



ADOPTION INFORMATION AND INTERMEDIARY SERVICES (PRE-COMMENCEMENT ADOPTIONS) REGULATIONS 2024

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Adoption Act 2021

ADOPTION INFORMATION AND INTERMEDIARY SERVICES (PRE-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 makes the following Regulations under sections 10, 81, 123(3), 125(1) and 126(5) of the Adoption Act 2021.

PART 1 – INTRODUCTORY

1 Title

These Regulations are the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2024.

2 Commencement

If approved by Tynwald, ¹ these Regulations come into operation immediately upon the coming into operation of sections 10, 81, 123, 125 and 126 of the Adoption Act 2021.²

3 Interpretation

In these Regulations —

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

“**adopted person**” means a person who was adopted before the appointed day and has reached the age of 18 years;

¹ Under section 123(2) of the Adoption Act 2021 these Regulations are subject to section 30 of the Legislation Act 2015 (approval required procedure).

² 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.

“**applicant**” means a person who makes an application under regulation 7 and is —

- (a) an adopted person;
- (b) a person with a prescribed relationship; or
- (c) a relative of an adopted person;

“**the appointed day**” has the same meaning as in section 81(7) of the Act;

“**the appropriate adoption agency**” has the same meaning as in section 126(1) of the Act;

“**identifying information**” means information which, whether taken on its own or together with other information possessed by the applicant, enables the subject to be identified or traced;

“**intermediary agency**” has the meaning given in regulation 6;

“**intermediary service**” has the meaning given in regulation 6;

“**prescribed relationship**” has the meaning given in regulation 4;

“**relative**”, in relation to an adopted person, has the meaning given in section 81(7) of the Act;

“**subject**”, in relation to an application under regulation 7, is a person with whom the applicant seeks contact.

4 Prescribed relationship

For the purposes of section 81(2) of the Act, a prescribed relationship is a relationship whereby a person (who is not a relative of the adopted person) is related to an adopted person —

- (a) by blood (including half-blood), marriage or civil partnership; or
- (b) by virtue of the adopted person’s adoption.

5 Provision of intermediary services

- (1) An adoption agency may provide an intermediary service.
- (2) The service must be provided in accordance with these Regulations.

6 Meaning of “intermediary service” and “intermediary agency”

- (1) Subject to paragraph (2), for the purposes of these Regulations an intermediary service is a service provided for the purposes of —
 - (a) assisting adopted persons to obtain information in relation to their adoption;
 - (b) facilitating contact between such persons and their relatives; and
 - (c) facilitating contact between persons with a prescribed relationship to an adopted person and relatives of the adopted person.

- (2) An adoption agency does not provide an intermediary service for the purposes of these Regulations if it –
 - (a) is the appropriate adoption agency in relation to an adopted person; and
 - (b) only provides information in relation to that person’s adoption.
- (3) An adoption agency that provides an intermediary service is referred to in these Regulations as an “intermediary agency.”

PART 2 – APPLICATIONS FOR INTERMEDIARY SERVICES

7 Applications that may be accepted

- (1) Subject to paragraph (2), an intermediary agency may accept an application from –
 - (a) an adopted person for assistance in contacting a relative of the adopted person;
 - (b) a relative of an adopted person for assistance in contacting –
 - (i) the adopted person; or
 - (ii) a person with a prescribed relationship to the adopted person; or
 - (c) a person with a prescribed relationship to an adopted person for assistance in contacting a relative of an adopted person.
- (2) The applicant and the subject must be aged 18 or over.

8 Restrictions on proceeding with an application

- (1) Where an intermediary agency accepts an application from a relative of an adopted person for assistance in contacting the adopted person, it must not proceed with the application if a veto applies under regulation 11(1), except in the circumstances referred to in regulation 11(1)(b)(ii).
- (2) Where an intermediary agency accepts an application from a relative of an adopted person for assistance in contacting a person with a prescribed relationship to the adopted person, it must not proceed with an application if –
 - (a) a veto applies under regulation 11(1), except in the circumstances referred to in regulation 11(1)(b)(ii); or
 - (b) the adopted person does not consent to the application proceeding.
- (3) Subject to paragraphs (4) to (6), where an intermediary agency accepts an application from a person with a prescribed relationship to an adopted person for assistance in contacting a relative of the adopted person, it must not proceed with the application if the adopted person does not consent to the application proceeding.

- (4) An intermediary agency may proceed with an application under paragraph (3) —
 - (a) if the intermediary agency has taken all reasonable steps to locate the adopted person but has been unable to do so; or
 - (b) where —
 - (i) the applicant is either the spouse, civil partner, child, grandchild or great grandchild of the adopted person; and
 - (ii) the applicant is seeking to contact the relative of the adopted person only to obtain information about the medical history of the adopted person's relatives.
- (5) Where paragraph (4)(b) applies, the intermediary agency must not disclose any information which, whether taken on its own or together with other information possessed by the person to whom it is being disclosed, would enable the adopted person, any relative of the adopted person or any person with a prescribed relationship to the adopted person to be identified or traced.
- (6) Any requirement under this regulation for the adopted person to consent to an application proceeding does not apply if —
 - (a) the adopted person has died; or
 - (b) the intermediary agency, after taking all reasonable steps that making such a determination requires, determines that the adopted person is incapable of giving informed consent.
- (7) Where the consent of the adopted person is required under this regulation, the intermediary agency must take all reasonable steps to ensure that the adopted person has sufficient information to make an informed decision.

9 No obligation to proceed if not appropriate

- (1) An intermediary agency that accepts an application under these Regulations is not required to proceed with the application, or having begun to proceed with the application is not required to continue, if the intermediary agency considers that it would not be appropriate to do so.
- (2) In deciding whether it is appropriate to proceed (or continue proceeding) with an application, the intermediary agency must have regard to —
 - (a) the welfare of —
 - (i) the applicant;
 - (ii) the subject; and
 - (iii) any other persons who may be identified or otherwise affected by the application;
 - (b) any views of the appropriate adoption agency obtained under regulation 15; and

- (c) any information obtained from the Adoption Contact Register under regulation 16,
and all the other circumstances of the case.
- (3) In relation to any decision under paragraph (2), the intermediary agency must have particular regard to the welfare of any person mentioned in paragraph (2)(a)(iii) who is under the age of 18.
- (4) If, at any time, the intermediary agency ascertains that the subject of an application is under the age of 18, the agency must not proceed further with the application in relation to that subject.

10 Consent of subject to disclosure etc.

- (1) Subject to paragraph (2) an intermediary agency must not disclose to the applicant any identifying information about the subject without the subject's consent.
- (2) If the subject has died or the agency, after taking all reasonable steps that making such a determination requires, determines that the subject is incapable of giving informed consent, the agency may disclose such identifying information about the subject to the applicant as the agency considers appropriate, having regard to the matters referred to in regulation 9(2).
- (3) The agency must take all reasonable steps to ensure that any person whose consent to disclosure is required under this regulation has sufficient information to make an informed decision as to whether to give such consent.

11 Veto by an adopted person

- (1) A veto applies in relation to an application under regulation 7 where –
 - (a) the subject is the adopted person or a person with a prescribed relationship to the adopted person; and
 - (b) the adopted person has notified the appropriate adoption agency –
 - (i) that the adopted person does not wish to be contacted by an intermediary agency in relation to an application under these Regulations; or
 - (ii) that the adopted person only wishes to be contacted in specified circumstances.
- (2) Where the appropriate adoption agency is notified of a veto under paragraph (1), it must keep a written record of it on the adopted person's case record and ensure that it is made known to any intermediary agency that contacts that adoption agency in relation to an application under these Regulations.

12 Provision of background information where consent refused etc.

Nothing in these Regulations prevents the intermediary agency from disclosing to the applicant any information about the subject that is not identifying information and that the agency considers appropriate to disclose.

13 Counselling

- (1) An intermediary agency must provide written information about the availability of counselling to any person who –
 - (a) makes an application to that agency under these Regulations;
 - (b) is the subject of such an application and is considering whether to consent to disclosure of information about themselves to the applicant; or
 - (c) is an adopted person considering whether to consent to an application proceeding.
- (2) The information provided under paragraph (1) must include details of –
 - (a) persons offering counselling; and
 - (b) fees that may be charged by such persons.
- (3) If a person mentioned in paragraph (1) requests counselling, the intermediary agency must secure the provision of counselling for that person.
- (4) The intermediary agency may provide the counselling itself or make arrangements with any of the following persons for provision of counselling –
 - (a) if the person to receive counselling is in the Island, another adoption agency;
 - (b) if the person to receive counselling is outside the Island, any person or body outside the Island which appears to the intermediary agency to have functions that correspond to an agency mentioned in sub-paragraph (a).

PART 3 – PROCEDURE ON HANDLING APPLICATIONS

14 Procedure on receipt of application

The intermediary agency must, on receipt of an application under regulation 7, take reasonable steps to confirm –

- (a) the identity of the applicant or of any person acting on the applicant's behalf;
- (b) the age of the applicant;
- (c) that any person acting on behalf of the applicant is authorised to do so;

- (d) in the case of an application by a relative of the adopted person, that the applicant is related to the adopted person; and
- (e) in the case of an application by a person with a prescribed relationship to the adopted person, that the applicant has a prescribed relationship with the adopted person.

15 Contacting the appropriate adoption agency

- (1) The intermediary agency must (unless it is the appropriate adoption agency) take reasonable steps to establish whether an adoption agency was involved in the adoption and, if so, to identify the appropriate adoption agency.
- (2) The steps referred to in paragraph (1) may include —
 - (a) requesting in writing from the Registrar General any information under regulation 16 that may be relevant for that purpose;
 - (b) requesting in writing from the court that made the adoption order information about the identity of the appropriate adoption agency; or
 - (c) if the adoption took place outside the Island, requesting information from a relevant authority where the adoption took place.
- (3) Where the appropriate adoption agency has been identified, the intermediary agency must take all reasonable steps to contact that agency in order to —
 - (a) ascertain whether a veto under regulation 11 exists;
 - (b) if no veto exists —
 - (i) ascertain whether the adopted person has, at any time, expressed the adopted person's views to the agency about —
 - (aa) any future contact with any relative of the adopted person;
 - (bb) any future contact between people with a prescribed relationship to the adopted person and the adopted person's relatives; or
 - (cc) the adopted person being approached with regard to such contact; and
 - (ii) ascertain the agency's views as to whether the application is appropriate having regard to the matters mentioned in regulation 9; and
 - (c) seek any other information required for the following purposes —
 - (i) tracing the adopted person and, where the adopted person is not the subject, any other subject;

- (ii) enabling the adopted person to make an informed decision as to whether the adopted person consents to –
 - (aa) the disclosure of identifying information about the adopted person;
 - (bb) an application proceeding to facilitate contact between a relative of the adopted person and a person with a prescribed relationship to the adopted person; or
 - (cc) contact with the applicant;
 - (iii) enabling any other subject to make an informed decision as to whether that subject consents to –
 - (aa) the disclosure of identifying information about that subject; or
 - (bb) contact with the applicant;
 - (iv) counselling the subject and, where the adopted person is not the subject, the adopted person in relation to the decision in paragraph (3)(c)(iii); and
 - (v) counselling the applicant.
- (4) Unless a veto under regulation 11 applies, the appropriate adoption agency must take reasonable steps to provide the information sought from that agency under paragraph (3) and may disclose to the intermediary agency such information (including identifying information) as is necessary for that purpose.

16 Obtaining information from the Registrar General

- (1) An intermediary agency may make a request in writing to the Registrar General for such of the following information as may assist that agency for the purposes of proceeding with an application under these Regulations –
- (a) the identity of the appropriate adoption agency;
 - (b) details of the court that made the adoption order;
 - (c) information the Registrar General may hold that would enable an application to be made for a certified copy of an entry in the Adopted Children Register;
 - (d) information from the Adoption Contact Register.
- (2) If an intermediary agency is proceeding with an application under regulation 7(1)(c), it may also make a request in writing to the Registrar General for such information as the Registrar General may hold that would enable the adopted person with whom the applicant has a prescribed relationship to obtain a certified copy of the adopted person's record of birth.

17 Registrar General to comply with request

The Registrar General must take reasonable steps to comply with a written request for information from an intermediary agency under regulation 16.

18 Court to comply with request

- (1) The court must disclose any information requested in writing by the intermediary agency under regulation 15(2)(b) that is contained in court records.
- (2) If the court does not have the information requested under regulation 15(2)(b), it must inform the intermediary agency of that fact in writing, specifying the searches made of court records and, if the court considers that the information may be found in the records of another court, provide the intermediary agency with details of that court.

19 Authorised disclosures

An intermediary agency must treat information obtained or held for the purposes of these Regulations as confidential, but may disclose such information (including information that identifies any person) as is necessary –

- (a) to the Registrar General or to the court for the purpose of obtaining information under regulation 16;
- (b) to the appropriate adoption agency for the purposes of ascertaining its views or seeking information under regulation 15;
- (c) to the subject to enable the subject to make an informed decision under regulation 10;
- (d) to a person providing counselling in connection with an application under these Regulations; or
- (e) to the adopted person to enable the adopted person to make an informed decision about whether to consent to an application under these Regulations proceeding.

PART 4 – MISCELLANEOUS

20 Offence

An intermediary agency that discloses information in contravention of regulation 10 without reasonable excuse is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

21 Fees

- (1) An intermediary agency may charge the applicant any fee that the agency determines is reasonable in connection with the processing of an application under these Regulations.
- (2) An intermediary agency may charge a person mentioned in regulation 13(1) such fee as it determines is reasonable in respect of –
 - (a) the provision of counselling services for that person; or
 - (b) making arrangements to secure counselling where the counselling is provided by a person outside the Island.
- (3) The Registrar General may charge an intermediary agency the following fees in connection with requests for information under regulation 16 –
 - (a) £50 for processing an initial request for information (whether or not information is provided); or
 - (b) £20 for providing information in response to any subsequent request made in relation to the same applicant.
- (4) An adoption agency may charge an intermediary agency such fee as it determines is reasonable for providing information or giving its views in accordance with a request under regulation 15.

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.