption agency
- Regulation 9: Procedure in non-agency cases
- Regulation 10: Counselling
- Regulation 11: Disclosure

REGULATION 6 – PROCEDURE ON RECEIPT OF APPLICATION

3.2 Regulation 6 sets out the steps that an ASA must take on receipt of an application before it proceeds further with the application. The ASA is required to take all reasonable steps to confirm the following:

(a) the identity of the applicant or of any person acting on his behalf.

Any application to an ASA must be in writing and should include evidence to confirm the applicant's current identity, and previous identity if this is relevant, and address. Where the ASA is unable to satisfy itself on these points it may seek additional information from the applicant. For example, a copy of the applicant's passport, bank statement or other proof of identity. Where a person is acting on behalf of the applicant, the ASA must also take the same steps to verify their identity.

(b) that any person acting on behalf of the applicant is authorised to do so.

Where a person is acting on behalf of the applicant, such as where the applicant is unable to make an application unassisted because of ill health or disability, the ASA must verify that this person is acting with the proper authority of the applicant. This may be a written authorisation from the applicant that the person may act on their behalf or the ASA may seek to confirm this orally with applicant where it is not practicable for the applicant to provide written authorisation.

(c) in the case of an application by a birth relative, that the applicant is related to the adopted person.

A birth relative who makes an application to an ASA must provide evidence of his relationship to the adopted person. For example, a birth mother may prove her relationship to the adopted person by providing a copy of her birth certificate, her child's birth certificate, and if she was married after the child's birth, her marriage certificate. Other birth relatives may be required by the ASA to provide additional certificates in order to prove their relationship to the adopted person.

(d) in the case of an application made by an adopted adult, that the applicant has first obtained the information that the Registrar General is required to provide under Schedule 2 of the Act.

Where an adopted adult makes an application to an ASA seeking contact with an adult birth relative he will need to supply evidence that, but for his adoption, he would be related to that person by blood, including half-blood, or marriage. Therefore, an adopted person will need to know the information necessary to obtain a certified copy of the record of his birth – i.e. his birth name and date of birth. It is anticipated that in most cases, the applicant will already have obtained this from the Registrar General under Schedule 2 of the 2002 Act. The applicant may present a certified copy of the record of his original birth together with a copy of the later entry in the Adopted Children Register as evidence of (a) that he is related to the subject of the application and (b) his current identity.

3.3 An ASA must take all reasonable steps to satisfy itself as to the above points before it proceeds further with an application.

REGULATION 7 – IDENTIFYING THE APPROPRIATE ADOPTION AGENCY

3.4 Where an ASA has decided to proceed with an application, **regulation 7(1)** requires it to take all reasonable steps to establish if an adoption agency was involved in the adoption and, if so, to identify the appropriate adoption agency. The appropriate adoption agency is defined in regulation 2(1).

3.5 The applicant may know the adoption agency that arranged the adoption in which case the ASA need not make any further enquiries other than to establish that the agency still exists or, if it does not, the adoption agency that now holds the records in relation to the adoption.

3.6 Where the applicant does not know the details of the adoption agency but has information, such as the information on the adoption certificate, to indicate the area in which the adoption took place, **regulation 7(2)(a)** requires the ASA to contact the local authority in that area in the first instance. The local authority itself may have placed the child for adoption, it may have provided information to the court (in more recent cases, in the form of a Schedule 2 report) or it may hold records about the adoption. For example, where a voluntary adoption agency in the area had ceased to operate and had passed its adoption records into the safekeeping of the local authority.

3.7 Regulation 7(2)(b) provides that where an ASA has been unable to establish if an adoption agency was involved in the adoption, or where it cannot identify the appropriate adoption agency, it may make an application to the Registrar General for information. The Registrar General may be able to identify from the records he holds if an adoption agency was involved in the adoption. However, it should be borne in mind that for pre-commencement adoptions, the courts had no obligation to notify the Registrar General of the adoption agency involved and the court itself may be the best source of information.

3.8 Where the Registrar General holds information about the appropriate adoption agency, he is obliged to disclose it to the ASA by virtue of draft regulation 13. Where the Registrar General is unable to state whether or not an adoption agency was involved in the adoption, he is required by regulation 13(2) to confirm this in writing to the ASA. The Registrar General should at this stage provide the ASA with details of the court that made the adoption order, where the ASA does not already hold this information. The Registrar General's written confirmation that he does not hold information about the identity of the adoption agency (if any) involved in the adoption will enable the ASA to make an application to the court for the information it needs.

3.9 Where the Registrar General does not hold information about the appropriate adoption agency, **regulation 7(2)(c)** permits the ASA to make an application to the court that made the adoption order for this information. The way in which the application is made will be set out in draft regulations which will be issued for consultation by the Department for Constitutional Affairs. Where the court holds this information it will be obliged to disclose it to the ASA. Where the court does not hold this information, the ASA will be reliant upon information that may be provided by the Registrar General in accordance with draft regulation 8(3).

3.10 Both the Registrar General and the court will be able to charge the ASA a fee for disclosing information in accordance with this regulation.

REGULATION 8 – CONTACTING THE APPROPRIATE ADOPTION AGENCY

3.11 Regulation 8 sets out the process that must be followed by an ASA where it has been able to identify the appropriate adoption agency.

3.12 Regulation 8(1) requires the ASA to take all reasonable steps to contact the adoption agency that has been identified. If that agency has ceased to exist or no longer holds the adoption records, the ASA must take all reasonable steps to contact the adoption agency to which the records were transferred.

3.13 On contacting the adoption agency, the ASA is required in the first instance by regulation 8(1)(a) to inform the agency of the details of the application and to seek its views on the application and proposed contact between the applicant and the subject. The adoption agency should be able to provide the ASA with a view on the application based on the information available to it on the adoption case record. The adoption agency may have information on the case record to indicate that the application is inappropriate or that proceeding with the application may place the applicant or the subject at risk of harm. The subject may already have contacted the adoption agency to register a wish for contact or no contact with the applicant (or another specified person), and even that they do not wish to be approached by an ASA or the adoption agency (where the agency provides an intermediary service). The ASA will need to give very careful consideration to these views before deciding whether to proceed further with the application.

3.14 The ASA has the discretion at this stage not to proceed with the application. The ASA is required by regulation 4(2) to have regard to any views expressed by the adoption agency as well as the welfare of the adopted person and all the other circumstances of the case in deciding whether to proceed further.

3.15 Having ascertained the adoption agency's views, regulation 8(1)(b) provides that the ASA may seek from the adoption agency any information, including identifying information, it considers appropriate for the purposes of:

- Tracing the subject of the application;
- Seeking the subject's consent and enabling the subject to make an informed consent decision as to the disclosure of identifying information to the applicant (and possible contact).
- Counselling the subject about the application, its context and the consent decision.

3.16 The information disclosed by the adoption agency may only be used by the ASA for the purposes for which it is disclosed under regulation 8(1). The ASA must take particular care at this stage not to disclose to the applicant any identifying information about the subject that has been provided by the adoption agency.

3.17 Regulation 8(2) places a duty on the adoption agency to take all reasonable steps to comply with a request from an ASA under regulation 8(1). Under this regulation, the adoption agency may disclose the information that is necessary for the purposes of assisting the ASA in its functions under regulation 8(1). Therefore, it should consider at this stage whether it would be appropriate for the ASA to be given unrestricted access to the entire case record.

3.18 There may be circumstances where the information held by the adoption agency is sparse or where there is not sufficient information to enable the ASA to be able to trace the subject. **Regulation 8(3)** therefore permits the ASA to seek additional information from the Registrar General to assist it in tracing the subject and seeking their informed consent. This will be the connecting information referred to in section 79(3) of the Act which would enable an adopted person to be identified or information from the Adoption Contact Register where this may assist the search.

3.19 Where there was an entry for the subject on the Adoption Contact Register this would provide contact details as well as an indication as to whether or not the subject had formally signified a desire for contact or no contact with a birth relative. Where the subject had formally registered a wish for no contact with the applicant, the Registrar General will notify the ASA of this fact. The ASA should use this indication to inform its decision under regulation 4(1) as to whether or not to continue proceeding with the application. The ASA will need to give very careful consideration to the subject's wishes in deciding whether to proceed. Where the ASA decided on the basis of the information from the Adoption Contact Register not to proceed further with the application, it will notify the applicant accordingly.

3.20 Where the Registrar General has disclosed information under this regulation, the ASA may use it to trace the subject, but it must not disclose any information received from the Registrar General to anybody other than to the subject or where the subject had given his informed consent, to the applicant.

REGULATION 9 – PROCEDURE IN NON-AGENCY CASES

3.21 Regulation 9 provides for the circumstances in which the ASA is unable to identify the appropriate adoption agency, or where the appropriate adoption agency is identified but no longer exists, or where the adoption agency records cannot be found. It would also cover those cases where there was a private placement and no adoption agency was involved. In such circumstances, the ASA will be reliant upon information held by the Registrar General and it may make an application for the information referred to in regulation 8(3). This would enable, for example, the identity of an adopted person to be established from the Adopted Children Register.

3.22 As above, the ASA may use identifying information disclosed by the Registrar General to trace the subject of the application, but it must not disclose that information to anybody other than to the subject and to the applicant where informed consent has been obtained.

REGULATION 10 – COUNSELLING

3.23 Regulation 10(1) places a duty on the ASA to provide written information about the availability of counselling services to the following persons:

- Any person making an application in accordance with the regulations; or

- The subject of an application who has been traced and is considering whether to give consent to the disclosure of information that would identify him to the applicant.

3.24 Counselling will have an important role to play for both the applicant and the subject. It will help prepare the applicant for the process of tracing a birth relative from whom they may have been separated for many years. The applicant will need to be prepared for both a positive or a negative outcome, such as feelings of rejection that may arise where the subject refuses to give consent to the disclosure of information. Similarly, the subject will need counselling and support from the ASA in making their consent decision and coping with the consequences of that decision.

3.25 The purpose of regulation 10, therefore, is to ensure that both the applicant and the subject are made fully aware of the availability of counselling and how it may be beneficial in helping them to come to terms with the difficult and emotional issues that are likely to arise. Counselling will be important both during the searching process, in deciding whether to give consent, and in preparing for possible reunion and ongoing contact.

3.26 Regulation 10(2) requires the ASA to provide a description of the counselling on offer and any fees that may apply.

3.27 Given the important role that counselling may play, regulation 10(3) places a duty on the ASA to secure the provision of counselling where it has been requested by the applicant or the subject. The ASA may provide the counselling itself as part of its core service but regulation 10(4) provides the ASA with the discretion to make arrangements with another agency to provide the counselling on its behalf. This will be an adoption agency or another registered Adoption Support Agency. This may arise, for example, where the subject of an application lived a significant distance from the ASA and wished to receive counselling locally such as through their local authority.

REGULATION 11 – DISCLOSURE

3.28 Regulation 11 sets out the circumstances in which an ASA is permitted to disclose information, including identifying information, for the purposes of processing an application under these regulations.

3.29 Regulation 11(a) permits the ASA to disclose information, including identifying information, to the Registrar General for the purposes of obtaining information under Regulations 7, 8 and 9. Where the ASA is seeking the disclosure of the connecting information referred to in section 79(3) of the Act or information from the Adoption Contact Register, it will need to provide the Registrar General with the information he requires to conduct the necessary searches.

3.30 Regulation 11(b) permits the ASA to disclose information to the appropriate adoption agency for the purposes of seeking its views on the proposed application or where the ASA is seeking information under regulation 8. The ASA will need to disclose to the adoption agency details of the application and any other relevant background information to enable the adoption agency to trace the records, provide a view on the proposed application and to disclose the information necessary to enable the ASA to process the application.

3.31 Regulation 11(c) permits the ASA to disclose information to the subject of the application to enable him to make an informed decision as to whether to give consent to the disclosure of identifying information to the applicant. The agency is permitted to disclose the identity of the applicant to the subject but should not disclose identifying information about any other person that has been supplied by the adoption agency or the Registrar General. However, it may disclose background information so that the subject fully understands the nature and circumstances of the application and is able to make a consent decision based on all the available information.

3.32 Regulation 11(d) permits the ASA to disclose information, including identifying information, to an agency with which the ASA has made arrangements to provide counselling on its behalf. For example, an adoption agency or another registered Adoption Support Agency.

3.33 For the counselling to be meaningful, the person providing the counselling will require information from the ASA on the background and the circumstances of the case. The person providing the counselling will either be an employee of an adoption agency or another registered ASA and will have an automatic duty under these regulations to properly safeguard that information.

PART 4 – MISCELLANEOUS

4.1 This part of the guidance explains the miscellaneous provisions in the regulations. It includes the regulations relating to offences and the fees that may be charged by registered ASAs, adoption agencies and the Registrar General. It also explains the way in which the Registrar General must assist a registered ASA in processing an application.

This section covers:

Regulation 12: Offence

Regulation 13: Registrar General

Regulation 14: Fees

REGULATION 12 – OFFENCE

4.2 Regulation 12 makes it an offence for a registered ASA to disclose information in contravention of regulation 5. An ASA is prohibited from disclosing any identifying information about the subject of an application to the applicant without having first obtained the subject's informed consent.

4.3 This is an important safeguard and recognises that some people involved in an adoption have no wish to be traced or to have their details passed on. Inappropriate disclosure of information to the applicant may be distressing to the subject and it could even put an individual at risk of harm. It is right therefore that where a registered ASA discloses identifying information in contravention of regulation 5 it will commit a criminal offence punishable on summary conviction with a fine not exceeding level 5 on the standard scale (£5,000). An offence may also be grounds for the registration authority to cancel the ASA's registration.

REGULATION 13 – REGISTRAR GENERAL

4.4 Regulation 13(1) requires the Registrar General to take reasonable steps to comply with a request from a registered ASA under regulations 7,8 or 9. This would be where the ASA makes enquiries of the Registrar General as to the appropriate adoption agency, or where the ASA seeks disclosure of the connecting information referred to in section 79(3) of the Act to enable an adopted person to be identified or seeks disclosure of information from the Adoption Contact Register. Where a registered ASA seeks information in accordance with these regulations and the Registrar General holds that information he is obliged to disclose it. The Registrar General may charge the ASA a prescribed fee for the disclosure of this information.

4.5 Regulation 13(2) provides that where a registered ASA has sought information from the Registrar General as to the appropriate adoption agency under regulation 7, and the Registrar General does not hold this information, he must provide written verification of that fact together with details of the court that made the adoption order. The ASA may use the written confirmation from the Registrar General as authorisation to make an application to the relevant court for details of the appropriate adoption agency.⁴ The application to the court will be made under draft regulations to be published for consultation by the Department for Constitutional Affairs.

REGULATION 14 – FEES

4.6 Regulation 14(1) provides a registered Adoption Support Agency with the discretion to charge a fee to an applicant, including an adopted person, for processing an application in accordance with these regulations. This will be a fee to cover any reasonable costs incurred in processing an application, including seeking to identify the appropriate adoption agency, ascertaining its views as to the proposed application, and tracing the subject to seek their informed consent.

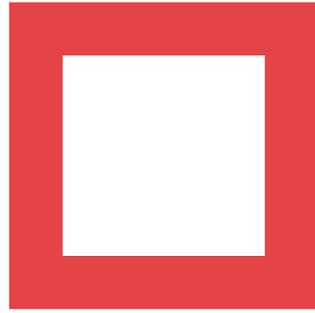
4.7 A registered ASA has the discretion to waive the payment of a fee – in whole or in part – such as where the applicant is on a low income or in receipt of state benefits.

4.8 Regulation 14(2) provides the ASA with the discretion to charge a fee to the applicant and to the subject to cover any reasonable costs incurred in securing the provision of counselling. The expectation is that the ASA will generally provide the counselling itself but it may make arrangements to secure the provision of counselling services on its behalf. Such an arrangement may be made with another registered ASA or an adoption agency.

4.9 Regulation 14(3) provides the Registrar General with the discretion to charge a fee that he determines to be reasonable for the disclosure of information to the ASA under regulations 7,8 or 9. This will be information as to the appropriate adoption agency or the disclosure of the connecting birth record information referred to in section 79(3) of the Act or information from the Adoption Contact Register. Where the Registrar General exercises his discretion to charge a fee for the disclosure of information, the ASA may seek to recover these costs from the applicant.

4.10 Regulation 14(4) provides an adoption agency with the discretion to charge the ASA a fee for the disclosure of information or providing its views to the ASA on the application under regulation 8. Again, this will be a fee to cover any reasonable costs incurred by the agency in disclosing information or providing its views. Where the adoption agency opts to charge a fee, the ASA is obliged to pay it.

4 As defined by regulation 2(1).



Guidance on the Access to Information (Post-Commencement Adoptions) Regulations 2004

PART 1 – ARRANGEMENT OF REGULATIONS

This part of the guidance explains:

Regulation 1: Citation, commencement and application

Regulation 2: Interpretation

SCOPE

1.1 These draft regulations – the Access to Information (Post-Commencement Adoptions) Regulations 2004 – provide for a more consistent approach to the retention, safeguarding and access to sensitive information about a person’s adoption. The 2002 Act and the regulations provide adoption agencies with a framework within which they are required to consider certain issues before making a decision as to whether to disclose identifying information. The framework recognises and seeks to balance the interests and wishes of all those involved in adoption. These draft regulations will replace Regulation 15 of the Adoption Agencies Regulations 1983, as amended, and associated guidance in LAC(84)3.

Citation, Commencement and Application

1.2 Regulation 1 sets the date on which these regulations will come into force and makes it clear that they apply to England only.

Interpretation

1.3 Regulation 2 defines certain expressions used in the draft regulations.

PART 2 – INFORMATION TO BE KEPT AND KEEPING OF THAT INFORMATION

2.1 This part of the guidance explains the regulations that require adoption agencies to maintain and preserve the information it holds about an adoption under section 56 of the Act once the adoption order has been made. The regulations set out the section 56 information that must be retained, how this information should be stored and the length of time for which it must be preserved. The regulations also set out the circumstances in which the adoption agency may transfer section 56 information to another adoption agency, subject to the prior approval of the registration authority.

This part of the guidance explains:

Regulation 3: Information to be kept about a person’s adoption

Regulation 4: Storage and manner of keeping of section 56 information

Regulation 5: Preservation of section 56 information

Regulation 6: Transfer of section 56 information

REGULATION 3: INFORMATION TO BE KEPT ABOUT A PERSON’S ADOPTION

2.2 Regulation 3(1) requires the adoption agency to keep on the child’s case record the information set out in regulations 3(2) and 3(3). This case record will have been established by virtue of draft regulation 11 of the Adoption Agencies Regulations 2004. The adoption agency is required to open an adoption case record for the child when adoption is identified as the plan for the child at a statutory review.

2.3 Once the adoption order has been made, the information that the adoption agency is required to keep on the child’s case record is referred to as “Section 56 information”.⁵ Section 56 information will be information about the adopted person, birth parents and other birth relatives, the adoptive parents and siblings. It will also include medical reports obtained by the agency and other information, such as the names of social workers who managed or worked on the adoption case. Section 56 information covers both identifying information and background information. Identifying information is defined as information about a person which, whether taken on its own or together with other information disclosed by an adoption agency, identifies a person or enables a person to be identified. It will include names, residential addresses, educational or employment addresses, legal and medical information, photographs or audio-visual cassettes. It may also be information which a birth relative has asked to be kept, such as correspondence from the birth mother about the circumstances leading to the child’s placement for adoption.

⁵ Section 56 of the 2002 Act

2.4 The background information covered by section 56 will be information which does not identify a person or enable them to be identified. This might include the adopted person's birth details, such as birth weight or time of birth, information about progress at school or any special needs. It is largely contextual information which will help inform the adoptive parents in caring for the child and addressing any specific needs. It is also information which the adoption agency may disclose to birth relatives about the child's progress and well being without revealing the child's new identity or whereabouts, or the identity of the adoptive parents.

2.5 The draft Adoption Agencies Regulations 2004 set out the information that is to be obtained by the adoption agency and placed on the respective case records for the child and the prospective adopters as the plan for the child's adoption develops. Once the adoption order has been made, **Regulation 3(2)** places a requirement on the appropriate adoption agency to continue to maintain the case record that was set up for the child and compiled by virtue of Part 3 of the Adoption Agencies Regulations.

2.6 The appropriate adoption agency will either be the agency that placed the child for adoption or the agency to which records have been transferred by virtue of regulation 6.

2.7 In cases where the child was not placed for adoption by an adoption agency but where the relevant local authority provided a report to the court,⁶ the local authority is required to maintain a case record for that child after the adoption order has been made. The local authority must ensure that the case record includes any reports provided to the court and any other relevant information about the child, the birth relatives and the adopters. The requirement to keep the information prescribed by Part 3 of the Adoption Agencies Regulations will not apply.

2.8 Regulation 3(3) prescribes the additional information that the adoption agency is required to keep, as follows:

(a) any information that has been supplied by a birth parent or other birth relative of the adopted person with the intention that the adopted person may, should he wish to, be given this information.

This regulation covers circumstances where a birth parent or birth relative has deposited information with the adoption agency with the intention that the adopted person may be given this information, should he wish to receive it. For example, it may include correspondence from the birth parents or wider birth relatives. It is not uncommon for a birth mother to deposit a letter with the adoption agency for the adopted person, explaining her feelings about the child's adoption. Such information may also include objects or mementoes relating to the child's early life. For example, a family photograph album or audio-visual cassettes.

6 Section 44 of the 2002 Act.

(b) any information supplied by the adopters or other persons which is relevant to matters arising after the adoption order has been made.

This covers information about the child's progress and development in the adoptive placement. Where this is non-identifying information it could be passed by the agency to the birth relatives. This regulation also covers information relating to other issues that may arise after the adoption order has been made, such as where an adopter contacts the adoption agency seeking an assessment for adoption support services, including financial support. The agency is under a duty to keep such information on the case record.

(c) any information that the adopted person has requested should be kept.

This regulation requires the adoption agency to keep on the case record any information supplied by the adopted person after the adoption order has been made, such as their views as to the disclosure of information about themselves or their wishes as to contact, or no contact, with a birth relative.

(d) any information given to the agency in respect of an adopted person by the Registrar General under section 79(5) of the Act (information that would enable an adopted person to obtain a certified copy of the record of his birth).

In those rare circumstances where an adopted person does not know their birth name on reaching the age of 18 he may apply to the adoption agency for the information which would enable him to obtain a certified copy of the record of his birth.⁷ Where the adoption agency does not hold this information, it may request it from the Registrar General.⁸ The Registrar General has a duty to disclose this information and the adoption agency must retain it on the adopted person's case record.

(e) any information disclosed to the adoption agency about an entry relating to the adopted person on the Adoption Contact Register.

Where an adoption agency has received an application for the disclosure of protected information, it is under a duty to take all reasonable steps to seek the views of any person the information is about as to the disclosure of that information. Where the adoption agency is not able to trace a person from the records it holds, it may seek information held by Registrar General on the Adoption Contact Register. If this still did not enable the agency to contact the individual, it may use an indication from the Adoption Contact Register entry as to contact, or no contact, to inform the exercise of its discretion as to the disclosure. Where the Registrar General discloses information from the Adoption Contact Register to the agency, this regulation requires the agency to retain that information on the case record.

⁷ Section 60(2)(a) of the 2002 Act

⁸ Section 79(5) of the 2002 Act

(f) any information to be recorded in accordance with regulations 9,10, 13 or 17.

Where an adoption agency has disclosed protected information in accordance with the above regulations, or where it has sought a person's views as to the disclosure of information, this regulation requires the agency to maintain a written record of any disclosure made or any views obtained from an individual. This could also include where a birth relative formally registered their views as to the disclosure of information or a wish for future contact, or no contact, with the adopted person in the event that he applied to the adoption agency for access to identifying information. Where a birth relative has provided such information to the adoption agency, this constitutes section 56 information and the agency is also under a duty to retain it as part of the adopted person's case record.

(g) the record of any agreement under regulation 10.

Regulation 10 sets out the arrangements for making an agreement for the disclosure of protected information to which the adoption agency, the adopters and the birth parents are parties. Such an agreement is intended to ensure that arrangements for open adoptions are clear and unhindered where there is agreement. Some adoptions are now made on an open basis where it is seen to be beneficial for the exchange of identifying information to occur. In other adoptions, contact may be indirect, with the adoption agency passing on letters or birthday cards from the birth family to the adopted child, and the birth family receiving information about the child's progress. Regulation 10 requires that such an agreement for the disclosure of protected information be recorded in writing by the adoption agency. This regulation requires a copy of that written agreement to be kept on the case record.

2.9 Regulation 3(4) defines information for the purposes of this regulation. This includes information in any form including paper records, electronic records, microfiche, photographs, audio and audio-visual cassettes, objects or mementoes. Even though this information may be kept separately from the main case record, it constitutes section 56 information and the adoption agency is therefore under a duty to retain it.

REGULATION 4: STORAGE AND MANNER OF KEEPING OF SECTION 56 INFORMATION

2.10 Regulation 4 requires the adoption agency to ensure that any section 56 information – in whatever format – is at all times closely safeguarded by staff or kept in secure conditions. Appropriate measures should be taken to safeguard against theft, unauthorised disclosure, damage, loss or destruction. The section 56 information held on the adopted person's case record will predominantly be a paper record containing social worker reports, adoption panel papers, legal and medical papers, plus any information supplied by birth relatives or others involved in the adoption. It will also comprise information held electronically or digitally or photographs and other mementoes.

2.11 The adoption agency is required to have in place adequate security arrangements to safeguard this information in its various formats. When not in use, any section 56 information should be stored in a lockable security cabinet or locked room so that it is not accessible to anybody who has no right to see it. Adequate arrangements must also be in place to minimise the risk of accidental damage or damage caused by fire or water. All agency staff with responsibility for safeguarding this information should be clear as to their duties under these regulations.

2.12 Where section 56 information is stored electronically or digitally, the adoption agency should ensure that adequate systems are in place to protect the integrity and confidentiality of this material. Information stored on PCs should be password protected and where information is stored on floppy disc, CD-ROM or microfiche, these should be securely stored when not in use. The adoption agency should ensure that section 56 information is not transmitted outside the agency by e-mail or facsimile unless its confidentiality can be assured.

2.13 There is nothing in this group of regulations to prevent an adoption agency from preserving section 56 information on microfiche or other electronic media. Particular care should be taken when transferring original documentation from the adoption case record to microfiche or other electronic formats. The adoption agency should ensure that information that is likely to be significant to the adopted person, such as letters or cards from a birth relative, is preserved in its original form.

2.14 The adoption agency should keep its security arrangements under review, and any breaches in the security of its records should be acted on promptly and steps taken to prevent a recurrence. This should be recorded in the agency's policies and procedures document.

2.15 The duties placed on the adoption agency by this regulation also apply to any section 56 information which is, for whatever reason, not retained on the agency's premises.

REGULATION 5: PRESERVATION OF SECTION 56 INFORMATION

2.16 Regulation 5 requires the adoption agency to preserve section 56 information for at least 75 years from the date on which the adoption order was made. The requirement to preserve section 56 information also applies to any information which is stored electronically or digitally (or by other means). Where, for example, information is stored on floppy disc or microfiche, the adoption agency must take all reasonable steps to protect against data corruption or damage to ensure that the information is preserved for at least 75 years.

2.17 Where an adoption agency decides to destroy section 56 information after the 75-year retention duty, the agency must treat this as confidential waste and it should be disposed of accordingly. Sensitive information relating to individuals involved in an adoption should be shredded prior to disposal.

2.18 In cases where the records relate to a child where the plan for adoption did not conclude with an adoption order being made, or to records of prospective adopters where the agency did not consider them suitable, regulation 38 of the Adoption Agencies Regulations 2004 will apply. This provides the adoption agency with the discretion to keep these records for such a period as it considers appropriate.

REGULATION 6: TRANSFER OF SECTION 56 INFORMATION

2.19 Regulation 6(1) sets out the circumstances in which an adoption agency is permitted to transfer its section 56 information (and any indexes to that information) to another adoption agency.

2.20 Where a voluntary adoption agency intends to cease to exist or operate, or where it is no longer registered, it must ensure that any section 56 information it holds about a person's adoption is not lost and is passed into the safekeeping of another adoption agency. Subject to having first obtained the written approval of the registration authority, a voluntary adoption agency that intends to cease to exist or operate, or where it is no longer registered, must:

- Transfer its section 56 information by agreement to another adoption agency; or
- Transfer its section 56 information to the local authority in whose area the society's principal office is situated.

2.21 The adoption agency receiving the section 56 information by virtue of this regulation will become responsible for retaining the information under regulation 3(2)(b), and for safeguarding and considering access to the information under these regulations.

2.22 Where a voluntary adoption agency intends to amalgamate with another voluntary adoption agency to form a new agency, it will need to make arrangements for its section 56 information to transfer to the new agency. Again, the prior written approval of the registration authority to the transfer of section 56 information will be needed.

2.23 Regulation 6(2) requires the adoption agency to which the section 56 information transferred to notify the registration authority in writing that the transfer has taken place.

PART 3 – DISCLOSURE OF SECTION 56 INFORMATION

3.1 This section of the guidance explains the circumstances in which an adoption agency may be authorised or required to disclose section 56 information, or may enter into an agreement for the disclosure of section 56 information.

3.2 This part covers:

Regulation 7: Disclosure of section 56 information for purposes of agency's functions

Regulation 8: Disclosure of section 56 information for the purposes of inquiries, inspection etc.

Regulation 9: Requirements relating to disclosure

Regulation 10: Agreements for the disclosure of protected information

REGULATION 7: DISCLOSURE OF SECTION 56 INFORMATION FOR PURPOSES OF AGENCY'S FUNCTIONS

3.3 Regulation 7(1) provides an adoption agency with the discretion to disclose section 56 information that is not protected information for the purposes of carrying out its functions as an adoption agency. This replicates the existing provision in the Adoption Agencies Regulations 1983.

3.4 This regulation permits an adoption agency to disclose at its discretion background information about persons involved in an adoption. Background information is information which does not identify a person or enable them to be identified. For example, this regulation allows an adoption agency to disclose information about an adopted child's progress with his adoptive family to a birth relative without disclosing the child's new identity or whereabouts or the identity or whereabouts of the adoptive family.

3.5 The adoption agency may also disclose background information to an adopted person, providing details of their early life or the circumstances that led to them being placed for adoption without compromising the identity of members of the birth family.

3.6 Where an adoption agency exercises its discretion to disclose background information, it should first consider whether this information disclosed in isolation may identify a person when linked with other information disclosed by the agency. The agency is required by regulation 9 to keep a written record of any information disclosed by virtue of this regulation. This should include a description of the information disclosed, the date of disclosure, the person to whom the information was disclosed, any conditions attached to the disclosure and the reason for the disclosure.

3.7 Regulation 7(2) permits an adoption agency to disclose section 56 information, including protected information, to a registered Adoption Support Agency (ASA) which is providing services to the adoption agency in connection with the agency's functions under sections 61 or 62 of the 2002 Act.

3.8 Where an adoption agency has received an application for the disclosure of section 56 information, sections 61(3), 62(3) and 62(4) of the Act require the adoption agency to take all reasonable steps to obtain the views of any person the information is about as to the disclosure of that information. To assist the adoption agency, it may make arrangements with a registered ASA to trace a person and seek their views on the agency's behalf. Before making such arrangements with an Adoption Support Agency, the adoption agency must satisfy itself that:

- The conditions of the Adoption Support Agency's registration do not prevent it from providing such services;
- The Adoption Support Agency has the necessary skills and experience to undertake this work.

3.9 The responsibility for deciding whether or not to disclose the information will remain with the adoption agency.

3.10 Regulation 7(3) provides that an adoption agency may disclose section 56 information, including protected information, to a person authorised in writing by the Secretary of State to obtain information for the purposes of research. It is for the adoption agency to decide whether it wishes to participate in any research, as the Secretary of State cannot commit any agency to research activity. Authority for a researcher to seek access to adoption records will be provided by a senior official within DfES Children, Young People and Families Directorate on behalf of the Secretary of State.

3.11 An adoption agency may not make section 56 information available to an outside researcher unless he holds a valid authority in respect of that research project. Before the Secretary of State's authority is given, research proposals will be considered carefully by DfES to assess whether the potential value of the research justifies disclosure to the researcher. The Secretary of State will also need to be satisfied that any information obtained for the purposes of research will be properly safeguarded and its confidentiality maintained. Authorised researchers will be required to sign an undertaking to use any information obtained only for the purposes of research and may not publish any material which might enable any person involved in an adoption to be identified.

REGULATION 8: DISCLOSURE OF SECTION 56 FOR THE PURPOSES OF INQUIRIES, INSPECTION ETC.

3.12 Regulation 8 sets out the circumstances in which an adoption agency may be required to disclose section 56 information or provide unrestricted access to any section 56 information it holds. This regulation updates the existing provision at regulation 15 of the Adoption Agencies Regulations 1983.

3.13 Where a request for access to section 56 information falls within the remit of this regulation, the adoption agency has no discretion to withhold the information or to deny access to it. There is a duty on the adoption agency to comply with the request.

3.14 Regulation 8(1) sets out the circumstances in which an adoption agency may be required to disclose section 56 information or provide access to the section 56 information it holds, as follows:

(a) to those holding an inquiry under section 81 of the Children Act 1989 or section 17 of the 2002 Act (inquiries) for the purposes of such an inquiry.

An inquiry under section 81 of the 1989 Act or section 17 of the 2002 Act may seek the disclosure of section 56 information in relation to a matter before the inquiry. Access to, or disclosure of, section 56 information is to be provided on request to any person acting for the inquiry. The inquiry must show that access to section 56 information is necessary for the purposes of taking forward the inquiry. Where the adoption agency has concerns about disclosing section 56 information to the inquiry, for example if the inquiry is being held in public, it should seek the prior written agreement of the inquiry that it will maintain the confidentiality of this information.

(b) to the Secretary of State.

There may be circumstances in which the Secretary of State may seek access to, or the disclosure of, section 56 information. For example, where the Secretary of State needs to obtain information from the adoption agency in order to decide whether to establish an inquiry under the Children Act 1989 or section 17 of the 2002 Act. This regulation also gives general authority for the provision of statistical information to central Government, known as “the adoption return”, though this information will normally be limited to statistical data and will not include any protected information.

(c) to the registration authority.

The disclosure of section 56 information will be necessary for the purposes of the functions conferred on the registration authority by Parts II and III of the Care Standards Act 2000. Part II of the 2000 Act provides for applications by an adoption agency for registration with the registration authority, and for refusals and cancellations of registrations. So the adoption agency may be required by the registration authority to disclose section 56 information in connection with a decision by the registration authority to cancel a voluntary adoption agency’s registration, or in relation to an appeal against such a decision by the registration authority.

Part III of the Care Standards Act 2000 provides the registration authority with the powers to regulate and inspect local authority adoption and fostering services. Section 45 of the 2000 Act provides the registration authority with the powers to require a local authority to provide any information relating to its adoption service in connection with an inspection. Regulation 8(1)(c) therefore places a corresponding duty on the adoption agency to disclose any information requested by the registration authority.

(d) Subject to the provisions of sections 29(7) and 32(3) of the Local Government Act 1974 (investigations and disclosure), to a Local Commissioner, appointed under section 23 of that Act (Commissioners for Local Administration), for the purposes of any investigation conducted in accordance with Part 3 of that Act;

Regulation 8(1)(d) provides for circumstances where a local commissioner (i.e. the Local Government Ombudsman) is investigating a complaint involving a local authority adoption agency and needs access to section 56 information in order to do so. This will only apply to local authority adoption agencies, as the local commissioner has no powers to investigate the activities of registered voluntary adoption agencies. Where the local commissioner requests access to section 56 information or the disclosure of section 56 information for the purposes of investigating a complaint, the local authority is required by this regulation to provide the information sought.

A local authority may, under s29(7) of the 1974 Act, refuse to disclose certain information to a local Commissioner or Ombudsman where the authority would not be required to disclose it to the High Court. A local authority may also seek to serve a statutory notice on a local commissioner or ombudsman under section 32(3) of the 1974 Act. Such a notice would preclude him from disclosing to anyone else any information which has been disclosed to him during the course of an investigation.

(e) to any person appointed by the adoption agency for the purposes of the consideration by the agency of any representations (including complaints).

Sections 26(3) and 26(4) of the Children Act 1989 require local authorities to establish a procedure for considering representations, including complaints, and for involving an independent person in that procedure. The Voluntary Adoption Agencies and Adoption Agencies (Miscellaneous Amendments) Regulations 2003 require voluntary adoption agencies to establish a complaints procedure. Regulation 11 of those regulations requires the VAA to establish a written procedure and regulation 12 provides for complaints to be fully investigated.

For the purposes of adoption, a service user will be any person listed in section 3(1) of the 2002 Act. Where an independent person has been appointed for the purpose of the consideration of any representations, or complaints, in relation to an adoption, he is likely to need access to section 56 information or the disclosure of section 56 information from the case record. Regulation 8(1)(e) places a duty on the adoption agency to disclose the information requested by the person appointed by the agency to consider the representations or complaints.

(f) to a panel constituted under section 12 of the Act to consider a qualifying determination in relating to the disclosure of section 56 information.

Section 12 of the 2002 Act provides for an independent review mechanism to review determinations made by adoption agencies about the disclosure of information under sections 56–65 of that Act. Where an adoption agency exercises its discretion not to proceed with an application for the disclosure of information, or where the agency reaches a determination to withhold or to disclose information contrary to the expressed view of the person who would be identified by disclosure, this will constitute a qualifying determination for the purposes of section 12 of the Act. Therefore, the applicant or the person who would be identified by the disclosure of section 56 information may request that the adoption agency's determination be reviewed by the independent review mechanism under section 12.

In order to review a determination made by an adoption agency, the independent review mechanism may require the disclosure of section 56 information from the case record. Regulation 14(3)(d) of these regulations provides the independent review mechanism with a power to seek the disclosure of section 56 information from the case record. Regulation 8(1)(f) therefore places a corresponding duty on the adoption agency to provide disclosure of section 56 information, where it has been requested by the independent review panel.

(g) to a court having the power to make an order under the 2002 Act or the 1989 Act.

Regulation 8(1)(g) requires the adoption agency to provide access to section 56 information to a court which has a power to make an order under the 2002 Act or under the Children Act 1989. This might occur where, for example, an adoption agency was subject to judicial review or in connection with proceedings brought by the registration authority.

REGULATION 9: REQUIREMENTS RELATING TO DISCLOSURE

3.15 Regulation 9 prescribes the way in which an adoption agency must record the disclosure of section 56 information where the disclosure is made in accordance with regulations 7 or 8.

3.16 This regulation requires the adoption agency to keep a written record of any access provided to section 56 information in accordance with regulations 7 or 8. This is particularly important where the agency has exercised its discretion to disclose Section 56 information under regulation 7(1). The agency should maintain an accurate record of the person(s) to whom access or disclosure was provided, together with brief supporting reasons and the date on which disclosure took place. The adoption agency may have cause to rely on this information at a later date, for example in the event of a legal challenge in respect of information that the agency had disclosed using its discretionary power.

REGULATION 10: AGREEMENTS FOR DISCLOSURE OF PROTECTED INFORMATION

3.17 Section 57(5) of the 2002 Act is intended to allow agreements to be made for the sharing of protected information. **Regulation 10(1)(a)** therefore provides for a written agreement to be made for the sharing of protected information where the adoption agency, the birth parents and the adoptive parents are party to the agreement.

3.18 The purpose of such an agreement is to release the adoption agency from the duty of having to seek the views of any person identified by the disclosure of information, where that person is either the adopted person or any of those parties that have already given their prior agreement. For example, where an agreement had been made and an adopted person applied to the adoption agency for the disclosure of identifying information about a birth parent, the adoption agency would not be required to seek their views as to the disclosure of information. Such an agreement may also facilitate arrangements for an open adoption arrangement and the exchange of identifying information between birth and adoptive families where the agency considered that this would benefit the child's welfare and best interests.

3.19 Where an agreement for the sharing of information is being considered, the adoption agency is required by regulation 15(c) to provide written information about counselling to any person who is considering entering into the agreement. Counselling will help ensure that the parties to the agreement fully understand the nature of the agreement and its effect. This will normally be the birth and adoptive families though the adoption agency may also wish to ascertain the wishes of the child – subject to his age and understanding – and may provide counselling to him for this purpose. Regulation 10(1)(b) requires that the adoption agency must satisfy itself that an agreement is in the adopted child's best interests.

3.20 Regulation 10(2) provides that where an agreement is made for the sharing of protected information, the adoption agency is required to record this in writing. It should set out the reasons for making the agreement, the information that may be disclosed under the agreement, and the persons to whom the information may be disclosed. The agreement must be retained on the case record and a copy should be provided to each party to the agreement.

PART 4 – DISCLOSURE OF PROTECTED INFORMATION UNDER SECTIONS 61 AND 62

4.1 This part of the guidance explains how an application for the disclosure of protected information should be made to an adoption agency and the steps to be taken by the agency on receipt of an application.

This section covers:

Regulation 11: Manner of application

Regulation 12: Duties of agency on receipt of application

Regulation 13: Record of views

Regulation 14: Independent review of determinations

REGULATION 11 – MANNER OF APPLICATION

4.2 Regulation 11 prescribes the way in which an application to an adoption agency for the disclosure of information under sections 61 and 62 must be made. It provides that any application must be made in writing to the agency and should include brief supporting reasons for the application to enable the agency to properly discharge its functions under sections 61 and 62 of the Act.

4.3 Some adoption agencies will hold many thousands of adoption records so it is important that the application provides sufficient information to enable the agency to locate the section 56 information and make an initial assessment of the merits of the application. Where the applicant is an adopted person, the following information should be provided:

- Current forename and surname
- Name on adoption (if different from current name)
- Date of Birth
- Full name of adoptive parent(s)
- Original birth name (if known)
- Date of adoption (if known)

Where the application is from a birth relative or any other person involved in an adoption, the following information should be provided:

- Current (and previous, if relevant) full name
- Original birth name of adopted person
- Relationship to adopted person (if a birth relative)
- Date of adoption (if known).

REGULATION 12 – DUTIES OF AGENCY ON RECEIPT OF APPLICATION

4.4 Regulation 12 sets out the steps that an adoption agency must take on receipt of an application for the disclosure of protected information under sections 61 or 62 of the Act.

4.5 The adoption agency must first confirm the current identity of the applicant and establish that he or she is:

- (a) the adopted person, or
- (b) a birth relative of the adopted person, or
- (c) any other person involved in the adoption

In satisfying itself of the applicant's current identity, the adoption agency may request additional proof of identity such as a passport, a certified copy of the record of birth or a certified copy of an entry in the Adopted Children Register.

4.6 There may be circumstances where the applicant requires assistance with making an application to the adoption agency. For example, where the applicant has a physical or mental impairment which prevents them from making an application without assistance. In such cases, the agency is required by **regulation 12(a)** to confirm the identity of any person acting on the applicant's behalf and to satisfy itself that that person is acting with the proper authority of the applicant. This will normally be in the form of a written authority from the applicant, though authority may be given orally to the agency where it is not possible to do so in writing.

4.7 Regulation 12(b) provides the adoption agency with the discretion to seek further information from the applicant about the application to enable it to properly discharge its functions under sections 61 and 62 of the Act. On receipt of an application for the disclosure of section 56 information, the adoption agency must first make a judgement as to whether it intends to proceed with the application. The agency must therefore ensure that it has sufficient information from the applicant to enable it to locate the appropriate case record and make an initial assessment of the merits of the application.

4.8 In deciding whether to proceed with an application, the adoption agency must first establish if the information being sought relates solely to an adult or if any of the information sought is about a child. Where none of the information being sought is about a child, section 61 of the Act will apply. In all other cases, section 62 of the Act will apply.

4.9 In deciding whether to proceed with an application for the disclosure of protected information about an adult, the adoption agency is required by section 61 of the Act to consider:

- The welfare of the adopted person;
- Any views that the agency may have recorded on the case record as to the disclosure of information;
- All the other circumstances of the case.

4.10 In deciding whether to proceed with an application for the disclosure of protected information, where any of that information is about a child, the adopted agency is required by section 62 of the Act to consider the following matters:

- If the child is an adopted child, the child's welfare must be the paramount consideration;
- In the case of any other child, the agency must have particular regard to the child's welfare.

4.11 In applications made under section 62 of the Act, the adoption agency must also consider:

- The welfare of the adopted person (where the adopted person is not an adopted child whose welfare must be the paramount consideration);
- Any views that the agency may have on the case record as to the disclosure of information;
- All the other circumstances of the case.

4.12 The adoption agency will need to have regard to all the relevant background information available to it on the case record in considering all the circumstances of the case. There may be information on the case record to suggest that the application is inappropriate or even vexatious. The agency may have reasonable grounds to suspect that the disclosure of protected information may result in an individual being placed at risk of distress or serious harm. For example, where a child was placed for adoption as a result of sexual abuse within the birth family, disclosure of protected information to the adopted person about the birth relative that perpetrated the abuse could place the adopted person at risk of further harm. Similarly, the adopted person may wish to cause harm to the birth relative.

4.13 The adoption agency is also required by sections 61(5)(b) and 62(7)(b) to consider any views that may already have been provided to the agency by a person as to the disclosure of information about themselves. For example, a person involved in the adoption may already have formally registered an objection to the disclosure of information about themselves. Where views have been recorded on the case record, the adoption agency must give careful consideration to those views in deciding whether or not to proceed with the application.

4.14 Where the adoption agency determines that it intends not to proceed with an application, for whatever reason, it must notify the applicant in writing together with brief supporting reasons. This will constitute a qualifying determination for the purposes of section 12 of the Act and the agency must notify the applicant of their right to seek an independent review of the agency's determination. The process to be followed thereafter is prescribed by regulation 14.

REGULATION 13: RECORD OF VIEWS

4.15 Where an adoption agency determines that it does intend to proceed with an application for the disclosure of protected information, it is required to take all reasonable steps to seek the views of any person the information is about as to the disclosure of that information. This will require the agency to engage in tracing work, using the information it has on the case record and possibly gathering more information, if the agency's current records do not enable it trace a person. For example, the adoption agency may seek information held by the Registrar General on the Adoption Contact Register.

4.16 Where the adoption agency has been able to trace and contact a person to seek their views, the agency is required by regulation 13 to ensure that those views are recorded in writing and retained on the case record. The recording of any views by the agency must make it clear whether the person whom the information is about has consented or objected to the disclosure of information. Although the agency retains the discretion to disclose section 56 information, or to withhold it, contrary to the views expressed by the person the information is about, the agency should give careful consideration to that person's views. Where the agency makes a qualifying determination, it should record its reasons for doing so. It may have cause to rely on that information at a later date. For example, where a person seeks an independent review of the agency's determination to disclose or withhold the disclosure of section 56 information.

4.17 It is also important that the agency retains a written record of a person's views as to the disclosure of information in the event that the agency receives a further application for the disclosure of information about that person. Those views may inform a decision by the adoption agency as to whether or not to proceed with an application.

REGULATION 14: INDEPENDENT REVIEW

4.18 Regulation 14(1) prescribes the determinations made by an adoption agency in relation to an application for the disclosure of information under sections 61 and 62 of the Act that constitute a qualifying determination for the purposes of section 12 of the Act. The independent review mechanism is intended to balance the agency's exercise of discretion in relation to the disclosure of protected information by providing a right to request an independent review of the agency's determination.

4.19 A qualifying determination will be where the agency:

- (a) determines not to proceed with an application from any person for the disclosure of protected information;
- (b) determines to disclose protected information to the applicant against the expressed wishes of the person the information is about;
- (c) determines not to disclose information about a person to the applicant where the person the information is about has agreed to the disclosure of that information.

4.20 Therefore, where an adoption agency determines not to proceed with an application or where it determines not to disclose information to the applicant, even though the subject has consented to the disclosure, the applicant will have the right to request an independent review of the agency's determination. Where the agency determines to disclose information to the applicant, contrary to the wishes of the person that the information is about, that person will be able to request an independent review of the agency's determination.

4.21 Regulation 14(2) provides that where the adoption agency makes a qualifying determination, it must provide written notification of its determination and provide supporting reasons to the person that has the right to request an independent review of that determination. The agency must advise the person that he may apply to the independent review panel for a review of the qualifying determination within 28 days. The period of 28 days should commence on the day that the agency sends its written notification.

4.22 No information may be disclosed while an application to the independent review panel may be pending. The agency should take no further action in respect of the disclosure of information until it has verified with the independent review panel that the person has not applied for an independent review within the 28-day period. This is particularly important where the qualifying determination was in respect of a decision by the agency to disclose protected information against the expressed wish of the subject of the application. Where the person elects not to apply to the independent review panel within the 28-day period, the adoption agency shall proceed on the basis of its original determination and notify the person accordingly.

4.23 Where the adoption agency receives notification from the independent review panel that a person has applied for an independent review of the agency's qualifying determination, regulation 14(3) requires the agency to send to the independent review panel – within 10 working days – the following information:

- A copy of the application for the disclosure of protected information;
- A copy of the agency's notification, together with the agency's reasons for making the qualifying determination, as sent in accordance with regulation 14(2);
- The written record of any views obtained by the adoption agency in accordance with sections 61(3), 62(3) or 62(4) of the Act;
- Any additional information requested by the independent review panel.

4.24 Regulation 14(5)(b) defines a working day for the purposes of regulation 14(3) as any day other than a Saturday or Sunday, Christmas Day, Good Friday or a day which is a bank holiday.

4.25 Where the independent review panel requests additional information from the adoption agency, the agency must disclose this information in accordance with regulation 8(f).

PART 5 – COUNSELLING

5.1 This part of the guidance explains the regulations setting out the framework for the provision of counselling services in connection with the disclosure of information under sections 56–65 of the Act. The regulations place duties on adoption agencies to provide information about the availability of counselling, to secure the provision of counselling where a person has requested it, and permits the adoption agency to disclose information for the purposes of counselling.

5.2 This part of the guidance covers:

Regulation 15: Information about the availability of counselling

Regulation 16: Duty to secure counselling

Regulation 17: Disclosure of information for the purposes of counselling

REGULATION 15: INFORMATION ABOUT THE AVAILABILITY OF COUNSELLING

5.3 Regulation 15(1) places a duty on the adoption agency to provide written information about the availability of counselling – and how it may be accessed – to:

- (a) any person seeking the disclosure of information from the adoption agency under sections 60, 61 or 62 of the Act;
- (b) any person whose views have been sought by the agency as to disclosure of information in accordance with sections 61(3), 62(3) and 62(4) of the Act;
- (c) any person considering entering into an agreement with the agency by virtue of regulation 10.

5.4 Under sections 56–65 of the 2002 Act and these regulations, there is no requirement for a person to undergo counselling in connection with the disclosure of information about an adoption. However, experience has shown that counselling can help adopted persons come to terms with the disclosure of information about their background and family history. Counselling may be of particular value for those adopted people whose family history includes distressing events such as abuse or neglect. Similarly, where a birth relative is seeking information about an adopted person, the support and advice of an experienced counsellor may help prepare them for some of the difficult issues that may arise during the process of seeking information. Their expectations may be unrealistic and seeking information may bring back painful memories of the circumstances which led to a child being placed for adoption.

5.5 Regulation 15(2) requires that where the adoption agency provides information about the availability of counselling services, it must also provide information about any fees that may apply. The adoption agency has the discretion to charge a fee for securing the provision of counselling – other than where the applicant is an adopted person, in which case a fee may not be charged.

REGULATION 16: DUTY TO SECURE COUNSELLING

5.6 Where a person requests the provision of counselling, **regulation 16(1)** places a duty on the adoption agency to secure the provision of counselling services for that person.

5.7 Regulation 16(2) provides the adoption agency with the discretion to provide the counselling itself or to make arrangements with other counselling agencies to provide counselling on the agency's behalf. Where the person is in England or Wales, regulation 16(2)(a) provides that the adoption agency may make arrangements for counselling to be provided by another adoption agency or a registered adoption support agency.

5.8 Where an adoption agency intends entering into an arrangement with a registered adoption support agency to provide counselling, the agency will need to verify that the conditions of the ASA's registration do not prevent it from offering such services. The adoption agency will also wish to satisfy itself that the ASA has the necessary skills and experience to take on the individual case.

5.9 Where the person is in Scotland, **regulation 16(2)(b)** provides that the agency may make arrangements with a Scottish adoption agency. This may be a local authority or voluntary adoption agency provided it is registered to provide that service.⁹ Where the person is in Northern Ireland, regulation 16(2)(c) permits the agency to make arrangements with a registered adoption society or Health and Social Services Board.

5.10 Where the person who wishes to receive counselling is outside the UK, **regulation 16(2)(d)** permits the adoption agency to make arrangements with an overseas counselling provider. The agency will wish to satisfy itself, as far as reasonably practicable, that the provider has the necessary qualifications, skills and experience to provide the counselling service. In most cases, it is anticipated that the person seeking the overseas counselling will make their own arrangements to receive it, being best placed to identify local providers and the fees charged by them. Where the agency has incurred costs in securing the provision of counselling outside the UK, the agency may require any person, **including an adopted person**, to pay a fee to cover any reasonable costs incurred in securing the counselling provision. This is the only circumstance in which an adopted person may be required to pay a fee by the agency.

REGULATION 17: DISCLOSURE OF INFORMATION FOR THE PURPOSES OF COUNSELLING

5.11 Regulation 17(1) permits an adoption agency to disclose section 56 information to an agency or person with whom the adoption agency has made arrangements to provide counselling on its behalf. For example, where an adoption agency has made arrangements with a registered Adoption Support Agency with skilled counsellors to provide specialist help or to provide more general counselling services on its behalf.

9 Section 144(3) of the 2002 Act.

5.12 For counselling to be meaningful and beneficial, the person providing the counselling will require access to section 56 information held by the agency. The adoption agency has the discretion to disclose the information it considers necessary for the counsellor to provide effective counselling. This may be all of the section 56 information that it holds about the adoption. The adoption agency should be mindful that it may be misleading for information about a person's adoption to be disclosed out of context. It is envisaged, therefore, that in most cases the adoption agency will allow the counselling agency unrestricted access to the section 56 information it holds. This would enable the counsellor to consider all the circumstances of the case and decide which information would be of most value for the counselling interview(s).

5.13 Where an adoption agency has disclosed protected information to a person providing counselling on the agency's behalf, that person must take particular care not to inappropriately disclose any protected information about any person involved in the adoption. For example, where initial counselling is being provided to a person who has applied to an agency for the disclosure of protected information, care must be taken not to disclose any information which may identify a person involved in the adoption. However, where an agency has agreed that section 56 information may be disclosed in accordance with these regulations, the counsellor may disclose it on behalf of the agency.

5.14 Regulation 17(2) requires the adoption agency to keep a written record of any information disclosed, including protected information, in connection with providing – or securing the provision of – counselling. The written record should include a description of the information disclosed, the date of disclosure, the person to whom the information was disclosed and any conditions or restrictions attached to the disclosure.

PART 6 – THE REGISTRAR GENERAL

6.1 This section of the guidance explains the circumstances in which an adoption agency may seek information from the Registrar General and the information that the Registrar General is obliged to disclose to an adoption agency.

6.2 This part covers:

Regulation 18: Seeking information from the Registrar General

Regulation 19: Registrar General to disclose information regarding the appropriate adoption agency and the Adoption Contact Register

REGULATION 18: SEEKING INFORMATION FROM THE REGISTRAR GENERAL

6.3 Section 60(2)(a) of the 2002 Act provides that an adopted person, on attaining the age of 18, may apply to the appropriate adoption agency for the information that would enable him to obtain a certified copy of the record of his birth. The appropriate adoption agency will be:

(a) if the person was placed for adoption by an adoption agency, that agency or (if different) the agency that holds the records in relation to the adoption.

(b) In any other case, the local authority to which notice of intention to adopt was given.¹⁰

6.4 Where an adopted person does not know the information needed to obtain a certified copy of his record of birth (i.e. his birth name and date of birth) **Regulation 18(1)** provides that he may apply to the adoption agency for this information. In the rare cases where the adoption agency does not hold the information, it must seek the information from the Registrar General.¹¹ Cases where the adoption agency will not hold this information will be rare but it may arise where, for example, the adoption agency is unable to trace the adopted person's case record or where the records have been damaged or destroyed.

6.5 Where the adoption agency applies to the Registrar General for the information to enable an adopted adult to obtain a certified copy of the record of his birth, regulation 18 requires the agency to provide the Registrar General with the following information:

(a) the full adoptive name, date of birth and country of birth of the adopted person;

(b) the names of that person's adoptive father and mother;

(c) the date of the adoption (if known).

6.6 On receipt of an application from the adoption agency in the proper manner, the Registrar General is required by regulations to disclose the information requested to the adoption agency. It is implicit in Section 60(2)(a) of the Act that this information must then be passed on to the adopted adult by the adoption agency.

¹⁰ Section 44 of the 2002 Act

¹¹ Section 79(5) of the 2002 Act.

6.7 Regulation 18(2) provides for circumstances in which the adoption agency may apply to the Registrar General for information he may hold on the Adoption Contact Register. Where an adoption agency is seeking to trace a person for the purposes of seeking his views under sections 61(3), 62(3) or 62(4) of the Act, it may be unable to trace a person from the records it holds. In such circumstances the agency may apply to the Registrar General for information he may hold about that person on the Adoption Contact Register.

6.8 Where there is an entry about the person on the Adoption Contact Register, this may contain the information the agency needs to trace and contact the person, such as a recent contact address. Where the Registrar General holds this information, he is required by regulation 19(1)(b) to disclose it to the adoption agency.

6.9 Where the Registrar General discloses information about an entry in the Adoption Contact Register but this still does not enable the adoption agency to trace the person, the agency may use an indication from the Register entry as to contact, or no contact, to inform the exercise of its discretion as to the disclosure of information.

REGULATION 19: REGISTRAR GENERAL TO DISCLOSE INFORMATION REGARDING THE APPROPRIATE ADOPTION AGENCY AND THE ADOPTION CONTACT REGISTER

6.10 Regulation 19 places a duty on the Registrar General to disclose information about the appropriate adoption agency to any person who is seeking to make contact with that agency. It also requires the Registrar General to disclose, on application by an adoption agency, any information it needs about an entry on the Adoption Contact Register.

6.11 In relation to any adoption made after the Act comes into force, where a person is seeking the disclosure of information but does not know which agency to apply to, he may apply to the Registrar General for information which identifies the appropriate adoption agency. **Regulation 19(1)(a)** requires the Registrar General to disclose to any person the information he needs to contact the appropriate adoption agency,¹² or the agency which holds the information about the adoption.

6.12 For example, where a birth sibling is seeking information about his brother but does not know which agency arranged his brother's adoption, the Registrar General will be required to inform the birth sibling so that he may apply for information from the appropriate adoption agency.

6.13 Regulation 19(1)(b) requires the Registrar General to disclose to an adoption agency the information that it requires about an entry on the Adoption Contact Register. The adoption agency may seek such information from the Registrar General by virtue of regulation 18(2).

¹² Defined in section 65(1) of the 2002 Act.

6.14 Where the Registrar General discloses information about an entry on the Adoption Contact Register to an adoption agency, he may charge a fee to the agency which he determines to be reasonable. Where the Registrar General charges a fee, regulation 19(2) requires the agency to pay that fee. Although this regulation provides the Registrar General with the power to charge a fee he may wish to exercise discretion over whether to use it, particularly for providing information to voluntary adoption agencies.

PART 7 – MISCELLANEOUS

7.1 This part of the guidance explains the miscellaneous provisions in the regulations. It includes the regulations relating to offences and the fees that may be charged by an adoption agency in respect of the disclosure of information under sections 56–65 of the Act.

7.2 This part covers:

Regulation 20: Offences

Regulation 21: Fees charged by adoption agencies

REGULATION 20: OFFENCES

7.3 Regulation 20 builds on the provision in section 59 of the Act which makes it a criminal offence for a voluntary adoption agency to disclose protected information in contravention of section 57 of the Act. The inappropriate disclosure of identifying information could be distressing or could even put individuals, including children, at risk of serious harm. It is right, therefore, that an offence may be subject to criminal proceedings.

7.4 If guilty of an offence, a voluntary adoption agency will be liable to a fine not exceeding £5,000 (level 5 on the standard scale). Proceedings will normally be brought by the registration authority. Where an offence is believed to have been committed, proceedings must normally be brought within six months of the commission of the offence.¹³ This may be extended where it takes some time for evidence that an offence may have been committed to come to the attention of the registration authority (i.e. the Commission for Social Care Inspection or the National Assembly for Wales).

7.5 Where a voluntary adoption agency is convicted of an offence, this may also be grounds for the registration authority to cancel the agency's registration.¹⁴

7.6 Where a local authority adoption agency discloses information in contravention of section 57 of the Act, the offence may be dealt with under the default power provided for the appropriate Minister in section 14 of the Act. These powers may be applied where a local authority has failed, without reasonable excuse, to comply with any of the duties imposed by the 2002 Act.

¹³ Section 138 of the 2002 Act;

¹⁴ Section 14 of the Care Standards Act 2000 (as amended by the 2002 Act).

REGULATION 21: FEES CHARGED BY ADOPTION AGENCIES

7.7 Regulation 21(1)(a) provides an adoption agency with the power to charge a fee in respect of the disclosure of information under sections 60,61, or 62 of the Act. This will be a fee which the adoption agency determines to be a reasonable fee to cover its costs in processing an application for the disclosure of protected information about an adoption, including the work required to trace a person and ascertain their views. The exception is where the applicant is an adopted person applying for information about any person who, but for his adoption, would be related to him by blood, including half-blood or marriage, in which case a fee may not be charged. It is intended that an adopted person will receive these services free of charge.

7.8 Regulation 21(1)(b) provides the adoption agency with the power to charge a fee to cover any reasonable costs incurred in securing the provision of counselling under section 60,61 or 62 of the Act. Where a person has requested the provision of counselling the adoption agency is under a duty to provide counselling or secure the provision of counselling services. Where the agency provides the counselling itself it has the discretion to charge a fee for this service to any person other than an adopted person.

7.9 Where the agency incurs costs in securing counselling provision by arrangement with another provider, it also has the discretion to charge a fee to cover any reasonable costs incurred. For example, where an agency makes an arrangement with another adoption agency or a registered Adoption Support Agency to provide counselling on its behalf, a charge may be incurred. The adoption agency may seek to recover this cost from the person receiving the counselling, unless that person is an adopted person in which case a fee may not be charged.

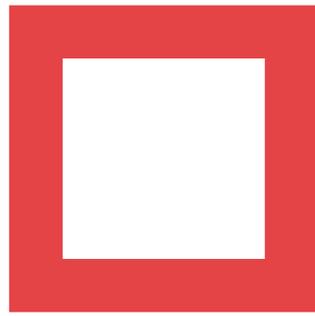
7.10 Regulation 21(2) provides that the adoption agency shall not charge an adopted person a fee for:

- Any information disclosed to him under sections 60,61 or 62 of the Act;
- Counselling provided to him, except where the counselling is provide outside the United Kingdom.

7.11 Although regulation 21 provides the adoption agency with the power to charge a fee, the agency retains the discretion to waive its fees – in whole or in part – for example, where the person seeking information is a birth relative in receipt of income support or other state benefits.

7.12 Regulation 21(3) requires an adoption agency to make available information about the fees it may charge to any person seeking the disclosure of information from the agency. It is important that potential service users are made aware of any fees that may apply in processing an application for the disclosure of protected information. The agency may incur costs in tracing a person to seek their views on disclosure, obtaining information from the Registrar General, gathering additional information where the adoption agency records do not enable it to trace an individual, and securing the provision of counselling. The adoption agency should advise any potential service user that its fees will be limited to cover any reasonable costs incurred in processing an application under the access to information provisions at sections 56–65 of the Act.

7.13 Fees will vary over time. Where an adoption agency produces a fixed schedule of fees it must therefore ensure that this is regularly updated and made available to any person who approaches the agency seeking the disclosure of information under sections 56–65 of the Act.



Guidance on the Adopted Children and Adoption Contact Register Regulations 2004

SCOPE

1.1 These regulations cover the direct functions of the Registrar General with regard to the maintenance of and dissemination of information from the Adopted Children and Adoption Contact Registers and include every aspect of his duties with regard to adoptions other than the prescription of his duties at Part 6 of the Access to Information (Post-Commencement Adoptions) Regulations and at Regulation 13 of the Access to Information (Pre-Commencement Adoptions) Regulations. The preamble points to the sections of the Adoption and Children Act 2002 which confer powers on him relevant to these regulations and to the need for the approval of the Chancellor of the Exchequer, to whom the Registrar General reports for both his administration of vital records registration in England and Wales and as Director of National Statistics.

PART 1 – GENERAL

REGULATION 1: CITATION, COMMENCEMENT AND INTERPRETATION

1.2 Regulation 1 sets out the date on which these regulations will come into force, invokes a shortened form of reference to the 2002 Act throughout and defines a foreign adoption application.

REGULATION 2: REVOCATION

1.3 Regulation 2 will list all past secondary legislation which will be revoked by these regulations.

REGULATION 3: FEES

1.4 Regulation 3 specifies the fees payable for the information the Registrar General provides from his records of adoption registration other than in the form of a certified copy of an entry, which is prescribed elsewhere.

PART 2 – ADOPTED CHILDREN REGISTER

Conditions governing the making of entries in the Register

REGULATION 4: FORM OF AN ENTRY IN THE ADOPTED CHILDREN REGISTER

2.1 The new Regulations combine the Adoptions (Form of Entry) Regulations 1975, which have long governed how the Registrar General has entered particulars of every adoptive entry of birth in England and Wales into the Adopted Children Register, with the Registration of Foreign Adoptions Regulations 2003, which greatly extended the number of overseas adoptions which could also be entered. The main distinction as far as the Regulations are concerned is that all the instructions as to the details to be entered for adoptions in England and Wales are governed by the order of the court, which is the legal authority for making the entry. Therefore the only outstanding item which these Regulations need to address is the form of entry itself into the Register, either in English or in Welsh.

By contrast the new category of registrable foreign adoption requires an administrative equivalent to all the proceedings which would normally take place before an English or Welsh court and these now follow.

REGULATION 5: MEANING OF REGISTRABLE FOREIGN ADOPTION

2.2 A number of conditions need to be met for registration of these forms of adoptions. Critically **Regulation 5** prescribes the necessity for the adoptive parent or parents to be habitually resident in England or Wales at the time the foreign adoption, be it a Convention or overseas adoption, is effected.

REGULATION 6: PERSONS WHO MAY MAKE AN APPLICATION TO REGISTER A REGISTRABLE FOREIGN ADOPTION

2.3 Regulation 6 specifies the three categories of individual(s) who may apply to the Registrar General for registration of the birth of a child adopted overseas.

The bulk of the new administrative provisions concern the manner of application and the documentation and other information needed and is listed in detail in Regulation 7, which is therefore worth covering in some depth.

REGULATION 7: MANNER OF APPLICATION, PRESCRIBED DOCUMENTS ETC FOR REGISTRABLE FOREIGN ADOPTIONS

2.4 Regulation 7(1) is a simplification of past regulatory prescription for applications to the Registrar General. No longer does a statutory form need to be laboriously filled in and signed. To allow for applications by email, and eventually on-line via the Internet, it will suffice for the applicant to provide information in writing, and the email address automatically generated in the heading by the account will stand for a signature.

2.5 Regulation 7(2) covers all the documents and information the applicant needs to submit. The two types of registrable foreign adoption, Convention and overseas, are covered at (2)(a) and (b). The former will be authorised by a certificate from the appropriate central authority, which together with the date on which the adoption was effected is the evidence the Registrar General will require for registration; the latter will require the submission of certified documentary evidence from the overseas court or other authority as to the adoption proceedings and the date on which they were effected.

In addition, **Regulation 7(2)(c)** specifies those details which would be on a court order for English or Welsh adoptions and which are therefore required for registration of the overseas adoption. They concern details as to name, sex and date of birth and similar relevant particulars for the birth parents and adoptive parents.

2.6 Regulation 7(3) acknowledges that all such particulars may be hard to come by, particularly from non-European countries with historically different naming customs and manner of recording information, and does not require that every piece of information needs to be complete.

2.7 Regulation 7(4) concerns translations of documents submitted and makes a distinction between Welsh documents, where the Registrar General can arrange for translations internally, and all other non-English documentation, where certified translation into English is a necessity, together with details of the translator.

PART 3 – ADOPTION CONTACT REGISTER

REGULATION 8: ENTRIES ONTO PART 1 OF THE ADOPTION CONTACT REGISTER

3.1 The Adoption Contact Register was established in 1991 as the first national register to facilitate adopted persons making contact with members of their birth families, thereby extending the Access to Birth Records provisions of 1976.

Regulation 8 specifies the details which are to be entered into each entry on Part 1 of the Register concerning the adopted person and the named relationship of any relative with whom they do or do not want contact. The specification of with whom contact is desired and the opportunity of stating a desire for non-contact are specific enhancements to the existing service and are a reflection of customer demand.

REGULATION 9: ENTRIES ONTO PART 2 OF THE ADOPTION CONTACT REGISTER

3.2 Regulation 9 specifies equivalent details which are to be entered into each entry of Part 2 of the Register concerning the birth relative of the adopted person and whether or not they wish for contact. It should be emphasised that the Contact Register, having only been in existence for 13 of the 78 years of legal adoption in England and Wales, is far from a definitive database of all those adopted persons and birth relatives who have desired, expressed a wish to and actually made contact. The information contained in it is therefore only as accurate as that which the Registrar General has been given. He is dependent on specific notification of the desires of those who choose to register, which can change over time. Hence the need for specific registration of a desire for non-contact, rather than an assumption that because an individual has not registered they do not wish for contact.

REGULATION 10: NOTIFICATION OF LINK

3.3 Regulation 10 provides for the Registrar General to notify an adopted person who has expressed desire for contact to be notified when a relative has also expressed desire for contact. As now, this puts the onus rightly on the adopted person to take the first step with regard to actual contact.

3.4 There is a concern, identified during the passage of the Bill, about the information which should be given to either an adopted person or a relative desiring contact where the other person has been reported to the Registrar General as having died. Legal advice indicates that notification of fact of death may not be a regulatory provision but the Registrar General invites views as to how this issue might be handled administratively.

PART 4 – INFORMATION FROM THE REGISTERS

Conditions governing access to and release of information from the Registrar General's Adoption Registers

REGULATION 11: PARTICULARS REQUIRED TO OBTAIN A CERTIFICATE FROM THE REGISTER RELATING TO AN ADOPTED PERSON UNDER 18

4.1 Regulation 11 follows the power given to the Registrar General by section 79(7) of the Act to restrict the ease with which individuals can currently access the Adopted Children Register index and obtain certificates of adopted minors. This potential for disruption of placements, following a use of the index which Parliament never intended, has been the subject of judicial criticism and led to legal attempts to restrict or even remove access to the entire index. This new regulation severely restricts the potential for illicit application for certificates from the Adopted Children Register by expanding the amount of information the applicant needs to be aware of and supply before the application can proceed. The index will in future be held on a computer system at the Family Records Centre in London, and legitimate searchers should find access to index information and certificate application more efficient and streamlined than at present.

REGULATION 12: APPLICATION BY ADOPTION AGENCY FOR INFORMATION

4.2 For post-commencement adoptions, under the new access to birth records provisions, adopted persons will apply to an adoption agency for such information as may be necessary to obtain a certificate of the original registration of their birth, and it is the adoption agency who will approach the Registrar General for this information from his records. **Regulation 12** sets out the mechanics of this. Again, in place of the complex prescribed form-filling of the past it will suffice for the agency to write in with their request, either by letter, email, or eventually on-line via the Internet, providing as they do so such minimal administrative information as the Registrar General may require.

4.3 Footnote (a) to Regulation 12 is a cross-reference to Part 6 of the Access to Information (Post-Commencement Adoptions) Regulations, which requires the Registrar General to provide the agency with details of the agency involved in the adoption (where known) and information from the Adoption Contact Register as to the whereabouts and intention of any appropriate individual. This forms a further stage in the new post-commencement model of Access to Birth records for adopted persons.

REGULATION 13: PRE-COMMENCEMENT ADOPTIONS

4.4 Regulation 13 concerns the existing access to birth records model, whereby pre-commencement adopted persons may continue to approach the Registrar General directly for such information as may be available from his records to enable them to obtain a certificate of the original record of their birth. Schedule 2 of the Act sets out the conditions under which the Registrar General may accept such an application and the detailed provisions regarding counselling, which replicate those in the 1976 Adoption Act. The Registrar General's national counselling service has been retained for pre-commencement adopted persons, but is now based in Southport rather than London. Application will again be simpler than at present, with no prescribed form, but such information as the Registrar General may require administratively, in writing.

4.5 Footnote (c) to Regulation 13 is a cross-reference to Regulations 7–9 and 13 of the Access to Information (Pre-Commencement Adoptions) Regulations, whereby the Registrar General is to assist Adoption Support Agencies (ASAs) in their attempts to facilitate contact between birth relatives and adopted persons on request. This service will involve notification of the agency involved in the adoption (where known) and releasing information from the Adoption Contact Register as to the whereabouts and intention of any appropriate individual on the Register.

REGULATION 14: APPLICATION BY ADOPTED PERSON UNDER THE AGE OF 18 WHO INTENDS TO MARRY

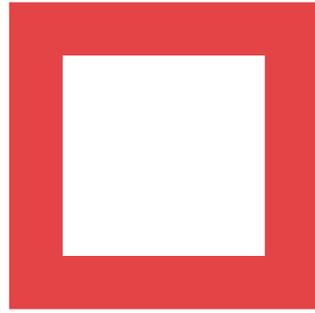
4.6 Regulation 14 stems from section 79(7) of the Act and again replicates existing provisions, but in a simpler, less prescribed, manner. Where an adopted person under the age of 18 intends to marry and applies in writing to the Registrar General for information as to whether he and his intended are related within the prohibited degrees of relationship for marriage, the Registrar General will respond after accessing such of his records as will confirm or deny such a possibility. He will require administratively name, birth and parental details of both parties to the intended marriage.

SCHEDULES 1 AND 2

4.7 The first two schedules set out the form of entries in the Adopted Children Register for first English and secondly Welsh registrations. A significant change from existing regulations is in space 2, where provision is made for registration district and sub-district (English and Welsh entries) and place and country of birth (overseas adoptions). A further change is in space 5 where a new generic term of "parent/parents on adoption" is to be used to cover all possible future parenting combinations (e.g. single, same sex, step-parent). Subject to continuing legal consultation, an additional regulation may be inserted to prescribe the exact qualification of each parent after their name in the entry.

SCHEDULES 3 AND 4

4.8 The third and fourth schedules prescribe the information required to be given by first the adopted person on Part 1 and secondly the relative on Part 2 of the Adoption Contact Register. For the adopted person this information comprises name, address, date of birth, relationships of relatives they wish to contact and do not wish to contact, and the possibility of withdrawing their application. This last provision effectively enables the Registrar General to cancel the entry administratively. As regards the birth relative, similar information is required, so that effectively their date of birth is to be captured for the first time.



Access to Information and the 2002 Act – An Overview

1. The 2002 Act and the draft regulations set out two distinct systems for the disclosure of information about a person's adoption. One process will apply in respect of those persons adopted after the regulations have come into force (i.e. a post-commencement adoption). This is set out in sections 56–65 of the Act and the Access to Information (Post-Commencement Adoptions) Regulations. For persons adopted prior to the regulations coming into force (i.e. a pre-commencement adoption), sections 98 and Schedule 2 of the Act and the Access to Information (Pre-Commencement Adoptions) Regulations apply.

POST-COMMENCEMENT ADOPTIONS

2. In respect of any person adopted after commencement of the regulations, the Act and the draft regulations introduce new provisions on the information that adoption agencies must keep in relation to an adoption, the information that agencies must disclose to adopted adults on request and the information that agencies may release to adopted adults, birth relatives and others. The Registrar General's duties in maintaining the Adopted Children Register (and index), the Adoption Contact Register and access to birth records are set out in separate regulations. This guidance includes an explanation of the role of the Registrar General under the 2002 Act. Revised court rules will set out the information that an adopted adult has a right to request from the court that made the adoption order.

3. The regulations and guidance are underpinned by the following key principles:

- To ensure consistency of approach in relation to the records kept by an adoption agency in relation to a person's adoption.
- To ensure a more consistent approach to the information that adopted people receive about their background, given that they have a right to apply for access to this information when they reach age 18.
- To provide adoption agencies with a framework within which they consider certain issues (such as the adopted person's welfare) before making a determination as to whether to disclose identifying information.
- To provide for adoption agencies to seek the views of any person who might be identified by the disclosure of information.
- To give adoption agencies the discretion in exceptional circumstances to determine whether to override a person's views about the disclosure of identifying information.
- To balance the agency's exercise of discretion by providing a right to request an independent review of the agency's determination.¹⁵

4. This section of the guidance sets out the regime for the disclosure of information in respect of any person adopted after the regulations have come into force. It covers the disclosure of information by the adoption agency of the information that an adopted adult needs in order to obtain a certified copy of their original birth record and disclosure of information about other persons involved in the adoption. It also covers the release of adoption agency information to birth relatives and other people involved in an adoption.

Disclosing Information to an Adopted Adult

5. Under the 2002 Act an adopted person, on reaching age 18, has a right to receive the following information on application to the appropriate adoption agency:¹⁶

- The information which would enable him to obtain a certified copy of his record of birth from the Registrar General;
- The information disclosed to the prospective adopter(s) by virtue of section 54 of the 2002 Act.

6. An adopted adult also has the right to receive from the court which made the adoption order a copy of any prescribed document or prescribed order relating to the adoption. The court may only disclose information in so far as it does not contain protected information.¹⁷

¹⁵ Section 12 of the 2002 Act.

¹⁶ As defined in section 65(1) of the 2002 Act

¹⁷ Sections 60(4) and (5) of the 2002 Act.

The Birth Record

7. One of the most significant changes in the 2002 Act is that a person adopted after commencement will no longer have the direct route to the Registrar General, currently provided by section 51 of the Adoption Act 1976, for the information needed to obtain a certified copy of the record of their birth. Though an adopted adult retains the right to receive this information on reaching age 18, any application must be made to the appropriate adoption agency.¹⁸ This will either be the adoption agency that arranged the adoption or, if the agency has ceased to exist, the adoption agency that now holds the case records relating to the adoption.

8. This is because the adoption agency is considered to be best placed to provide this information, to handle other sensitive information and to secure the provision of counselling. The Registrar General's past duties in this area do not sit comfortably with his primary role as custodian and disseminator of information.

9. Where the adoption agency does not hold – or cannot locate – the information that the adopted adult needs to obtain a certified copy of his record of birth, it must apply to the Registrar General for this information on the adopted adult's behalf.¹⁹ The manner in which the adoption agency must make this application is set out in draft regulation 18(1). On receipt of an application in the proper manner, the Registrar General is required to provide this information to the adoption agency.²⁰

10. There is a safeguard. Where the adoption agency wishes to withhold this information from the adopted person, it must make an application to the High Court for an order to prevent access to this information. The adoption agency must satisfy the court that the circumstances are sufficiently exceptional as to warrant an order preventing the adopted adult having access to the information needed to obtain a certified copy of his record of birth. This might occur where, for example, the adoption agency has sufficient grounds to consider that disclosing the information could put individuals at risk of serious harm; for example, where a child was adopted following serious intra-familial sexual abuse and the adoption agency believed that the adopted adult now wished to cause a birth relative harm. The adoption agency may also have grounds to believe that disclosing the information might place the adopted person at risk of further harm by the birth family should he seek to trace and contact them.

11. Where the court is satisfied that the circumstances are exceptional it will grant an order allowing the adoption agency to withhold this information from the adopted adult.

¹⁸ Section 60(2)(a) of the 2002 Act.

¹⁹ Regulations made under section 64(3)(b) of the Act.

²⁰ Section 79(5) of the 2002 Act.

Section 54 Information

- 12.** On reaching age 18, an adopted person has a new right to receive from the adoption agency the information disclosed to the prospective adopters by the agency under section 54 of the Act. This will be the information that the agency is required to provide to the prospective adopters by virtue of draft regulation 27 and Schedule 5 of the draft Adoption Agencies Regulations. This will be a summary report about the child at the linking stage, a full matching report and the written proposal setting out the terms of the placement. Much of the information will be the information that the prospective adopters will need if they are to be able to understand the needs of the child and care successfully for him. It will include basic information about the child, details of his family history, a chronology of his progress in care and at school, cultural and religious background, plus medical and educational reports.
- 13.** The report will also include a record of the views of the birth family as to the proposed adoption and on continued contact with the child. It may also include a record of the views of the child in relation to the adoption, where it was practicable for the agency to obtain the child's views.
- 14.** It is proposed that the adopted person, on reaching age 18, should have an unqualified right to receive all of the information provided to the prospective adopters under section 54 of the Act. However, some of this information may be potentially distressing to the adopted person and the agency will need to ensure it is disclosed in a sensitive and compassionate way. The agency should consider whether the information should be disclosed in parts over time accompanied by the offer of counselling. This may help lessen the trauma of receiving potentially upsetting information about the circumstances leading to the placement for adoption, while still fulfilling the adopted adult's right to receive this information.
- 15.** In addition to the information provided to the prospective adopters by virtue of section 54 of the Act, an adopted adult may also receive from the adoption agency any information or documentation that the birth family had asked the agency to keep for the adopted person until he or she reached the age of 18. This may include identifying information such as photographs, the birth certificate, a family tree or cards and letters from members of the birth family. Agreement may be reached between the birth parents, the agency and the prospective adopters for information, such as a life story book, to be given to the adoptive parents to pass on to the adopted person at an appropriate time in his life.

The Court

16. An adopted person, on reaching age 18, has the right to request from the court which made the adoption order, a copy of a prescribed document or prescribed order relating to the adoption.²¹ These documents will be prescribed in revised court rules made by the Department for Constitutional Affairs. The types of documents which may be prescribed to be released by the court will be consulted on. However, the prescribed documents or orders must not contain any protected (i.e. identifying) information about another person. Therefore, where a document or order contains protected information, a copy of it may still be disclosed by the court provided any protected information has been removed. Revised court rules (to be published by the Department for Constitutional Affairs) will set out the process that the court must follow in disclosing information about a person's adoption.

Section 56 Information

17. Any information about the adoption which the agency is required to keep on the adopted person's case record is referred to in the Act and the regulations as "section 56 information". Section 56 information will include:

- Information about the adopted person and other persons involved in the adoption such as the birth parents, adoptive parents, other birth relatives such as siblings, and other persons involved in the adoption. It may include information about the adopted person's early life, including with the birth family or in care as well as medical reports and social worker reports.
- Information which would enable the adopted person to obtain a certified copy of his record of birth or information that the agency has obtained from the Registrar General under section 79(5) of the Act.
- Information about an entry relating to the adopted person in the Adoption Contact Register.

18. Section 56 information covers both protected (i.e. identifying) information and background (i.e. non-identifying) information. Identifying information is defined as information which, whether taken on its own or together with other information disclosed by an adoption agency, clearly identifies a person or enables a person to be identified. It will include names, residential addresses, educational or employment addresses, photographic material such as a family album and legal and medical reports. It may also be information deposited on the adopted person's case record by a birth relative, such as an open letter from the birth mother explaining the circumstances leading to the child's placement for adoption.

²¹ Section 60(4) of the 2002 Act.

19. Background information will be information which does not identify a person or enable them to be identified. It may include the adopted person's birth details such as birth weight and time of birth, information about progress at school or difficulties experienced at the birth parent's home. It will also be information about an adopted child's progress with the adoptive parents and other aspects of his life which the agency may disclose to birth relatives without revealing the adopted child's identity or whereabouts or the identity or whereabouts of the adoptive parents.

20. The regulations place duties on adoption agencies in respect of the way in which section 56 information is stored and safeguarded, the length of time for which it must be retained as well as the circumstances in which it may be transferred between adoption agencies.

Disclosing Protected Information about Adults

21. Section 61 of the Act and the draft regulations set out the process that an adoption agency must undertake when it receives an application for the disclosure of protected information (i.e. identifying information) about an adult. This means that at the time the application for protected information is made, **none** of that information is about a child. A child is any person who has not attained the age of 18 years.

22. When the adoption agency receives an application for the disclosure of protected information about an adult, it has the discretion not to proceed with the application.²² In deciding whether it is appropriate to proceed with an application, the agency is required to consider the following:

- The welfare of the adopted person;
- Any views obtained by the agency under section 61(5)(b) of the Act;
- Any prescribed matters.
- All the other circumstances of the case.

23. In reaching its decision as to whether to proceed, the adoption agency must take account of all the circumstances in weighing up the merits of an application. For example, the person who may be identified by disclosure may already have expressed a view to the agency as to the disclosure of information about himself. There may be information on the case record to suggest that proceeding with the application may place an individual at risk of harm. There may be special circumstances such as those involving a genetic or hereditary illness.

24. Where the adoption agency determines that it does not intend to proceed with an application, this will constitute a "qualifying determination" for the purposes of section 12 of the Act. Therefore, the agency is required by regulations to notify the applicant of their right to request an independent review of the agency's determination.

²² Section 61(2) of the 2002 Act.

25. Where the adoption agency decides to proceed with an application, it is required to take **all reasonable steps** to obtain the views of any person who would be identified by the disclosure of protected information. This will require the adoption agency to undertake research work, to use the information it has at its disposal, to contact individuals and possibly to gather more information where its current records do not enable it to trace an individual. In seeking to trace an individual to obtain their views, the adoption agency may seek information from the Registrar General to assist its search.²³ This will be information from the Adoption Contact Register which may indicate a person's last known whereabouts. The Registrar General is obliged to disclose this information to the adoption agency.²⁴

26. The requirement at sections 61(3), 62(3) and 62(4) of the Act to take all reasonable steps to obtain the views of any person who may be identified by the disclosure of information places a new statutory burden on adoption agencies. Therefore, an adoption agency will have the discretion to make arrangements with a registered Adoption Support Agency (ASA) to trace an individual and seek their views as to the disclosure of information on the agency's behalf. The ASA will then report those views back to the agency. The decision as to whether or not to disclose the information will remain with the adoption agency and may not be delegated to the ASA. Before entering into such an arrangement, the adoption agency will need to satisfy itself that the ASA has the necessary skills and experience to undertake this work and that its conditions of registration do not prevent it from doing so.

27. Where the adoption agency enters into such an arrangement with an ASA, the ASA will be able to charge the adoption agency a fee to cover any reasonable costs incurred in tracing a person and seeking their views. The adoption agency will be obliged to pay this fee. It may recover this fee from the applicant, other than where the applicant is an adopted person seeking information about a birth relative, in which case a fee may not be charged by the agency.

28. Having obtained the views of the person(s) whom the information is about, the adoption agency has the discretion to disclose the protected information to the applicant if it considers it appropriate to do so. Again, in reaching its decision the adoption agency must consider the welfare of the adopted person, any views obtained and all the other circumstances of the case.

29. Where the adoption agency has been unable to trace a person to seek their views, it has the discretion to disclose the information if it considers it appropriate to do so. It may be able to use an indication from the Adoption Contact Register as to contact, or no contact, to inform the exercise of its discretion as to whether the information should be disclosed.

²³ Section 64(3)(b) of the 2002 Act.

²⁴ Draft regulation 19(1)(b)

30. The discretion vested in the adoption agency by virtue of section 61(4) of the Act is an important one. It means the agency retains the discretion to disclose or withhold the disclosure of protected information contrary to the view expressed by the person identified by disclosure. Therefore, where a person has objected to the disclosure of protected information, the adoption agency may still disclose it if it considers that there are compelling grounds to do so. For example, where an adopted person was seeking identifying information about a birth sibling but the birth sibling had objected to the disclosure of identifying information, the adoption agency may still disclose the information if it considers that disclosure was in the interests of the adopted person's welfare. This might arise where there were medical grounds, such as those involving a genetic or hereditary illness or a need for organ donation.

31. Where the adoption agency determines to disclose or withhold protected information contrary to the views expressed by the person identified by disclosure, this will constitute a qualifying determination under section 12 of the Act. Therefore, where a person has objected to the disclosure of information but the adoption agency determines that it should be disclosed, that person has the right to request an independent review of the agency's determination. Similarly, where a person has agreed to the disclosure of identifying information but the adoption agency determines that the information should be withheld, the person seeking the information (i.e. the applicant) has the right to request an independent review of the agency's determination. It is envisaged that such cases will be rare, as where agreement has been given to disclosure the expectation is that the agency will normally disclose the information unless there are exceptional circumstances to indicate otherwise.

32. The process outlined above will not apply where information is being sought from the agency under section 60(2) of the Act (i.e. birth record information) as the adopted person has a right to receive this information on reaching age 18 – unless the court orders otherwise. It will also not apply when the adoption agency is required to disclose protected information under draft regulation 8, for example to an inquiry constituted under section 17 of the 2002 Act. In such circumstances, the adoption agency will not have the discretion to withhold this information or deny access to any section 56 information it holds.

Disclosing Protected Information about Children

33. Section 62 of the Act and the draft regulations set out the process that an adoption agency must undertake when it receives an application for the disclosure of protected information and **any of that information relates to a child at the time that the application is made.**

34. Where a person is seeking information that identifies an adopted child, the adoption agency's **paramount consideration** must be the welfare of that child.²⁵ The process outlined below will apply even where the application relates to a request for a single document that identifies an adult and an adopted child, or where it is not possible for the agency to disclose identifying information about an adult without identifying an adopted child. Where the child identified by disclosure is not an adopted child (i.e. a birth sibling), the agency must have particular regard to his welfare.²⁶

35. As with an application for the disclosure of protected information about an adult, the adoption agency is not required to proceed with an application unless it considers it appropriate to do so. In deciding whether it is appropriate to proceed with an application, the child's welfare must be the paramount consideration if the information requested is about an adopted child. Therefore, it is envisaged that only a very small number of applications from birth relatives for identifying information about an adopted child will be accepted and processed by adoption agencies. In the case of any other child, such as a birth sibling or another child of the adoptive parents, the agency must have particular regard to that child's welfare.

36. In deciding whether to proceed the agency must also consider:

- The welfare of the adopted person (where the adopted person is not a child);
- Any views obtained by the agency under sections 61(3) and 61(4);
- Any matters prescribed by regulations.

37. Where the agency determines that it does not intend to proceed with an application, this will constitute a "qualifying determination" for the purposes of section 12 of the Act. The agency is required by draft regulation 14 to notify the applicant of their right to request an independent review of the agency's determination.

38. Where the adoption agency decides to proceed with an application, it is obliged to take all reasonable steps to obtain the views of any parent or guardian of the child.²⁷ Therefore, where the information requested is about an adopted child, the agency must seek the views of the adoptive parents. The adopted child's welfare must continue to be the agency's paramount consideration. Where, for example, an adopted person is seeking information about a birth sibling, and the sibling is a child at the time the application is made, the adoption agency must take all reasonable steps to obtain the views of any parent or guardian of the child. In such circumstances, the agency must have particular regard to the child's welfare.

²⁵ Section 62(6)(a) of the 2002 Act.

²⁶ Section 62(6)(b) of the 2002 Act.

²⁷ Section 62(3)(a) of the 2002 Act.

39. The adoption agency also has the discretion to seek the views of the child if it considers it appropriate to do so.²⁸ The agency will need to have regard to the child's age and understanding in reaching this decision. For example, the agency should have regard to whether the child is "Gillick competent" (and where, for example, the child is aged 16 or 17 and is living away from home).

40. Where the information requested also identifies an adult, the agency is also required to take all reasonable steps to obtain his views as to the disclosure of information.²⁹

41. Having obtained the views of the parents or guardian of the child (and where appropriate the child), or any other person to whom the information relates, the agency has the discretion to disclose the information if it considers it appropriate to do so. In deciding whether or not to disclose the information where any of it relates to an adopted child, that child's welfare must continue to be the paramount consideration.

42. Where a person has consented to the disclosure of information, it is anticipated that the agency will normally disclose it. However, the agency retains the discretion to disclose or withhold the disclosure of information, contrary to the expressed view of any person identified by the disclosure. Where the agency was unable to obtain a person's views, it could still disclose the information if it considered it appropriate to do so having regard to all the circumstances of the case.

43. The adopted child's welfare must be the paramount consideration by the agency in deciding whether or not to disclose protected information. Therefore, it is envisaged that the chances of obtaining information against the wishes of the adopted person and/or the adoptive parents will be extremely limited. The circumstances would have to be exceptional to justify disclosure. For example, where a birth mother was terminally ill, with just a short time to live, and was seeking an opportunity to say goodbye to a child she had placed for adoption.

44. Where the adoption agency determines to disclose or withhold disclosure of protected information, contrary to a person's expressed view, this will constitute a qualifying determination for the purposes of section 12 of the Act. The same principles as outlined in paragraph 31 above apply.

²⁸ Section 62(3)(b) of the 2002 Act.

²⁹ Section 62(4) of the 2002 Act.

Disclosing Background Information

45. Section 58 of the Act covers the disclosure of information held by the adoption agency that is not protected information. It therefore covers the disclosure of any information which the agency holds about an adopted person – or anybody else involved in the adoption – but that does not identify that person or enable them to be identified. For example, it will be information that may be disclosed by the adoption agency to the birth family which tells them about an adopted child’s progress at school, or with his adoptive family, without disclosing the child’s identity or whereabouts or the identity or whereabouts of the adoptive family. The agency may also wish to provide an adopted child with background information about himself or information about the circumstances of the adoption, without compromising the identity of the birth parents.

46. The Act and the regulations provide the adoption agency with a wide discretion in respect of the information it may disclose, how it is disclosed and to whom. This replicates existing provision in the Adoption Agencies Regulations 1983. However, agencies must be aware that where they disclose non-identifying information about an adopted person or a birth relative, this is still potentially sensitive information. Care must be taken that it is disclosed appropriately as certain information may be non-identifying information when disclosed in isolation but may become identifying information when linked with other information disclosed by the agency. Therefore, draft regulation 9 requires an adoption agency to keep a written record of any information disclosed, the date of disclosure, the person to whom it was disclosed and the reasons for disclosure.

47. As with protected information, there may also be circumstances where the agency may be required to disclose background information under regulation 8, such as to a statutory inquiry constituted under section 17 of the 2002 Act. In such circumstances, the agency will not have the discretion to withhold this information or to deny access to the section 56 information it holds.

Counselling

48. Where a person is seeking the disclosure of information from an adoption agency in relation to a person adopted after commencement, there is no requirement for them to undergo counselling. However, experience has shown that counselling has an important role to play in helping people deal with the disclosure of information about their background, their family history and the circumstances surrounding their adoption. Certain information disclosed by the adoption agency may be distressing or even traumatic for the recipient. For example, where a birth mother seeks information from the adoption agency about a child she relinquished for adoption but where the child has subsequently died. Or where an adopted person seeks information about his early life and the circumstances leading to him being adopted, which may include details of abuse or neglect.

49. Therefore, the 2002 Act and draft regulation 15 require an adoption agency to provide information about the availability of counselling to any person who:

- is seeking information from the agency in pursuance of sections 56–65 of the Act;
- is considering objecting or consenting to the disclosure of information by the agency in pursuance of sections 56–65 of the Act;
- is considering entering into an agreement with the agency in pursuance of section 57(5) of the Act.

50. The information provided by the agency should include a description of the counselling being offered, the body providing the counselling (where the agency is not providing the counselling itself) and details of any fees that may apply. The adoption agency will have the discretion to charge any person a fee in respect of the costs incurred in securing the provision of counselling. An adopted person may not be charged a fee by the agency for securing the provision of counselling unless he or she is outside the United Kingdom and wishes to receive counselling overseas – see paragraph 52 below.

51. Where a person has requested counselling, the adoption agency is required by regulation to secure the provision of counselling services. The adoption agency may provide the counselling itself or – where the applicant is in England or Wales – the agency may make arrangements with another adoption agency or registered Adoption Support Agency to provide counselling services on its behalf. The adoption agency may also make an arrangement with an adoption agency or registered adoption society in Scotland or Northern Ireland to provide counselling. This would provide, for example, for circumstances where an adopted person living in Scotland seeks protected information from an English adoption agency but wishes to receive counselling in Scotland. The 2002 Act therefore provides for regulations to be made by the devolved administrations to require specified agencies to provide counselling by arrangement in Scotland and Northern Ireland.

52. Where an adoption agency has incurred costs in securing the provision of counselling outside the United Kingdom, the adoption agency may require the person who is to receive the counselling to pay a fee to cover any reasonable costs incurred by the agency. This will include an adopted person where the adoption agency in the UK commissions and incurs the cost of counselling on the adopted person's behalf. Such cases will be rare as it is anticipated that the person overseas will normally make their own arrangements to receive counselling and pay any fees direct to their counselling provider.

53. Where an adoption agency is not providing the counselling itself, draft regulation 17 authorises the agency to disclose section 56 information to the agency that will be providing the counselling. This will be another adoption agency, registered Adoption Support Agency or a counselling provider overseas. The adoption agency will be able to disclose all the section 56 information it holds about the adoption, where this is needed in order to provide an effective counselling service. Regulation 17(2) requires the adoption agency to maintain a written record of any information disclosed for the purposes of providing counselling.

Fees

54. Draft regulation 21 provides the adoption agency with the discretion to charge a fee to any person seeking the disclosure of information under sections 60, 61 or 62 of the Act. A fee may be charged to any person to cover any reasonable costs incurred by the agency in disclosing the information. The exception is that an adopted person may not be required to pay a fee in respect of any information disclosed to him in relation to any person who (but for his adoption) would be related by blood (including half-blood) or marriage. It is important that adoption agencies provide this service free of charge to the adopted person where he or she is seeking information about a birth relative.

55. The power to charge a fee recognises the additional work that an adoption agency will be required to undertake in taking forward an application for the disclosure of protected information. For example, tracing and contacting a person to seek their views as to disclosure, seeking information from the Registrar General or the court, and securing the provision of counselling services. The adoption agency is required to make available information about the fees it may charge to any person seeking the disclosure of protected information from it.

56. Draft regulation 19(2) also provides the Registrar General with the discretion to charge a fee to an adoption agency in respect of any information disclosed to the agency from the Adoption Contact Register.³⁰ The Registrar General may exercise his discretion not to charge a fee, for example, for providing information to a voluntary adoption agency. Where the Registrar General exercises his discretion to charge a fee, the adoption agency is obliged by the regulations to pay this fee. This cost may be recovered from the applicant, other than where the applicant was an adopted person seeking information about a birth relative in which case a fee may not be charged.

³⁰ Section 64(4)(b) of the 2002 Act.

Adoptions with a Foreign Element

57. It is intended that the framework for the disclosure of information in relation to an adoption made after the appointed day should apply, as far as is reasonably practicable, to adoptions with a foreign element. This means those cases where a person habitually resident in England and Wales adopts a child from outside the British Isles or where a child from England or Wales is adopted by adopters from outside the British Isles. The provisions in relation to pre-commencement adoptions are also intended to apply, as far as is reasonably practicable, where an adopted person or a birth relative approaches a registered Adoption Support Agency for an intermediary service.

58. The majority of cases will involve an adoption where a child is either adopted overseas or brought into England or Wales from outside the British Isles for the purposes of adoption. In more recent cases, in order to comply with regulations governing adoption with a foreign element, the adopters will have been assessed and approved by their adoption agency. This may be a local authority or a Voluntary Adoption Agency registered to undertake this work. The adoption agency will therefore hold information about the adopters, including a home study report.

59. However, the information about the adopted child, his background and family origins is likely to be much less comprehensive than for a domestic adoption. Where the adoption is a Hague Convention adoption, the Central Authority of the child's State of Origin will have sent the child's details to the Central Authority (DfES) for England for onward transmission to the adopters' adoption agency. Where the adoption is a non-Hague Convention adoption, the process may vary according to the country involved and their practices.

60. Therefore where a person, including an adopted person, is seeking the disclosure of information about an adoption, the adoption agency that assessed the prospective adopters should be the first point of contact. The same will apply in relation to a child that is adopted from England and Wales by adopters habitually resident outside the British Isles.

61. It must be borne in mind that the information available on the child will vary hugely depending on the child's country of origin. In many overseas countries, adoption practice differs significantly from this country and continues to be stigmatised and ruled by secrecy. In some countries it is illegal to seek to make contact with birth parents once an adoption order has been made in that country. So both adoption agencies and Adoption Support Agencies will need to have an awareness of the social and legal framework which operates in a particular country, before accepting an application for the disclosure of information or the provision of an intermediary service where there is a foreign element to the adoption.

62. In such cases, where a person applies to an adoption agency for the disclosure of information or approaches an Adoption Support Agency to request an intermediary service, he will need to be made aware that the legal framework of the overseas country involved may place significant limitations on the services that may be offered. Furthermore, where the cost of processing an application involving an foreign element is prohibitive, or where the legal framework is such that the agency or ASA could not usefully process the application, the agency or ASA may exercise its discretion not to proceed with the application.

63. We would particularly value the input of stakeholders on the issues and difficulties presented by adoptions with a foreign element and what could reasonably be expected of adoption agencies and ASAs in these circumstances.

PRE-COMMENCEMENT ADOPTIONS AND THE ROLE OF ADOPTION SUPPORT AGENCIES

64. The arrangements set out in paragraphs 2 to 63 above will only apply to adoptions where the adoption order is made after the relevant provisions of the Act have come into force.³¹ It is intended that this will be September 2005. In relation to any adoption that took place before the regulations came into force,³² section 98 of the Act and the Access to Information (Pre-Commencement Adoptions) Regulations will apply.

65. These regulations set out a scheme whereby registered Adoption Support Agencies will be able to operate an intermediary service to provide for contact between adopted adults and their adult birth relatives. A registered Adoption Support Agency will be able to obtain information about an adoption, use this information to trace an individual and, subject to their consent being given, facilitate contact between them. The scheme therefore provides the first statutory opportunity for those people who relinquished children for adoption many years ago to seek to trace and make contact with them.

66. An adopted adult will also be able to ask an Adoption Support Agency to provide the same service where he wishes to trace or establish contact with a birth relative. However, Schedule 2 of the 2002 Act provides for the Registrar General to provide to an adopted adult on application such information as is necessary to enable that person to access a record of their birth and inform them as to counselling provision, as currently happens under the 1976 Act. This needs to occur **before** the adopted adult approaches the ASA for assistance with possible tracing of a birth relative.

31 The "appointed day of commencement" – the day on which the relevant sections of the 2002 Act come into force.

32 i.e. any legal adoption between the Adoption of Children Act 1926 and the appointed day of commencement.

67. Though it is anticipated that registered ASAs will deal with the majority of requests for the provision of intermediary services, the regulations do not preclude an adoption agency from providing an intermediary service should it wish to do so. Therefore, where a person knows the adoption agency that either arranged their adoption or holds their adoption records, they may approach that agency direct and request that an intermediary service be provided. Adoption agencies are not required to provide intermediary services. Therefore, where the adoption agency does not provide an intermediary service, it should refer the applicant to a registered ASA.

ADOPTION SUPPORT AGENCIES (ASAS)

68. It is envisaged that an Adoption Support Agency will specify in its application for registration the services that it wishes to provide. These may include intermediary services. The registration authority may then grant registration and that registration may be either conditional or unconditional. Conditions will effectively limit the sphere of operation of the ASA. As such, an ASA may offer intermediary services unless it is a condition of its operation that it does not. A breach of registration conditions will be an offence under section 24 of the Care Standards Act 2000, punishable by a fine not exceeding £5,000 (level 5 on the standard scale). It may also provide grounds for the registration authority to cancel the ASA's registration.

69. A registered Adoption Support Agency will be able to seek information from adoption agencies, the Registrar General and the courts on behalf of an applicant. This information may be used to establish the identity of the subject of the application, to trace them, to provide counselling, and to seek their informed consent to the disclosure of information that would identify them to the applicant. If requested, the Adoption Support Agency may then seek to facilitate contact between them. An adopted person, on reaching the age of 18, would be able to request the same from an Adoption Support Agency if they wished to seek to trace and establish contact with a birth relative from whom they were separated by adoption.

70. A registered Adoption Support Agency will be **prohibited** from disclosing any identifying information about a person without having first obtained their **informed consent**. Where an ASA discloses information in contravention of this scheme it will commit a criminal offence.

71. Broadly, the way in which an Adoption Support Agency processes an application will depend upon whether it has been able to establish that an adoption agency was involved in arranging the adoption. In seeking to identify the appropriate adoption agency the ASA will be able to seek information from the Registrar General and the court that made the adoption order.

72. Where an adoption agency was involved in the adoption it is obliged to assist the Adoption Support Agency in considering the merits of the application. It will also be able to disclose information to the ASA to enable it to trace the subject of the application and seek their informed consent to the disclosure of identifying information to the applicant.

73. Where an ASA was unable to identify the appropriate adoption agency; or where the adoption agency was identified but had ceased to exist; or where the adoption agency records could not be found, the ASA may seek information from the Registrar General to assist it in tracing an individual. This will be the sensitive information held by the Registrar General on the Adoption Contact Register.

Processing an Application

74. When a person makes an application to an Adoption Support Agency, the ASA must first verify the identity of the applicant and confirm that they are related to the subject of the application. Therefore, the regulations require that applications must be in writing and must include evidence to demonstrate that the applicant is related to the subject. This is the information that the Registrar General requires before he is able to make an entry on the Adoption Contact Register.

75. An adopted adult will need to provide the following information:

- Current full name;
- Original birth name prior to adoption;
- Date and place of birth;
- Birth mother's name and surname;
- Birth mother's maiden name and birth father's full name (if these were recorded on the original birth entry).

76. A birth relative will need to provide the following information:

- Current full name;
- The name in which the adopted person's birth was registered prior to adoption;
- Date and place of birth of the adopted person;
- The birth mother's name;
- The birth mother's maiden name and birth father's full name (if these details were recorded on the original birth entry).

77. At this stage the ASA has the discretion not to proceed with an application. It may decide not to proceed where, for example, it has reasonable grounds to consider that the application is inappropriate or vexatious or where the applicant has been unable to produce satisfactory evidence to satisfy the ASA that he is related to the subject of the application. In deciding whether or not to proceed with the application, regulations require the ASA to consider the welfare of the adopted person and all the other circumstances of the case.

78. Unlike the provisions for post-commencement adoptions under sections 56–65 of the Act, where a registered ASA determines not to proceed with an application this will **not** be grounds on which the applicant may seek an independent determination of the ASA’s decision under section 12 of the Act. The applicant will, however, be free to apply to another registered ASA for an intermediary service.

79. If the ASA chooses to proceed with the application it must first take all reasonable steps to establish if an adoption agency was involved in the adoption – either where an adoption agency placed the child for adoption or where a local authority was notified of the intention to adopt and provided information to the court (i.e. in the form of a Schedule 2 report). There will be cases where the applicant knows the details of the adoption agency concerned in which case the ASA will not need to follow the process outlined below.

80. If necessary, the ASA may at this point make an application to the Registrar General to seek to establish if an adoption agency was involved in the adoption. It needs to be remembered that for pre-commencement adoptions, the courts were under no obligation to notify the Registrar General of the adoption agency involved and that reference to the court may be the most fruitful source of information for the adoption agency details.

81. Where the Registrar General holds this information, he is obliged by draft regulation 13(1) disclose it to the ASA. Where the Registrar General is unable to say if an adoption agency was involved in the adoption he must provide written verification of that fact together with details of the court that made the adoption order. The ASA may then make an application to the court for details of the local authority or adoption agency involved in the adoption. Regulations made by the Department for Constitutional Affairs will require the court to disclose this information to the ASA where it holds it.

82. Both the Registrar General and the court have the discretion to charge a fee to the ASA for releasing this information. Where a fee is imposed, the ASA is required by regulations to pay that fee.

83. The way in which the application is processed further will depend upon whether the ASA has been able to establish that an adoption agency or local authority was involved in the adoption.

ADOPTION AGENCY CASE

84. Where the ASA has been able to establish that an adoption agency was involved in the adoption, it is required to take all reasonable steps to contact the agency. Where that agency no longer holds the relevant adoption records, the ASA must take all reasonable steps to contact the adoption agency to which those records were transferred.

85. The ASA is required in the first instance to inform the adoption agency of the details of the application and to seek the views of the adoption agency on the application and proposed contact based on its knowledge of the case. The adoption agency is obliged to provide a view on the merits of the application based on the information available to it on the case record and any other relevant information. For example, the adoption agency may have previously received an approach from an adopted person or a birth relative seeking an intermediary service.

86. On the basis of the information or views supplied by the adoption agency to the ASA, the ASA has the discretion at this stage not to proceed further with the application. This may occur, for example, where the adoption agency has expressed a view, based on information from the adoption case record, that the subject of the application may be placed at risk of harm if traced and placed in contact with the applicant (or vice-versa).

Tracing the Subject of the Application

87. Where the ASA decides to proceed with the application, it may seek from the adoption agency any information it considers appropriate for the purposes of assisting it to trace the subject of the application, in order to seek their informed consent to the disclosure of identifying information to the applicant. This will include sensitive identifying information. The draft regulations provide that an adoption agency must take all reasonable steps to comply with a request from an ASA for its views or for information. The adoption agency may charge the ASA a fee that it determines to be a reasonable fee for disclosing this information.

88. The ASA may then seek to trace the subject of the application. In addition to using information supplied by the adoption agency, the ASA may also make an application to the Registrar General for information that may assist it in tracing the subject. This will be the connecting information referred to in section 79(3) of the Act that would enable an ASA to identify an adopted person or information from the Adoption Contact Register where that would assist the search. For example, where there is an entry for the subject on the Adoption Contact Register this would provide contact details for the person as well as an indication as to whether or not he had registered a wish for contact or no contact. On receipt of an application from an ASA for this information, the Registrar General is obliged by draft regulation 13 to disclose it. The Registrar General will be able to charge the ASA a fee for the disclosure of this information.

89. The ASA may use the information disclosed by the adoption agency and the Registrar General to trace the subject of the application, but must not disclose any identifying information to anyone other than to the subject or to the applicant where the subject has given their informed consent to the disclosure. The ASA may disclose identifying information about the applicant to the subject where this is necessary for the subject to give their informed consent. This might arise, for example, where the applicant was one of several birth siblings that were placed separately for adoption, and the subject wished to have further information about which sibling was seeking contact.

Non-Agency Adoptions

90. Where an ASA was unable to establish if an adoption agency was involved in the adoption, or where an agency is identified but cannot be traced, or where the adoption records cannot be found, a source of identifying information may be held by the Registrar General.

91. Therefore, draft regulation 9 permits a registered ASA to make an application to the Registrar General for the connecting information referred to in section 79(3) of the Act which would enable the ASA to identify an adopted person or information held on the Adoption Contact Register. Again, on receipt of an application the Registrar General is obliged to disclose that information to the ASA. The Registrar General will be able to charge the ASA a fee which he determines to be a reasonable fee for the disclosure of this information.

92. The ASA may then use the information received from the Registrar General to seek to trace the subject of the application. It must not disclose any information received from the Registrar General to any person other than where the subject has given consent, the disclosure is made to the applicant.

Obtaining Consent

93. The requirement to obtain a person's informed consent before disclosing identifying information about them is an important and necessary safeguard. It recognises that some people have no wish to be traced or to have their details passed on. The ASA must respect that wish for privacy.

94. Therefore, draft regulation 12 prohibits an ASA from disclosing any identifying information about the subject of the application to the applicant without having first obtained the subject's informed consent. An ASA that discloses identifying information in contravention of this scheme will commit a criminal offence punishable on summary conviction to a fine not exceeding level 5 of the standard scale. An offence may also be grounds for the registration authority to cancel the ASA's registration.

95. Having established contact with the subject of the application, the ASA may use the information provided by the adoption agency to assist the subject in deciding whether or not to give consent. The ASA must not disclose any identifying information about any person that has been provided by the adoption agency but it may use non-identifying information to discuss the background of the case with the subject. The ASA must ensure that the subject fully understands the nature and the circumstances of the application and that if consent is given this is **informed** consent.

96. Where the subject consents to the disclosure of identifying information, the ASA may then facilitate and support contact between the applicant and the subject should both parties wish for contact. The ASA may provide counselling to assist this process. At this stage, an exchange of identifying information may be as far as the applicant and subject wish to go and they may need further time to consider possible contact. The process of reunion will give rise to a whole range of feelings and emotions in both the applicant and the subject and it will need to be carefully managed by the ASA, providing advice and support to both parties throughout. The pace of the reunion process is particularly important and the ASA may initially facilitate indirect contact by letter or telephone until both parties are ready for face-to-face contact.

97. Where consent is not given, the ASA will be prohibited from disclosing any identifying information about the subject of the application to the applicant. The ASA may pass certain background information about the subject back to the applicant taking care to ensure that it does not disclose the subject's current identity or whereabouts. For example, where a birth relative is seeking contact with an adopted adult and consent has been refused, the ASA will have the discretion to provide the birth relative with background information about him and his life without compromising his new identity or whereabouts. This may be information about the subject's general health and well being or social and domestic circumstances. Similarly where the ASA is unable to trace the subject of an application, it will not be permitted to pass on any identifying information to the applicant. An ASA does not have the discretion to disclose identifying information in the absence of consent.

98. There may be cases where the subject of an application has died or where the ASA determines that the subject is unable to provide informed consent because of ill health or disability. Where informed consent cannot be obtained in such circumstances, the presumption is that identifying information will not be disclosed to the applicant. However, in such cases the ASA will have the discretion to seek the views of others as to the disclosure of information about the subject. For example, where the subject of the application is an adopted adult that has died, the ASA may seek the views of the adopted person's family or the adoptive parents as to the disclosure of information about him. Where consent was forthcoming from the adoptive parents or the spouse of the adopted person, identifying information may be disclosed to the applicant by the ASA. Where consent was not given, the ASA would be limited to disclose non-identifying information about the subject, including the circumstances of his death.

Counselling

99. The process of seeking contact with an adopted adult (or a birth relative) will present a range of issues and emotions for all involved. The applicant will need to be prepared for the process of tracing a relative and supported throughout that process. An approach from an ASA, however sensitively it is managed, may be upsetting or even traumatic for the subject of the application, bringing back painful memories from many years ago. Counselling will therefore have a vital role to play for both the applicant and the subject.

100. Counselling will be of benefit at a number of stages. It may help prepare the applicant for what the searching process may entail and the possible outcomes. It may be helpful to the subject of the application in deciding whether or not to give their informed consent to the disclosure of information. Where consent has been given, counselling will be helpful in preparing both the applicant and the subject for possible reunion and ongoing contact.

101. Draft regulation 10 therefore requires the ASA to notify both the applicant and the subject of the application of the availability of counselling services and how they may be accessed. The applicant may already have received counselling from the Registrar General under Schedule 2 of the Act when he applied for a certified copy of the record of his birth. If the applicant was an adopted person who was adopted prior to 12th November 1975 he will have been required to undergo counselling when making an application to the Registrar General for the original birth record.

102. Under the Access to Information (Pre-Commencement Adoptions) Regulations, neither the applicant nor the subject may be required to undergo counselling. However, the benefits of accepting counselling are well established. Therefore, where counselling is requested by the applicant or the subject, the ASA is required by regulation 10(3) to secure the provision of counselling services. The expectation is that the ASA will normally provide the counselling itself though it may make arrangements for another agency to provide counselling on its behalf. This may be an adoption agency or another registered Adoption Support Agency.

OFFENCES

103. The inappropriate disclosure of identifying information could be distressing or could even put individual at risk of harm. It is essential that the sensitive identifying information that an ASA will be able to obtain from an adoption agency or the Registrar General is properly safeguarded and only disclosed in certain circumstances. The draft regulations therefore make provision for conditions to be attached to the disclosure of identifying information to an ASA by an adoption agency or the Registrar General. The intention is to ensure that the appropriate consent is in place before any disclosure of identifying information takes place.

104. If a registered ASA discloses identifying information in contravention of these regulations, it will commit an offence punishable on summary conviction with a fine not exceeding level 5 on the standard scale. The unauthorised disclosure of information may also be grounds for the registration authority to cancel the ASA's registration.

FEES

105. The draft regulations authorise the charging of fees by registered ASAs, the Registrar General (subject to the approval of the Chancellor of the Exchequer) and adoption agencies. Separate regulations made by the Department for Constitutional Affairs will authorise the charging of a fee by the court for releasing information about an adoption agency or local authority.

106. A registered ASA will have the discretion to charge a fee to the applicant, including an adopted person, which it determines to be a reasonable fee for processing an application under section 98 of the Act. The fee will cover any reasonable costs incurred by the ASA in considering the application, identifying if an adoption agency was involved in the adoption, seeking the adoption agency's views and seeking to trace the subject of the application. The ASA may also seek to recover any costs incurred in providing counselling or securing the provision of counselling and, where appropriate, facilitating contact between the applicant and the subject of the application.

107. The Registrar General, the adoption agency and the courts will be able to charge a fee to an ASA for releasing information to it. For example, an ASA may need to purchase certificates from the Registrar General to enable it to trace a person. Where such a fee is charged, the ASA will be obliged to pay it. Where the ASA incurs a fee in obtaining information from an adoption agency, the Registrar General or the court, it may seek to recover these costs from the applicant.

108. In a post-commencement adoption under sections 56–65 of the Act, an adoption agency may make an arrangement with a registered ASA to trace and seek the views of a person who may be identified by the disclosure of information. The ASA may charge the adoption agency a fee for undertaking this work on the agency’s behalf. The adoption agency will be obliged by regulations to pay this fee. Similarly, where an adoption agency makes an arrangement with an ASA to provide counselling on its behalf, the ASA will be able to charge a fee for this service.

109. An ASA will have the discretion to waive the payment of a fee by the applicant, in whole or in part, in certain circumstances such as where the applicant is on a low income or in receipt of Income Support.

ADOPTION AGENCY CASE RECORDS

110. Where a person approaches an ASA, not seeking contact with a birth relative, but instead seeking information about their adoption, and an adoption agency was involved in the arranging the adoption, then the ASA should advise the person that disclosure of this information is a matter for the adoption agency. The individual may then approach the adoption agency direct or the ASA may make an approach on their behalf. Similarly, a person seeking the disclosure of identifying or background information about an adoption who knows the adoption agency concerned, may bypass an ASA and approach the agency directly.

111. It is intended that where a person approaches the adoption agency directly seeking an intermediary service or the disclosure of identifying information, the agency may exercise its discretion in deciding whether to disclose this information, as it currently does under regulation 15 of the Adoption Agencies Regulations 1983. However, before disclosing any identifying information about an individual, the agency must have regard to the principles set out in sections 61 and 62 of the Act. The agency should therefore take all reasonable steps to ascertain the views of any person the information is about as to the disclosure of that information.

112. Where the adoption agency receives an application for the disclosure of information in relation to a pre-commencement adoption, but where the applicant is not seeking contact, the agency may make arrangements with a registered ASA to take steps to trace an individual and seek their views on the disclosure of identifying information. Where the ASA was able to obtain a person’s views, it would then report those views back to the adoption agency. The decision as to whether or not to disclose the information will remain with the adoption agency and may not be delegated to an ASA. The agency will have the discretion to disclose identifying information where it considered that it was appropriate to do so.

113. Before entering into such an arrangement with an ASA, the adoption agency will wish to satisfy itself that the conditions of the ASA's registration do not prevent it from offering intermediary services. The adoption agency will also wish to be satisfied that the ASA has the necessary skills and experience to undertake the individual case. The adoption agency should therefore take steps to verify the ASA's registration conditions with the registration authority, obtain evidence of the ASA's capacity and skills to provide intermediary services, and, if appropriate, consult with other adoption agencies who may have used the ASA's services.

114. Where an adoption agency makes such an arrangement with a registered ASA, the ASA will be able to charge the adoption agency a fee to cover any reasonable costs incurred in tracing a person and seeking their views. The adoption agency will be obliged to pay this fee. The adoption agency will be able to recover this fee from the applicant, other than where the applicant is an adopted person seeking information about a birth relative, in which case a fee may not be charged.

No wish for contact

115. The 2002 Act recognises that not everybody involved in an adoption has a wish to be traced or to be reunited with a birth relative. Therefore, section 80 of the Act will extend the provision of the Registrar General's Adoption Contact Register so that a person can formally register their wish for no contact. On Part 1 of the Register, an adopted person will be able to formally signify a desire for no contact with a specified person. On Part 2 of the Register, a birth relative will be able to signify a wish for no contact with a specified person. This, and the other new Contact Register provisions, are described in more detail in the chapter relating to all the Registrar General's functions regarding adoption.

116. Where an ASA is seeking to trace a person in order to seek their consent to the disclosure of information, it may seek information from the Registrar General regarding what records, if any, he holds on the Adoption Contact Register where this may assist its search. Where the subject of an application had formally registered a wish for no contact, the Registrar General will notify the ASA accordingly. The ASA must have regard to this information to inform its decision as to whether or not to proceed further with the application. The ASA will need to give careful consideration to the subject's wishes and weigh these against any special circumstances that may exist, such as those involving a hereditary or genetic medical condition.

117. In addition to those persons who have no wish for reunion with a relative, some people involved in an adoption have no wish even to be approached by an ASA. In such cases, where the person knows the adoption agency that was involved in the adoption, it is intended that they will be able to write to the adoption agency to formally register their wish not to be approached by an ASA or the adoption agency. Therefore, when an ASA approached the adoption agency to ascertain its views on an application, as required by draft regulation 8, the ASA would be informed that the subject of the application had registered a wish not to be approached. In such circumstances, the ASA should consider the person's views very carefully in deciding whether to proceed further with the application. Where the ASA decided not to proceed on the basis of this information, it will notify the applicant accordingly.

118. This would also enable, for example, an adopted person to register the fact that they would be open to an approach from an ASA on behalf of a birth sibling but not on behalf of a birth parent. It would also enable, for example, the adoptive parents to register their views with the adoption agency as to an approach to the adopted person by an ASA and its potential impact. This does not constitute a "veto" but the ASA should use this information to inform its decision as to whether or not to proceed with the application.

THE REGISTRAR GENERAL

119. Sections 77 to 82 and Schedules 1 and 2 of the 2002 Act provide for the Registrar General of England and Wales' continuing registration of all adoptions on the Adopted Children Register, an altered but still significant role in Access to Birth records provision and his continuing maintenance of an enhanced Adoption Contact Register. The Government has recognised that, however inappropriate the discretionary role into which the Registrar General has increasingly been forced since 1976, his maintenance of all general birth registration, the Adopted Children Register and the confidential link between the two is the lynchpin of the 'through-life' record of the adopted person. His maintenance of the Adoption Contact Register since 1991 is the model for the new informed communication, by consent, which the majority of adopted persons and, in particular, birth relatives now require in an increasingly open and pluralist society.

120. There is some irony in the fact that the new provisions for access to information under sections 56–65 of the 2002 Act will gradually reduce the Registrar General's pre-eminent 23-year role in the process to one of a signpost and may undermine his Adoption Contact Register service just as it is being enhanced. However, successive governments have recognised that the key to proper access to information provision lies in the strengthening and standardising of local authority provision and the Registrar General has always acknowledged that his role, while national, could only be an administrative stopgap until local provision had been allowed to build to appropriate levels.

ADOPTED CHILDREN REGISTER

121. Section 77 of the Act provides for the Registrar General to continue to maintain the Adopted Children Register at the General Register Office, as he has done since 1926. This register is, of course, not open to the general public. The wording regarding non-access has been tightened up in the new Act to put the matter beyond doubt. Entries will continue to be made in the Register on the sole authority of a court order, the mechanics of which are specified in schedule 1, while the form of the entry is prescribed by the Registrar General's Regulations and based on the Court Rules which provide the information in the order (both must be identical where they impinge on what will go in the Register).

122. Schedule 1 also specifies that the court order must contain a direction to the Registrar General to ensure that the original birth entry to which the adoption relates is annotated with the word 'Adopted'. Further provisions lay down how the Registrar General should handle re-adoptions, adoptions in Scotland, Northern Ireland, the Isle of Man and the Channel Islands, and 'other adoptions' which, as a result of last June's implementation, means registrable foreign adoptions (either Convention or overseas). There is also instruction on overseas registers of birth, some categories of which he holds and is therefore able to annotate the entry at the General Register Office and others of which he needs to 'secure' by advising the officer having custody of the register to mark the entry 'adopted'.

123. The second half of schedule 1 concerns instruction by the court to the Registrar General where the adopted person's entry contains errors (because the order did) and correction is needed, or where the adoption order is revoked (including specific instruction for registrable foreign adoptions). Finally, there are instructions on how to handle birth entries which have been re-registered on legitimation and revocation of orders in such cases.

The specific detail of how these orders need to be worded in each particular case, so as to ensure the Registrar General effects an accurate adoption registration, are to be the subject of Court Rules, drafted by colleagues in the Department for Constitutional Affairs, and subject to separate consultation.

SEARCHES AND COPIES

124. Section 78 of the Act provides for the Registrar General to continue to maintain an index to the Adopted Children Register at the General Register Office. Any person may search this index and apply for a certificate from it. This replicates the longstanding legal position for general birth registers, whereby anyone can apply for a certified copy of an entry in a birth register, provided that they have sufficient information from the indexes to identify the entry they seek. An entry in the Adopted Children Register supersedes the adopted person's original birth entry for all legal and administrative purposes.

125. However, the primary reason for a public index to the Adopted Children Register is to assist an adopted person, or the adoptive family, to obtain certificates of an event which intimately affects them. Parliament never intended it to be used by birth parents or others to circumvent the agreed provisions for access to the adopted person, primarily the Adoption Contact Register, by using it as an inventive search mechanism to identify and search for the adoptive person. Indeed the existing arrangements have been subject to judicial criticism because of the potential disruption to adoption placements. As a result the 2002 Act lays down, via the Adopted Children and Adoption Contact Registers Regulations, the specific details an applicant must provide when applying for a birth certificate of a minor from the Adopted Children Register. These are more stringent than applications for certificates of adopted adults, and the provision for the first time of a computerised index is intended to make all applications both more user-friendly and easier to monitor.

126. As laid down by the 1976 Act, the terms and conditions with regard to index searches and payment for certificates from the Adopted Children Register are obliged to mirror those laid down by 1953 Registration Regulations governing general birth index searches, certificate applications and issue. It is only appropriate that administrative arrangements, including fees, for services regarding certificates of adoption entries should be analogous to such services concerning the birth entries they have replaced.

CONNECTING BIRTH RECORD INFORMATION

127. Section 79 of the 2002 Act requires the Registrar General to make traceable the connection between an original birth entry subsequently marked 'Adopted' and the corresponding entry in the Adopted Children Register which replaces it, provided that this information is not publicly accessible other than within four separate sets of circumstances:

- a) **pre-commencement:** by order of the Court under exceptional circumstances (normally relating to health, inheritance etc);
- b) **post-commencement:** on application by the appropriate adoption agency on behalf of the adopted person (reflecting the new model whereby the Registrar General acts as a signpost to the agency gateway);
- c) **pre-commencement:** on application by the adopted person, as now, under Schedule 2 of the Act, ensuring that counselling provision is fully explained;
- d) **pre- and post-commencement:** on application by a minor who wishes to marry and may be related to their prospective spouse within the prohibited degrees of relationship for marriage (as now).

Pre-commencement

128. To summarise, an adult adopted before the day on which the regulations come into force retains the option to apply to the Registrar General for the continuing Access to Birth Records Service currently available under s.51 of the 1976 Act. Schedule 2 of the new Act has replicated the relevant provisions, which ensure that the appropriate guidance is given as to counselling (mandatory prior to 12 November 1975, optional thereafter) and the services available, dependent on the residence of the applicant. The Registrar General's national Adoption Counselling Service has been retained for these purposes, but is now based at the main General Register Office in Southport rather than the Family Records Centre in London.

129. In addition, the Registrar General has a further role in relation to pre-commencement adoptions, that of assisting the new registered Adoption Support Agencies who may be approached by both adopted persons and birth relatives to trace a person and facilitate contact. Section 98 of the Act confers functions on the Registrar General, which are spelt out in the appropriate regulations, to disclose information from the Adoption Contact Register to the adoption support agency which may assist in tracing either an adopted person or relative or indicating their desire or otherwise for contact. To manage what could otherwise prove to be an unsustainable demand for service – and to allow for computerisation of as many of the records as possible – it is proposed that applications be accepted in two tranches: 1926–1975 in the first phase and post–1975 adoptions in the second phase. The demand for services in the first year will be monitored to inform any decision as to when the second phase of the scheme will come into operation.

POST-COMMENCEMENT

130. The adopted adult is now pointed towards the adoption agency, who will act as an intermediary in obtaining what has hitherto been termed 'section 51' connecting information from the Registrar General. As explained earlier, the agency is in a much better position to disclose this information and to pursue the adopted person's concern to track down all other information relating to their adoption than the Registrar General, whose role is strictly speaking solely administrative, as custodian and disseminator of Registration records.

ADOPTION CONTACT REGISTER

131. Section 80 of the Act places the Registrar General under a duty to maintain the Adoption Contact Register, which since 1991 has been the only government source for birth relatives to make contact with the adopted person. The Government considers that this service adds value and has provided – in the short term – that it be enhanced, while recognising that the new provisions in relation to pre-commencement adoptions may ultimately supplant it.

132. Part 1 of the Register is for entry of the particulars of an adult adopted person, a record of whose birth is kept by the Registrar General, and who has such information as is necessary for him to obtain a certified copy of the record of his birth. That person needs to apply using the information prescribed by the Registrar General's Regulations.

133. Part 2 of the Register is for entry of details relating to an adult relative of an adopted person who has such information as is necessary to enable him to obtain a certified copy of the record of the adopted person's birth. Again the applicant needs to provide prescribed information.

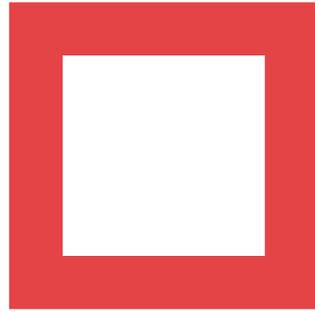
134. The onus is still on the adopted person as to whether contact should be made, once the Registrar General has established that a match has been made between an adopted person and a birth relative, both of whom have expressed a desire for contact. Appropriate guidance is given throughout the various processes.

135. The significant enhancement to the service brought about by the provisions of the Act in the Registrar General's Regulations are:

- a) that the applicant should specify with whom he desires contact; and
- b) that the applicant should specify the person with whom he does not want contact (if such be the case).

In addition, the Registrar General may provide administratively a notification of fact of death service.

136. Provision is made for fees to be payable to the Registrar General for the service just described and for the passing of information from the Adoption Contact Register to adoption agencies and adoption support agencies to assist in the new services they are to provide under the 2002 Act. Where fees are varied this will only occur on the authority of the Registrar General and with the approval of the Chancellor of the Exchequer, to whom he is ultimately responsible.



Partial Regulatory Impact Assessment (RIA)

1. TITLE OF REGULATORY PROPOSAL

The Access to Information (Post-Commencement Adoptions) Regulations; the Access to Information (Pre-Commencement Adoptions) Regulations.

2. PURPOSE AND INTENDED EFFECT

OBJECTIVE

These regulations are to be made under the Adoption and Children Act 2002 (the 2002 Act), which received Royal Assent in November 2002. The 2002 Act represents the culmination of efforts by the Government to modernise the existing adoption primary legislation that pre-dates the Children Act 1989, and as such is in need of amendment in key areas. For example, in making the child's welfare the paramount consideration in all decisions made by adoption agencies and courts.

The consultation package comprises three sets of regulations. Two sets of regulations set out the regulatory frameworks for access to information about a person's adoption. One set applies to adoptions made after the relevant provisions of the 2002 Act have come into force. The other set of regulations applies to any adoption made before the relevant provisions come into force. These are referred to as "post-commencement" and "pre-commencement" adoptions respectively.

A third set of related regulations set out the Registrar General's revised functions and duties in maintaining the Adopted Children Register and the Adoption Contact Register, and his role in providing access to birth record information.

The Access to Information (Post-Commencement Adoptions) Regulations apply to post-commencement adoptions. The regulations and supporting guidance cover the information that adoption agencies must keep in relation to a person's adoption; the way in which that information is kept; the length of time that the information must be kept for; the information that agencies must disclose to adopted adults on request; and the information that adoption agencies may disclose to adopted people, birth relatives and others. The regulations provide a framework designed to provide greater consistency in relation to the retention, safeguarding and disclosure of sensitive information about adoption.

The key objectives of the new regulatory framework are:

- To ensure consistency of approach in relation to the records kept by adoption agencies.
- To ensure a consistent approach to the information that adopted people receive about their background, as they will have a right to access this information when they reach age 18.
- To provide adoption agencies with a framework within which they consider certain issues, such as the adopted person's welfare, before making a determination as to whether to disclose identifying information.
- To provide adoption agencies with the discretion in certain circumstances to override a person's views about withholding or disclosing identifying information.
- To balance the adoption agency's exercise of discretion by providing a right to request an independent review of the agency's determination.

The Access to Information (Pre-Commencement Adoptions) Regulations apply to all adoptions that took place before the relevant provisions come into force. These regulations provide for a scheme whereby new organisations – registered Adoption Support Agencies (ASAs) – will be able to operate a regulated intermediary service to provide for contact between adopted adults and their birth relatives. Section 98 provides a new statutory right for birth relatives to request an ASA to trace an adopted adult and establish if contact would be welcome. Similarly an adopted adult could request the same service where he wished to trace a birth relative. Where a registered ASA has agreed to process an application, it will seek to establish the current identity of the subject of the application, trace that person and seek their informed consent to identifying information being passed to the applicant. In order to achieve those aims, the regulations provide for the disclosure of information between registered ASAs, adoption agencies, the Registrar General and the courts.

We anticipate that demand for regulated intermediary services could be high, particularly initially as those who have been waiting exercise their new rights and apply for the disclosure of information when Section 98 is implemented. There have been approximately 875,000 adoptions since 1926. Many birth relatives see Section 98 as a final chance to establish contact with a child that was relinquished for adoption many years ago.

BACKGROUND

The Adoption and Children Act 2002 legally underpins a number of the new policies for adoption set out in the White Paper *Adoption: A New Approach*, published in December 2000. This itself follows on from the Review of Adoption commissioned by the Prime Minister in 2000. The new measures included in the 2002 Act are as follows:

- A duty on local authorities to make arrangements to provide adoption support services, including financial support, according to a framework to be set out in regulations.
- A new right to an assessment of need for adoption support services.
- An independent review mechanism in relation to the approval of prospective adopters and access to information.
- A more consistent system for access to information for adopted people about their background and their adoption, and the disclosure of information by adoption agencies.
- The obligation for courts to fix and monitor timetables in adoption cases so that they are dealt with at the appropriate speed, and to support better case management.
- A new Special Guardianship order to provide permanence for children for whom adoption is not a suitable option.

The Adoption and Children Act will also:

- Align adoption law with the relevant provisions of the Children Act 1989 to ensure that the child's welfare is the paramount consideration in all decisions to do with adoption.
- Require Adoption Support Agencies to register with the registration authority under Part 2 of the Care Standards Act 2000 to ensure that services are provided to a high standard.
- Replace the now outdated process of "freeing" children for adoption with new measures for addressing the issue of parental consent, including placement orders.
- Extend eligibility to apply to adopt jointly to unmarried couples.
- Incorporate the majority of the Adoption (Intercountry Aspects) Act 1999 with legislation on domestic adoption to create a single consolidated legal framework for adoption.
- Strengthen the safeguards within the adoption system by improving the legal controls on intercountry adoption and advertising children for adoption, and making clear the steps in relation to adoption which may only be taken by adoption agencies.

- Legally underpin the Adoption Register to suggest matches between children waiting to be adopted and approved adoptive families waiting to adopt.

The Access to Information (Post-Commencement Adoptions) Regulations place duties on adoption agencies in respect of the information they hold about an adoption and the way in which that information is disclosed to adopted people, birth relatives and others involved in an adoption. Adoption agencies hold a wide range of highly sensitive information about individuals, including personal information about their background and family history as well as medical and legal information. It is imperative, therefore, that such information is properly safeguarded and only disclosed in appropriate circumstances. Inappropriate disclosure of such information could not only be distressing but may even place individuals at risk of harm. It is important that the framework provides for consistent standards of decision making and that penalties may be imposed where information is disclosed in contravention of this scheme.

The Access to Information (Pre-Commencement Adoptions) Regulations place duties and functions on registered Adoption Support Agencies, adoption agencies and Registrar General. The regulations set out the circumstances in which those bodies are to be able (or required) to disclose information to each other. The sharing of information between those bodies is intended to assist an ASA in its task of tracing the subject of an application and seeking their informed consent to the disclosure of identifying information to the applicant. An ASA must be registered with the registration authority under the Care Standards Act 2000 to provide such services. Safeguards will be put in place to prevent the inappropriate disclosure of identifying information. A registered ASA will be prohibited from disclosing any identifying information about a person without having first obtained their informed consent. Disclosure in contravention of the scheme will be constitute a criminal offence.

RISK ASSESSMENT

Both the Prime Minister's Review of Adoption and the subsequent White Paper underlined the value of adoption for children who might otherwise be looked after. The White Paper also acknowledged that all adopted people should be able to find out about their family history and origins if and when they wished to do so. Similarly, birth families should have the opportunity to tell their story. The adopted person *"will then be able to find out about their parents' views, when they want and need to do so"*.³³

33 Adoption – A New Approach [Dept of Health, 2000]

The Access to Information (Post-Commencement Adoptions) Regulations implement a key part of the Adoption and Children Act 2002. The regulations also deliver the Government's pledge in the Adoption White Paper *"to provide adopted people with consistency of access to information about their family history and their adoption"*. The existing legislative framework (the Adoption Act 1976 and the Adoption Agencies Regulations 1983) provides adoption agencies with a wide discretion in respect of the information they keep and how it is disclosed. Such a wide discretion has led to inconsistent practice across adoption agencies. In some cases, adoption agencies have disclosed identifying information without having first consulted the person who would be identified. The current system does not serve the interests of adopted people or their birth relatives well. Not implementing these regulations would mean:

- that Government would not fulfil its commitment to deliver a consistent framework for the disclosure of information;
- that key parts of the Adoption and Children Act 2002 would not be implemented;
- that sensitive information about adoption may continue to be disclosed inappropriately. This may not only be distressing to those concerned but could even place individuals at risk of harm.

The Adopted Persons (Pre-Commencement Adoptions) Regulations provide for adoptions made before the Act is commenced. These regulations set out a scheme whereby registered Adoption Support Agencies will be able to operate a regulated intermediary service providing for contact between adopted adults and their adult birth relatives. This is a significant change in adoption law and recognises the need of many birth relatives to seek information about – and possibly contact with – adopted adults from whom they were separated many years ago. Similarly, adopted adults may apply to an ASA in order to make contact with a birth relative. These regulations therefore provide for a wholly new service and fulfil commitments made by Ministers in Parliament.

Some unregulated intermediary services exist in some parts of the country. However the level of provision is inconsistent and there are no regulated standards or safeguards. Not implementing these regulations would mean:

- a key part of the Adoption and Children Act 2002 would not be implemented and Government would not fulfil the pledges made by Ministers during the passage of the legislation to provide new statutory rights to apply for access to information;
- Intermediary services would continue to operate outside a regulatory framework and as a result significant variations of service provision would continue to be the norm;

- Demand for intermediary services is expected to be significant. Not providing this service would continue to mean a high level of unmet need, particularly in respect birth relatives who see this scheme as a final opportunity to seek to make contact with a child from whom they were separated many years ago.

3. OPTIONS

Option 1 – to do nothing and rely on current arrangements.

This is not an option. The Adoption Act 1976 and the Adoption Agencies Regulations 1983 do not make adequate provision in respect of access to information. The Adoption and Children Act 2002 has already been passed, and now needs to be implemented through regulations if Parliament’s intentions are to be delivered.

Option 2 – to bring forward Regulations for England under the 2002 Act that are less prescriptive than currently drafted (and therefore akin to the 1983 Adoption Agencies Regulations used currently).

A simpler, skeletal set of regulations would not provide sufficient checks and balances that are essential for a framework that seeks to provide for access to information while at the same time ensuring that safeguards are in place to protect sensitive identifying information from being disclosed inappropriately. We have carefully considered how to balance the obligations set out in regulations with guidance. Both sets of regulations, for pre and post commencement, consist of a set of coherent regulations. Removing parts of these would open gaps in the regulatory framework and undermine the safeguards that have been put in place.

Option 3 – To bring forward regulations for England under the 2002 Act as drafted. This will deliver Ministerial commitments to Parliament and ensure that a balanced framework for providing access to sensitive information is put in place.

POST-COMMENCEMENT ADOPTIONS

These regulations place a new duty on adoption agencies, including voluntary adoption agencies, to take reasonable steps to seek the views of any person who would be identified by the disclosure of information. This will involve extra burdens for adoption agencies but it is an important and necessary safeguard. As the regulations apply only to adoptions made after the regulations have come into force, the impact of this new burden will not be immediate and will allow agencies time to prepare for these new duties.

PRE-COMMENCEMENT ADOPTIONS

These regulations provide for a workable scheme to ensure that the new statutory rights to request access to information about adopted adults or their adult relatives can be accommodated in practice. It would not be possible to operate such a scheme without such regulations.

4(i) BENEFITS

- **Option 1** – there are no perceived benefits.
- **Option 2** – the only possible benefit of this option would be that adoption agencies and Adoption Support Agencies could operate more flexibly within the regulatory framework. A more relaxed regulatory framework would not require adoption agencies to seek the views of any person identified by the disclosure of information. This would be less burdensome but would remove an important and necessary safeguard. Second, this option would not provide the clarity and consistency of approach that adoption agencies and Adoption Support Agencies are themselves seeking.
- **Option 3** – this option is the most effective way of delivering the findings of the White Paper and the new provisions in the 2002 Act. In relation to post-commencement adoptions, the regulations provide a workable framework within which adoption agencies have clarity about the information they are required to keep and a framework within which they can consider certain issues, such as the adopted person’s welfare, before deciding whether to disclose identifying information. The framework effectively balances the interests and wishes of all those involved in adoption.

In relation to pre-commencement adoptions, this option is the only effective way of setting out a scheme providing regulated intermediary services for birth relatives and adopted adults. This delivers the commitment made by Government during the passage of the Adoption and Children Bill to set out in detail how the scheme will operate in secondary legislation.

THE ACCESS TO INFORMATION (POST-COMMENCEMENT ADOPTIONS) REGULATIONS

(a) some of the new duties and associated benefits of individual regulations are set out below:

Regulation 3: information to be kept about a person’s adoption – this regulation requires adoption agencies to retain certain prescribed information about an adoption. It will eliminate existing inconsistencies in the information that adoption agencies keep about a person’s adoption and ensure greater consistency in the information that adopted people are entitled to receive about their background when they reach age 18.

Regulation 10: agreements for the disclosure of protected information – this regulation provides for a written agreement to be made between the adoption agency, the adoptive parents and the birth parents for the sharing of protected information. The purpose of such an agreement is to release the adoption agency from the duty of having to seek the views of any person identified by the disclosure of information, where that person has already given their prior agreement to the disclosure.

Regulation 14: independent review – this regulation provides for an independent review mechanism. This is intended to balance an adoption agency's exercise of discretion in relation to the disclosure of protected information by providing a right to request an independent review of the agency's determination. This regulation is a safeguard to help ensure that an agency's discretionary powers in respect of the disclosure of information are not used inappropriately.

Regulation 16: duty to secure counselling – this regulation places a duty on an adoption agency to provide, or secure the provision of, counselling services where a person has requested it. This regulation recognises the important role that counselling has to play in helping people deal with the disclosure of information about their background and family history. It will be welcomed by those seeking information and those who are approached by an adoption agency to give their views as the disclosure of identifying information about themselves.

Regulation 21: fees – this regulation provides an adoption agency with the discretion to charge a fee to any person, other than an adopted person, to cover any reasonable costs incurred in processing an application for the disclosure of information. It recognises that an adoption agency has a new duty to seek the views of any person identified by the disclosure of information and that it may incur costs in doing so. The impact of this new burden will not be immediate. Where the applicant is not an adopted person, the agency will be able to recover the costs it incurs in complying with this duty.

THE ACCESS TO INFORMATION (PRE-COMMENCEMENT ADOPTIONS) REGULATIONS

Regulation 5: consent of subject to disclosure etc. – This regulation prevents a registered Adoption Support Agency (ASA) from disclosing any identifying information without having first obtained the informed consent of the person that the information identifies. This is an important safeguard which recognises a person's right to privacy. It will be welcomed by those persons involved in an adoption who have no wish to be traced or to have their details passed on.

Regulation 8: contacting the appropriate adoption – where a person has applied to an ASA for a regulated intermediary service, this regulation requires the ASA to first take all reasonable steps to contact the adoption agency involved in the adoption. The ASA is required to seek the views of the agency on the proposed application and the agency is obliged to provide a view. This is partly a safeguard provision as the adoption agency may have information on the case record to indicate that the application is inappropriate or that proceeding with the application may place an individual at risk of harm.

Regulation 12: offence – this regulation makes it a criminal offence for an ASA to disclose identifying information in contravention of the regulations. It is intended to ensure that sensitive information is properly safeguarded by ASAs and only disclosed in accordance with the regulations. It is an important measure to give services users the assurance that the confidential information about them will be properly safeguarded and only disclosed in appropriate circumstances.

4(ii) QUANTIFYING AND VALUING THE BENEFITS

POST-COMMENCEMENT ADOPTIONS AND PRE-COMMENCEMENT ADOPTIONS

The benefits of the proposed changes will not manifest themselves in monetary terms. The value will be seen in providing an improved, more consistent service to adopted people and birth relatives wishing to have access information about an adoption.

The post-commencement regulations should:

- help ensure consistency by providing adoption agencies with a framework within which they consider the circumstances of applications, such as the adopted person's welfare, before making a determination as to whether to disclose identifying information.
- provide adoption agencies with the discretion in certain circumstances to override a person's views about withholding or disclosing identifying information.
- Balancing the adoption agency's exercise of discretion by providing a right to request an independent review of the agency's determination.

The pre-commencement regulations should provide for new statutory rights to request access to information by:

- enabling ASAs to obtain information from an adoption agency or the Registrar General on behalf of the person who is seeking to make contact with their relative.
- Placing a duty on adoption agencies and the Registrar General to provide information to registered ASAs which may be used to trace people and facilitate contact, provided a person who would be identified has given his consent.

5. COSTS

(I) COMPLIANCE COSTS FOR BUSINESSES, CHARITIES AND VOLUNTARY ORGANISATIONS

There is no impact on businesses. The proposals in relation to post-commencement adoptions would impact solely on local authority adoption agencies and some of the 31 voluntary adoption agencies in England. The proposals in relation to pre-commencement adoptions would impact principally on registered Adoption Support Agencies with a significantly lesser resource implication for local authorities and voluntary adoption agencies.

Option 1: As stated above, this option would not meet the objectives and there are no perceived benefits.

Option 2: As stated above, this would entail minimum change to the current, outdated framework provided by the Adoption Agency Regulations 1983. Therefore, few new costs would be involved but it would not deliver the framework the Government has committed itself to.

Option 3: The potential new costs of both sets of regulations are set out below.

POST-COMMENCEMENT ADOPTIONS: THE ACCESS TO INFORMATION (POST-COMMENCEMENT ADOPTIONS) REGULATIONS 2004

These regulations impose new burdens on adoption agencies for adoptions made after the 2002 Act is fully implemented. This is likely to increase the work of adoption agencies but only gradually over the next two decades. For instance, the vast majority of adopted people will not seek identifying information from the adoption agency under these regulations until they have reached the age 18. Research indicates that many adopted people do not seek information about their birth parents until they reach their late twenties or early thirties. The current average age of an adopted child is 4½ years. Ministers have announced their intention to implement the 2002 Act from September 2005. Therefore there is not likely to be significant increase in applications by adopted people until 2025. As birth relatives may apply for access to information under these regulations when the adopted person reaches the age of 18, except in exceptional circumstances, a significant rise in applications is not anticipated until 2018 at the earliest.

The 2002 Act also places a duty on adoption agency's to make the adopted child's welfare their paramount consideration in deciding whether to release information. It is therefore envisaged that only a very small number of applications from birth parents for identifying information about an adopted child will be accepted and processed by adoption agencies.

The main cost implications for adoption agencies as a result of the new regulatory framework will arise from the new duty to seek the views of any person who would be identified by the disclosure of information. The legislation requires the adoption agency to "take all reasonable steps" to obtain those views. This will require the adoption agency to engage in research work, to contact individuals, to use the information it has and possibly to gather more information to enable it to trace someone. An adoption agency may make arrangements with a registered Adoption Support Agency to undertake this work on its behalf. The ASA will be able to charge the adoption agency a fee for providing this service. The regulations provide for adoption agencies to be able to charge a fee to the applicant to cover any reasonable costs incurred in processing an application for the disclosure of identifying information, unless the application is from an adopted person. The adoption agency will therefore be able to recover its costs where the applicant is a birth relative person seeking information about an adopted person.

The only figures available in relation to applications for information are those recorded by the Registrar General. These show that in 2000 the Registrar General received around 3,800 applications from adopted people wishing to access their original birth records. Demand for this service fell by 27% between 1996 and 2000. The likely increase in adoption agencies' work should also be considered alongside the more open climate in which adoption occurs today. Unlike adoptions which took place 30 or 40 years ago, many children adopted today are older and have access to some information about their background and family history. They are therefore less likely to require the services of the adoption agency if they wish to identify their birth parents when they reach age 18.

These regulations place the responsibility for managing the access to information applications on the agency that places the child for adoption and therefore maintains the child's adoption records. This will generally be a local authority. For voluntary adoption agencies the potential work levels are likely to be considerably less than for local authorities as few voluntary adoption agencies place children for adoption, concentrating on recruiting, preparing and approving prospective adopters.

PRE-COMMENCEMENT ADOPTIONS: THE ACCESS TO INFORMATION (PRE-COMMENCEMENT ADOPTIONS) REGULATIONS 2004

These regulations apply to any adoption that took place prior to the regulations coming into force. There have been around 875,000 legal adoptions since 1926. The regulations set out a new scheme that provides for new organisations – registered Adoption Support Agencies – to operate a regulated intermediary service to provide for contact between adopted adults and their birth relatives.

For the first time the 2002 Act therefore provides birth relatives with a statutory right to request an intermediary service. This means that a registered Adoption Support Agency may be able to establish the identity of an adopted adult, seek to trace them and – subject to obtaining their informed consent – disclose identifying information about them to the birth relative.

The main cost implications for providing this new service will be for registered Adoption Support Agencies (ASAs). There will also be resource implications for adoption agencies in assessing and providing information to ASAs to assist them in processing an application. There is no precedent in this country for the provision of this service and thus it is very difficult to predict the level of demand and the resource implications.

As stated earlier, there have been around 875,000 adoptions since 1926. When the numbers of birth parents and other relatives are considered, there are likely to be over 2 million people who might have an interest in applying or being the subject of an application under Section 98. It is only possible to speculate how many may choose to exercise their right to apply for information under these regulations. We anticipate that there is likely to be an initial surge from those who are waiting for Section 98 to be implemented, and we expect that this will then subside. Some stakeholders have suggested that the initial surge could amount to around 20–30,000 applications. This is why Ministers announced in Parliament that the Government intended the scheme to be phased in over in two stages to help registered ASAs, adoption agencies, the Registrar General and the courts manage the demand from applicants for this new service. The first stage would apply to all adoptions made between 1926 and 12 November 1975, and the second stage would apply to all adoptions made between 13 November 1975 and the full commencement of the 2002 Act.

The draft regulations provide registered Adoption Support Agencies with the power to charge a fee to cover any reasonable costs incurred in processing an application. A fee may be charged to any person seeking an intermediary service from a registered ASA, including an adopted person. Therefore, where an ASA incurs costs in obtaining information from an adoption agency, the Registrar General or the courts it will be able to recover these costs from the applicant. The ASA will also be able to charge a fee in respect of other services – for example providing counselling or securing the provision of counselling where a person wishes to receive it. Therefore, the costs incurred by these new duties will be recoverable.

(II) COSTS TO GOVERNMENT

In relation to post-commencement adoptions, the creation of single gateway for access to identifying information about an adoption may increase the workload of local authority adoption agencies in providing all aspects of a service that was previously provided in part by the Registrar General. However, as explained earlier, the regulations apply only to adoptions made after the regulations have come into force, the impact of this burden will not be immediate and will allow adoption agencies time to prepare for these new duties.

In relation to pre-commencement adoptions, registered Adoption Support Agencies will shoulder most of the duties set out in regulations. Though a local authority adoption agency will be required to assist an ASA by disclosing information to it, there will be no cost implications as the adoption agency may charge the ASA a fee to covers its costs.

6. IMPACT ON SMALL BUSINESS

There is no impact on small business. In relation to post-commencement adoptions the regulations impact principally on local authority adoption agencies and 31 not-for-profit voluntary adoption agencies. In relation to pre-commencement adoptions, the regulations will be cost neutral, as a registered Adoption Support Agency will charge service users a fee for the provision of a regulated intermediary service. Fees will apply to a birth relative or an adopted adult.

7. COMPETITION ASSESSMENT

In relation to post-commencement adoptions, we have considered the market for VAAs and found that there are 31 not-for-profit VAAs in England. In addition, 150 local authorities with social services responsibilities have a duty to provide adoption services. As costs associated with these regulations are low and adoption agencies may charge a fee, other than to an adopted person, for the disclosure of information, competition is unlikely to be affected.

In relation to pre-commencement adoptions, intermediary services are currently unregulated. As explained earlier, it is difficult to predict the likely demand for services or the numbers of current unregulated providers of intermediary services that will wish to register to operate. Therefore, it is difficult to assess the impact on competition at this stage. We will explore this point with stakeholders during the consultation process.

8. ENFORCEMENT, SANCTIONS, MONITORING AND REVIEW

Local authorities, VAAs and registered Adoption Support Agencies will be required to comply with these regulations. The Health and Social Care (Community Health and Standards) Act 2003 established a new independent Commission for Social Care Inspection (CSCI) and this will assume responsibility for the regulation of social care providers in England from April 2004. Those bodies that intend to provide intermediary services will be required to register as an Adoption Support Agency with the Commission.

Both sets of regulations include offence provisions to safeguard against the inappropriate disclosure of protected information about a person's adoption. Where a VAA or a registered ASA breached the offence provision, the regulations provide that the registration authority may instigate proceedings. If guilty of an offence, a registered adoption society or Adoption Support Agency will be liable to a fine not exceeding £5,000 (level 5 on the standard scale). An offence may also be grounds for the registration authority to cancel the agency's registration. Where a local authority adoption agency disclosed information in contravention of the regulations, the offence may be dealt with under the default power provided for the appropriate Minister in section 14 of the 2002 Act. These powers may be applied where a local authority has failed, without reasonable excuse, to comply with any of the duties imposed by the Act.

9. CONSULTATION

The Department for Education and Skills has consulted with other key Government interests including the National Assembly for Wales, Department for Constitutional Affairs and the Registrar General (Office for National Statistics).

The regulations and supporting guidance are now being issued for full public consultation to those with an interest being given the opportunity to consider the regulations over the next four months. It will be possible for those with an interest to write in with comments on the draft regulations either via the internet or by post. There will also be an opportunity to attend consultation workshops. The regulations will be finalised taking account of the comments received. The consultation will raise specific questions about the potential cost implications of these regulations for local authorities, voluntary adoption agencies and registered adoption support agencies (ASAs).

10. SUMMARY AND RECOMMENDATION

The Government has indicated its intention to bring forward these regulations to implement the Adoption and Children Act 2002, of which these regulations form a crucial part.

We consider that the regulations as drafted will meet the Government's key objectives and that **option 3** is the most effective way of delivering those objectives. They will provide a fair and consistent framework for the disclosure of information about adoption which recognises the wishes of interests of all involved, placing the adopted person's welfare at the forefront of decision making. In relation to pre-commencement adoptions, the regulations provide for the first time a properly regulated intermediary service for adopted adults and their birth relatives.

In relation to post-commencement adoptions, we do not consider that these new regulations will involve a significant level of additional work for adoption agencies. Although the Access to Information (Post-Commencement Adoptions) Regulations do impose new duties on adoption agencies they only apply to adoptions made after the regulations come into force. Therefore, the impact of the new burden will be gradual allowing adoption agencies time to adjust to these new duties. The regulations will involve some additional costs to adoption agencies but these may be recovered from those people applying to the agency for the disclosure of information, other than where the applicant is an adopted person in which case services should be provided free of charge.

In relation to pre-commencement adoptions, the regulations introduce a new statutory framework for the provision of intermediary services. As stated earlier, it is extremely difficult at this stage to predict the likely demand for such services. Most of the new burdens and costs in the draft regulations will fall to registered Adoption Support Agencies who will operate regulated intermediary services in this country for the first time. Registered ASAs will be able to recover their costs by charging fees to service users, including adopted adults. Local authorities and voluntary adoption agencies may choose to operate an intermediary service for former clients but there is no obligation on them to do so. Many will refer clients to an ASA for this service.

11. DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

For further information on this Regulatory Impact Assessment contact:

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