

ADOPTION AND CHILDREN ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Adoption

Chapter 7 - Miscellaneous

Section 98: Pre-commencement adoptions: information

244. *Section 98* amplifies the regulation-making power in section 9 to provide that the appropriate Minister may make regulations in connection with adoptions made before the appointed day (i.e. commencement of sections 56 to 65). *Subsection (1)* provides that regulations may make provision for assisting adults adopted before the appointed day to obtain information about their adoption and to facilitate contact between them and their relatives.
245. It is intended that this is to be used to provide for a system in which adoption support agencies registered to provide such services may, on application by a person adopted before the Bill is implemented or a birth relative of such a person, act as intermediaries and, with the informed consent of the adopted person, facilitate contact between him and his relatives. It is envisaged that in performing this role adoption support agencies will be obliged, where an adoption agency arranged the adoption, to seek advice and information from that agency. It is also envisaged that the adoption support agency is to be able to obtain information held by the Registrar General, where this is necessary in order to perform their intermediary function.
246. It is intended that the regulations made under *subsections (2) and (3)(a)* will set out the circumstances when adoption support agencies, adoption agencies and the Registrar General are to be able or required to disclose information to each other. For example, an adoption support agency is to be authorised to disclose information to the Registrar General or to an adoption agency. The Registrar General or the adoption agency are to be required to disclose tracing information to the adoption support agency.
247. Provision is made under *subsection (3)(b)* for regulations to be made authorising or requiring the court to disclose information to an adoption support agency. This will enable the adoption support agency to contact an adoption agency that was involved in the particular adoption to ensure that it is aware of any information that that agency holds that is relevant to the case the adoption support agency is handling. In addition, subsection (3) also makes express provision for regulations to impose conditions on the disclosure of information under this section so that identifying information is properly protected, for example to ensure that the appropriate consent is in place before any disclosure is made. Regulations may be made under subsection (3) of section 9 for unauthorised disclosure of the information provided for by section 98(1) to be a criminal offence punishable on summary conviction with a maximum level 5 fine.
248. *Subsection (4)* provides that regulations may authorise the charging of prescribed fees for the disclosure of information by adoption support agencies, adoption agencies, the Registrar General and the court.

*These notes refer to the Adoption and Children Act 2002
(c.38) which received Royal Assent on 7th November 2002*

249. *Subsection (5)* provides an authorisation or requirement made under *subsection (3)(a)*, has effect of in spite of any restriction on the disclosure of information in Chapter 5 relating to the Registers. *Subsection (6)* requires the approval of the Chancellor of the Exchequer to the making of regulations under *subsections (2) and (4)* which relate to the Registrar General. *Subsection (7)* provides definitions in relation to this section.