

Notes and Guidance for Registered Adoption Agencies

Intermediary Services for Descendants and other Relatives with a Prescribed Relationship of Adopted People who were adopted before 30 December 2005

Introduction

On 9 December 2013 the Government tabled an amendment to the Children and Families Bill 2013 to add a new clause which amended section 98 of the Adoption and Children Act 2002 to enable regulations to be made for the provision of facilitating contact between persons with a prescribed relationship (including descendants) and adopted persons. The regulations came into force on 31 October 2014.

Statutory Guidance will be forthcoming but meanwhile the following information has been prepared for local authorities, voluntary adoption agencies and adoption support agencies to explain who now has rights to apply for an intermediary service under these new provisions and how agencies should respond when they receive enquiries from descendants and other relatives. It explains the processes that need to be in place in order that applications can be acted upon efficiently and effectively. The information set out below is in a Question and Answer format which can be added to as further questions arise.

The new rules extend the right to all relatives of adopted adults, from children and grandchildren to partners and adoptive relatives to apply for an intermediary service so that contact can be made with the adopted person's birth relatives. However whilst the adopted person is alive they have the right to veto an application by a birth relative for contact with themselves or a person with a prescribed relationship and agencies must not proceed with an application in these circumstances. Adopted adults may also refuse to consent to an application from a person with a prescribed relationship for contact with a birth relative of theirs, unless the applicant is their spouse, child, grandchild or great-grandchild and the applicant is seeking to obtain medical information about their relatives.

In all cases an intermediary agency has the discretion to disclose any non-identifying information which is in their possession, if they consider it appropriate to do so.

CoramBAAF has already produced a Q&A for descendants and relatives with a prescribed relationship of an adopted person and also one for adopted people. These can be accessed on CoramBAAF's Adoption Search Reunion Website.

<http://www.adoptionsearchreunion.org.uk/search/dap/default.htm>

If you have any comments or further questions about the Q&A then please email these to julia.feast@corambaaf.org.uk

Q1. What do the new rules mean?

A. The Government has amended the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005 to extend the provision of intermediary services to facilitate contact between 'persons with a prescribed relationship' and the birth relatives of a person adopted before 30 December 2005. This will allow a wide range of relatives to apply to an intermediary agency to help facilitate contact with biological and non-biological relatives. Previously only the adopted person and the birth family could use an intermediary service. Under the new

rules, a wide range of relatives (including descendants, spouses or adoptive relatives) can now apply to an intermediary agency for help contacting relatives of the adopted person.

Q2. Who is included in the definition of a 'person with a prescribed relationship'?

A. Under the Adoption and Children Act 2002 and the Regulations, a "relative" is defined as a person who is related to the adopted person by blood (including half-blood) or by marriage, but who is no longer *legally* related to the adopted person because the adoption ended the *legal* relationship between them. When the Regulations were extended to allow descendants and other connected people to apply for an intermediary service, these people could not be described as 'relatives' because 'relatives' already has a specific meaning for the purposes of the Act and Regulations. Descendants and others are described as 'persons with a prescribed relationship', which means people who are related to the adopted person by blood, marriage or civil partnership or by virtue of the person's adoption but who are not "relatives" under the 2002 Act and Regulations definition.

Q3. Who can provide an intermediary Service?

A. Local authorities, Voluntary Adoption Agencies and registered Adoption Support Agencies can provide intermediary services.

Q4. Who can apply for an intermediary service?

A. An adopted person, a "relative" of the adopted person and a person with a prescribed relationship to the adopted person (including descendants) can apply to an intermediary agency if they are 18 years and over, and if the adopted person's adoption order was made before 30 December 2005. This change allows descendants and other relatives the right to apply for an intermediary service for the purpose of facilitating contact between them and the adopted person's birth relatives.

These new provisions do not apply where the Adoption Order was granted after 30 December 2005.

Q5. Why can't descendants and other relatives of people who were adopted on or after 30 December 2005 apply for an intermediary service?

A. In relation to adoptions that took place on or after the 30 December 2005, any person may apply for information from the agency that arranged the adoption. The adoption agency has discretion whether to release information and has to take various factors into account when deciding whether it will be appropriate to do so. The Adoption and Children Act 2002 and the Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005 established a new system of retaining and disclosing information relating to adoption for adoptions that took place on or after the 30 December 2005.

Q6. What are the conditions where a person with a prescribed relationship applies for contact with a birth relative whilst the adopted person is still alive?

A. If the adopted person is alive, the intermediary service is required to take all reasonable steps to seek the views of the adopted person. If the adopted person could not be found, or if they could be found but were incapable of giving informed consent, it would be for the intermediary service to decide whether it was appropriate to proceed with the application. If the adopted person was found but did not consent to the application proceeding, the intermediary agency must not continue with the application. However, the intermediary agency would have discretion to proceed with an

application from a spouse, child, grandchild or great grandchild in order to share information about the medical history of relatives, if this can be done without disclosing identifying information.

Q7. Are there any conditions when a birth relative applies for contact with a person with a prescribed relationship when the adopted person is alive?

A. If the adopted person has registered a veto against contact, the intermediary agency must reject the application without making contact with the adopted person, unless the adopted person is deceased or if the veto is qualified and the qualifications apply.

If the adopted person has not registered a veto, the intermediary agency must seek the views of the adopted person before proceeding further with the application. If the adopted person does not consent or cannot be found, the intermediary agency cannot proceed with the application (the only exception to this is where the adopted person does not have the capacity to give informed consent).

Q8. What happens when a descendant or other person with a prescribed relationship applies for contact with a person who has died?

A. The Regulations allow an intermediary agency the discretion to disclose information, including identifying information, if the subject has died or is unable to give consent. The agency must decide on what information it is appropriate to disclose. The agency should also consider what impact and effect disclosing information could have on other birth relatives and other members of the adoptive family.

Q9. Do local authorities and other registered adoption agencies continue to have the choice of providing intermediary services?

A. Yes. Local authorities and other adoption agencies do not have to provide intermediary services but it is important that if they do not provide the service themselves, they must signpost the applicant to an agency that can.

Q10. How should registered agencies respond to an enquiry?

A. Agencies have been providing intermediary services for many years so the systems and processes should already be in place to respond to these enquiries. For example, the agency would need to verify the person's identity and confirm that they are a descendant or other person with a prescribed relationship as defined in the regulations. They will ask to see photo identification and relationship documentation such as copies of birth and marriage/civil partnership certificates.

Q11. Will registered agencies use the same forms when applying for the identifying information from the Adopted Children Register?

A. The General Register Office (GRO) has produced a form to use specifically for applications in relation to descendants and other persons with a prescribed relationship. This called an AF5 and registered agencies can obtain the form from GRO.

Q12. Once the agency has established birth information relating to the adopted person can this be given to a descendant or other person with a prescribed relationship?

A. This information would allow the applicant to identify the birth parents and lead to identification of the wider birth family. Identifying information cannot be disclosed to the applicant with the descendant or other person with a prescribed relationship unless the birth relative who is being sought has given permission, cannot be found or is deceased.

Q13. What if the descendant or other person with a prescribed relationship already know the adopted person's birth name, has a copy of the birth certificate and wants to contact the birth family?

A. In such situations then you can advise the descendant and other relative that they are able to make their own search and make contact with birth relatives. However it is important to help them consider the potential impact this may have. For example, some birth relatives may give a positive response and are welcoming whilst others may feel unable to respond to an approach or not provide any information about the birth family.

Q14. Is a descendant allowed to have a copy of the original birth certificate that contains their parent's birth name and other details?

A. There is a statutory right for anybody to have a copy of any birth certificate that they can identify. In some cases, where a person with a prescribed relationship applies for an intermediary service for contact with a birth relative of the adopted person, they may be given information (see Q 12 above) which might be sufficient to enable them to identify their parent's original birth registration and apply for a copy of the birth certificate.

Q15. Can agencies charge for the intermediary services it provides?

A. Yes agencies can charge for providing intermediary services. Agencies can also charge for obtaining information from other agencies e.g. the GRO.

Q16. How can I pass on information about a medical condition I have which is hereditary?

A. The NHS provides a service where medical information about an existing hereditary medical condition can be exchanged between the GP of an adopted person and the GP of their birth family.

Provided the adopted person/birth relative can be identified from the information available and is currently registered with a GP in England, Wales or the Isle of Man, medical information about existing hereditary conditions may be passed on.

The service is subject to the consent of both GPs involved and only information relating to an existing medical condition which is hereditary will be passed on. The service does not include the facilitation of any contact between the applicant and the adopted person and birth relative. For more information please see link below.

<http://www.hscic.gov.uk/article/1801/Hereditary-Medical-Conditions>

Q17. Where can agencies direct descendants and other person with a prescribed relationship, and also adopted adults, if they want to obtain more information about the regulations and how it affects them?

A. CoramBAAF has produced Q&A for these groups of people and information can be accessed on the Adoption Search Reunion website:

- Prescribed relatives of adopted people
http://www.adoptionsearchreunion.org.uk/NR/rdonlyres/8CCDA125-7722-4452-BAB3-6CD9205BC987/62/ASR_QandA_for_descendants_of_adopted_people1.pdf
- Adopted adults
http://www.adoptionsearchreunion.org.uk/NR/rdonlyres/8CCDA125-7722-4452-BAB3-6CD9205BC987/63/ASR_QandA_for_adopted_adults.pdf