

**The Adoption Information (Scotland)
Regulations**

and

**The Adoption (Disclosure of
Information)(Scotland) Regulations**

**CONSULTATION ON DRAFT
REGULATIONS**

The Scottish Government

Edinburgh, 2008

<u>CHAPTER</u>	<u>PAGE</u>
INTRODUCTION	2
BACKGROUND	3
COMMENTARY	4
THE ADOPTION INFORMATION (SCOTLAND) REGULATIONS	4
Regulation 1 - Citation, commencement and interpretation	4
Regulation 2 - Information to be kept about adoptions	4
Regulation 3 - Form and manner in which information is kept	5
THE ADOPTION (DISCLOSURE OF INFORMATION) (SCOTLAND) REGULATIONS	6
Regulation 2 – Interpretation	6
Regulation 3 – Disclosure of information to adopted person	6
Regulation 4 – Disclosure of information to other persons	7
Regulation 5 – Disclosure of information for purposes of agency’s functions or for research	7
Regulation 6 – Disclosure of information for enquires etc.	8
Regulation 7 – Requirements relating to disclosure	8
Regulation 8 – Transfer of case records	9
SUMMARY OF CONSULTATION QUESTIONS	10
ANNEX A: THE ADOPTION INFORMATION (SCOTLAND) REGULATIONS	11
ANNEX B: THE ADOPTION (DISCLOSURE OF INFORMATION) (SCOTLAND) REGULATIONS	14
ANNEX C: RELEVANT SECTIONS OF THE 2007 ACT	18
RESPONDENT INFORMATION FORM: DRAFT ADOPTION INFORMATION REGULATIONS AND ADOPTION (DISCLOSURE OF INFORMATION) (SCOTLAND) REGULATIONS	20

INTRODUCTION

This document accompanies the Adoption Information (Scotland) Regulations and the Adoption (Disclosure of Information) (Scotland) Regulations. It sets out the policy behind the draft Regulations and seeks your comments on a number of issues within the Regulations. The consultation period runs until 8 October 2008.

There are specific questions on which we seek your views and these are highlighted in the document. However, we welcome comments on all of the proposals.

We are aware of the data protection issues surrounding adoption records and will ensure that the references to adoption legislation in the Data Protection Subject Access Order are updated to reflect the new Act and Regulations.

This document is primarily being distributed electronically and is available on the Scottish Government web-site at

www.scotland.gov.uk/adoptioninformationregs

If, however, you would wish to be sent the document in photocopy please contact

Suzanne Allan on 0131 244 0407

or e-mail adoptionregulations@scotland.gsi.gov.uk to arrange for a copy or copies to be sent to you.

Please send your response electronically to the above address or in hard copy to

Adoption Support Regulations Consultation, 2-A(N) Victoria Quay, EDINBURGH, EH6 6QQ

Please complete the details on the respondent information form at the end of this document and return it with your response. This will help ensure we handle your response appropriately. The form should be printed first to enable completion and then either scanned and emailed or sent as a hard copy (depending on how you intend to send your response). Thank you for your help.

BACKGROUND

The Adoption and Children (Scotland) Act 2007 ('the 2007 Act') introduced a range of reforms into the law relating to adoption of, and permanent care for, children who cannot remain with their birth families.

Once the new legislation is commenced, the existing legislation – the Adoption (Scotland) Act 1978 ('the 1978 Act') – will be repealed, except to the extent necessary to maintain the legality of those adoptions that have already been made under it. One consequence of this is that existing Regulations made under the 1978 Act will no longer be valid. For that reason new Regulations require to be put in place to restate, and amend, extend and improve, existing Regulations. In doing this account will be taken of the report from the Adoption Policy Review Group (APRG) *Adoption: Better Choices for Our Children*, which has already shaped the 2007 Act itself.

The present consultation paper deals with the draft Adoption Information (Scotland) Regulations and the draft Adoption (Disclosure of Information)(Scotland) Regulations. Due to these regulations being subject to different Parliamentary procedures the regulations will remain separate from each other. However this does not prejudice any views on whether the draft Adoption Information (Scotland) Regulations should be separate or combined with other Regulations following up the 2007 Act, such as the Adoption Agencies Regulations. Each draft set of regulations will be dealt with separately in the following commentary. The draft Regulations are at Annexes A and B.

Regulations are intended to supplement primary legislation – in this case the 2007 Act – so they do not generally repeat provision already there. To aid full consideration, therefore, the most relevant provisions in the 2007 Act are reproduced for ease of reference at Annex C.

The full text of the 2007 Act may be found at:

http://www.opsi.gov.uk/legislation/scotland/acts2007/asp_20070004_en_1

The APRG Report *Adoption: Better Choices for Our Children* may be found at:

<http://www.scotland.gov.uk/Publications/2005/06/27140607/06107>

COMMENTARY

THE ADOPTION INFORMATION (SCOTLAND) REGULATIONS

Regulation 1 - Citation, commencement and interpretation

- 1.—(1) *These Regulations may be cited as the Adoption Information (Scotland) Regulations 2009 and come into force on 2009.*
(2) *In these regulations “the Act” means the Adoption and Children (Scotland) Act 2007.*

Regulation 1 provides for the commencement date and definitions to be used throughout the following Regulations. Where an expression is used in these Regulations it will have the same definition as in the Act unless a separate definition is provided.

Most of the terms in this Regulation flow from the 2007 Act and further definitions were not considered necessary.

Regulation 2 - Information to be kept about adoptions

- 2.—(1) *An adoption agency must create a case record in respect of—*
(a) *an adopted child; and*
(b) *a prospective adoptive parent.*
(2) *The following must be placed on the case record relating to an adopted child or a prospective adoptive parent—*
(a) *any information obtained by that adoption agency; or*
(b) *any report, recommendation or decision made by that adoption agency, or by an adoption panel or joint adoption panel appointed by that agency,*
under the Adoption Agencies (Scotland) Regulations 2009, in respect of that adopted child or, as the case may be, that prospective adoptive parent.
(3) *An adoption agency must continue to keep the case record set up in respect of an adopted child or prospective adoptive parent under the Adoption Agencies (Scotland) Regulations 1996.*
(4) *However an adoption agency is not required to keep any information falling within paragraph (2)(a) if the 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.*

Regulation 2 provides for the creation of a case record on an adopted child and prospective adopters. The regulation goes further than the current regulation 23 in that it does not assume the setting up of a case record. The equivalent regulation in the English and Welsh regulations makes provision for specific information to be put on a case record. This information is to supplement the information outlined in their Adoption and Children Act 2002. However, no such list exists in the 2007 Act, therefore, this regulation specifies that any information collected during the adoption process as well as the report, recommendations and decisions by the adoption agency, or panels, should be kept. “Adoption panel” and “Joint adoption panel” have not been defined as this set of regulations may be included with the Adoption Agencies (Scotland) Regulations.

Regulation 2(3) creates a savings provision for adoption records created under the Adoption Agencies (Scotland) Regulations 1996.

Regulation 2(4) replicates Regulation 4(4) of the (English) Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005 (SI 2005/888) and reflects the need to consider the welfare of the child throughout their life. If, in the view of the adoption agency, it would be contrary to the welfare of the child to keep certain information on record then this information need not be kept by the agency.

Q1 – Is the approach in this regulation sufficiently inclusive and comprehensive for the purposes of the collection and creation of a case record.

Q2 – Are there any processes in practice that are not covered by this regulation and should be included.

Q3 – Is the term ‘adopted child’ confusing? If so, what term should be used?

Q4 – Is regulation 2(4) necessary?

Regulation 3 - Form and manner in which information is kept

3.—(1) Subject to the Adoption (Disclosure of Information) (Scotland) Regulations 2009 any information, reports, recommendations or decisions referred to in regulation 2(2) above, must be treated by the adoption agency as confidential.

(2) The adoption agency must ensure that all case records, together with the indexes to them, are 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.

(3) Subject to the Adoption (Disclosure of Information) (Scotland) Regulations 2009, an adoption agency must—

- (a) preserve the indexes to all its case records and the case records in respect of those cases in which an adoption order is made in secure conditions for at least 75 years; and*
- (b) preserve other case records in secure conditions for so long as it considers appropriate.*

(4) Case records and indexes to them may be preserved on computer records or such other system as reproduces the total contents of the case record or index.

Regulation 3 specifies that the information kept must be treated as confidential unless disclosure is permitted by the Adoption (Disclosure of Information) (Scotland) Regulations 2009. The records and indexes should be held in secure conditions, this may be on computer records or other such electronic system. Where an adoption order is made the agency must preserve the records for at least 75 years.

Q5 – Is the timescale for preservation of records sufficient? What would be a more appropriate timescale?

THE ADOPTION (DISCLOSURE OF INFORMATION) (SCOTLAND) REGULATIONS

Due to the provisions in section 117 of the 2007 Act, these regulations are subject to affirmative procedures in the Scottish Parliament. As the provisions in the Adoption Information (Scotland) Regulations are subject to negative procedures the two sets of regulations being consulted on cannot be made together.

Regulation 2 – Interpretation

2. In these regulations—

“the Act” means the Adoption and Children (Scotland) Act 2007;

“the 2002 Act” means the Adoption and Children Act 2002;

“the 2009 Regulations” means the Adoption Agencies (Scotland) Regulations 2009.

Regulation 2 provides for the definitions to be used throughout the following Regulations. Where an expression is used in these Regulations it will have the same definition as in the Act unless a separate definition is provided.

Most of the terms in this Regulation flow from the 2007 Act and further definitions were not considered necessary.

Q6 – Are there any definitions in these regulations which are required to be included in regulation 2.

Regulation 3 – Disclosure of information to adopted person

3.—(1) Where an adopted person who has attained the age of 16 years, if in Scotland, or 18 years, if in England or Wales, applies for counselling under section 9 (assessment of needs for adoption support services) of the Act, or is seeking information under section 60 (disclosing information to adopted adult), 61 (disclosing protected information about adults) or 62 (disclosing protected information about children) of the 2002 Act, an adoption agency may disclose the information, which it has relating to that person’s adoption, to that adopted person.

(2) Where an adopted person has not yet attained the age of 16 years, if in Scotland, or 18 years, if in England or Wales, an adoption agency may disclose information, which it has relating to that person’s adoption, to that adopted person if the agency thinks it appropriate to do so.

(3) In considering whether it is appropriate to disclose or withhold information under paragraph (2) the adoption agency must have due regard, so far as is practicable, to—

- (a) the views of the adopted person, taking into account the person’s age and maturity and*
- (b) the welfare of the adopted person.*

(4) But notwithstanding paragraph (3) information must not be disclosed to the adopted person under paragraph (2) if that information could, whether taken on its own or together with other information possessed by the adopted person, identify the adopted person’s natural parents or other natural relatives.

Regulation 3 allows adoption agencies to disclose information to an adopted person in Scotland who has attained the age of 16 (if the person is in England or Wales then the age for disclosing information is 18). The disclosure of the information to the adoption person is dependant upon their request for counselling.

Certain information may be disclosed to an adopted person who has not yet attained the age of 16, or 18 in England and Wales, if the adoption agency thinks that it is appropriate. The regulation stipulates the consideration the adoption agency must have regard to before disclose information to an adopted person who has not attained the correct age. However, information which might identify the adopted person's birth parent must not be disclosed, whether that identification can be made with the information on its own or together with other information possessed by the adopted person.

Q7 – Should the disclosure of information be triggered only by a request for counselling or are there other circumstances where this disclosure may be suitable, should the disclosure be automatic on the adopter person reaching the appointed age?

Q8 – Is it appropriate for an adopted person who has not attained the age specified to be able to access certain information at the discretion of the adoption agency? Are the caveats concerning the identification of birth parents sufficient, or should there be further caveats to the release of this information?

Regulation 4 – Disclosure of information to other persons

4. Where an adopted person who has attained the age of 16 years, if in Scotland, or 18 years, if in England or Wales, applies for counselling under section 9 of the Act, or is seeking information under section 60, 61 or 62 of the 2002 Act, an adoption agency may disclose information, which it has relating to that person's adoption, to–

- (a) the local authority for the area in Scotland where the adopted person lives, if the adopted person has applied to them for counselling;
- (b) the Registrar General for England and Wales;
- (c) the local authority for the area in England and Wales where the adopted person lives, if the adopted person has sought information from them; and
- (d) the local authority for the area in England or Wales where the court sat which made the order relating to the adopted person, if the adopted person has sought information from that authority.

Regulation 4 allows adoption agencies to disclose information to certain identified persons when an adopted person in Scotland who has attained the age of 16 (if the person is in England or Wales then the age for disclosing information is 18) applies for counselling.

The purpose of this regulation is to allow the disclosure of information to certain individuals and organisations that may need access to this information to discharge their duties in relation to that adopted person. These duties are statutory.

Q9 – Does this regulation sufficiently cover the organisations that may need access to the information in order to support an adopted person?

Regulation 5 – Disclosure of information for purposes of agency's functions or for research

5. An adoption agency may provide access to its case records and the indexes to them and disclose such information in its possession, as it thinks fit–

- (a) for the purposes of carrying out its functions as an adoption agency; and

- (b) to a person who is authorised in writing by the Scottish Ministers to obtain information for the purposes of research.*

Regulation 5 restates regulation 24(2) of the Adoption Agencies (Scotland) Regulations 1996. This regulation allows adoption agencies to disclose information to those authorized by Scottish Ministers whilst undertaking research. An adoption agency may also disclose information for the purposes of carrying out its functions.

Regulation 6 – Disclosure of information for enquires etc.

6. An adoption agency must provide such access to its case records and the indexes to them and disclose such information in its possession, as may be required–

- (a) to those holding an inquiry under section 6A of the Social Work (Scotland) Act 1968 (inquiries), or under the Inquiries Act 2005 for the purposes of such an inquiry;*
- (b) to the Scottish Ministers;*
- (c) to the Scottish Public Services Ombudsman;*
- (d) to the persons and authorities referred to in regulations 10 (notification of adoption agency decisions) and 19 (placement for adoption: notification and provision of information) of the 2009 Regulations, to the extent specified in those regulations;*
- (e) [to a court under [regulation 22 of the 1996 Regs / sheriff court rules] to the extent specified in that regulation / rules]; and*
- (f) to a curator ad litem or reporting officer appointed under rules made pursuant to section 108 of the Act (rules: appointment of curators ad litem and reporting officers) for the purpose of the discharge of their duties in that behalf.*

Regulation 6 restates regulation 24(1) of the Adoption Agencies (Scotland) Regulations 1996. This regulations describes persons which an agency must disclose information to, and these include those holding certain inquiries, the Scottish Ministers, the Scottish Public Services Ombudsman and persons authorised under the Adoption Agencies (Scotland) Regulations 2009.

Q10 – Taking regulations 5 and 6 together, should information be disclosed to anyone else, and under what circumstance?

Regulation 7 – Requirements relating to disclosure

7. The adoption agency must make a written record of any access provided or disclosure made under regulation 5 or 6, 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; and*
- (d) the reason for disclosure.*

Regulations 7 requires an adoption agency to make a written record of any disclosure it makes under regulations 5 and 6. The regulation specifies what is required is that record.

Q11 – Should anything else be recorded about the disclosure?

Regulation 8 – Transfer of case records

8. —(1) Subject to paragraphs (2) and (3), a registered adoption service may transfer a copy of a case record (or part thereof) to another adoption agency when it considers this to be in the interests of a child or prospective adoptive parent to whom the record relates, and a written record must be kept of any such transfer.

(2) Where a registered adoption service intends to cease to act or exist as such, it must transfer its case records and the indexes to them which it holds in relation to an adopted child or a prospective adoptive parent—

- (a) to another registered adoption service, having first obtained the Scottish Ministers' approval for such transfer;
- (b) to the local authority in whose area the society's head office is situated; or
- (c) in the case of a service which amalgamates with another registered adoption service to form a new registered adoption service, to the new body.

(3) A registered adoption service to which case records or the indexes to them are transferred by virtue of paragraph (2) must notify the Scottish Ministers in writing of such transfer.

Regulation 8 makes provision for the transfer of case records to other adoption agencies in cases where it is thought to be in the best interests of the child or when an agency ceases to exist or act. In cases where the agency ceases to exist or act the regulation stipulates the organisations that could receive the transferred records. Notification of this transfer should be made to the Scottish Ministers.

Q12 – Does this regulations cover the transfer of records sufficiently, are there other occasions when an agency would want to transfer records that is not included in this regulations?

SUMMARY OF CONSULTATION QUESTIONS

THE ADOPTION INFORMATION (SCOTLAND) REGULATIONS

Q1 – Is the approach in this regulation sufficiently inclusive and comprehensive for the purposes of the collection and creation of a case record.

Q2 – Are there any processes in practice that are not covered by this regulation and should be included.

Q3 – Is the term ‘adopted child’ confusing? If so, what term should be used?

Q4 – Is regulation 2(4) necessary?

Q5 – Is the timescale for preservation of records sufficient? What would be a more appropriate timescale?

THE ADOPTION (DISCLOSURE OF INFORMATION) (SCOTLAND) REGULATIONS

Q6 – Are there any definitions in these regulations which are required to be included in regulation 2.

Q7 – Should the disclosure of information be triggered only by a request for counselling or are there other circumstances where this disclosure may be suitable, should the disclosure be automatic on the adopter person reaching the appointed age?

Q8 – Is it appropriate for an adopted person who has not attained the age specified to be able to access certain information at the discretion of the adoption agency? Are the caveats concerning the identification of birth parents sufficient, or should there be further caveats to the release of this information?

Q9 – Does this regulation sufficiently cover the organisations that may need access to the information in order to support an adopted person?

Q10 – Taking regulations 5 and 6 together, should information be disclosed to anyone else, and under what circumstance?

Q11 – Should anything else be recorded about the disclosure?

Q12 – Does this regulations cover the transfer of records sufficiently, are there other occasions when an agency would want to transfer records that is not included in this regulations?

ANNEX A: THE ADOPTION INFORMATION (SCOTLAND) REGULATIONS

SCOTTISH STATUTORY INSTRUMENTS

2009 No.

CHILDREN AND YOUNG PERSONS

The Adoption Information (Scotland) Regulations 2009

Made - - - - - 2009

Laid before the Scottish the Scottish Parliament 2009

Coming into force - - - 2009

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 37 and 117(2) of the Adoption and Children (Scotland) Act 2007⁽¹⁾ and all other powers enabling them to do so.

(1) 2007 asp 4.
(2) S.S.I. 2009/.....
(3) S.I. 1996/3266.
(4) S.S.I. 2009/.....
(5) 2007 asp 4.
(6) 2002 c.38.
(7) S.S.I. 2009/
(8) 1968 c.49.
(9) 2005 c.12.
(10) 1995 c. 36.

Citation, commencement and interpretation

4.—a) These Regulations may be cited as the Adoption Information (Scotland) Regulations 2009 and come into force on 2009.

(1) In these regulations “the Act” means the Adoption and Children (Scotland) Act 2007.

Information to be kept about adoptions

5.—(1) An adoption agency must create a case record in respect of—

- (a) an adopted child; and
- (b) a prospective adoptive parent.

(2) The following must be placed on the case record relating to an adopted child or a prospective adoptive parent—

- (a) any information obtained by that adoption agency; and
- (b) any report, recommendation or decision made by that adoption agency, or by an adoption panel or joint adoption panel appointed by that agency,

under the Adoption Agencies (Scotland) Regulations 2009(2), in respect of that adopted child or, as the case may be, that prospective adoptive parent.

(3) An adoption agency must continue to keep the case record set up in respect of an adopted child or prospective adoptive parent under the Adoption Agencies (Scotland) Regulations 1996.(3)

(4) However an adoption agency is not required to keep any information falling within paragraph (2)(a) if the 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.

Form and manner in which information is kept

6.—(1) Subject to the Adoption (Disclosure of Information) (Scotland) Regulations 2009(4) any information, reports, recommendations or decisions referred to in regulation 2(2) above, must be treated by the adoption agency as confidential.

(1) The adoption agency must ensure that all case records, together with the indexes to them, are 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.

(2) Subject to the Adoption (Disclosure of Information) (Scotland) Regulations 2009, an adoption agency must—

- (a) preserve the indexes to all its case records and the case records in respect of those cases in which an adoption order is made in secure conditions for at least 75 years; and
- (b) preserve other case records in secure conditions for so long as it considers appropriate.

(3) Case records and indexes to them may be preserved on computer records or such other system as reproduces the total contents of the case record or index.

[A member of the Scottish Executive]
[Authorised to sign by the Scottish Ministers]

St Andrew’s House,
Edinburgh

2009

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision concerning the information which an adoption agency must keep in relation to adoptions and the form and manner in which such information must be kept.

Regulation 2 provides that an adoption agency must create a case record for each adopted child and prospective adoptive parent. These case records must contain all the information, reports, recommendations and decisions relating to those persons. Regulation 2(3) provides that adoption agencies must continue to keep case records established under the Adoption Agencies (Scotland) Regulations 1996 (S.I. No. 3266). Regulation 2(4) sets out circumstances in which an agency is not required to keep information.

Regulation 3 specifies that the information kept must be treated as confidential unless disclosure is permitted by the Adoption (Disclosure of Information) (Scotland) Regulations 2009. The agency must keep the case records in secure conditions and preserve them for at least 75 years, where an adoption order was made.

ANNEX B: THE ADOPTION (DISCLOSURE OF INFORMATION) (SCOTLAND) REGULATIONS

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2009 No.

CHILDREN AND YOUNG PERSONS

The Adoption (Disclosure of Information) (Scotland) Regulations 2009

Made - - - -
2009

Coming into force - - -
2009

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 38(1) and 117(2) of the Adoption and Children (Scotland) Act 2007(5) and all other powers enabling them to do so.

In accordance with section 117(5) of that Act, a draft of these Regulations has been laid before, and approved by resolution of, the Scottish Parliament.

Citation and commencement

7. These Regulations may be cited as the Adoption (Disclosure of Information) (Scotland) Regulations 2009 and come into force on 2009.

Interpretation

8. In these regulations—

“the Act” means the Adoption and Children (Scotland) Act 2007;

“the 2002 Act” means the Adoption and Children Act 2002(6);

“the 2009 Regulations” means the Adoption Agencies (Scotland) Regulations 2009(7).

Disclosure of information to adopted person

9.—b) Where an adopted person who has attained the age of 16 years, if in Scotland, or 18 years, if in England or Wales, applies for counselling under section 9 (assessment of needs for adoption support services) of the Act, or is seeking information under section 60 (disclosing information to adopted adult), 61 (disclosing protected information about adults) or 62 (disclosing protected information about children) of the 2002 Act, an adoption agency may disclose the information, which it has relating to that person’s adoption, to that adopted person.

(1) Where an adopted person has not yet attained the age of 16 years, if in Scotland, or 18 years, if in England or Wales, an adoption agency may disclose information, which it has relating to that person's adoption, to that adopted person if the agency thinks it appropriate to do so.

(2) In considering whether it is appropriate to disclose or withhold information under paragraph (2) the adoption agency must have due regard, so far as is practicable, to—

- (a) the views of the adopted person, taking into account the person's age and maturity and
- (b) the welfare of the adopted person.

(3) But notwithstanding paragraph (3) information must not be disclosed to the adopted person under paragraph (2) if that information could, whether taken on its own or together with other information possessed by the adopted person, identify the adopted person's natural parents or other natural relatives.

Disclosure of information to other persons

10. Where an adopted person who has attained the age of 16 years, if in Scotland, or 18 years, if in England or Wales, applies for counselling under section 9 of the Act, or is seeking information under section 60, 61 or 62 of the 2002 Act, an adoption agency may disclose information, which it has relating to that person's adoption, to—

- (a) the local authority for the area in Scotland where the adopted person lives, if the adopted person has applied to them for counselling;
- (b) the Registrar General for England and Wales;
- (c) the local authority for the area in England and Wales where the adopted person lives, if the adopted person has sought information from them; and
- (d) the local authority for the area in England or Wales where the court sat which made the order relating to the adopted person, if the adopted person has sought information from that authority.

Disclosure of information for purposes of agency's functions or for research

11. An adoption agency may provide access to its case records and the indexes to them and disclose such information in its possession, as it thinks fit—

- (a) for the purposes of carrying out its functions as an adoption agency; or
- (b) to a person who is authorised in writing by the Scottish Ministers to obtain information for the purposes of research.

Disclosure of information for inquiries etc.

12. An adoption agency must provide such access to its case records and the indexes to them and disclose such information in its possession, as may be required—

- (a) to those holding an inquiry under section 6A of the Social Work (Scotland) Act 1968(8) (inquiries), or under the Inquiries Act 2005(9) for the purposes of such an inquiry;
- (b) to the Scottish Ministers;
- (c) to the Scottish Public Services Ombudsman;
- (d) to the persons and authorities referred to in regulations 10 (notification of adoption agency decisions) and 19 (placement for adoption: notification and provision of information) of the 2009 Regulations, to the extent specified in those regulations;
- (e) to a court having power to make an order under the Act or under the Children (Scotland) Act 1995(10); and
- (f) to a curator *ad litem* or reporting officer appointed under rules made pursuant to section 108 of the Act (rules: appointment of curators *ad litem* and reporting officers) for the purpose of the discharge of their duties in that behalf.

Requirements relating to disclosure

13. The adoption agency must make a written record of any access provided or disclosure made under regulation 5 or 6, 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; and
- (d) the reason for disclosure.

Transfer of case records

14.—c) Subject to paragraphs (2) and (3), a registered adoption service may transfer a copy of a case record (or part thereof) to another adoption agency when it considers this to be in the interests of a child or prospective adoptive parent to whom the record relates, and a written record must be kept of any such transfer.

(1) Where a registered adoption service intends to cease to act or exist as such, it must transfer its case records and the indexes to them which it holds in relation to an adopted child or a prospective adoptive parent—

- (a) to another registered adoption service, having first obtained the Scottish Ministers' approval for such transfer;
- (b) to the local authority in whose area the society's head office is situated; or
- (c) in the case of a service which amalgamates with another registered adoption service to form a new registered adoption service, to the new body.

(2) A registered adoption service to which case records or the indexes to them are transferred by virtue of paragraph (2) must notify the Scottish Ministers in writing of such transfer.

[A member of the Scottish Executive]
[Authorised to sign by the Scottish Ministers]

St Andrew's House,
Edinburgh

2009

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, made under the Adoption and Children (Scotland) Act 2007, make provision concerning the disclosure by adoption agencies of information relating to adoptions.

Regulation 3 provides for disclosure of information to adopted persons. Where the adopted person is under the age of 16 (or 18 if in England or Wales) the adoption agency must, prior to disclosing information, consider the adopted person's views and welfare. However, the agency must not disclose to an adopted person under the age of 16 (or 18 in England or Wales) any information which could identify the adopted person's natural parents.

Regulation 4 provides for disclosure of information to local authorities in Scotland, England and Wales, and to the Registrar General for England and Wales, where an adopted person is applying for counselling or seeking information about their adoption. An adoption agency may disclose information for the purposes of carrying out its functions or to researchers authorised by the Scottish Ministers (regulation 5). Regulation 6 describes persons which an agency must disclose information to, and these include those holding certain inquiries, the Scottish Ministers, the Scottish Public Services Ombudsman, persons authorised under the Adoption Agencies (Scotland) Regulations 2009 and courts. When an agency discloses information under regulations 5 and 6 it must keep a record of the disclosure and the reasons for it (regulation 7). Regulation 8 provides for the transfer of adoption case records, including where adoption agencies dissolve or merge.

ANNEX C: RELEVANT SECTIONS OF THE 2007 ACT

Adoption records

37 Information to be kept about adoptions

The Scottish Ministers may make regulations for or in connection with specifying—

- (a) the information which an adoption agency must keep in relation to adoptions, and
- (b) the form and manner in which it must keep the information.

38 Disclosure of information kept under relevant enactment

(1) The Scottish Ministers may by regulations make provision for or in connection with the disclosure by adoption agencies to adopted persons and other persons of a description or descriptions specified in the regulations of information kept by virtue of a relevant enactment.

(2) Regulations under subsection (1) may in particular include provision—

- (a) in circumstances specified in the regulations, conferring discretion on adoption agencies as to whether to disclose or withhold information,
- (b) specifying conditions which are to apply in relation to the disclosure of information, or information of a type so specified, to adopted persons of a description or descriptions so specified,
- (c) specifying circumstances in which information should not be disclosed to adopted persons of a description or descriptions so specified,
- (d) about the review of decisions of adoption agencies in connection with—
 - (i) the disclosure of information,
 - (ii) the conditions applicable to such disclosure.

(3) In this section, “relevant enactment” means—

- (a) section 37, or
- (b) any other enactment (whether or not in force) which imposes a requirement (however expressed) to keep records relating to adoptions.

117 Orders and regulations

(1) Any power conferred by this Act on the Scottish Ministers or the Registrar General to make orders or regulations is exercisable by statutory instrument.

(2) Any power conferred by this Act on the Scottish Ministers or the Registrar General to make orders or regulations—

- (a) may be exercised so as to make different provision for different purposes,
- (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Scottish Ministers consider appropriate or, as the case may be, the Registrar General considers appropriate.

(3) Any power conferred by this Act on the Scottish Ministers to make orders or regulations (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to—

- (a) those cases subject to specified exceptions, or
- (b) a particular case or class of case.

(4) Subject to subsection (5), a statutory instrument containing an order or regulations made under this Act (other than an order under section 121) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(5) A statutory instrument containing—

(a) regulations under—

(i) section 3 which includes provision amending subsection (4) or (5) of section 1,

(ii) section 38(1),

(iii) section 74(1),

(b) an order under section 116(1) which includes provision modifying an Act or an Act of the Scottish Parliament,

is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

(6) In this section, “Registrar General” has the meaning given by section 57(1).

RESPONDENT INFORMATION FORM: DRAFT ADOPTION INFORMATION REGULATIONS AND ADOPTION (DISCLOSURE OF INFORMATION) (SCOTLAND) REGULATIONS

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name:

Postal Address:

1. Are you responding: (please tick one box)

- (a) as an individual ☐ go to Q2a/b and then Q4
(b) on behalf of a group/organisation ☐ go to Q3 and then Q4

INDIVIDUALS

2a. Do you agree to your response being made available to the public (in The Scottish Government library and/or on The Scottish Government website)?

Yes (go to 2b below) ☐

No, not at all ☐ We will treat your response as confidential

2b. Where *confidentiality is not requested*, we will make your response available to the public on the following basis (please tick one of the following boxes)

Yes, make my response, name and address all available ☐

Yes, make my response available, but not my name or address ☐

Yes, make my response and name available, but not my address ☐

ON BEHALF OF GROUPS OR ORGANISATIONS:

3 The name and address of your organisation *will be* made available to the public (in the Scottish Government library and/or on the Scottish Government website). Are you also content for your **response** to be made available?

Yes ☐

No ☐ We will treat your response as confidential

SHARING RESPONSES/FUTURE ENGAGEMENT

4 We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in the future in relation to this consultation response?

Yes ☐

No ☐