

Subsidiary Legislation made under ss. 9(2), 10(2), 53 and 60.

Adoption (Disclosure of Information) Regulations 2024

LN.2024/051

Commencement

18.4.2024

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In exercise of the powers conferred on the Minister by sections 9(2), 10(2), 53 and 60 of the Adoption Act 2023 and all other enabling powers, the Minister has made these Regulations-

**PART 1
PRELIMINARY**

Title.

1. These Regulations may be cited as the Adoption (Disclosure of Information) Regulations 2024.

Commencement.

2. These Regulations come into operation on the date of publication.

Interpretation.

3.(1) In these Regulations-

“the Act” means the Adoption Act 2023;

“the Agency” means the Care Agency established under section 3 of the Care Agency Act 2009;

“independent review panel” means a panel constituted under section 10 of the Act;

“relative” means, in relation to an adopted person, a person who, but for the adoption, would be related to him or her by blood (including half-blood) or marriage;

“section 53 information” means the information prescribed by regulation 5;

“working day” means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act.

**PART 2
KEEPING OF INFORMATION ABOUT ADOPTIONS**

Application of requirements.

4. The requirements in relation to the keeping of information about a person’s adoption apply to the Agency.

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Information to be kept about a person's adoption.

5.(1) Sub-regulations (2) and (3) prescribe for the purposes of section 53 of the Act, the information that the Agency shall keep in relation to a person's adoption ("section 53 information").

(2) The Agency shall continue to keep the case record that was set up in respect of the adopted person under Part 3 of the Adoption (Care Agency) Regulations 2024.

(3) Subject to the provisions of sub-regulation (4) the Agency shall also keep-

- (a) any information that has been supplied by a natural parent or relative 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 supplied by the adoptive parents or other persons which is relevant to matters arising after the making of the adoption order;
- (c) any information that the adopted person has requested should be kept;
- (d) any information given to the Agency in respect of an adopted person by the Registrar of Births and Deaths under section 73(5) of the Act (information that would enable an adopted person to obtain a certified copy of the record of his birth);
- (e) any information disclosed to the Agency about an entry relating to the adopted person on the Adoption Contact Register;
- (f) any information required to be recorded in accordance with regulation 10, 14 or 18;
- (g) the record of any agreement under regulation 11.

(4) The Agency is not required to keep any information falling within sub regulations (3)(a) to (c) 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.

Storage and manner of keeping of section 53 information.

6. The Agency shall ensure that section 53 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 53 information.

7. The Agency shall keep section 53 information in relation to a person's adoption for at least 100 years from the date of the adoption order.

**PART 3
DISCLOSURE OF INFORMATION- GENERAL**

Disclosure for purposes of Agency's functions or for research.

8.(1) The Agency may disclose section 53 information that is not protected information as it thinks fit for the purposes of carrying out its functions in relation to adoption.

(2) The Agency may disclose section 53 information (including protected information) to a person who is authorised in writing by the Minister to obtain information for the purposes of research.

Disclosure required for purposes of inquiries and inspection.

9. The Agency shall disclose section 53 information (including protected information) as may be required-

- (a) to those holding an inquiry under section 136 of the Children Act 2009 for the purposes of such an inquiry;
- (b) to the Minister;
- (c) to the Registrar of Births and Deaths;
- (d) to any person appointed by the Agency for the purposes of the consideration by the Agency of any representations (including complaints);
- (e) to a panel constituted under section 10 of the Act to consider a qualifying determination in relation to the disclosure of section 53 information;
- (f) to a court having power to make an order under the Act or under the Children Act 2009.

Requirements relating to disclosure.

10. The Agency shall make a written record of any disclosure made under regulation 8 or 9, which shall 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.

11.(1) A prescribed agreement for the purposes of section 54(5) of the Act is-

- (a) an agreement made between the Agency and a person aged eighteen or over at the time the agreement is made as to the disclosure of protected information about him or her; or
- (b) an agreement made between the Agency and each of the following persons as to the disclosure of protected information about them or about the adopted person-
 - (i) the adoptive parent, or in the case of adoption by a couple, both adoptive parents, of the adopted person;
 - (ii) each person who, before the adoption order was made, was a parent with parental responsibility for the adopted person.

(2) The Agency shall keep a written record of any such agreement and that record shall include-

- (a) the full names and signatures of the persons who are parties;
- (b) the date on which it is made;
- (c) the reasons for making it;
- (d) the information that may be disclosed in accordance with the agreement;
- (e) any agreed restrictions on the circumstances in which information may be disclosed.

PART 4
APPLICATIONS FOR DISCLOSURE OF PROTECTED INFORMATION

Manner of application.

12. An application to the Agency for the disclosure of protected information under section 57 or 58 of the Act shall be in writing and shall state the reasons for the application.

Duties of Agency on receipt of application.

13. On receipt of an application for the disclosure of protected information under section 57 or 58 of the Act the Agency shall take reasonable steps to confirm-

- (a) the identity of the applicant or of any person acting on his or her behalf; and
- (b) that any person acting on behalf of the applicant is authorised to do so.

Record of views.

14. The Agency shall ensure that any views obtained under section 57(3) or 58(3) or (4) of the Act are recorded in writing.

Independent review.

15.(1) The following determinations by the Agency in relation to an application under section 57 of the Act are qualifying determinations for the purposes of section 10 of the Act-

- (a) not to proceed with an application from any person for disclosure of protected information;
- (b) to disclose information against the express views of the person the information is about;
- (c) not to disclose information about a person to the applicant where that person has expressed the view that the information should be disclosed.

(2) The Agency shall give the relevant person written notification of the determination, which shall-

- (a) state the reasons for it; and

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- (b) advise the relevant person that he or she may apply to the Minister within forty working days, beginning with the date on which the notification was sent, for a review by an independent review panel of the qualifying determination.
- (3) If the Agency receives notification from the Minister that the relevant person has applied for a review by an independent review panel of the qualifying determination, the Agency shall, within 10 working days of receipt of that notification, send to the Minister-
 - (a) a copy of the application for disclosure of information;
 - (b) a copy of the notification given under sub regulation (2);
 - (c) the record of any views obtained by the Agency under section 57(3) of the Act; and
 - (d) any additional information requested by the panel.
- (4) The Agency shall not take any action in accordance with its original determination before-
 - (a) the independent review panel has made its recommendation; or
 - (b) if the person has not applied for a review within that forty day period, the end of that period.
- (5) The Agency shall have regard to any recommendation of the independent review panel in deciding whether to proceed with its original determination.
- (6) In this regulation “the relevant person” is-
 - (a) in the case of a qualifying determination mentioned in sub-regulation (1)(a) or (c), the applicant;
 - (b) in the case of a qualifying determination mentioned in sub-regulation (1)(b), the person the protected information is about.

PART 5 COUNSELLING

Information about the availability of counselling.

16. The Agency may provide written information about the availability of counselling to any person-

- (a) who is seeking information under section 56, 57 or 58 of the Act;
- (b) whose views have been sought as to the disclosure of information about him or her under section 57(3) or 58(3) or (4) of the Act;
- (c) who enters into, or is considering entering into, an agreement with the Agency under regulation 11.

Securing of counselling.

17.(1) Where a person mentioned in regulation 16 requests that counselling be provided for him or her, the Agency may make arrangements to secure counselling for that person.

(2) The Agency may provide the counselling itself or make arrangements with any persons for provision of counselling.

Disclosure of information for the purposes of counselling.

18.(1) The Agency may disclose any information (which may include protected information) which is required for the purposes of providing counselling to any person with whom it has made arrangements to provide counselling.

(2) The Agency shall make a written record of any disclosure made by virtue of this regulation.

**PART 6
THE REGISTRAR**

Seeking information from the Registrar of Births and Deaths.

19.(1) Where-

- (a) an adopted person who has attained the age of eighteen years requests information from the Agency under section 56(2)(a) of the Act that would enable him or her to obtain a certified copy of the record of his or her birth; and
- (b) the Agency does not have that information,

the Agency shall seek that information from the Registrar of Births and Deaths.

(2) Where the Agency seeks information from the Registrar of Births and Deaths under sub-regulation (1) the Agency shall provide the Registrar of Births and Deaths in writing with the following information, so far as it is known-

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- (a) the name, date of birth and country of birth of the adopted person;
- (b) the names of that person's adoptive father and mother;
- (c) the date of the adoption order.

Registrar of Births and Deaths to disclose information regarding the Adoption Contact Register.

20. The Registrar of Births and Deaths shall-

- (a) disclose to any person (including an adopted person) at his or her request any information that the person requires to assist him or her to make contact with the Agency in the case of the person specified in the request (or, as the case may be, in the applicant's case); and
- (b) disclose to the Agency any information that the Agency requires, in relation to an application under section 56, 57 or 58 of the Act, about any entry relating to an adopted person on the Adoption Contact Register.

**PART 7
OFFENCE**

Offence.

21. Any person which discloses any information in contravention of section 54 of the Act is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.