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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2009 No.**

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

**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<sup>(1)</sup> (inquiries), or under the Inquiries Act 2005<sup>(2)</sup>, 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<sup>(3)</sup>; 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).

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(1) 1968 c. 49.

(2) 2005 c. 12.

(3) 1995 c. 36.

### **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—

- (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.