

No. [    ]

**SOCIAL CARE, ENGLAND**

**CHILDREN AND YOUNG PERSONS, ENGLAND**

**The Access to Information (Post-Commencement Adoptions)  
Regulations 2004**

*Made* - - - -

*Laid before Parliament*

*Coming into force* - -

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The Secretary of State in the exercise of the powers conferred on him by sections 9, 56 to 64, 140(8), 142(1) and (5) and 144(2) of the Adoption and Children Act 2002(a) and of all other powers enabling him in that behalf, with the approval of the Registrar General(b) and the Chancellor of the Exchequer (c), hereby makes the following Regulations:—

## PART 1

### GENERAL

#### **Citation, commencement and application**

1.—(1) These Regulations may be cited as the Access to Information (Post-Commencement Adoptions) Regulations and shall come into force on [ ].

(2) These Regulations apply to England only.

#### **Interpretation**

2. In these Regulations—

“the Act” means the Adoption and Children Act 2002;

“the Adoption Agencies Regulations” means the Adoption Agencies Regulations 2004(d)

“adopters” in the case of an adoption by one person means that person;

“birth parent” in relation to an adopted person means a person who, but for the adoption, would be his parent;

“birth relative” in relation to an adopted person means a person who, but for the adoption, would be related to him by blood (including half blood) or marriage;

“registered adoption support agency” means an adoption support agency in respect of which a person is registered under Part 2 of the Care Standards Act 2000(e)

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(a) 2002 c.38. These powers are exercisable by the appropriate Minister, who is defined in section 144(1) of the Act in relation to England, as the Secretary of State, in relation to Wales as the National Assembly for Wales and in relation to England and Wales, as the Secretary of State and the National Assembly or Wales acting jointly.

(b) The Registrar General’s approval is required for regulation 18(3) by virtue of section 64(5) of the Act.

(c) The approval of the Chancellor of the Exchequer is required for regulation 19(2) by virtue of section 64(4) of the Act

(d) 2000 c.14.

“the registration authority” means the Commission for Social Care Inspection (a);

## PART 2

### KEEPING OF INFORMATION BY ADOPTION AGENCIES

#### Information to be kept about a person’s adoption

3.—(1) Paragraphs (2) and (3) prescribe, for the purposes of section 56 of the Act, the information that an adoption agency must keep in relation to a person adopted on or after [A day] (and which is referred to in the Act and in these Regulations as “section 56 information”)(b).

(2) When an adoption order is made in relation to a person adopted after [A day] the adoption agency —

(a) that placed the person for adoption; or  
(b) to which the case records in respect of adopted person have been transferred, must continue to keep the case record that was set up in respect of the adopted person under Part 3 of the Adoption Agencies Regulations.

(3) The adoption agency must also keep—

- (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 that information;
- (b) any information supplied by the adopters or other persons which is relevant to matters arising after the adoption order has been made;
- (c) any information that the adopted person has requested should be kept;
- (d) any information given to 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);
- (e) any information disclosed to the adoption agency about an entry relating to the adopted person on the Adoption Contact Register.
- (f) any information required to be recorded in accordance with regulation 9, 10, 13 or 17;
- (g) the record of any agreement under regulation 10.

(4) For the purposes of this regulation “information” includes information in any form, including paper or electronic records, photographs, objects and mementos.

#### Storage and manner of keeping of section 56 information

4. The adoption agency shall ensure that section 56 information in relation to a person’s adoption is at all times kept in secure conditions and in particular that all appropriate measures are taken to prevent theft, unauthorised disclosure, damage, loss or destruction.

#### Preservation of section 56 information

5. The adoption agency must keep section 56 information in relation to a person’s adoption for at least 75 years from the date of the adoption order.

#### Transfer of section 56 information

6.—(1) Where a registered adoption society intends to cease to act or exist as such, it must transfer any section 56 information which it holds in relation to a person’s adoption to another

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(a) See section 42 of the Health and Social Care (Community Health and Standards) Act 2003 (c.41).

(b) Sections 56 to 64 are commenced only in respect of adoptions on or after [A day].

adoption agency having first obtained the approval of the registration authority for such transfer, or transfer the information—

- (a) to the local authority in whose area the society's principal office is situated; or
- (b) in the case of a society which amalgamates with another registered adoption society to form a new registered adoption society, to the new society.

(2) An adoption agency to which records are transferred by virtue of paragraph (1), shall notify the registration authority in writing of such a transfer.

## PART 3

### DISCLOSURE OF INFORMATION - GENERAL

#### **Disclosure of section 56 information for purposes of agency's functions**

7.—(1) An adoption agency may disclose section 56 information that is not protected information as it thinks fit for the purpose of carrying out its functions as an adoption agency.

(2) An adoption agency may disclose section 56 information (including protected information) to a registered adoption support agency which provides services to the adoption agency in connection with any of its functions under section 61 or 62 of the Act.

(3) An adoption agency may disclose section 56 information (including protected information) to a person who is authorised in writing by the Secretary of State to obtain information for the purposes of research.

#### **Disclosure of section 56 information for the purposes of inquiries, inspection etc.**

8. An adoption agency must disclose section 56 information (including protected information) as may be required —

- (a) to those holding an inquiry under section 17 of the Act or section 81 of the Children Act 1989(a) for the purposes of such an inquiry;
- (b) to the Secretary of State;
- (c) to the registration authority;
- (d) subject to the provisions of section 29(7) and 32(3) of the Local Government Act 1974(b) (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;
- (e) to any person appointed by the adoption agency for the purposes of the consideration by the agency of any representations (including complaints);
- (f) to a panel constituted under section 12 of the Act to consider a qualifying determination in relation to the disclosure of section 56 information;
- (g) to a court having power to make an order under the Act or under the Children Act 1989.

#### **Requirements relating to disclosure**

9. The adoption agency must make a written record of any disclosure made under regulation 7 or 8, which must include—

- (a) a description of the information disclosed;
- (b) the date on which the information is disclosed;
- (c) the person to whom the information is disclosed;

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(a) 1989 c.41.

(b) 1974 c.7.

- (d) the reason for disclosure.

### **Agreements for the disclosure of protected information**

**10.**—(1) For the purposes of section 57(5) of the Act an agreement for disclosure of protected information is a prescribed agreement if—

- (a) the adoption agency, the adopters and the birth parents are parties to it; and
- (b) the adoption agency is satisfied that it is in the adopted person's best interests.

(2) The adoption agency must keep a written record of any agreement referred to in paragraph (1) and that record must include —

- (a) the reasons for making the agreement; and
- (b) the information that that may be disclosed under the agreement and persons to whom it may be disclosed.

## **PART 4**

### **DISCLOSURE OF PROTECTED INFORMATION UNDER SECTIONS 61 AND 62**

#### **Manner of application**

**11.** An application to an adoption agency for the disclosure of protected information under section 61 or 62 of the Act must be in writing and must state the reasons for the application.

#### **Duties of agency on receipt of application**

**12.** On receipt of an application for the disclosure of protected information under section 61 or 62 of the Act an adoption agency must—

- (a) take all reasonable steps to confirm the identity of the applicant and of any person acting on his behalf; and
- (b) ensure that it has sufficient information from the applicant about the reasons for the application to enable the agency to discharge its functions under section 61 or 62 of the Act (as the case may be).

#### **Record of views**

**13.** An adoption agency must ensure that any views obtained under sections 61(3) or 62(3) or (4) of the Act are recorded in writing.

#### **Independent review**

**14.**—(1) The following determinations in relation to an application under section 61 or 62 of the Act are qualifying determinations for the purposes of section 12 of the Act (independent review of determinations)—

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

(2) The adoption agency must give the relevant person written notification of the determination, which must—

- (a) state the reasons for it, and

- (b) advise the relevant person that he may apply to an independent review panel for a review of the determination within 28 days.
- (3) If, within that 28 days, the adoption agency receives notification from an independent review panel that the relevant person has applied for a review of the determination, the agency must, within 10 working days, send to the panel —
  - (a) a copy of the application for disclosure;
  - (b) a copy of the notification given under paragraph (2);
  - (c) the record of any views obtained by the agency under section 61(3) or 62(3); and
  - (d) any additional information requested by the panel.
- (4) If, at the end of that 28 days, the relevant person has not applied for a review of the qualifying determination, the agency may proceed with its decision.
- (5) In paragraph (3) —
  - (a) the reference to an independent review panel is to a panel constituted for the purposes of section 12 of the Act; and
  - (b) “working day” means any day other than a Saturday or Sunday, Christmas day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971(a)
- (6) In this regulation “the relevant person” is —
  - (a) in the case of a determination mentioned in paragraph (1)(a) or (c), the applicant;
  - (b) in the case of a determination mentioned in paragraph (1)(b), the person the information is about.

## PART 5

### COUNSELLING

#### **Information about the availability of counselling**

- 15.**—(1) An adoption agency must provide written information about the availability of counselling to any person —
- (a) who is seeking information under sections 60, 61 or 62 of the Act;
  - (b) whose views have been sought as to the disclosure of information about him under section 61(3) or 62(3) or (4) of the Act;
  - (c) who enters, or is considering entering, into an agreement with the agency under regulation 10.
- (2) The information provided under paragraph (1) must include information about the fees that may be charged by persons providing counselling.

#### **Duty to secure counselling**

- 16.**—(1) Where a person who is seeking information from an adoption agency under section 60, 61 or 62 of the Act requests that counselling to be provided for him, the agency must make arrangements to secure counselling for that person.
- (2) The agency may provide the counselling itself or make arrangements with any of the following persons for provision of counselling —
- (a) if the person is in England or Wales, another adoption agency or a registered adoption support agency;

- (b) if the person is in Scotland, a Scottish adoption agency;
  - (c) if the person is in Northern Ireland, an adoption society which is registered under Article 4 of the Adoption (Northern Ireland) Order 1987<sup>(b)</sup> or from any Board; or
  - (d) if the person is outside the United Kingdom, any person or body outside the United Kingdom who appears to the agency to correspond in its functions to a body mentioned in paragraphs (a) to (d).
- (3) In this regulation-

“Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972 <sup>(a)</sup> or where the functions of a Board are exercisable by a Health and Social Services Trust, that Trust;

“registered adoption support agency” means an adoption support agency in respect of which a person is registered under Part 2 of the Care Standards Act 2000.

### **Disclosure of information for the purposes of counselling**

17.—(1) An adoption agency may disclose information (including protected information), which is required for the purposes of providing counselling to any person with whom it has made arrangements to provide counselling.

(2) An adoption agency must make a written record of any disclosure made by virtue of this regulation.

## **PART 6**

### **THE REGISTRAR GENERAL**

#### **Seeking information from the Registrar General**

18.—(1) Where—

- (a) an adopted person who has attained age of 18 years requests information from an adoption agency under section 60(2)(a) of the Act, which would enable him to obtain a certified copy of the record of his birth; and
  - (b) the agency does not have that information,
- the agency must seek that information from the Registrar General.

(2) Where an adoption agency is not able to trace a person for the purposes of seeking his views under section 61(3), 62(3) or 62(4), the agency must seek from the Registrar General any information that he holds about that person on the Adoption Contact Register.

(3) Where an adoption agency seeks information from the Registrar General under paragraph (1) the agency must provide him with the following information, so far as it is known, —

- (a) the 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.

#### **Registrar General to disclose information regarding the appropriate adoption agency and the Adoption Contact Register**

19.—(1) The Registrar General must—

- (a) disclose to any person at his request any information that the person requires to assist him to make contact with the adoption agency which is the appropriate adoption agency in the

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<sup>(b)</sup> S.I. 1987/2203 (N.I. 22)  
<sup>(a)</sup> S.I. 1972/1265 (N.I. 14).

case of the person specified in the request (or, as the case may be in the applicant's case); and

- (b) disclose to the appropriate adoption agency any information that the agency requires about any entry relating to an adopted person on the Adoption Contact Register.

(2) The adoption agency must pay any fee that the Registrar General determines is reasonable for the disclosure of information under paragraph (1) (b).

(3) In this regulation "appropriate adoption agency" has the same meaning given by section 65(1) of the Act.

## PART 7

### MISCELLANEOUS

#### **Offence**

**20.** A registered adoption society which discloses any information in contravention of section 57 of the Act (restrictions on disclosure etc. of information) is guilty of an offence punishable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **Fees charged by adoption agencies**

**21.—**(1) Subject to paragraph (2) an adoption agency may charge a fee which it determines to be a reasonable fee—

- (a) in respect of the disclosure of information under sections 61 or 62 of the Act;
- (b) for providing counselling in connection with the disclosure of information under those sections; or
- (c) for making arrangements to secure counselling in accordance with regulation 16 where the counselling is provided by a person outside the United Kingdom.

(2) No fee shall be payable by an adopted person in respect of any information disclosed to him under section 60,61 or 62 in relation to any relative of his or for any counselling provided to him in connection with any such disclosure.

(3) An adoption agency must, before providing a service to any person for which it may charge a fee under this regulation, give the person information about its fees.



## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations prescribe certain matters for the purposes of the regime set out in sections 56 to 65 of the Act (disclosure of information in relation to a person's adoption). The regime provides for adoption agencies to keep information about each adoption and to provide a service for persons seeking information about an adoption. The regime applies only in relation to adoptions on or after [A day].

Part 2 provides for the keeping of information. Regulation 3 prescribes what information must be kept ("section 56 information"). This includes the case record that was established by the adoption agency in relation to the child for the purposes of the adoption, information supplied by the birth parents, information supplied by the Registrar General, and the record of any disclosure of information. Part 2 also deals with storage and transfer of section 56 information. Regulation 5 requires that section 56 information be kept for 75 years from the date of the adoption.

Part 3 makes general provision for the disclosure of section 56 information, which may include protected information (that is information that identifies any person). Under regulation 7 an adoption agency may disclose section 56 information that is not protected information as necessary for the purpose of its functions. It may also disclose any section 56 information to persons providing services in relation to its functions under section 61 or 62 (for example a registered adoption support agency carrying out enquiries on its behalf). Regulation 8 provides for disclosure of information to specified persons including persons holding inquiries, the Commission for Social Care Inspection and the Secretary of State. Regulation 9 requires a written record to be kept of any disclosure. Regulation 10 prescribes the requirements for an agreement under 57(5) of the Act (which permits disclosure of protected information in pursuance of a prescribed agreement).

Part 4 relates to applications for disclosure of protected information under section 61 (information about adults) and 62 (information about children). Regulations 11 to 13 deal with procedural matters in relation to such applications. Regulation 14 makes provision for independent review of certain decisions of the adoption agency in relation to applications under section 61 or 62.

Part 5 makes provision for counselling. Regulation 15 requires adoption agencies to provide information about availability of counselling for persons seeking information about an adoption or person about whom information is being sought. Regulation 16 requires adoption agencies to secure counselling where requested by persons seeking information.

Part 6 relates to the Registrar General. Adopted adults have a right under section 60 of the Act to request information about their birth records. They must first approach the appropriate adoption agency, which then requests the information from the Registrar General. Regulation 18 requires the Registrar to provide the information. Regulation 19 requires the Registrar General to disclose information to any person that may assist the person in making contact with the adoption agency that holds the records of this adoption. It also requires the Registrar General to disclose information from the Adoption Contact Register at the request of an adoption agency.

Part 6 deals with miscellaneous matters. It creates an offence of disclosing information in contravention of section 57 of the Act. Regulation 21 prescribes fees that may be charged by adoption agencies in relation to disclosure of information and counselling.





