
WELSH STATUTORY INSTRUMENTS

2015 No. 1802 (W. 257)

CHILDREN AND YOUNG PERSONS, WALES

**The Adoption Information and Intermediary
Services (Pre-Commencement Adoptions)
(Wales) (Amendment) Regulations 2015**

<i>Made</i>	- - - -	<i>16 October 2015</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>20 October 2015</i>
<i>Coming into force</i>	- -	<i>10 November 2015</i>

The Welsh Ministers in exercise of the powers conferred by sections 2(6), 9(1), 98(1), (1A), (2) and (3) and 144(2) of the Adoption and Children Act 2002(1)(2), make the following Regulations.

The Secretary of State has approved the making of these Regulations in so far as the Secretary of State's approval is required by section 98(6) of that Act(3).

Title, commencement and application

1.—(1) The title of these Regulations is the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) (Wales) (Amendment) Regulations 2015.

(2) These Regulations come into force on 10 November 2015.

(3) These Regulations apply in relation to Wales.

Amendment of the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) (Wales) Regulations 2005

2. The Adoption Information and Intermediary Services (Pre-Commencement Adoptions) (Wales) Regulations 2005(4) are amended in accordance with regulations 3 to 16.

3. In regulation 2 (interpretation)—

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- (1) 2002 c. 38. Section 1 of the Children and Families Act 2014 inserted subsection (1A) into section 98 of the 2002 Act so that regulations made by the Welsh Ministers can make provision to facilitate contact between persons with a prescribed relationship to a person adopted before 30 December 2005 and the adopted person's birth relatives.
- (2) The power conferred on the National Assembly for Wales to make regulations under the 2002 Act transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (3) Section 98(6) of the 2002 Act provides that provision made in regulations authorising the Registrar General to disclose information or to charge prescribed fees requires the approval of the Secretary of State. The approval function of the Chancellor of the Exchequer under section 98(6) of the 2002 Act transferred to the Secretary of State by virtue of S.I. 2008/678.
- (4) S.I. 2005/2701 (W. 190) as amended by S.I. 2005/3293 (W. 253).

- (a) in the appropriate place in the alphabetical order insert—
- ““adopted person” (“*person mabwysiedig*”) means a person who was adopted before 30 December 2005 and has attained the age of 18;”;
- ““corresponding English provision” (“*darpariaeth Seisnig gyfatebol*”) means in relation to a Part or a regulation of these Regulations, the provision of regulations made by the Secretary of State under section 9 of the 2002 Act which corresponds to that Part or regulation;”;
- ““prescribed relationship” (“*perthynas ragnodedig*”) has the meaning given in regulation 2A;”;
- (b) for the definition of “the applicant” (“*y ceisydd*”) substitute—
- ““the applicant” (“*y ceisydd*”) means a person who makes an application under regulation 5 and is—
- (a) an adopted person;
- (b) a person with a prescribed relationship; or
- (c) a relative of an adopted person;”.

4. After regulation 2 (interpretation) insert—

“Prescribed relationship

2A. For the purposes of section 98(1A) of the 2002 Act, a prescribed relationship is a relationship whereby a person (who is not a relative of the adopted person within the meaning of “relative” in regulation 2) is related to an adopted person—

- (a) by blood, marriage or civil partnership; or
- (b) by virtue of the adopted person’s adoption.”

5. In regulation 4 (meaning of “intermediary service” and “intermediary agency”) for paragraph (1) substitute—

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

- (a) assisting adopted persons to obtain information in relation to their adoption;
- (b) facilitating contact between adopted persons and their relatives; and
- (c) facilitating contact between persons with a prescribed relationship to an adopted person and relatives of the adopted person.”

6. In regulation 5—

- (a) in the heading for “Priority for adoptions before 1976” substitute “Applications that may be accepted”;
- (b) for paragraph (1) substitute—
- “(1) Subject to paragraph (3) an intermediary agency may accept an application from—
- (a) an adopted person for assistance in obtaining information about that person’s adoption and contacting a relative of that person;
- (b) a relative of an adopted person for assistance in contacting—
- (i) the adopted person; or
- (ii) a person with a prescribed relationship to the adopted person; or
- (c) a person with a prescribed relationship to the adopted person for assistance in contacting a relative of an adopted person.”;

- (c) omit paragraph (2);
 - (d) in paragraph (3) after “paragraph (1)” omit “and (2)”.
7. After regulation 5 insert—

“Restrictions on proceeding with an application

5A.—(1) Where an intermediary agency accepts an application from a relative of an adopted person for assistance in contacting the adopted person, it must not proceed with the application if a veto applies under regulation 8(1), except in circumstances referred to in regulation 8(1)(b)(ii).

(2) Where an intermediary agency accepts an application from a relative of an adopted person for assistance in contacting a person with a prescribed relationship to the adopted person, it must not proceed with the application if—

- (a) a veto applies under regulation 8(1), except in the circumstances referred to in regulation 8(1)(b)(ii); or
- (b) the adopted person does not consent to the application proceeding.

(3) Subject to paragraphs (4) to (6), where an intermediary agency accepts an application from a person with a prescribed relationship to an adopted person for assistance in contacting a relative of the adopted person, it must not proceed with the application if the adopted person does not consent to the application proceeding.

(4) An intermediary agency may proceed with an application under paragraph (3)—

- (a) if the intermediary agency has taken all reasonable steps to locate the adopted person but has been unable to do so; or
- (b) where—
 - (i) the applicant is either the spouse, child, grandchild or great grandchild of the adopted person; and
 - (ii) the applicant is seeking to contact the relative of the adopted person only to obtain information about the medical history of the adopted person’s relatives.

(5) Where paragraph (4)(b) applies, the intermediary agency must not disclose any information which, whether taken on its own or together with other information possessed by the person to whom it is being disclosed, would enable the adopted person, any relative of the adopted person or any person with a prescribed relationship to the adopted person to be identified or traced.

(6) Any requirement under this regulation for the adopted person to consent to an application proceeding does not apply if—

- (a) the adopted person has died; or
- (b) the intermediary agency determines that the adopted person is incapable of giving informed consent.

(7) Where the consent of the adopted person is required under this regulation, the intermediary agency must take all reasonable steps to ensure that the adopted person has sufficient information to make an informed decision.”

8. In regulation 8 (veto by an adopted person)—

- (a) for paragraph (1) substitute—

“(1) A veto applies in relation to an application under these Regulations or under corresponding English provision where—

- (a) the subject is either the adopted person or a person with a prescribed relationship to the adopted person; and
 - (b) the adopted person has notified the appropriate adoption agency in writing that—
 - (i) he or she does not wish to be contacted by an intermediary agency in relation to an application under these Regulations; or
 - (ii) that he or she only wishes to be contacted under specified circumstances or by specified persons.”;
 - (b) omit paragraph (3); and
 - (c) at the end insert—

“(4) A veto which applies by virtue of a notification given before 10 November 2015 is deemed to apply to any application made by a relative of the adopted person under these Regulations.”
- 9.** For regulation 9 (provision of background information where consent refused etc.) substitute—
- “**9.** Nothing in these Regulations prevents the intermediary agency from disclosing to the applicant any information about the subject that is not identifying information and that the agency considers it appropriate to disclose.”
- 10.** In regulation 10 (counselling)—
- (a) for paragraph (1) substitute—

“(1) An intermediary agency must provide written information about the availability of counselling to any person who—

 - (a) makes an application to it under these Regulations;
 - (b) is the subject of such an application and is considering whether to consent to disclosure of information about the subject to the applicant; or
 - (c) is an adopted person considering whether to consent to an application proceeding.”;
 - (b) for paragraph (4)(c) substitute—

“(c) if the person is in Northern Ireland, an appropriate voluntary organisation within the meaning of Article 2(2) of the Adoption (Northern Ireland) Order 1987⁽⁵⁾ or the Regional Board or any Health and Social Care Trust; or”;
- (c) for paragraph (5) substitute—
- “(5) In this regulation “Regional Board” (“*Bwrdd Rhanbarthol*”) means the Regional Health and Social Care Board established under section 7 of the Health and Social Care (Reform) Act (Northern Ireland) 2009⁽⁶⁾ and a “Health and Social Care Trust” (“*Ymddiriedolaeth Iechyd a Gofal Cymdeithasol*”) means a Health and Social Care Trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991⁽⁷⁾.”
- 11.** In regulation 11 (procedure on receipt of application)—
- (a) omit “and” at the end of paragraph (b);
 - (b) at the end of paragraph (c) for “.” substitute “; and”;
 - (c) after paragraph (c) insert—

⁽⁵⁾ S.I. 1987/2203 (N.I. 22).

⁽⁶⁾ 2009 c. 1.

⁽⁷⁾ S.I. 1991/194 (N.I.1).

“(d) in the case of an application by a person with a prescribed relationship to the adopted person, that the applicant does have a prescribed relationship with that person.”

12. In regulation 12 (contacting the appropriate adoption agency)—

(a) for paragraph (2) substitute—

“(2) The steps referred to in paragraph (1) include—

- (a) requesting in writing from the Registrar General any information under regulation 13 that may be relevant for this purpose;
- (b) requesting in writing from the court that made the adoption order information about the identity of the appropriate adoption agency;
- (c) making enquiries of the local authority for the area where the adoption took place.”;

(b) in paragraph (3) after “the intermediary agency must” insert “take all reasonable steps to”;

(c) for paragraph (4)(a) substitute—

“(a) ascertain whether the adopted person has, at any time, expressed views to the agency about—

- (i) any future contact with any relative;
- (ii) any future contact between people with a prescribed relationship to the adopted person and relatives of the adopted person;
- (iii) being approached with regard to such contact; and”;

(d) for paragraph (4)(c) substitute—

“(c) seek any other information required for the purposes of—

- (i) tracing the adopted person and, where the adopted person is not the subject, any other subject;
- (ii) enabling the adopted person to make an informed decision as to whether to consent to—
 - (aa) the disclosure of identifying information about him or her;
 - (bb) an application proceeding to facilitate contact between a relative of the adopted person and a person with a prescribed relationship to the adopted person; or
 - (cc) contact with the applicant;
- (iii) enabling any other subject to make an informed decision as to whether to consent to—
 - (aa) the disclosure of identifying information about him or her; or
 - (bb) contact with the applicant;
- (iv) counselling the subject and, where he or she is not the subject, the adopted person in relation to that decision; and
- (v) counselling the applicant.”;

(e) in paragraph (5) after “a request from an intermediary agency under paragraph (4)” insert “or under corresponding English provision”;

(f) after paragraph (5) insert—

“(6) An “intermediary agency” (“*asiantaeth gyfryngol*”) for the purposes of paragraph (5) includes an intermediary agency as defined under corresponding English provision.”

13. In regulation 13 (obtaining information from Registrar General)—

(a) for paragraph (1) substitute—

“(1) An intermediary agency may make a request in writing to the Registrar General for such of the following information as may assist it for the purposes of proceeding with an application under these Regulations—

- (a) the identity of the appropriate adoption agency;
- (b) details of the court that made the adoption order;
- (c) information that he or she may hold that would enable an application to be made for a certificate from the Adopted Children Register;
- (d) information from the Adoption Contact Register.”;

(b) for paragraph (2) substitute—

“(2) If an intermediary agency is proceeding with an application under regulation 5(1) (c), it may also make a request in writing to the Registrar General for such information that he or she may hold that would enable the adopted person to whom the applicant has a prescribed relationship to obtain a certified copy of the record of his or her birth.”.

14. In regulation 14 (Registrar General to comply with request)—

- (a) in paragraph (1) omit “12 or”;
- (b) omit paragraph (2).

15. In regulation 16 (authorised disclosures)—

- (a) in paragraph (a) omit “12 or”;
- (b) omit “and” at the end of paragraph (c);
- (c) in paragraph (d) for “.” substitute “; and”;
- (d) after paragraph (d) insert—

“(e) to the adopted person to enable him or her to make an informed decision about whether to consent to an application under these Regulations proceeding.”

16. In regulation 18 (fees) for paragraph (3) substitute—

“(3) The Registrar General may charge an intermediary agency the following fees in connection with requests for information under regulation 13 or 14—

- (a) £36 for processing an initial request for information (whether or not information is provided);
- (b) £14 for providing information in response to any subsequent request made in relation to the same applicant.”

16 October 2015

Mark Drakeford
Minister for Health and Social Services, one of
the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) (Wales) Regulations 2005 (“the 2005 Regulations”), which make provision under section 98 of the Adoption and Children Act 2002 for the purpose of assisting persons adopted before 30 December 2005 to obtain information about their adoption and to facilitate contact between those persons and their birth relatives.

Regulations 4 and 5 of the 2005 Regulations, which set out the services that an intermediary agency may provide and applications that such agencies may accept, are amended to provide that intermediary agencies may accept applications from a person with a prescribed relationship (as defined in the new regulation 2A) to an adopted person for assistance in contacting a relative of an adopted person and vice versa (regulations 3 and 4).

Regulation 5A is inserted into the 2005 Regulations to prescribe the circumstances in which an intermediary agency must not proceed with an application and to set out the circumstances in which a veto registered under regulation 8 of the 2005 Regulations will apply (regulation 7).

Regulation 8 of the 2005 Regulations is amended to provide that an adopted person’s veto also applies when the subject of an application is a person with a prescribed relationship to the adopted person (regulation 8).

Regulation 9 of the 2005 Regulations is amended so that the 2005 Regulations do not prevent an intermediary agency from disclosing information that is not identifying information to an applicant if the agency considers that it would be appropriate to do so (regulation 9).

Regulation 10 of the 2005 Regulations is amended to require an intermediary agency to provide written information about the availability of counselling to an adopted person who is considering whether to consent to an application proceeding (regulation 10).

Regulation 11 of the 2005 Regulations is amended to require an intermediary agency to take reasonable steps to confirm that the applicant does have a prescribed relationship when it receives an application from such a person (regulation 11).

Regulation 12 of the 2005 Regulations is amended to require the intermediary agency to ascertain from the appropriate adoption agency whether the adopted person has at any time expressed his or her views about contact and to require the intermediary agency to seek other information from the appropriate adoption agency. It is also amended to require adoption agencies in Wales to take reasonable steps to provide relevant information to intermediary agencies in England (regulation 12).

Regulation 13 of the 2005 Regulations is amended to enable the intermediary agency to request any or all of the information listed in that regulation at the same time. It also enables the intermediary agency, if it is proceeding with an application from a person with a prescribed relationship to the adopted person, to request information from the register of live births (regulation 13).

Regulation 16 of the 2005 Regulations is amended to enable an intermediary agency to disclose information (including information that identifies any person) as is necessary to the adopted person to enable him or her to make an informed decision about whether to consent to an application proceeding (regulation 15).

Regulation 18 of the 2005 Regulations is amended in relation to the fees payable by an intermediary agency requesting information from the Registrar General. Previously, a fee of £10 was payable in respect of information provided. A new fee of £36 is payable for processing an

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initial request for information under regulation 13 or 14 of the 2005 Regulations, which is payable whether or not any information is located and provided, and irrespective of how much information is provided. A further fee of £14 is payable in respect of each subsequent request for information, but only where information is provided (regulation 16).

An impact assessment has not been produced for this instrument as it has a minimal impact on businesses, civil society organisations and on the public sector.