

**EXPLANATORY MEMORANDUM TO**  
**THE ADOPTION INFORMATION AND INTERMEDIARY SERVICES (PRE-**  
**COMMENCEMENT ADOPTIONS) (AMENDMENT) REGULATIONS 2015**

**2015 No. 1685**

**1.** This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 To enable persons with a prescribed relationship to an adopted person (who was adopted before 30 December 2005) to proceed with an application to an intermediary agency, where the prescribed person does not know the name at birth of the adopted person, by enabling the Registrar General to disclose information from the birth register to intermediary agencies acting on behalf of prescribed persons. Applications to an intermediary agency are for the purpose of facilitating contact (and in some cases disclosure of information) between such persons and birth relatives of the adopted person.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 Under the 2005 Regulations, a fee of £10 was payable in respect of the information provided by the Registrar General. The General Register Office (GRO) have recently held a review of the fees they charge for their services. This amendment proposes to change the fees payable on a cost recovery basis by an intermediary agency requesting information from the Registrar General. The amendment imposes a new fee of £36 for processing the application, which is payable whether or not any information is provided. This is because most of the work involves tracing the record and locating the information. A further fee of £14 is payable in respect of each subsequent request for information, but only where information is provided.

**4. Legislative Context**

4.1 In October 2014, following public consultation, the Department amended regulations to widen the access to intermediary services to include a wide range of relatives including descendants of adopted people. Since making the amendment it has become clear that in some cases intermediary agencies have had difficulties in accessing birth information from the Registrar General. The amendment to the Regulations would allow the Registrar General to disclose information from the birth register to intermediary agencies acting on behalf of prescribed persons.

## **5. Territorial Extent and Application**

5.1 These regulations apply to England. The regulations have been amended to require adoption agencies in England to take reasonable steps to provide relevant information to intermediary agencies in Wales. Wales intends to implement the same amendment to the Wales regulations, to facilitate cross-border applications.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- What is being done and why

7.1 Section 98(1A) of the Adoption and Children Act 2002, which was inserted by the Children and Families Act 2014, enables regulations to be made for the purposes of facilitating contact between ‘persons with a prescribed relationship’ to an adopted person (who was adopted before 30 December 2005) and the adopted person’s relatives. In October 2014 the Government amended regulations to define ‘persons with a prescribed relationship’ as all relatives of an adopted person (except relatives at birth, who already had a right to apply to an intermediary service), including but not limited to an adopted person’s children and grandchildren. The amendment had the effect of allowing this new category of relatives to apply to an intermediary agency, which facilitates contact and, in some cases, disclosure of information, between an adopted person or a person with a prescribed relationship to an adopted person, and the adopted person’s birth relatives.

7.2 It has since emerged that intermediary agencies have had difficulties in processing some applications from this new category of applicants, namely those with a prescribed relationship to an adopted person, as agencies are unable to access birth information from the Registrar General. The Registrar General provides services for adopted adults to recover birth records, however, the Registrar General is not able to disclose information from the birth register to an intermediary agency acting on behalf of a person with a prescribed relationship. While this is not a barrier to all cases, if a person with a prescribed relationship does not know the name at birth of the adopted person, intermediary agencies are often not able to trace the subject of the application. This is not in line with the original intent of either the 2014 Act or the 2015 regulations, which was to enable ‘persons with a prescribed relationship’ to apply to an intermediary agency for help in facilitating contact with birth relatives of the adopted person.

7.3 The Government has worked closely with the GRO and Welsh colleagues on an amendment to the regulations to fix this issue. The amendment will allow the Registrar General to disclose information from the birth register to intermediary agencies acting on behalf of applicants who have a prescribed relationship to an adopted person. The amendment to the regulations will not give the applicantsthemselves direct access to birth

register information. The intermediary agency will be able to use the information to help progress the application for assistance in facilitating contact, i.e. to trace the subject or other birth relatives. Existing safeguards about appropriate release of information remain the same.

7.4 The GRO have also recently held a review of the fees charged by the Registrar General for services provided for under the Adoption Information and Intermediary Services (Pre-Commencement) Regulations 2005. This amendment proposes to change the fees payable on a cost recovery basis by an intermediary agency requesting information from the Registrar General. Under the 2005 Regulations, a fee of £10 was payable in respect of information provided. The amendment imposes a new fee of £36 for processing the application, 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.

### **Consolidation**

7.5 This is a minor amendment and the Department does not anticipate any further need to amend this legislation.

## **8. Consultation outcome**

8.1 The Government held a public consultation in April 2014 to seek views on this policy, to find out which groups of people should be granted access to intermediary services and what safeguards should be put in place to balance the desire of relatives accessing such services against the privacy of people who were adopted before 30 December 2005.

8.2 A large majority of respondents (88%) to the consultation felt that the direct descendants (children and grandchildren) of adopted adults should be able to access intermediary services and that the law should not discriminate on the basis of legal relationships alone, but instead allow intermediary services to consider each case on its individual merits. This amendment will enable intermediary agencies to progress cases, whilst retaining safeguards around access to sensitive information.

## **9. Guidance**

9.1 Statutory guidance, under section 7 of the Local Authority Social Services Act 1970, will be issued to accompany these Regulations in autumn 2015.

## **10. Impact**

10.1 Intermediary services can be delivered by voluntary adoption agencies, voluntary adoption support agencies or local authorities. However not all of these agencies provide intermediary services.

10.2 The impact on those voluntary adoption agencies, adoption support agencies and local authorities that provide intermediary services, has been assessed by the department in 2014 and it was concluded that intermediary agencies are likely to see an increase in applications. However intermediary agencies have discretion to supply the service and to charge a fee for the service at a level they see fit which means the benefits to business of the measure will at least equal the costs.

10.3 The impact on the public sector is a potential increase in applications to the Registrar General from intermediary agencies requesting birth records. The department has worked closely with the GRO who provide a chargeable service for recovering birth records, and counselling to adults accessing such records. The impact is likely to be small.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 Local authority children's services and voluntary adoption agencies are inspected every three years by HM Chief Inspector for Standards in Education, Children's Services and Skills (HMCI). HMCI is independent of the Department for Education. These inspections include local authority practice in complying with the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005.

12.2 The department will monitor the change through representative organisations and departmental stakeholder groups and, if there are issues with implementation, will consider what further review of policy may be necessary.

## **13. Contact**

Claudia Rodrigues at the Department for Education Tel: 0207 7838532 or email: [Claudia.Rodrigues@education.gsi.gov.uk](mailto:Claudia.Rodrigues@education.gsi.gov.uk).