

# Draft Adoption Regulations and Guidance for Consultation - Access to Information

(Pre and post-Commencement Adoptions)  
The Registrar General's Functions

## **Consultation Response Form**

The closing date for this consultation is: 31 July 2004  
Your comments must reach us by that date.

**Note when completing electronically**

- **mouse** to access hyperlink. And to access input boxes;
- **scroll** bar to navigate the form

The information you send to us may need to be passed to colleagues within the Department for Education and Skills and/or published in a summary of responses received in response to this consultation. We will assume that you are content for us to do this, and that if you are replying by e-mail, your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system, unless you specifically include a request to the contrary in the main text of your submission to us.

The Department may, in accordance with the Code of Practice on Access to Government Information, make available on public request, individual consultation responses. This will extend to your comments unless you inform us that you wish them to remain confidential.

**Please insert 'X' if you want us to keep your response confidential**

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Please identify below whether you are responding:

As an individual

On behalf of an organisation

Please insert 'X' in **one** of the following boxes that best describes you as a respondent.

Local Authority

Representative group

Academic

Social Worker

Carer

Support services provider

Other (Please specify)

On behalf of the organisations listed

## A. ACCESS TO INFORMATION (POST-COMMENCEMENT ADOPTIONS) REGULATIONS

### Question 1 Information to be kept about a person's adoption (draft regulation 3(3)).

(a) Draft Regulation 3(3)(a) requires the adoption agency to keep information on the adoption case record that has been supplied by a birth parent or other birth relative. Should specific provision be made for others, such as an adopted child's former foster carer, to be able to deposit information on the case record?

Yes

No

No View

(b) If yes, who else might be covered by this provision?

#### Comments:

Other people would include foster carers, and others who have information that could be significant for the adopted person concerned (eg, from a person who finds an abandoned child)

(c) Should the regulations place an adoption agency under a duty to keep any information supplied by a birth relative or other person involved in an adoption?

Yes

No

No View

#### Comments:

The agency must however, retain a discretion and be able to exercise its professional judgement particularly in respect of large objects. The regulations could be framed in such a way as to require the agency to retain the information unless it considers it is inappropriate or impractical to do so. Where it decides against including something that has been offered, it should record the fact, and the reasons for its decision not to add the object to the file.

The test should always be based on what is likely to be of benefit to the adopted person.

### Question 2 – Preservation of section 56 information

(a) Draft regulation 5 requires adoption agencies to preserve any section 56 information for at least 75 years. Is this the right length of time?

Yes

No

No View

(b) If no, what would be a more appropriate length of time?

#### Comments:

In view of greater longevity it should be increased to 85 years or more.

### Question 3 – Transfer of section 56 information

(a) Regulation 6 provides that where a voluntary adoption agency ceases to act or exist, it is required to transfer its section 56 information either by agreement to another adoption agency or to the local authority in whose area the agency's principal office is situated. Should this regulation require that section 56 information only be transferred to a local authority adoption agency, as the body best placed to safeguard this information and to provide an ongoing services to former clients of the defunct VAA?

Yes

No

No View

#### Comments:

There is no reason why the information should not be transferred to another VAA if it is willing to undertake this task. What is important is that it is clearly understood where the information has been transferred. The registration authority should be required to retain this information, as should the local authority for the area in which the closed VAA operated.

(b) Where a VAA intends to transfer section 56 information to a local authority adoption agency, should the regulations require the relevant local authority to take this information?

Yes

No

No View

**Comments:**

Without this there would be a danger that the l.a. would refuse, and the information must be retained somewhere appropriate.

**Question 4 – Impact on adoption agencies**

(a) In relation to adoptions made after the relevant sections of the 2002 have come into force, adoption agencies are required by the Act to take "all reasonable steps" to obtain the views of any person identified by the disclosure of information. Will this new burden have a significant impact on the work of adoption agencies?

Yes

No

No View

(b) If yes, what will the impact be?

**Comments:**

There is concern about how "all reasonable steps" will be interpreted. There is also anxiety about the work to be done while an adoption placement is being planned. We would not disagree with the desirability in principle of reaching agreement with birth family members, foster carers and others about the disclosure of information, but the work involved should not be underestimated, particularly in cases where the birth family members are hostile to the adoption plan. This issue is discussed further in our additional comments.

While much of the additional work may principally arise in future years, as children adopted approach adulthood, this task will be made more manageable if sound work is undertaken from the earliest stages, and continued after the adoption, for example with support for letterbox contact arrangements.

### Question 5 – Overall Detail

(a) Overall, is the level of detail provided by this set of regulations and accompanying guidance:

Too much       Too little       About right

(b) What, if any, additional issues need to be covered?

#### Comments:

Overall the feeling is that the regulations are over-prescriptive and the guidance insufficient.

In an area of such complexity and sensitivity, the overriding requirement is for a high level of professional expertise, so that those involved in this work can exercise their professional judgement within clearly understood guidelines.

Examples of areas where more guidance is needed include

- life story books and "later life" letters
- the provision of support for all concerned, whether in putting together packages of information, writing letters for indirect contact arrangements, or coming to terms with information disclosed
- the making of disclosure agreements under regulation 10 (which needs to include others as well as birth parents, the agency and the adopters.)

### Question 6 – Overall view of the guidance

Overall, in assisting you in interpreting the requirements set out in the Act and the draft regulations, do you find the guidance:

Very helpful       Helpful       Not very helpful       Not at all helpful

#### Comments:

The main problem, as outlined in our more detailed comments, is in the limitations placed on the disclosure of "identifying information" and the fact that disclosure to adopted people is treated in the same way as disclosure to birth relatives. The guidance would be more helpful if it were divided into different sections dealing with disclosure to adopted people and disclosure to birth relatives, and sharing of information prior to adoption, and sharing it later.

## B. ACCESS TO INFORMATION (PRE-COMMENCEMENT ADOPTIONS) REGULATIONS

### Question 7 – Consent of subject to disclosure

(a) Draft regulation 5 prohibits a registered Adoption Support Agency from disclosing any identifying information about the subject of an application without having first obtained his informed consent.. Where consent cannot be obtained because the subject has died or cannot be traced, is this requirement:

**Too restrictive**

**About right**

**No view**

(b) What is your view on what may be disclosed by a registered ASA in these circumstances?

#### Comments:

This is a difficult issue. Again the difficulties arise from the fact that an application by a birth relative is treated in the same way as an application by an adopted person. It can be assumed that an adopted person has been able to obtain information which enables him or her to identify - at least - his or her birth mother. In these circumstances, where the ASA makes an approach to the birth parent, and consent to disclosure is refused, it would appear that regulation 5 prohibits the ASA from giving any information at all to the adopted person. Where it is an agency adoption, and the adoption agency has provided the ASA with information under regulation 8, it may be appropriate, with the agreement of the agency, for the ASA to share some background information with the adopted person, rather than being required to refer him or her back to the adoption agency.

By contrast, where it is a birth relative making an application under regulation 3, it is quite right that the identity of the adopted person should not be disclosed against his wishes, but it might in these circumstances be appropriate in some cases for some non-identifying information to be shared. This is apparently permissible, and it is unhelpful that it is made impossible in the reverse circumstances.

More guidance is needed on the exercise of discretion under regulation 5(3) where the subject has died or is incapable of consenting. What for example is the position of living relatives of the subject who has died, or that of the adoptive parents of an adopted person who is incapable of giving consent?

### Question 8 – Fees

(a) Draft regulation 14 provides registered ASAs with the discretion to charge a fee to any person in connection with the provision of counselling services. Where counselling is provided to the subject of an application, who should bear the cost?

**The subject**

**The applicant**

**No view**

**Cost shared between subject and applicant**

(b) Please explain your reasons.

#### Comments:

This is an area of great concern. Probably the most practical approach is for the fee paid by the applicant to include the cost of some counselling for both himself or herself as well as the subject. This we understand is the approach currently followed by NORCAP. Where however the application gives rise to or reveals the need for more intensive counselling and support, it may be that the person concerned will need to be encouraged to approach the local authority for an assessment of support needs under the adoption support provisions

#### **Question 9 – No wish for contact or an approach from a registered Adoption Support Agency**

(a) The 2002 Act recognises that not everybody wishes to be traced or reunited with a birth relative. Some people will have no wish even to be approached by an Adoption Support Agency. Therefore, section 80 of the Act extends the Adoption Contact Register so that a person can formally register their wish for no contact with a specified person. It is also proposed in the guidance that where an adopted person (or their adoptive parents) knows the adoption agency that was involved in the adoption, they will be able to register their wish not to be approached by an ASA or the adoption agency.

Where the notification or entry is from the adopted person, should the guidance say that on obtaining this information from the adoption agency or from the Registrar General (the entry on the Contact Register) the ASA should:

- Inform the applicant of this and stop all further work on the application; or**
- Inform the applicant and carefully consider the case before deciding whether or not to proceed with the application; or**
- Take other steps in such cases. If so, please suggest what these might be.**

(b) Where the notification of no wish for contact is from the adoptive parents, should the guidance say:

- Inform the applicant and carefully consider the merits of the case before deciding whether or not to proceed with the application; or**
- Take other steps in such cases. If so, please suggest what these might be.**

**Comments:**

It is not possible to answer the above questions until it is clear what the process will be for people to register a wish for "no contact". There needs to be some means by which it can be ascertained that the person lodging such a request has done so with full understanding. There is a wide range of circumstances in which an approach might be made, and a range of individuals who might instigate such an approach. Any form made available for people to register their wishes should explain the possible options, and offer counselling to ensure that these are understood. For example, an adopted person might indicate a desire for no contact, but, when given an opportunity to consider, may agree that an approach to elicit or give medical information would still be welcome, or that an approach from a sibling although not from a birth parent might be considered. In addition, since views may well change over time, it needs to be made clear that a change of mind can be indicated, or possibly that any notification of views will last only for a certain period until renewed.

It would be helpful to consider the practice of other countries with such systems - examples given are New Jersey and New Zealand.

#### Question 10 – Phased implementation of the provisions in the Access to Information (Pre-Commencement Adoptions) Regulations

To help registered ASAs, adoption agencies and the Registrar General to manage the new demand for services under section 98 of the 2002 Act, it is proposed to implement the scheme in two phases. The first phase would apply to all adoptions made prior to 12 November 1975, and the second phase to all adoptions made between 13 November 1975 and full commencement of the 2002 Act. When should the second phase be introduced?

After one year

After eighteen months

After two years

Depends on initial demand for services

No view

#### Comments:

It is difficult to predict what the initial demand for services will be. If no firm decision is taken at this stage on further implementation, there needs to be clarity about how and when the decision will be made.

There needs also to be consideration of the needs of people who would be excluded until full implementation, with a discretion for agencies and ASAs to take forward applications if there are pressing reasons - eg the fact that one of the parties has not long to live.

#### Question 11– Overall Detail

(a) Overall is the level of detail provided by the regulations and guidance:

Too much

About right

Too little

(b) What, if any, additional issues need to be covered?

**Comments:**

There is a lack of clarity about the interaction between adoption agencies and ASAs. It is too simplistic to say that the latter will deal with requests for contact and the former with issues regarding information. Any decision on whether to pursue contact will have to be based on information, but it will (in agency cases) rest with the adoption agency to exercise a discretion on disclosing information in appropriate circumstances. Will it be permitted to delegate some decision making to the ASA or will the latter always have to refer back to the agency?

There also appears to be a gap between the requirements for the retention of case records contained in the draft Adoption Agency Regulations and these draft regulations. Post commencement cases are provided for, but not pre-commencement cases.

**C. THE ADOPTED CHILDREN AND ADOPTION CONTACT REGISTERS REGULATIONS 2004**

**Question 12 – Manner of application for a registrable foreign adoption to be registered in the Adopted Children Register (Regulation 7)**

Is the Registrar General asking for appropriate particulars from the applicant as to what should make up the application?

Yes

No

No view

**Comments:**

**Question 13 – Applications for certificates from the Adopted Children Register (Regulation 11)**

Has the Registrar General done enough in the regulations to restrict applications for certificates where the adopted person is under the age of 18?

Yes

No

No view

Comments:

#### Question 14 – Notification of fact of death on the Adoption Contact Register

(a) Is the Registrar General right to offer fact of death of the adopted person to a birth relative of that person when he cannot offer the same service to adopted persons themselves regarding the death of a relative?

Yes

No

No view

(b) Would the Registrar General be wiser not to offer the service at all?

Yes

No

No view

(c) Please state your reasons:

Comments:

A birth relative who did not know the adoptive name of the adopted person would have no means of finding out whether or not he or she were alive. An adopted person might, albeit with difficulty, be able to ascertain this information in respect of a birth relative.

It is not clear from the consultation paper how this proposed service would be provided.

#### Question 15 – Future of the Adoption Contact Register

Given that the scheme set out in the Access to Information (Pre-Commencement Adoptions) Regulations duplicates much of the service previously provided solely by the Adoption Contact Register, is the Register still viable in the longer term?

Yes

No

No view

**Comments:**

The new scheme does not provide precisely the same service as that offered by the Adoption Contact Register. In particular, there will be a multiplicity of adoption support agencies, and no obvious means by which an adopted person or birth relative would know whether or not an interest had been registered by the person they wished to contact. This can only be provided by a central register. This applies with particular force to adoptions where no adoption agency was involved, of which there are many.

**Question 16 – Overall Detail**

(a) Overall, is the level of detail provided by the RG's regulations and guidance:

Too much

About right

Too little

(b) What, if any, additional issues need to be covered?

**Comments:**

As mentioned above, the form for requesting an entry on the contact register expressing a wish for no contact needs to make it clear what the various options might be, and to encourage the person concerned to seek advice and counselling before making a decision.

**D. PARTIAL REGULATORY IMPACT ASSESSMENT (RIA)**

**Question 17 – Impact of the Regulations**

do you agree with the assessment made on the likely impact of the regulations?

Yes

No, assessment too high

No, assessment too low

No view

**Comments:**

It is stated (page 100) that option 2 (less prescriptive regulations) would not provide sufficient checks and balances and ensure that safeguards are in place to protect sensitive identifying information from being disclosed inappropriately. Arguably, option 3 as set out in the draft regulations goes too far in the direction of "safeguards" and imposes too many restrictions on the disclosure of any identifying information, whether or not it is "sensitive". The main criticism of the permissive approach of the current Adoption Agencies Regulations 1983 is not, as far as we are aware, that it has led to frequent instances of information being disclosed inappropriately, but, rather, that the powers contained have been exercised inconsistently by different agencies (or even within agencies) so that adopted people, birth relatives and adopters have been forced to depend on the vagaries of the system for a decision on whether they can be helped to obtain information.

The assessment of the costs is too low. It will not in fact be possible, even if desirable, for voluntary adoption agencies and local authorities to avoid extra work engendered by the pre-commencement provisions. Even if they rely on ASAs to undertake most direct work with individuals they will still have to respond to requests from ASAs for information, and to have procedures in place for dealing with enquiries and disputes.

For postcommencement cases, as indicated above, there will be considerable extra work. One issue that is not addressed in the consultation paper is how any referral to the IRM for consideration of a qualifying determination will be funded. If the agency is required to pay the costs of this, this could have a considerable impact. On the other hand, if the costs fall on the individual, there would be some - perhaps many - who could not afford to take advantage of this.

**Question 18 – Benefits**

is the assessment of the benefits of the regulations:

Too positive

About right

Too negative

**Comments:**

see remarks above

**Question 19 General Comments**

Finally, please use this space for any general comments that you may have, comments on the layout of this consultation document would also be welcome.

**Comments:**

[please see our attached response, which also lists all the organisations who have collaborated in producing this joint response.](#)

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you tick the box below.

**Please acknowledge this reply**

The Department for Education and Skills carries out research on many different topics and consultations. As your views are valuable to us, would it be acceptable if we were to contact you again from time to time either for research or to send consultation documents?

**Yes**

**No**

**Code of Practice on Consultation**

All UK national public consultations are required to conform to the following standards:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a

designated consultation co-ordinator.

6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

**Thank you for taking the time to respond to this consultation.**

Completed questionnaires and other responses should be sent to the address shown below by 31 July 2004

Send by post to: Access to Information Consultation, Looked After Children Division, Room 121 Wellington House, 133-155 Waterloo Road, London SE1 8UG.

Send consultation responses by e-mail:

Once you have completed the questionnaire, save it on your hard drive and then open an email to [acesstoinformation.consultation@dfes.gsi.gov.uk](mailto:acesstoinformation.consultation@dfes.gsi.gov.uk), and then attach the completed questionnaire file and send the email