WELSH STATUTORY INSTRUMENTS

2005 No. 2689 (W.189)

SOCIAL CARE, WALES
CHILDREN AND YOUNG PERSONS, WALES

The Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005

Made - - - -	*27 September 2005*
Coming into force - -	*30 December 2005*

The National Assembly for Wales in the exercise of the powers conferred on it by sections 9, 56 to 64, 140(8), 142(1) and (5) and 144(2) of the Adoption and Children Act 2002(**1**) and of all other powers enabling it in that behalf, with the approval of the Registrar General(**2**) and the Chancellor of the Exchequer(**3**), hereby makes the following Regulations:—

PART 1

GENERAL

Title, commencement and application

1.—(1) The title of these Regulations is the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005 and come into force on 30 December 2005.

(2) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations —

"the Act" ("*y Ddeddf*") means the Adoption and Children Act 2002;

"the Adoption Agencies Regulations" ("*y Rheoliadau Asiantaethau Mabsysiadu*") means the Adoption Agencies (Wales) Regulations 2005(**4**);

(**1**) 2002 c. 38. These powers are exercisable by the appropriate Minister, who is defined in section 144(1) of the Act in relation to England, as the Secretary of State, in relation to Wales as the National Assembly for Wales and in relation to England and Wales, as the Secretary of State and the National Assembly or Wales acting jointly.
(**2**) The Registrar General's approval is required for regulation 17(3) by virtue of section 65(5) of the Act.
(**3**) The approval of the Chancellor of the Exchequer is required for regulation 18(2) by virtue of section 65(4) of the Act.
(**4**) S.I. 2005/1313.

"adopters" ("*mabwysiadwyr*") in the case of an adoption by one person means that person;

"birth parent" ("*rhiant geni*") in relation to an adopted person means a person who, but for the adoption, would be his or her parent;

"birth relative" ("*perthynas geni*") in relation to an adopted person means a person who, but for the adoption, would be related to him or her by blood (including half blood) or marriage;

"CAFCASS" ("*CAFCASS*") means the Children and Family Court Advisory and Support Service(**5**);

"registered adoption support agency" ("*asiantaeth cefnogi mabwysiadu gofrestredig*") means an adoption support agency in respect of which a person is registered under Part 2 of the Care Standards Act 2000(**6**);

"section 56 information" ("*gwybodaeth adran 56*") means information prescribed by regulation 3;

"the registration authority" ("*yr awdurdod cofrestru*") means the National Assembly for Wales;

"Welsh family proceedings officer" ("*swyddog achosion teuluol ar gyfer Cymru*") has the meaning given in section 35(4) of the Children Act 2004(**7**).

PART 2

KEEPING OF INFORMATION BY ADOPTION AGENCIES

Information to be kept about a person's adoption

3.—(1) Paragraphs (2) and (3) prescribe, for the purposes of section 56 of the Act, the information that an adoption agency must keep in relation to a person adopted on or after 30 December 2005 (and which is referred to in the Act and in these Regulations as "section 56 information")(**8**).

(2) When an adoption order is made in relation to a person adopted after 30 December 2005 the adoption agency—

(a) that placed the person for adoption; or

(b) to which the case records in respect of adopted person have been transferred,

must continue to keep the case record that was set up in respect of the adopted person under regulation 12 of the Adoption Agencies Regulations or under the Adoption Agencies Regulations 1983(**9**).

(3) The adoption agency must also keep —

(a) any information that has been supplied by a birth parent or other birth relative of the adopted person, or other significant person in the adopted person's life with the intention that the adopted person may, should he or she wish to, be given that information;

(b) any information that has been supplied by a former foster carer of the adopted person with the intention that the adopted person may, should he or she wish to, be given that information;

(c) any information supplied by the adopters or other persons which is relevant to matters arising after the adoption order has been made;

(d) any information that the adopted person has requested should be kept;

(**5**) See section 11 of the Criminal Justice and Court Services Act 2000 c. 43.
(**6**) 2000 c. 14.
(**7**) 2004 c. 31.
(**8**) Sections 56 to 64 are commenced only in respect of adoptions on or after 1 September 2005.
(**9**) S.I. 1983/1964.

(e) any information given to agency in respect of an adopted person by the Registrar General under section 79(5) of the Act (information that would enable an adopted person to obtain a certified copy of the record of his or her birth);

(f) any information disclosed to the adoption agency about an entry relating to the adopted person on the Adoption Contact Register;

(g) any information required to be recorded in accordance with regulation 9, 10, 13 or 16;

(h) the record of any agreement under regulation 10.

(4) For the purposes of this regulation "information" includes information in any form, including paper or electronic records and photographs.

(5) The adoption agency must keep a record of any objects and mementoes that are not retained because they are not reasonably practicable to store.

Storage and manner of keeping of section 56 information

4. The adoption agency shall ensure that section 56 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.

Preservation of section 56 information

5. The adoption agency must keep section 56 information in relation to a person's adoption for at least 100 years from the date of the adoption order.

Transfer of section 56 information

6.—(1) Where a registered adoption society(**10**) intends to cease to act or exist as such, it must transfer any section 56 information which it holds in relation to a person's adoption—

(a) to another adoption agency having first obtained the approval of the registration authority for such transfer;

(b) to the local authority in whose area the society's principal office is situated; or

(c) in the case of a society which amalgamates with another registered adoption society to form a new registered adoption society, to the new body.

(2) A registered adoption society that transfers its records to another adoption agency by virtue of paragraph (1) must, if its activities were principally based in the area of a single local authority, give written notification of the transfer to that authority.

(3) An adoption agency to which records are transferred by virtue of paragraph (1), shall notify the registration authority in writing of such a transfer.

PART 3

DISCLOSURE OF INFORMATION — GENERAL

Disclosure of section 56 information for purposes of agency's functions

7.—(1) An adoption agency may disclose section 56 information that is not protected information(**11**) as it thinks fit for the purpose of carrying out its functions as an adoption agency.

(**10**) *see* s.2(2) of the Act.
(**11**) *see* s.57(3) of the Act for the meaning of "protected information"

(2) An adoption agency may disclose section 56 information (including protected information) to a registered adoption support agency which provides services to the adoption agency in connection with any of its functions under section 61 or 62 of the Act.

(3) An adoption agency may disclose section 56 information (including protected information) to a person who is authorised in writing by the National Assembly for Wales to obtain information for the purposes of research.

Disclosure of section 56 information for the purposes of inquiries, inspection etc.

8. An adoption agency must disclose section 56 information (including protected information) as may be required—

(a) to those holding an inquiry under section 17 of the Act, section 81 of the Children Act 1989(**12**) or section 1 of the Inquiries Act 2005(**13**) for the purposes of such an inquiry;

(b) subject to the provisions of s.74(5) of the Care Standards Act 2000 to the Children's Commissioner for Wales(**14**) for the purposes of any examination conducted in accordance with Part V of that Act;

(c) to the National Assembly for Wales;

(d) subject to the provisions of sections 29(7) and 32(3) of the Local Government Act 1974(**15**) (investigations and disclosure), to the Commission for Local Administration in Wales, for the purpose of an investigation conducted in accordance with Part III of that Act;

(e) to any person appointed by the adoption agency for the purpose of the consideration by the agency of any representations (including complaints);

(f) to a panel constituted under section 12 of the Act to consider a qualifying determination in relation to the disclosure of section 56 information;

(g) to a Welsh family proceedings officer or an officer of CAFCASS for the purposes of the discharge of the officer's duties under the Act;

(h) to a court having power to make an order under the Act or under the Children Act 1989.

Requirements relating to disclosure

9. The adoption agency must make a written record of any disclosure made under regulation 7 or 8, 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.

Agreements for the disclosure of protected information

10.—(1) A prescribed agreement for the purpose of section 57(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 that person; 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—

(**12**) 1989 c. 41.
(**13**) 2005 c. 12.
(**14**) 2001 c. 18.
(**15**) 1974 c. 7.