EXPLANATORY MEMORANDUM TO

THE ADOPTION SUPPORT SERVICES (AMENDMENT) REGULATIONS 2014

2014 No. 1563

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 Explanatory Memorandum covers three sets of related Regulations: the Adoption and Care Planning (Miscellaneous Amendments) Regulations, the Adoption Support Services (Amendment) Regulations and the Adoption and Children Act Register Regulations.

The Adoption and Care Planning (Miscellaneous Amendments) Regulations 2014

2.2 The Adoption Agencies Regulations 2005 (the "2005 Regulations") (which these Regulations amend) make provision about how adoption agencies exercise their functions in relation to adoption under the Adoption and Children Act 2002 (the "2002 Act"). The amendments made by these Regulations continue the Government's drive to tackle delay in the adoption system by enabling the early placement of children with local authority foster parents who are also approved prospective adopters, finding suitable adopters as soon as reasonably practicable and placing a duty on adoption agencies to consider whether to seek to identify prospective adopters who may be suitable to adopt siblings.

2.3 The Regulations also make clear that, when considering whether contact between a child in care and their birth family (and certain others) is consistent with safeguarding and promoting the child's welfare, the local authority must have regard to the child's care plan.

2.4 The Regulations make a number of amendments consequent on the Children and Families Act 2014.

The Adoption Support Services (Amendment) Regulations 2014

2.5 The Regulations amend the Adoption Support Services Regulations 2005 to provide that prospective adopters and adoptive parents are informed by their local authority of their adoption support entitlements and other prescribed information.

The Adoption and Children Act Register Regulations 2014

2.6 The Regulations make provision for the establishment and maintenance of the Adoption and Children Act Register ("the Register").

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

The Adoption and Care Planning (Miscellaneous Amendments) Regulations 2014

4.1 These Regulations are being made under a number of enabling powers including, for the first time, the powers in sections 22C (9A)-(9C) of the Children Act 1989 (the "1989 Act") (as inserted by sections 2, and 8 of the Children and Families Act 2014) (the "2014 Act").

The Adoption Support Services (Amendment) Regulations 2014

4.2 These Regulations are being made for the first time under the powers in section 4B of the 2002 Act (as inserted by section 6 of the 2014 Act).

The Adoption and Children Act Register Regulations 2014

4.3 These Regulations are being made for the first time under the powers in sections 125, 128 and 129 of that Act (as amended by section 7 and Schedule 1 to the 2014 Act).

4.4 Sections 125 to 131of the 2002 Act are currently uncommenced but are proposed to be commenced before 25 July 2014.

5. Territorial Extent and Application

5.1 These Regulations apply to England.

6. European Convention on Human Rights

As the Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 These Regulations are part of a wider programme of implementation of proposals set out in An Action Plan for Adoption: Tackling Delay, published by the Department for Education on 14 March 2012 and Further Action on Adoption: Finding More Loving Homes, published by the Department for Education on 24 January 2013. A key aim of the adoption reform programme is for children to be adopted without delay and the Regulations play an important part in achieving that aim.

The Adoption and Care Planning (Miscellaneous Amendments) Regulations 2014

7.2 In the Adoption Action Plan, the Government set out the strong evidence base for the importance of ensuring that all children who cannot live with their parents are placed swiftly in the right permanent placement for them. It is the youngest children who are particularly vulnerable to the harmful effects of delay and disruption.

7.3 Data shows that just 480 of around 3500 children adopted in 2011-12 were under the age of one when they moved in with their adoptive parents. This is all the more significant given that 44% of children adopted became looked after when they were less than one month old. On average these children moved in with their adoptive families over 16 months after becoming looked after (the national average of all children is 22 months).

7.4 Local authorities are under a duty to place a child in the most appropriate placement available. Following the coming into force of section 2 of the 2014 Act on 25 July 2014 local authorities in England will be under a duty to consider placing the child with local authority foster carers who are also approved prospective adopters:

- when they are considering adoption for a child or has decided that the child ought to be placed for adoption but is not authorised to so place the child, and
- where they have determined that a family, friend or connected person placement is not suitable.

Placements made in accordance with section 22C(9A) of the 1989 Act (section 22C(9A) placements) are fostering placements which are expected to lead to adoption by those foster carers, although there will be some cases where this does not happen. Before a child may be formally placed for adoption the child's parents will need to give their consent or a placement order be granted by the court.

7.5 New regulations 12B and 14(b)(iv) of the 2005 Regulations and new regulation 22A of the Care Planning, Placement and Case Review (England) Regulations 2010 (the "2010 Regulations") set out the action the child's local authority must take when they decide to place a child in a section 22C(9A) placement.

7.6 When adoption is being considered for the child, it triggers the requirements set out in the 2005 Regulations. This includes the requirement under regulation 14 of those Regulations to provide counselling and information to the child's parents or guardian, and to ascertain their wishes and feelings to the adoption proposal. This regulation has been amended so that the legal implications of the child being placed in a section 22C(9A) placement are also explained to the child's parents or guardian.

7.7 The adoption agency must identify a prospective adopter who is suitable to care for that child once a decision has been made under regulation 22A of the 2010 Regulations to place a child in a section 22C(9A) placement. Before the child is placed with that carer the placement decision must be approved by a nominated officer. The nominated officer must be satisfied that the placement is the most appropriate placement for the child and will safeguard and promote the child's welfare. The nominated officer

must also be satisfied that the child's wishes and feelings have been ascertained and given due consideration when making the decision, and that the Independent Reviewing Officer has been informed of the decision. The placement must be explained to the child, the child's birth parents or guardian must be notified of the proposed placement, and the prospective adopters must be notified of the decision to place the child with them.

7.8 New Regulation 12A(1) and (3) of the 2005 Regulations require the adoption agency to identify prospective adopters who may be suitable to adopt the child, use their best endeavours to find a particular prospective adopter with whom it proposes the child is placed and to assess whether a prospective adopter may be suitable to meet the child's needs throughout childhood.

7.9 Following *Placing Children in Sibling Groups for Adoption: A Call for Views*, published by the Department for Education in July 2012, the Government concluded that siblings should be placed together only when it is the right option for each individual child. New regulation 12A(2) of the 2005 Regulations provides that where an adoption agency is considering adoption for siblings, the agency will need to consider whether to seek to identify prospective adopters who may be suitable to adopt two or more of the siblings together having regard to the interests of each child. The decision should be based on a balanced assessment of the individual needs of each child in the group, and the likely or possible consequences of each option on each child.

7.10 Local authorities are under a duty under section 34(1) of the 1989 Act to allow reasonable contact between a child in care and their parents (and guardians and certain others) where that is consistent with safeguarding and promoting the child's welfare.

7.11 There is concern that some contact arrangements between children in care and their birth families are inappropriate for the child, badly planned and badly monitored. These arrangements are being driven by the perception that contact should take place, rather than on the basis of the individual needs and circumstances of the child, and what is best for the child.

7.12 While contact can be a positive experience for children in care, it can also be hugely damaging if the arrangements are not appropriate. Such contact can lead to behavioural difficulties and anxiety or, in the most severe cases, further abuse. It is therefore important that contact arrangements are derived by the need to safeguard and promote the welfare of the child and the evolving circumstances of each individual child.

7.13 New Regulation 8ZA of the 2010 Regulations makes clear that the local authority must have regard to the child's care plan when considering whether contact between a child in care and their birth parents, and others listed in section 34(1) of the 1989 Act, is consistent with safeguarding and promoting the child's welfare.

7.14 The 1989 Act requires local authorities to promote the educational achievement of the children they look after from birth to 18. All local authorities in England must appoint at least one person who is an officer employed by that or another local authority to discharge that requirement. This person is often known as a Virtual School Head (VSH).

Section 22(3B) and (3C) of the 1989 Act (as inserted by section 90 of the 2014 Act) has placed the VSH role on a statutory footing; consequential amendments have been made to Schedules 1 and 2A to the 2010 Regulations.

The Adoption Support Services (Amendment) Regulations 2014

7.15 Good quality support during and after adoption is valued by adoptive parents and can have a real impact. Local authorities are already under a duty, in section 4 of the 2002 Act, to carry out an assessment of a person's need for adoption support when requested by an eligible person. However, evidence from a survey by Adoption UK suggests that many adoptive parents are unaware of this, and the need for local authorities to appoint an Adoption Support Service Adviser to help them navigate the adoption support system.

7.16 Section 4B of the 2002 Act (inserted by section 7 of the 2014 Act) places a duty on local authorities to inform prospective adopters and adoptive parents of their adoption support entitlements and other prescribed information. This includes information on the right to receive the child's permanence report, and information about the availability of assessments for adoption support services, priority school admissions, statutory adoption pay and statutory adoption leave and the complaints procedures.

7.17 The Regulations set out what information must be provided, to whom the information must be provided and the circumstances in which the information need not be provided.

The Adoption and Children Act Register Regulations 2014

7.18 The Register was launched in August 2001 and is currently operated on a non-statutory basis but in line with the currently uncommenced statutory provisions in the 2002 Act. The Register is currently run by the British Association of Adoption and Fostering (BAAF) under contract and on behalf of the Secretary of State for Education.

7.19 The Register increases the chances of a child being placed for adoption and reduces the delay in doing so. It increases the pool of adopters available to adoption agencies beyond those recruited locally to help facilitate matches for children and approved prospective adopters on a national basis.

7.20 The Regulations make provision for the establishment and maintenance of the Register.

7.21 The Register is a database that includes details of children waiting to be adopted (including those for whom the local authority is waiting to obtain a placement order or parental consent before the agency may place the child for the purposes of adoption) and approved prospective adopters (adopters). The details are provided to the organisation running the Register by adoption agencies in England. That information is used to generate possible matches between the child and adopter and disclosed to the child's social worker. The social worker considers each possible match and decides whether or not to proceed with one of them.

7.22 Adoption agencies (local authorities and voluntary adoption agencies) in England are already required by regulations 19A and 30G of the 2005 Regulations to provide the organisation running the Register with information about adopters, and information about children when they are not actively exploring a potential match with a named prospective adopter. The Adoption and Children Act Register Regulations inserts Schedules 1A and 4B into the 2005 Regulations which prescribe the information that adoption agencies must provide. Regulation 4 of these Regulations provides that the same information (with one exception) must be provided where a local authority in England is considering adoption for a child and provides information for inclusion in Part 2 of the Register.

7.23 The Register will be in three Parts. Part 1 will contain information about children who are suitable for adoption, Part 2 about children for whom a local authority in England is considering adoption and Part 3 about adopters suitable to adopt a child.

7.24 The Register must not contain personal data for longer than it needs to. Information relating to the children must be removed when the child is to be placed in an adoptive or section 22C(9A) placement, and the information about the adopter must be removed when a child is placed with them.

- Consolidation

The Adoption and Care Planning (Miscellaneous Amendments) Regulations 2014 and the Adoption Support Services (Amendment) Regulations 2014

7.25 Consolidation is not considered necessary.

7.26 The Adoption and Children Act Register Regulations 2014 are the principal Regulations.

8. Consultation outcome

8.1 Indicative Regulations, statutory guidance and policy statements on the areas below were published on the Department for Education's website during the Parliamentary process of the Children and Families Bill to assist Members of Parliament, Peers, adoption agencies and the general public. The areas covered were: placing a child with foster carers who are also approved prospective adopters, matching, sibling placement, adoption support, the Register and contact for children in the care of local authorities.

8.2 The Department for Education undertook a public consultation on these Regulations and draft statutory guidance for a six week period between 28 February and 11 April 2014. The consultation document, Regulations and statutory guidance were published on the Department for Education's website and on GOV.UK. The consultation was also advertised using social media resulting in 2,314 people reading the documents. The Government's response was published on 29 May 2014 on the Department for

Education's website at www.education.gov.uk/consultations/ and on GOV.UK's website at www.gov.uk.

8.3 The majority of respondents to the consultation were supportive of all three sets of Regulations and statutory guidance. Placing a child with foster carers who are also approved prospective adopters attracted the most detailed responses. The Government was persuaded by many of the points made by respondents and changed two sets of Regulations and statutory guidance accordingly.

8.4 There were 41 responses to the questions whether the three sets of Regulations are clear and the majority (76%) of respondents agreed that they were clear.

The Adoption Agencies and Care Planning (Miscellaneous Amendments) Regulations 2014

8.5 43% of the 49 respondents did not agree with the proposal that the Director of Children's Services should be the person to agree placement decisions made in accordance with section 22C(9A) of the 1989 Act (30% of respondents agreed with the proposal and 27% were not sure). Respondents suggested the decision should be approved by the Agency Decision Maker (the person in the adoption agency who makes the decisions on whether a child should be placed for adoption, the suitability of prospective adopters to adopt, and the proposed placement) or a nominated officer (a senior person in the child's local authority nominated by the Director of Children's Services for the purposes of the 2010 Regulations).

8.6 The Government made further changes to these Regulations as a result of the comments made. The obligation to notify the parents of the decision to place their child in a section 22C(9A) placement has been moved from the 2005 Regulations to the 2010 Regulations; and made it a requirement so that when considering adoption, the adoption agency must provide counselling to the parents and inform them of the legal implications of such a placement.

The Adoption Support Services (Amendment) Regulations 2014

8.7 The main concerns raised were not about the regulations but about the lack of provision of adoption support services more generally, and worries about the risk of this deteriorating further with increased demand as a result of more parents being informed about their rights. The Government is already taking action to address these concerns through other reforms to improve adoption support including: the introduction of the Adoption Support Fund in 2015, grants to three voluntary adoption agencies to expand their adoption support services, entitling children adopted from care to the Pupil Premium, priority school admissions, and early education for 2 year olds.

The Adoption and Children Act Register Regulations 2014

8.8 Although 76% of respondents agreed these Regulations are clear, the Government has amended them to make them even more straightforward to follow. All the information

the adoption agencies must give to the organisation running the Register about children suitable for adoption and prospective adopters suitable to adopt, will be located in the 2005 Regulations. Moving them into these Regulations will make it much easier for adoption agencies to understand their responsibilities with regards to the Register.

9. Guidance

9.1 Statutory guidance will be provided in respect of these Regulations. Changes will be made to the version of the guidance that was issued for consultation; these changes are set out in the Government's response to the consultation. The guidance prepared for these Regulations cannot be read in isolation and must be read as part of the whole statutory guidance which will be published before the Regulations come into force on 25 July 2014.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies (i.e. voluntary adoption agencies).

10.2 The impact on the public sector (local authorities) is an amendment to their practices on early placement of children, when matching children and adopters and deciding whether siblings should be placed together, and when considering what contact there should be between a child in care and their birth family. Local authorities will also need to gather the information required by the Adoption Support Services (Amendment) Regulations 2014 to meet their duty to inform potential adopters and adoptive parents of their adoption support entitlements.

10.3 Impact Assessments have not been prepared for these Regulations.

11. Regulating small business

11.1 The Adoption and Care Planning (Miscellaneous Amendments) Regulations 2014 and the Adoption Support Services (Amendment) Regulations 2014 do not apply to small businesses but the Adoption and Children Act Register Regulations 2014 do apply to small business.

12. Monitoring & review

12.1 Adoption agencies in England are inspected every three years by HM Chief Inspector for Standards in Education, Children's Services and Skills ("HMCI"). HMCI is independent of the Department for Education. The purpose of inspection is to assess the quality of the services provided by the agency to children and young people, birth and adoptive parents and families, and adopted adults. The inspection process is designed to test that the agencies are complying with the relevant Regulations, statutory guidance and with the National Minimum Standards that underpin these. Inspection information is used

to assess each agency's performance. HMCI publishes inspection reports of individual agencies on its website.

12.2 Inspection data and feedback from HMCI to the Department for Education helps inform the Department's monitoring and review of these Regulations and understand where there may be concerns or issues with the regulatory framework that mean it may need revision.

12.3 The Department for Education will review the annual data received from local authorities on children looked after by Local Authorities in England to see if decisions on whether specific children should be placed for adoption are being made faster. If the data shows no significant reduction in the average timescales, the Department would seek to address this with local authorities.

13. Contact

Mary Lucking at the Department for Education. Tel: 020 7783 8557 or email: Mary.Lucking@education.gsi.gov.uk can answer any queries regarding the Adoption and Care Planning (Miscellaneous Amendments) Regulations 2014.

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David Pearce at the Department for Education. Tel: 020 7783 8355 or email: David.Pearce@education.gsi.gov.uk can answer any queries regarding the Adoption and Children Act Register Regulations 2014.