

Draft Regulations laid before the Scottish Parliament under section 117(5) of the Adoption and Children (Scotland) Act 2007, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2009 No.

CHILDREN AND YOUNG PERSONS

The Adoption (Disclosure of Information and Medical Information about Natural Parents) (Scotland) Regulations 2009

Made - - - - 2009

Coming into force - - 28th September 2009

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 38(1), 74(1) and 117(2) of the Adoption and Children (Scotland) Act 2007⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 117(5) of that Act, a draft of these Regulations has been laid before, and approved by resolution of, the Scottish Parliament.

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Adoption (Disclosure of Information and Medical Information about Natural Parents) (Scotland) Regulations 2009 and come into force on 28th September 2009.

Interpretation

2. In these Regulations—

“the Act” means the Adoption and Children (Scotland) Act 2007;

“the 2002 Act” means the Adoption and Children Act 2002⁽²⁾;

“the 2009 Regulations” means the Adoption Agencies (Scotland) Regulations 2009⁽³⁾;

(1) 2007 asp 4.

(2) 2002 c. 38.

(3) S.S.I. 2009/154.

“case record” means the records created under regulation 27 of the 2009 Regulations.

PART 2

DISCLOSURE OF INFORMATION

Disclosure of information to adopted person

3.—(1) Where an adopted person who has attained the age of 16 years, if in Scotland, or 18 years, if in England or Wales, requests adoption support services under section 9 (assessment of needs for adoption support services) of the Act, or is seeking information under section 60 (disclosing information to adopted adult), 61 (disclosing protected information about adults) or 62 (disclosing protected information about children) of the 2002 Act, an adoption agency must disclose any information, which it has relating to that person’s adoption, to that adopted person.

(2) Where an adopted person has not yet attained the age of 16 years, if in Scotland, or 18 years, if in England or Wales, an adoption agency may disclose the information, which it has relating to that person’s adoption, to that adopted person if the agency thinks it appropriate to do so.

(3) In considering whether it is appropriate to disclose or withhold information under paragraph (2) the adoption agency must consider—

- (a) the views of the adopted person, taking into account the person’s age and maturity;
- (b) the views of the adopted person’s adoptive parents, insofar as it is practicable to obtain their views; and
- (c) the welfare of the adopted person.

(4) Notwithstanding paragraph (3) information must not be disclosed to the adopted person under paragraph (2) if that information could, whether taken on its own or together with other information held by the adopted person, identify the adopted person’s natural parents or other natural relatives.

(5) Where an adoption agency discloses information in accordance with paragraph (1) or (2) the agency must inform the adopted person of the availability of counselling services.

Disclosure of information to other persons

4. Where an adopted person who has attained the age of 16 years, if in Scotland, or 18 years, if in England or Wales, requests adoption support services under section 9 of the Act, or is seeking information under section 60, 61 or 62 of the 2002 Act, an adoption agency may disclose the information, which it has relating to that person’s adoption, to—

- (a) the local authority for the area in Scotland where the adopted person lives, if the adopted person has requested adoption support services from that authority;
- (b) the local authority for the area in Scotland where the court, which made the adoption order sat, if the adopted person has requested adoption support services from that authority;
- (c) the Registrar General for England and Wales;
- (d) the local authority for the area in England and Wales where the adopted person lives, if the adopted person has sought information from that authority; and
- (e) the local authority for the area in England or Wales where the court, which made the order relating to the adopted person sat, if the adopted person has sought information from that authority.

Disclosure of information for purposes of agency's functions or for research

5. An adoption agency may provide access to its case records and the indexes to them and disclose such information in its possession, as it thinks fit—

- (a) to persons, for the purposes of carrying out its functions as an adoption agency; or
- (b) to a person who is authorised in writing by the Scottish Ministers to obtain information for the purposes of research.

Disclosure of information for inquiries etc.

6. An adoption agency must provide such access to its case records and the indexes to them and disclose such information in its possession, as may be required, to—

- (a) those holding an inquiry under section 6A of the Social Work (Scotland) Act 1968⁽⁴⁾ (inquiries), or under the Inquiries Act 2005⁽⁵⁾, for the purposes of such an inquiry;
- (b) the Scottish Ministers;
- (c) the Scottish Public Services Ombudsman;
- (d) the Scottish Commission for the Regulation of Care;
- (e) the persons and authorities referred to in regulations 14 (notification of adoption agency decisions) and 24 (placement for adoption: notification and provision of information) of the 2009 Regulations, to the extent specified in those regulations;
- (f) a court having power to make an Order under the Act or under the Children (Scotland) Act 1995⁽⁶⁾; and
- (g) a curator *ad litem* or reporting officer appointed under rules made pursuant to section 108 of the Act (rules: appointment of curators *ad litem* and reporting officers) for the purpose of the discharge of their duties in that behalf.

Requirements relating to disclosure

7. The adoption agency must make and keep a written record of any access provided or disclosure made under regulation 5 or 6, 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; and
- (d) the reason for disclosure (including the paragraph in regulation 5 or 6 under which disclosure was made).

Transfer of case records

8.—(1) An adoption agency must transfer a copy of a case record (or part thereof) to another adoption agency when it considers this to be in the interests of an adopted child or prospective adoptive parent to whom the record relates, and a written record must be kept of any such transfer.

(2) Where a registered adoption service intends to cease to act or exist as such, it must transfer its case records and the indexes to them which it holds in relation to an adopted child or a prospective adoptive parent—

⁽⁴⁾ 1968 c. 49.

⁽⁵⁾ 2005 c. 12.

⁽⁶⁾ 1995 c. 36.

- (a) to another registered adoption service, having first obtained the Scottish Ministers' approval for such transfer;
 - (b) to the local authority in whose area the service's head office is situated; or
 - (c) in the case of a service which amalgamates with another registered adoption service to form a new registered adoption service, to the new body.
- (3) A registered adoption service to which case records or the indexes to them are transferred by virtue of paragraph (2) must notify the Scottish Ministers and the adopted child or prospective adoptive parent to whom the record relates, in writing, of such transfer.

PART 3

DISCLOSURE OF MEDICAL INFORMATION ABOUT NATURAL PARENTS

Application

9. Part 3 applies subject to—
- (a) Part 2; and
 - (b) the 2009 Regulations.

No automatic right of access to information

10. Neither the relevant child nor the adoptive parents of the relevant child have an automatic right to access information about the health of the natural parents of the relevant child(7).

Disclosure of medical information about natural parents

11.—(1) Where an adoption agency has not been able to obtain the information specified in paragraph 13 of Part III of schedule 1 to the 2009 Regulations(8), (whether there is any history of genetically transmissible or other significant disease in the family history of either the father's or mother's family) a registered medical practitioner holding any such information must disclose it to the adoption agency when requested to do so.

(2) Any information disclosed to an adoption agency under this regulation must be placed on the case record relating to an adopted child.

(3) Any information disclosed to an adoption agency under this regulation must be treated by that agency as confidential.

St Andrew's House,
Edinburgh
2009

Authorised to sign by the Scottish Ministers

(7) "Relevant child" is defined in section 74(1) of the Act.

(8) Part III of Schedule 1 is introduced by regulation 12(2)(c) (Duties of adoption agencies when considering adoption for a child) of the 2009 Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, made under the Adoption and Children (Scotland) Act 2007, make provision: in Part 2 concerning the disclosure by adoption agencies of information relating to adoptions; and in Part 3 concerning the disclosure of information about the health of the natural parents of a child who is to be, may be or has been adopted.

Regulation 3 provides for disclosure of information to adopted persons. Where the adopted person is under the age of 16 (or 18 if in England or Wales) the adoption agency must, prior to disclosing information, consider the adopted person's views and welfare and the views of the adoptive parents. However, the agency must not disclose to an adopted person under the age of 16 (or 18 in England or Wales) any information which could identify the adopted person's natural parents.

Regulation 4 provides for disclosure of information to local authorities in Scotland, England and Wales, and to the Registrar General for England and Wales, where an adopted person is applying for adoption support services or seeking information about their adoption. An adoption agency may disclose information for the purposes of carrying out its functions or to researchers authorised by the Scottish Ministers (regulation 5). Regulation 6 describes persons which an agency must disclose information to, and these include those holding certain inquiries, the Scottish Ministers, the Scottish Public Services Ombudsman, the Scottish Commission for the Regulation of Care, persons authorised under the Adoption Agencies (Scotland) Regulations 2009 and courts. When an agency discloses information under regulations 5 and 6 it must keep a record of the disclosure and the reasons for it (regulation 7). Regulation 8 provides for the transfer of adoption case records, including where adoption agencies dissolve or merge.

Regulation 9 provides that Part 3 applies subject to Part 2 and to the Adoption Agencies (Scotland) Regulations 2009.

Regulation 10 provides that neither the child who is to be, may be or has been adopted, nor the adoptive parents of that child, have an automatic right to access medical information concerning that child's natural parents.

Regulation 11 provides that where an adoption agency has been unable to obtain information about transmissible genetic, or other significant, disease in the family history of the child's natural parents, a GP holding such information must disclose it to the adoption agency on request. That information is then held on the case record relating to the child. Any information disclosed by the GP must be treated, by the adoption agency, as confidential.