
WELSH STATUTORY INSTRUMENTS

2005 No. 2689

The Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005

PART 1
GENERAL

Title, commencement and application

1.—(1) The title of these Regulations is the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005 and come into force on 30 December 2005.

(2) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations —

“the Act” (“*y Ddeddf*”) means the Adoption and Children Act 2002;

“the Adoption Agencies Regulations” (“*y Rheoliadau Asiantaethau Mabsysiadu*”) means the Adoption Agencies (Wales) Regulations 2005(1);

“adopters” (“*mabwysiadwyr*”) in the case of an adoption by one person means that person;

“birth parent” (“*rhiant geni*”) in relation to an adopted person means a person who, but for the adoption, would be his or her parent;

“birth relative” (“*perthynas geni*”) in relation to an adopted person means a person who, but for the adoption, would be related to him or her by blood (including half blood) or marriage;

“CAFCASS” (“*CAFCASS*”) means the Children and Family Court Advisory and Support Service(2);

“registered adoption support agency” (“*asiantaeth cefnogi mabwysiadu gofrestredig*”) means an adoption support agency in respect of which a person is registered under Part 2 of the Care Standards Act 2000(3);

“section 56 information” (“*gwybodaeth adran 56*”) means information prescribed by regulation 3;

“the registration authority” (“*yr awdurdod cofrestru*”) means the National Assembly for Wales;

“Welsh family proceedings officer” (“*swyddog achosion teuluol ar gyfer Cymru*”) has the meaning given in section 35(4) of the Children Act 2004(4).

(1) [S.I. 2005/1313](#).

(2) See section 11 of the Criminal Justice and Court Services Act 2000 [c. 43](#).

(3) [2000 c. 14](#).

(4) [2004 c. 31](#).

PART 2

KEEPING OF INFORMATION BY ADOPTION AGENCIES

Information to be kept about a person's adoption

3.—(1) Paragraphs (2) and (3) prescribe, for the purposes of section 56 of the Act, the information that an adoption agency must keep in relation to a person adopted on or after 30 December 2005 (and which is referred to in the Act and in these Regulations as “section 56 information”)(5).

(2) When an adoption order is made in relation to a person adopted after 30 December 2005 the adoption agency—

- (a) that placed the person for adoption; or
- (b) to which the case records in respect of adopted person have been transferred,

must continue to keep the case record that was set up in respect of the adopted person under regulation 12 of the Adoption Agencies Regulations or under the Adoption Agencies Regulations 1983(6).

(3) The adoption agency must also keep —

- (a) any information that has been supplied by a birth parent or other birth relative of the adopted person, or other significant person in the adopted person's life with the intention that the adopted person may, should he or she wish to, be given that information;
- (b) any information that has been supplied by a former foster carer of the adopted person with the intention that the adopted person may, should he or she wish to, be given that information;
- (c) any information supplied by the adopters or other persons which is relevant to matters arising after the adoption order has been made;
- (d) any information that the adopted person has requested should be kept;
- (e) any information given to agency in respect of an adopted person by the Registrar General under section 79(5) of the Act (information that would enable an adopted person to obtain a certified copy of the record of his or her birth);
- (f) any information disclosed to the adoption agency about an entry relating to the adopted person on the Adoption Contact Register;
- (g) any information required to be recorded in accordance with regulation 9, 10, 13 or 16;
- (h) the record of any agreement under regulation 10.

(4) For the purposes of this regulation “information” includes information in any form, including paper or electronic records and photographs.

(5) The adoption agency must keep a record of any objects and mementoes that are not retained because they are not reasonably practicable to store.

Storage and manner of keeping of section 56 information

4. The adoption agency shall ensure that section 56 information in relation to a person's adoption is at all times kept in secure conditions and in particular that all appropriate measures are taken to prevent theft, unauthorised disclosure, damage, loss or destruction.

(5) Sections 56 to 64 are commenced only in respect of adoptions on or after 1 September 2005.

(6) S.I. 1983/1964.

Preservation of section 56 information

5. The adoption agency must keep section 56 information in relation to a person's adoption for at least 100 years from the date of the adoption order.

Transfer of section 56 information

6.—(1) Where a registered adoption society(7) intends to cease to act or exist as such, it must transfer any section 56 information which it holds in relation to a person's adoption—

- (a) to another adoption agency having first obtained the approval of the registration authority for such transfer;
- (b) to the local authority in whose area the society's principal office is situated; or
- (c) in the case of a society which amalgamates with another registered adoption society to form a new registered adoption society, to the new body.

(2) A registered adoption society that transfers its records to another adoption agency by virtue of paragraph (1) must, if its activities were principally based in the area of a single local authority, give written notification of the transfer to that authority.

(3) An adoption agency to which records are transferred by virtue of paragraph (1), shall notify the registration authority in writing of such a transfer.

PART 3

DISCLOSURE OF INFORMATION — GENERAL

Disclosure of section 56 information for purposes of agency's functions

7.—(1) An adoption agency may disclose section 56 information that is not protected information(8) as it thinks fit for the purpose of carrying out its functions as an adoption agency.

(2) An adoption agency may disclose section 56 information (including protected information) to a registered adoption support agency which provides services to the adoption agency in connection with any of its functions under section 61 or 62 of the Act.

(3) An adoption agency may disclose section 56 information (including protected information) to a person who is authorised in writing by the National Assembly for Wales to obtain information for the purposes of research.

Disclosure of section 56 information for the purposes of inquiries, inspection etc.

8. An adoption agency must disclose section 56 information (including protected information) as may be required—

- (a) to those holding an inquiry under section 17 of the Act, section 81 of the Children Act 1989(9) or section 1 of the Inquiries Act 2005(10) for the purposes of such an inquiry;
- (b) subject to the provisions of s.74(5) of the Care Standards Act 2000 to the Children's Commissioner for Wales(11) for the purposes of any examination conducted in accordance with Part V of that Act;

(7) *see* s.2(2) of the Act.

(8) *see* s.57(3) of the Act for the meaning of "protected information"

(9) 1989 c. 41.

(10) 2005 c. 12.

(11) 2001 c. 18.

- (c) to the National Assembly for Wales;
- (d) subject to the provisions of sections 29(7) and 32(3) of the Local Government Act 1974(12) (investigations and disclosure), to the Commission for Local Administration in Wales, for the purpose of an investigation conducted in accordance with Part III of that Act;
- (e) to any person appointed by the adoption agency for the purpose of the consideration by the agency of any representations (including complaints);
- (f) to a panel constituted under section 12 of the Act to consider a qualifying determination in relation to the disclosure of section 56 information;
- (g) to a Welsh family proceedings officer or an officer of CAF/CASS for the purposes of the discharge of the officer's duties under the Act;
- (h) to a court having power to make an order under the Act or under the Children Act 1989.

Requirements relating to disclosure

9. The adoption agency must make a written record of any disclosure made under regulation 7 or 8, 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;
- (d) the reason for disclosure.

Agreements for the disclosure of protected information

10.—(1) A prescribed agreement for the purpose of section 57(5) of the Act is—

- (a) an agreement made between the adoption agency and a person aged 18 or over at the time the agreement is made as to the disclosure of protected information about that person; or
- (b) an agreement made between the adoption agency and each of the following persons as to the disclosure of protected information about them or about the adopted person—
 - (i) the adoptive parent, or in the case of adoption by a couple, both adoptive parents, of the adoptive person;
 - (ii) each person who, before the adoption order was made, was a parent with parental responsibility for the adopted person.

(2) The adoption agency must keep a written record of any such agreement and that record must include—

- (a) the full names and signatures of the persons who are parties;
- (b) the date on which it is made;
- (c) the reasons for making it;
- (d) the information that may be disclosed in accordance with the agreement;
- (e) any agreed restrictions on the circumstances in which information may be disclosed.

PART 4

DISCLOSURE OF PROTECTED INFORMATION UNDER SECTIONS 61 AND 62

Manner of application

11. An application to an adoption agency for the disclosure of protected information under section 61 or 62 of the Act must be in writing and must state the reasons for the application.

Duties of agency on receipt of application

12. On receipt of an application for the disclosure of protected information under section 61 or 62 of the Act an adoption agency must take all reasonable steps to—

- (a) confirm the identity of the applicant and of any person acting on his or her behalf; and
- (b) confirm that any person acting on behalf of the applicant is authorised to do so; and
- (c) ensure that it has sufficient information from the applicant about the reasons for the application to enable the agency to discharge its functions under section 61 or 62 of the Act (as the case may be).

Record of views

13. An adoption agency must ensure that any views obtained under sections 61(3) or 62(3) or (4) of the Act are recorded in writing.

PART 5

COUNSELLING

Information about the availability of counselling

14.—(1) An adoption agency must provide written information about the availability of counselling to any person —

- (a) who is seeking information under sections 60, 61 or 62 of the Act;
- (b) whose views have been sought as to the disclosure of information about him or her under section 61(3) or 62(3) or (4) of the Act;
- (c) who enters, or is considering entering, into an agreement with the agency under regulation 10.

(2) The information provided under paragraph (1) must include information about the fees that may be charged by persons providing counselling.

Duty to secure counselling

15.—(1) Where a person mentioned in regulation 14(1) requests that counselling be provided for him or her, the adoption agency must make arrangements to secure counselling for that person.

(2) The agency may provide the counselling itself or make arrangements with any of the following persons for the provision of counselling—

- (a) if the person is in Wales or England, another adoption agency or a registered adoption support agency;

- (b) if the person is in Scotland, a Scottish adoption agency;
- (c) if the person is in Northern Ireland, an adoption society which is registered under Article 4 of the Adoption (Northern Ireland) Order 1987⁽¹³⁾ or from any Board; or
- (d) if the person is outside the United Kingdom, any person or body outside the United Kingdom who appears to the agency to correspond in its functions to a body mentioned in paragraphs (a) to (c).

(3) In this regulation —

“Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972⁽¹⁴⁾ or where the functions of a Board are exercisable by a Health and Social Services Trust, that Trust;

“registered adoption support agency” means an adoption support agency in respect of which a person is registered under Part 2 of the Care Standards Act 2000.

Disclosure of information for the purposes of counselling

16.—(1) An adoption agency may disclose information (including protected information), which is required for the purposes of providing counselling to any person with whom it has made arrangements to provide counselling.

(2) An adoption agency must make a written record of any disclosure made by virtue of this regulation.

PART 6

THE REGISTRAR GENERAL

Seeking information from the Registrar General

17.—(1) Where —

- (a) an adopted person who has attained the age of 18 years requests information from an adoption agency under section 60(2)(a) of the Act, which would enable him or her to obtain a certified copy of the record of his or her birth; and
- (b) the agency does not have that information,

the agency must seek that information from the Registrar General.

(2) Where an adoption agency seeks information from the Registrar General under paragraph (1) the agency must provide the Registrar General in writing with the following information, so far as it is known—

- (a) the name, date of birth and country of birth of the adopted person;
- (b) the names of that person’s adoptive father or mother;
- (c) the date of the adoption order.

Registrar General to disclose information regarding the appropriate adoption agency and the Adoption Contact Register

18.—(1) The Registrar General must —

⁽¹³⁾ S.I. 1987/2203 (N.I. 22).

⁽¹⁴⁾ S.I. 1972/1265 (N.I. 14).

- (a) disclose to any person (including an adopted person) at his or her request any information that the person requires to assist him or her to make contact with the adoption agency which is the appropriate adoption agency in the case of the person specified in the request (or, as the case may be in the applicant's case); and
 - (b) disclose to the appropriate adoption agency any information that the agency requires, in relation to an application under section 60, 61 or 62 of the Act, about any entry relating to an adopted person on the Adoption Contact Register⁽¹⁵⁾.
- (2) The adoption agency must pay any fee that the Registrar General determines is reasonable for the disclosure of information under paragraph (1)(b).
- (3) In this regulation "appropriate adoption agency" has the same meaning given by section 65(1) of the Act.

PART 7

MISCELLANEOUS

Offence

19. A registered adoption society which discloses any information in contravention of section 57 of the Act (restrictions on disclosure etc. of information) is guilty of an offence punishable on summary conviction to a fine not exceeding level 5 on the standard scale.

Fees charged by adoption agencies

20.—(1) Subject to paragraph (2) an adoption agency may charge a fee which it determines to be a reasonable fee —

- (a) in respect of the disclosure of information under sections 61 or 62 of the Act;
- (b) for providing counselling in connection with the disclosure of information under those sections; or
- (c) for making arrangements to secure counselling in accordance with regulation 16 where the counselling is provided by a person outside the United Kingdom.

(2) No fee shall be payable by an adopted person in respect of any information disclosed to him or her under section 60, 61 or 62 in relation to any relative of his or her or for any counselling provided to him or her in connection with any such disclosure.

(3) An adoption agency must, before providing a service to any person for which it may charge a fee under this regulation, give the person information about its fees.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998⁽¹⁶⁾

27 September 2005

D. Elis-Thomas
The Presiding Officer of the National Assembly

⁽¹⁵⁾ For the definition of "Adoption Contact Register" see s.80 of the Act.

⁽¹⁶⁾ 1998 c. 38.