EXPLANATORY MEMORANDUM TO

THE ADOPTION AND CHILDREN ACT REGISTER (SEARCH AND INSPECTION) (AMENDMENT) REGULATIONS 2018

2018 No. 993

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument enables approved prospective adopters who have access to the Adoption Register to see additional information in order to improve matching. It will enable adopters to see more information, including the child's first name, details about the health history of the child and any geographical considerations that should be taken into account when matching the child to an adopter.

2.2 By providing additional information at an early stage, approved prospective adopters will be more able to make a decision on whether they should pursue a match with a particular child. The additional information enables approved prospective adopters to form more of a connection with a child through the profile and will help to prevent an approved prospective adopter from pursuing a match that turns out to be unsuitable as a result of information they are currently not permitted to see. This will make the process more efficient as approved prospective adopters will be able to rule themselves in or out of a particular match earlier, which will improve the approved prospective adopter's experience as well as the speed of matching, providing a better outcome for children on the Adoption Register.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is limited to England only.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This is the third exercise of the power under section 128A of the Adoption and Children Act 2002 (the 2002 Act), as inserted by section 7 of the Children and Families Act 2014 (the 2014 Act) and therefore is subject to negative resolution procedure.

6.2 The Adoption Register is permitted but not required under section 125 of the 2002 Act. The Adoption and Children Act Register Regulations 2014 prescribe the information that must be included in the Register and set out the disclosure of information requirements. The Adoption and Children Act (Search and Inspection) Regulations 2017 allow approved prospective adopters to search and inspect certain information held in the Register.

6.3 The information approved prospective adopters can search and inspect is limited to a subset of the information practitioners are able to view. This instrument will allow approved prospective adopters to search and inspect additional information in order to enable prospective adopters to more easily determine at an early stage whether they are suitable to pursue a match with a child, though still a subset of what practitioners are able to view.

7. Policy background

What is being done and why?

7.1 A non-statutory register was launched in August 2001, and fully operational from April 2002, following recommendations of the then Prime Minister's review of adoption in 2000. The 2014 Act placed this on a statutory basis. The Register is currently run under contract by Coram on behalf of the Secretary of State for Education, under section 126 of the Adoption and Children Act 2002 which allows the Secretary of State for Education to make arrangements with an organisation to establish and maintain the Register.

7.2 The Register is a database that includes details of (a) children waiting to be adopted (including those for whom the local authority is waiting to obtain a placement order or parental consent for before the agency may place the child for the purposes of adoption) and (b) approved prospective adopters (adopters). The Register increases the chances of a child being placed for adoption and reduces the delay in doing so.

7.3 Once a prospective adopter is approved, previously their role was limited. Many waited for months or longer to be matched to a child. Acting on feedback from the sector, the Government wanted to give adopters a more active role in identifying children for whom they might be suitable, so from July 2016 to Spring 2017 piloted adopter access to the Register with 29 specified adoption agencies. Adopters identifying children themselves is known as "adopter-led matching". Experience has shown that they will often consider children that they would otherwise not consider or be considered for. The Register has a key role to play in supporting this approach.

7.4 The adopter access pilot was evaluated in 2017 and it was shown to be successful with an increase in both the number of matches and speed of matches. In the evaluation, and this is supported by the results of the consultation, adopters told us that they want more information at an earlier stage and can be frustrated by being drip-fed information about a child as they move through the process. In October 2017 Regulations were made enabling all approved prospective adopters to access the

Register with the information they could see remaining unchanged. Since the 2017 Regulations came into force, the sector has feedback that it would be helpful for approved prospective adopters to access to additional information held in the Register.

7.5 The amendments being made in this instrument allow approved prospective adopters to also see:

a) The child's first name
b) Any geographical considerations in relation to the child's placement
c) The health history of the child, and the birth family where available

All of these amendments are supported by the responses to the consultation, in which 105 of the 129 respondents were positive and agreed with the proposals to make more information available to approved prospective adopters.

7.6 Enabling an approved prospective adopter to see the child's first name can help prospective adopters form a connection to the child. Whilst a first name should not alone be a reason to decide on a match with a particular child, adopters tell us it helps them form more of a connection with the child.

7.7 The inclusion of any geographical considerations in relation to the child's placement provides practical information for approved prospective adopters so they can quickly rule themselves in or out of a particular match. Geographical information may rule out an adopter if they live in a region where a child cannot be placed or if a child needed to remain close to the birth family because of a proposed contact. Adopters can find not having this information frustrating, as they would not have suggested a match had they known this information.

7.8 More information on the health history of the child, and where available, the health history of the birth family was popular. It is important that prospective adopters have access to the information they need to make an informed decision and to ensure that further into the process, they do not feel that information was withheld which would have meant they did not pursue the match from the outset.

7.9 The consultation included proposals to include other information, such as planned contact with the birth family, however the benefits of including this information were not as persuasive. The additions have been carefully considered and only information that has clear benefits has been added.

7.10 Approved prospective adopters remain only able to access certain specified information and they remain bound by requirements not to share any information they view. Adopters will need to continue to work closely with the Register staff, their own social worker, and subsequently the child's social worker, to follow up any links generated by their search. All adopters will still need professional advice and support on this process and social workers will still have a crucial role to play. The final decision whether the adopter is suitable to adopt the particular child will remain the responsibility of the adoption agency.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans to consolidate.

10. Consultation outcome

10.1 The Department conducted a targeted consultation on the proposals between 29th June and 27th July 2018 and in total 129 responses were received.

10.2 Responses were mainly from adoptive parents and adoption agencies. Of the 129 responses, 105 were very positive about the proposal to include the additional information. Respondents agreed that more information at an early stage could increase the number of matches made through the Adoption Register and thought it could save effort by not pursuing unsuitable matches. 24 responses offered more mixed views on the proposals to provide additional detail, some questioned whether certain information should be included and pointed out some potential risks, however 11 of the responses were more negative about the proposal as a whole.

10.3 Some responses suggested that there would be increased risk of more easily identifying a child on the Register as first names and limited information about location could be disclosed, particularly where a child has a distinctive first name. We have considered this, however adopters have been through a rigorous training process so they are aware how to handle sensitive information. Sharing information would be a breach of the terms of use and action could be taken. There are tight access controls and users are verified before they can set up an account. Prospective adopters also must take reasonable steps to ensure there is no unauthorised disclosure of the information they receive and inform the Secretary of State of any theft, unauthorised disclosure or loss of information disclosed.

11. Guidance

11.1 No guidance will be produced, users will be notified of the changes and the contractor will update their user guidance.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because this legislation has no impact on businesses.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Department for Education will monitor the impact of this instrument by:

- Using regular contract meetings to scrutinise management information to assess the impact on matching.
- Using the SSDA903 dataset and the Adoption Scorecards to track the speed of matching.
- Reviewing the impact of these regulations after 6 months, looking at the impact on matching and the impact on adopters and social workers.

15. Contact

15.1 Rachel Phillipson at the Department for Education Telephone: 01325 340464 or email: rachel.phillipson@education.gov.uk can be contacted with any queries regarding the instrument.

15.2 Ben Connah at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister for Children and Families, Nadhim Zahawi at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.