

No. []

SOCIAL CARE, ENGLAND

CHILDREN AND YOUNG PERSONS, ENGLAND

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

Made - - - - -

Laid before Parliament

Coming into force - - -

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The Secretary of State, in exercise of the powers conferred upon him by sections 9, 98 and 144(2) of the Adoption and Children Act 2002(a) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

PART 1

INTRODUCTORY

Citation and commencement and application

1.—(1) These Regulations may be cited as the Access to Information (Pre-Commencement Adoptions) Regulations 2004 and shall come into force on [].

(2) These Regulations apply only to England.

Interpretation

2.—(1) In these Regulations—

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

“the appropriate adoption agency”, in relation to an adopted person or to information relating to his adoption, means —

(a) if the person was placed for adoption by an adoption agency, that agency or (if different) the agency which keeps information in relation to his adoption;

(b) in any other case, the local authority to which notice of intention to adopt was given;

“ASA” means an adoption support agency;

“identifying information”, in relation to any person, means information which, whether taken on its own or together with other information, identifies the person or enables the person to be identified;

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

“registered ASA” means an ASA in respect of which a person is registered under Part 2 of the Care Standards Act 2000(b);

“subject” in relation to an application under these Regulations is a person about whom the applicant seeks information or with whom the applicant seeks contact;

(2) In these Regulations references to an adopted person are to a person adopted before [A day] who has attained the age of 18.

PART 2

FUNCTION OF ADOPTION SUPPORT AGENCIES

ASA may receive application from an adopted person or birth relative

3.—(1) A registered adoption support agency (“ASA”) may receive an application from a person adopted before [A day] who has attained the age of 18 for information in relation to his adoption or for assistance in contacting a relative of his.

(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) 2000 c.14.

(2) A registered ASA may also receive an application from a relative of a person mentioned in paragraph (1) for information in relation to that person's adoption or for assistance in contacting that person.

(3) Subject to regulations 4 and 5, if an ASA proceeds with such an application it must do so in accordance with these Regulations and take all reasonable steps to provide the information or the assistance sought by the applicant.

(4) An application under paragraph (2) must be from a person who has attained the age of 18.

No obligation to proceed if not appropriate

4.—(1) An ASA that receives an application under these Regulations is not required to proceed with it, or having begun to proceed with it, is not required to continue, if the ASA considers it would not be appropriate to do so.

(2) In deciding whether it is appropriate to proceed (or continue proceeding) with an application the ASA must have regard to—

- (a) the welfare of the adopted person;
- (b) any views of the appropriate adoption agency obtained under regulation 8, and all the other circumstances of the case.

Consent of subject to disclosure etc.

5.—(1) Subject to paragraph (3) an ASA must not, in pursuance of an application under these Regulations,—

- (a) disclose any identifying information about the subject to the applicant; or
- (b) make any arrangement for contact between the subject and the applicant, without first obtaining the consent of the subject.

(2) The ASA must take all reasonable steps to ensure that the subject has enough information to enable him to make an informed decision as to whether to give his consent to any such disclosure or arrangement.

(3) If the subject has died or the ASA determines that the subject is incapable of giving informed consent, the ASA may disclose to the applicant such information about the subject as it considers appropriate.

PART 3

PROCEDURE FOR APPLICATIONS

Procedure on receipt of application

6. Before proceeding with an application under these Regulations the ASA must take reasonable steps to confirm —

- (a) the identity of the applicant or of any person acting on his behalf;
- (b) that any person acting on behalf of the applicant is authorised to do so;
- (c) in the case of an application by a birth relative that the applicant is related to the adopted person;
- (d) in the case of an application made by an adopted person, that the applicant has first obtained the information that the Registrar General is required to provide under Schedule 2 to the Act (that is information necessary to enable the adopted person to obtain a certified copy of the record of his birth).

Identifying the appropriate adoption agency

7.—(1) Where an ASA proceeds with an application under these Regulations, the ASA must first take all reasonable steps to establish whether an adoption agency was involved in the adoption and, if so, to identify the appropriate adoption agency.

(2) The steps referred to in paragraph (1) are—

- (a) if the applicant cannot provide that information, making enquiries of the local authority for the area in which the adoption took place;
- (b) if that authority is not known or cannot provide that information, requesting it from the Registrar General, and
- (c) if the Registrar General certifies that he does not have that information, requesting it from the court that made the adoption order.

Contacting the appropriate adoption agency

8.—(1) Where the appropriate adoption agency has been identified, the ASA must contact that agency in order to—

- (a) ascertain its views as to whether the application is appropriate (having regard to the factors mentioned in regulation 4); and
- (b) seek any other information required for the purposes of—
 - (i) tracing the subject;
 - (ii) enabling the subject to make an informed decision as to whether he consents to the disclosure of information about him or to contact with the applicant;
 - (iii) counselling the subject in relation to that decision.

(2) The appropriate adoption agency must take all reasonable steps to comply with a request from an ASA under paragraph (1) and may disclose to the ASA such information (including identifying information about any person) as is necessary for that purpose.

(3) If the appropriate adoption agency cannot provide the information required for the purposes of paragraph (1)(b), the ASA must seek from the Registrar General such of the following information as may assist in the application—

- (a) the information referred to in section 79(3) of the Act (information which would enable an adopted person to obtain a certified copy of the record of his birth);
- (b) information from the Adoption Contact Register.

Procedure in non-agency cases

9.—(1) If the ASA is unable to identify the appropriate adoption agency in relation to an application under these Regulations, or ascertains that no adoption agency was involved in the adoption, the ASA must seek from the Registrar General such of the information referred to in regulation 8(3) as may assist it in dealing with application.

Counselling

10.—(1) A registered ASA must provide written information about the availability of counselling to any person who—

- (a) makes an application to it under these Regulations; or
- (b) is the subject of such an application and is considering whether to consent to disclosure of information about him or arrangements for contact with the applicant.

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

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

(3) If a person mentioned in paragraph (1) requests that counselling be provided for him, the ASA must secure the provision of counselling services for that person.

(4) The ASA may provide counselling services itself or make arrangements with another person for provision of those services.

Disclosure

11. An ASA may disclose such information (including identifying information about any person) as is necessary—

- (a) to the Registrar General or the Court for the purpose of obtaining information under regulation 8 or 9;
- (b) to the appropriate adoption agency for the purposes of ascertaining its views or seeking information under regulation 8;
- (c) to the subject to enable him to make an informed decision under regulation 5;
- (d) to a person providing counselling in connection with an application under these Regulations.

PART 4

MISCELLANEOUS

Offence

12. An ASA that discloses information in contravention of regulation 5 without reasonable excuse is guilty of an offence and is liable on conviction to a fine not exceeding level 5 on the standard scale.

Registrar General

13.—(1) The Registrar General must take reasonable steps to comply with a written request for information from an ASA under regulation 7, 8 or 9.

(2) If the Registrar General does not have the information about the appropriate adoption agency requested under regulation 7 he must provide the ASA with written verification of that fact together with details of the court that arranged the adoption.

Fees

14.—(1) An ASA may charge the applicant any fee it determines is reasonable in connection with the processing of an application under these Regulations.

(2) An ASA may charge a person mentioned in regulation 10 such fee as it determines is reasonable in respect of the provision of counselling services for that person.

(3) The Registrar General may charge a fee that he determines is reasonable for providing information under regulation 13.

(4) An adoption agency may charge an ASA such fee as it determines is reasonable for providing information or giving its views in accordance with a request under regulation 8.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision under section 98 of the Adoption and Children Act 2002 (“the Act”) for the purposes of assisting persons adopted before [A day] to obtain information about their adoption and to facilitate contact between those persons and their birth relatives. The corresponding regime for disclosure of information about adoptions after [A day] is set out sections 56 to 65 of the Act.

Part 2 confers new functions on registered adoption agencies (“ASAs”) that are willing to provide an intermediary service in respect of pre[A day] adoptions. A registered ASA may receive an application from an adopted person or a birth relative of an adopted person. The application may be for information about the adoption or for assistance in facilitating contact between the adopted person and a birth relative. The ASA is not required to proceed with an application where it does not consider that it would be appropriate. Regulation 4 sets out the factors that the ASA should take into account in making that decision. Regulation 5 requires the ASA to obtain the informed consent of the subject of the application before disclosing information about him or making arrangements for contact with the applicant.

Part 3 sets out the procedure to be followed by the ASA in processing an application. The first steps includes confirming the identity of the applicant, establishing that he is related to the subject and, where the applicant is the adopted person, ensuring that he has obtained any information to which he is entitled from the Registrar General. The ASA should then identify the adoption agency that holds the records relating to the adoption, seeking assistance where appropriate from the Registrar General and the Court (regulation 7). It should then contact that agency to seek its views on the application and to seek such information as may be necessary to trace the subject of the application (regulation 8). Where no adoption agency was involved (or cannot be traced or has ceased to exist) the ASA must seek such information from the Registrar General as may assist in processing the application (regulation 9). Regulation 10 sets out the requirements in relation to counselling. Regulation 10 provides for disclosure of information for the purposes of the application.

Part 4 deals with miscellaneous matters. Regulation 12 creates an offence of disclosure of information in contravention of Regulation 5. Regulation 13 provides for the role of the Registrar General. Regulation 15 provides for fees that may be charged by ASAs, adoption agencies and the Registrar General in relation to applications under these Regulations.