



DISCLOSURE OF ADOPTION INFORMATION (POST-COMMENCEMENT ADOPTIONS) REGULATIONS 2024

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Statutory Document No. 2024/0154



Adoption Act 2021

DISCLOSURE OF ADOPTION INFORMATION (POST-COMMENCEMENT ADOPTIONS) REGULATIONS 2024¹

Approved by Tynwald: 19 June 2024
Coming into operation in accordance with regulation 2

The Department of Health and Social Care, with the approval of the Registrar General¹, makes the following Regulations under sections 57 to 64 and 68 of the Adoption Act 2021.

PART 1 – INTRODUCTION

1 Title

These Regulations are the Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2024.

2 Commencement

If approved by Tynwald, these Regulations come into operation immediately upon the coming into operation of sections 57 to 64 and 68 of the Adoption Act 2021.²

3 Interpretation

In these Regulations —

¹ The Registrar General's approval is required for regulation 20(2) under section 65 of the Adoption Act 2021.

² Under section 123(2) of the Adoption Act 2021 these Regulations are subject to section 30 of the Legislation Act 2015 (approval required procedure). Section 71 of the Interpretation Act 2015 allows a power in an Act to make a public document to be exercised notwithstanding that that enabling power has not yet commenced. By virtue of section 71(4) of the Interpretation Act 2015, any public document so made cannot commence before the enabling power is itself commenced.

“**the Act**” means the Adoption Act 2021;

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

“**section 57 information**” means the information prescribed by regulation 5.

PART 2 – KEEPING OF INFORMATION ABOUT ADOPTION

4 Application of this Part

The requirements of this Part in relation to the keeping of information about a person’s adoption apply –

- (a) to the adoption agency that placed the person for adoption; or
- (b) to an adoption agency to which the case record in respect of the adopted person (or any information mentioned in regulation 5(3)) has been transferred.

5 Information to be kept about a person’s adoption

- (1) Paragraphs (2) and (3) prescribe, for the purposes of section 57 of the Act, the information that an adoption agency must keep in relation to a person’s adoption (“section 57 information”).
- (2) The adoption agency must continue to keep the case record that was set up in respect of the adopted person under Part 3 of the Adoption Agency Regulations 2024³ or under the Adoption Societies Regulations 1985⁴.
- (3) Subject to paragraph (4) below, the adoption agency must also keep –
 - (a) any information that has been supplied by a natural parent or relative or other significant person in the adopted person’s life, with the intention that the adopted person may, should they wish to, be given that information;
 - (b) any information supplied by the adoptive parents or other persons which is relevant to matters arising after the making of the adoption order;
 - (c) any information that the adopted person has requested should be kept;
 - (d) any information given to the adoption agency in respect of an adopted person by the Registrar General under section 97(5) of the Act (information that would enable an adopted person to obtain a certified copy of the record of their birth);

³ SD 2024/0149.

⁴ GC 284/85.

- (e) any information disclosed to the adoption agency about an entry relating to the adopted person on the Adoption Contact Register;
 - (f) any information required to be recorded in accordance with regulation 11, 15 or 19;
 - (g) the record of any agreement under regulation 12.
- (4) The adoption agency is not required to keep any information falling within paragraph (3)(a) to (c) if the adoption agency considers —
- (a) that it would be prejudicial to the adopted person’s welfare to keep it; or
 - (b) that it would not be reasonably practicable to keep it.

6 Storage and manner of keeping section 57 information

The adoption agency must ensure that section 57 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.

7 Preservation of section 57 information

The adoption agency must keep section 57 information in relation to a person’s adoption for at least 100 years from the date of the adoption order.

8 Transfer of section 57 information

- (1) Where a registered adoption society intends to cease to act or exist as such, it must transfer any section 57 information which it holds in relation to a person’s adoption —
 - (a) to the Department or a body nominated by the Department, having first obtained the approval of the Department for such a transfer; or
 - (b) in the case of a society which amalgamates with another registered adoption society to form a new registered adoption society, to the new body, once notified and authorised by the Department.
- (2) A registered adoption society that transfers its records to another adoption agency by virtue of paragraph (1) must give written notification of the transfer to the Department.

PART 3 – DISCLOSURE OF INFORMATION (GENERAL)

9 Disclosure for purposes of agency’s functions

An adoption agency may disclose section 57 information that is not protected information (see section 58(3) of the Act) as it thinks fit for the purposes of carrying out its functions as an adoption agency.

10 Disclosure required for purposes of inquiries, inspections etc.

An adoption agency must disclose section 57 information (including protected information) as may be required –

- (a) to a designated officer holding an inquiry under section 45 of the Children and Young Persons Act 2001 for the purposes of that inquiry;
- (b) to a person or Department holding an inquiry pursuant to section 1 of the Inquiries (Evidence) Act 2003 for the purposes of that inquiry;
- (c) to the Department;
- (d) to any person appointed by the adoption agency for the purposes of the consideration by the agency of any representations;
- (e) for the handling of any complaint under section 97A of the Children and Young Persons Act 2001;
- (f) to a panel constituted under section 68 of the Act to consider a qualifying determination in relation to the disclosure of section 57 information;
- (g) to a court having power to make an order under the Act or under the Children and Young Persons Act 2001;
- (h) to the Safeguarding Board⁵;
- (i) to any committee or sub-committee established under section 9 of the Safeguarding Act 2018.

11 Requirements relating to disclosure

The adoption agency must make a written record of any disclosure made under regulation 9 or 10, 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;

⁵ See section 6 of the Safeguarding Act 2018.

- (e) any agreed restrictions on the circumstances in which information may be disclosed; and
- (f) how the data is stored, kept and maintained in accordance with regulation 6.

12 Agreements for the disclosure of protected information

- (1) A prescribed agreement for the purposes of section 58(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 them; 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 adopted 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;
 - (f) how the data is stored, kept and maintained in accordance with regulation 6.

PART 4 – APPLICATIONS FOR DISCLOSURE OF PROTECTED INFORMATION

13 Manner of application

An application to an adoption agency for the disclosure of protected information under section 59 or 60 of the Act must be in writing and must state the reasons for the application.

14 Duties of agency on receipt of application

On receipt of an application for the disclosure of protected information under section 59 or 60 of the Act an adoption agency must take reasonable steps to confirm —

- (a) the identity of the applicant or of any person acting on their behalf, and
- (b) that any person acting on behalf of the applicant is authorised to do so.

15 Record of views

An adoption agency must ensure that any views obtained under 59(3) or 60(3) or (4) of the Act are recorded in writing.

16 Independent review

(1) The following determinations by the appropriate adoption agency in relation to an application under section 59 of the Act are qualifying determinations for the purposes of section 68 of the Act (independent review of determinations) —

- (a) not to proceed with an application from any person for disclosure of protected information;
- (b) to disclose information against the express views of the person the information is about;
- (c) not to disclose information about a person to the applicant where that person has expressed the view that the information should be disclosed.

(2) The adoption agency must give the relevant person written notification of the determination, which must —

- (a) state the reason for it; and
- (b) advise the relevant person that they may apply to the adoption agency within 40 working days, from the date on which the notification was sent, for a review by an independent review panel of the qualifying determination.

(3) If the adoption agency receives an application for a review by an independent review panel, the agency must within 10 working days of receipt of that application, send to the review panel appointer —

- (a) a copy of the application for disclosure of information;
- (b) a copy of the notification given under paragraph (2);
- (c) the record of any views obtained by the agency under section 59(3) of the Act; and
- (d) any additional information requested by the panel.

- (4) The adoption agency must not take any action in respect of its original determination before –
- (a) the independent review panel has made its recommendation; or
 - (b) if the person has not applied for a review within that 40 day period, the end of that period.
- (5) The adoption agency must have regard to any recommendation of the independent review panel in deciding whether to proceed with its original determination.
- (6) In this regulation –
- “the relevant person”** is –
- (a) in the case of a qualifying determination mentioned in paragraph (1)(a) or (c), the applicant;
 - (b) in the case of a qualifying determination mentioned in paragraph (1)(b), the person the protected information is about;
- “working day”** means a day of the week that is not any of the following –
- (a) a Saturday or Sunday;
 - (b) a bank holiday under the Bank Holidays Act 1989; or
 - (c) a day declared by a Treasury order, which has effect in the Isle of Man by virtue of the provisions of section 1(1) of the Banking and Financial Dealings (Isle of Man) Act 1973, to be a non-business day.
- (7) In this regulation –
- “independent review panel”** means a panel constituted under section 68 of the Act;
- “review panel appointer”** is to be construed in accordance with regulation 5 of the Independent Review of Determinations (Adoption) Regulations 2024⁶.

PART 5 – COUNSELLING

17 Information about the availability of counselling

An adoption agency must provide written information about the availability of counselling to any person –

- (a) who is seeking information under section 59, 60 or 61 of the Act;
- (b) whose views have been sought as to the disclosure of information about them under section 59(3) or 60(3) or (4) of the Act;

⁶ SD 2024/0153.

- (c) who enters into, or is considering entering into, an agreement with the agency under regulation 12 (agreements for the disclosure of protected information).

18 Duty to secure counselling

- (1) Where a person mentioned in regulation 17 requests that counselling be provided for them, the adoption agency must make arrangements to secure counselling for that person.
- (2) The adoption agency may —
 - (a) provide the counselling itself; or
 - (b) make arrangements with any of the listed persons in 63(4) of the Act, for the provision of counselling.

19 Disclosure of information for the purposes of counselling

- (1) An adoption agency may disclose any information (which may include protected information) which is required for the purposes of providing counselling to any persons 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

20 Seeking information from the Registrar General

- (1) Where —
 - (a) an adopted person who has attained the age of 18 years requests information from an adoption agency under section 61(2)(a) of the Act that would enable them to obtain a certified copy of the record of their 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 and mother;
 - (c) the date of the adoption order.

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

The Registrar General must —

- (a) disclose to any person (including an adopted person) at their request any information that the person requires to assist them 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, about any entry relating to an adopted person on the Adoption Contact Register.

MADE 10 MAY 2024

ENDNOTES

Table of Endnote References

¹ The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.