

## **Explanatory Memorandum to the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) (Wales) (Amendment) Regulations 2015.**

This Explanatory Memorandum has been prepared by the Department for Health and Social Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) (Wales) (Amendment) Regulations 2015. I am satisfied that the benefits outweigh any costs.

**Mark Drakeford**  
**Minister for Health and Social Services**  
16 October 2015

## **Part 1 – OVERVIEW**

### **Description**

1. These regulations amend the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005 (“the 2005 Regulations”). These regulations will allow all relatives of a person who was adopted before 30 December 2005, including but not limited to their children, grandchildren and great grandchildren, access to an intermediary service to facilitate contact (and in some cases disclosure of information) between such persons and birth relatives of the adopted person.

### **Matters of special interest to the Constitutional and Legislative Affairs Committee**

2. 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) has recently reviewed the fees they charge for their services. The amendment proposes to change the fees payable on a cost recovery basis by an intermediary agency requesting information for 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.

### **Legislative background**

3. The Adoption and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005 were made under the powers in sections 2(6), 9, 98, and 144(2) of the Adoption and Children Act 2002.

4. Section 98 (1A) of the Adoption and Children Act 2002 was inserted by section 1 of the Children and Families Act 2014. Section 98(1A) has been commenced in relation to Wales.

5. The Adoption Information and Intermediary Services (Pre-Commencement Adoptions) (Wales) (Amendment) Regulations 2015 are made under the powers in sections 2(6), 9(1), 98(1), (1A), (2) and (3) and 144(2) of the Adoption and Children Act 2002. This Statutory Instrument is subjected to annulment in pursuance of a resolution in the National Assembly for Wales (the negative procedure).

### **Purpose & intended effect of the legislation**

6. Under the current regulations, an intermediary service provides services only to adopted persons aged 18 or over who were adopted before 30 December 2005, and to certain ‘relatives’ of the adopted person. ‘Relatives’ are defined as anyone who, but for his adoption, would be related to the adopted person by blood, including half-blood, marriage or civil partnerships (birth relatives). This does not include the children or other descendants of an adopted person. An intermediary service is able to obtain information about the adoption and share this with the adopted person, and can facilitate contact between such persons and their birth relatives.

7. Following growing pressure, section 98 of the Adoption and Children Act 2002 was amended, by section 1 of the Children and Families Act 2014, to give the Welsh Ministers the power to make regulations to extend access to intermediary services to persons with a 'prescribed relationship to the adopted person' i.e. to allow the direct descendants and other relatives of adopted persons, who may have a legitimate wish or reason to find out about their family history, to access such services.

8. Therefore, these Regulations amend the 2005 Regulations to extend intermediary services to all relatives of an adopted person. This is defined in the regulations as anyone who is related to the adopted person by blood, marriage or civil partnership (but who does not already have access to intermediary services (or by virtue of their adoption). It therefore includes, but is not limited to, the children, grandchildren and great grandchildren of an adopted person.

9. As this change will open up intermediary services to a wider range of relatives, the regulations make provision for adopted persons to retain a strong degree of control over their own personal information and history. The regulations require an intermediary agency to obtain the consent of an adopted person before contact or information sharing is facilitated between persons with a prescribed relationship and birth relatives, unless the adopted person has died, or lacks capacity. Also, where spouses or children of an adopted person seeks non-identifying medical information from birth relatives of the adopted person and this can be shared by the intermediary agency without sharing identifying information, the adopted person's consent is not required. Similarly, if a person with a prescribed relationship applies for assistance in contacting a birth relative and the adopted person cannot be found despite reasonable steps being taken, the application can proceed without the adopted person's consent.

10. To facilitate cross-border applications for information and ensure equality of rights, an amendment is made to require adoption agencies in Wales to take reasonable steps to provide relevant information to intermediary services in England. A corresponding provision will be made by the Department of Education in respect of adoption agencies in England who are approached for information by intermediary services in Wales.

11. Furthermore, an amendment is made to allow the Registrar General to disclose information from the birth registrar to intermediary agencies acting on behalf of applicants who have a prescribed relationship to an adopted person. The amendment to the regulations will not allow the applicants themselves 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. Safeguards are made for the appropriate release of information.

12. The General Register Office (GRO) recently held a review of fees charged by the Registrar General for services provided under the Adoption Information and Intermediary Services (Pre-Commencement) (Wales) regulations 2005. An amendment is therefore made 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.

## **Consultation**

13. In June 2014, the former Deputy Minister for Social Services agreed to run a 12 week consultation on extending access to intermediary services for descendants and relatives of adopted people with a view to making new regulations under the Adoption and Children Act 2002. The consultation ran between 21 July and 20 October 2014 and sought views on which group of people should be granted access to 'intermediary services' for the purpose of tracing and facilitating contact between adoptive person's birth relatives and a range of other relatives. The consultation also asked for views on what safeguards should be in place to balance the desire of relatives accessing such services against the privacy of people who were adopted before 30 December 2005.

14. Further details on the consultation process are set out in the Regulatory Impact Assessment in Part 2.

15. The Report and a list of respondents can be found at:

<http://gov.wales/consultations/healthsocialcare/adopted/?status=closed&lang=en>

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

This Regulatory Impact Assessment explores the options and costings associated with these regulations.

Two options were considered:

Option 1 – do nothing

Option 2 – bring regulation into force.

### **Option 1: do nothing**

1. In the event of these regulations not being made, there will be an equality anomaly in the category of people who may access 'intermediary services'. An intermediary service currently enables adults who were adopted before 30 December 2005 to obtain information about their adoption, and can facilitate contact between them and their birth relatives. However, direct descendants (i.e. children and grandchildren) of an adopted person cannot use an intermediary service to facilitate contact with birth relatives of that adopted person. Likewise, other persons such as spouses and adoptive siblings of the adoptee are also denied the service. Intervention is required in order to extend the category of persons who can use this service.
2. If we do not amend the Welsh regulations to allow the Registrar General to disclose information from the birth register to intermediary agencies in Wales, acting on behalf of applicants who have a prescribed relationship to an adopted person, it will mean that such agencies/persons will be at a disadvantage in comparison to agencies/persons in England who will be able to access such information. Whilst 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 unable to trace the subject of the application.

### **Costs & benefits**

3. There would be no additional costs were these regulations not to be made. However, there would be a lack of clarity and consistency in the legislative framework for access intermediary services between England and Wales. Given the common legal framework for adoption and population movement between the two countries, the legislation would be different, and restrictions on the service would apply to Wales only.

### **Option 2: Bring regulations into force**

4. Making the Regulations will address the anomaly in legislation which leaves a number of people in the dark about their family history, and will allow a wider category of relatives to apply to an intermediary service. This will allow descendants (i.e. children and grandchildren) and 'prescribed persons' (such as spouses and adoptive siblings) to access an intermediary service for the purpose of facilitating contact with birth relatives of an adopted person. This means that prescribed persons, who may have good reasons for wishing to make contact with the adopted person's birth relatives, will have the right to apply to an intermediary service. The

Regulations are also mindful of the safeguards that need to be in place, which balance the desire of relatives to access such services against the right to privacy of people adopted.

5. The Regulations will also allow for the Register General to disclose information from the birth register to an intermediary agency who is acting on behalf of a person who has a prescribed relationship. This amendment will help intermediary agencies trace the subject of an application if the person with a prescribed relationship does not know the name at birth of the adopted person.

### **Costs & benefits**

6. There are no additional costs associated with the making of these regulations. They are intended to assist adopted adults to obtain information on their adoption, and facilitate contact between them and their birth relatives and other persons with a prescribed relationship to have access to intermediary services for adoptions that took place before 30 December 2005. These Regulations will allow more people to access intermediary services provided by local authorities and voluntary adoption agencies and the evidence gathered from the consultation also lends support to the proposal to extend access to intermediary services.
7. Although it is difficult to predict the likely level of demand for intermediary services, the new regulations will enable adoption agencies (e.g. voluntary adoption agencies and adoption support agencies) to supply intermediary services to a wider range of people. However intermediary agencies will have discretion to supply the service, and they will also have the discretion to charge a fee for the service at a level they see fit. It is therefore reasonable to assume that the demand on businesses will be equal to the costs.

### **Summary and Preferred Option**

The Welsh Government considers that Option 2 is the preferred option as it will enable a wider category of relatives to apply to an intermediary service for assistance in contacting birth relatives of an adopted person.

### **Consultation**

8. A 12 week consultation ran between 21 July and 20 October 2014 and sought views on which groups of people should be granted access to 'intermediary service' for the purpose of tracing and facilitating contact between adoptive person's relatives and a range of other relatives. The consultation also asked views on what safeguards should be in place to balance the desire of relatives accessing such services against the right to privacy of people who were adopted.
9. In general, the consultation responses were supportive of the Welsh Government's plans to extend access to intermediary services to direct blood descendants and adoptive descendants of an adopted person. There was also a clear view that

intermediary agencies are best placed to make decisions using their professional judgement and expertise based on the individual circumstances of the case.

10. The consultation response report can be found at:

<http://gov.wales/consultations/healthsocialcare/adopted/?status=closed&lang=en>

### **Competition Assessment**

11. We do not consider it necessary to undertake a competition assessment for these Regulations since it is unlikely that they will have a detrimental effect on competition

### **Post implementation review**

12. Local authority children's services and voluntary adoption agencies are inspected every three years by the Care and Social Services Inspectorate Wales (CSSIW). These inspections include local authority practice in complying with the Adoption Information and intermediary Services (Pre – Commencement Adoptions) (Wales) Regulations 2005.

13. The Welsh Government will continue to monitor the impact of the regulation on areas such as Welsh Language, the UN Convention on the Rights of the Child and the UN Principles on Older People, and upon those with protected characteristics under the equality legislation.