

EXECUTIVE NOTE TO
THE ADOPTION (DISCLOSURE OF INFORMATION AND MEDICAL
INFORMATION ABOUT NATURAL PARENTS) (SCOTLAND)
REGULATIONS 2009
SSI 2009/268

1. The above instrument (“the Regulations”) was made in exercise of the powers conferred by sections 38(1), 74(1) and 117(2) of the Adoption and Children (Scotland) Act 2007 (“the 2007 Act”). The instrument is subject to affirmative resolution procedure.

2. These Regulations are one of a series of statutory instruments being enacted to implement the core provisions of the 2007 Act. The purpose of Part 2 of the Regulations is to prescribe:

- the circumstances under which adoption information can be disclosed
- the persons that adoption information can be disclosed to and
- the requirements which are to apply when disclosing adoption information.

Part 3 of the Regulations relates to the disclosure of medical information during the adoption process and prescribes:

- the persons by whom, and to whom, medical information may be disclosed
- the circumstances when medical information can be disclosed and
- the content of medical information that can be disclosed.

3. The Regulations are designed to ensure that only the adopted person, and those other persons who have an identifiable need to access adoption information, will have such information disclosed to them. The circumstances under which information can be disclosed to persons other than the adopted person are narrow and mostly assist in providing adoption support services to the adopted person. Part 3 of the Regulations provides that, if important medical information is not forthcoming during the collection of information that an adoption agency is required to undertake, that agency may collect the information prescribed directly from the natural parent’s General Practitioner.

Legislative Background

4. The Adoption Policy Review Group (APRG) phase 2 report, which led to the 2007 Act, included specific recommendations on access to adoption information, including medical information. Some of the Regulations restate the existing legislation, but new provisions are included giving limited access to adoption information to an adopted person under the age of 16, and providing for the release of medical information from the natural parent’s GP to the adoption agency. The Regulations provide for the circumstances, and procedures, under which certain persons, such as an adopted person over 16 or a person conducting an inquiry, can access adoption information. Regulation 4 provides for procedures for assisting access to information where an adopted person may only have limited information concerning their adoption by providing that information can be disclosed to another local authority or to the Registrar General for England and Wales if they have been approached by an adopted person seeking adoption support services.

5. The APRG also identified that it can be difficult to obtain medical information when conducting a health assessment of a child. Generally, disclosure of medical information requires the consent of the patient to whom it relates. The APRG identified that, in practice, there were 3 situations where local authorities and adoption agencies find it difficult to obtain this information: where there is no consent as natural parents were never asked; where there is no consent because natural parents are absent and therefore cannot be asked; and where there is no consent because natural parents refuse to give it. The APRG identified that not being able to obtain this information hindered good planning for the child.

6. Regulation 11 states that the natural parent's General Practitioner must provide specified medical information to the adoption agency. Regulation 9 provides that Part 3 of the Regulations is subject to: Part 2 of the Regulations re general disclosure of adoption information; and the Adoption Agencies (Scotland) Regulations 2009, which includes general provision on the creation and retention of adoption information. Part 3 therefore applies only to the medical information specified in regulation 11.

Consultation

7. Draft regulations were published on the Consultations section of the Scottish Government web site. This consultation was supplemented by discussions with the Association of Directors of Social Work's Adoption and Fostering Sub-Group, the Scottish Committee of the British Association for Adoption and Fostering and a group of social work practitioners organised by the British Association of Adoption and Fostering. Responses were also sought directly from the General Medical Council, the Royal College of General Practitioners, the British Medical Association and the Information Commissioner's Office. The General Medical Council and the Information Commissioner's Office were closely involved in the development of the consultation draft regulations. Responses were in broad agreement with the principles of the regulations.

Financial Effects

8. The Regulations restate and extend the provisions already in place for the disclosure of adoption information. It is not envisaged that Part 2 will have any extra financial burden on either the Scottish Government or adoption agencies. Part 3 of the Regulations relating to the disclosure of medical information should not create any extra financial burden on local authorities or adoption agencies either, because the collection of this information is already required and is restated in the Adoption Agencies (Scotland) Regulations 2009. Part 3 simply provides another route for the adoption agency to gather that information.