EXPLANATORY MEMORANDUM TO

THE ADOPTION AND CHILDREN ACT REGISTER (SEARCH AND INSEPCTION) (PILOT) REGULATIONS 2014

2014 No. XXXX

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 To enable prospective adopters approved by the adoption agencies listed in the Schedule to search and inspect the Adoption and Children Act Register (the Register) for the purposes of assisting them to find a child for whom they would be appropriate adopters and/or identifying children for whom they would care for on a fostering basis while the adoption agency is waiting for authority to place the child for the purposes of adoption. Adoption agencies are local authorities and registered adoption societies (known as voluntary adoption agencies).

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

3.1 None.

4. Legislative Context

4.1 The Regulations are being made under the powers in 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). This instrument is the first instrument to be made under these powers.

4.2 The Regulations are subject to the affirmative procedure. Any subsequent Regulations made under these powers will be subject to the negative procedure.

4.3 This instrument relates to the Adoption and Children Act Register Regulations 2014 which are subject to the negative procedure. Those Regulations are proposed to be made on 10 June 2014 to come into force on 25 July 2014. A copy of those Regulations is annexed to this memorandum.

4.4 Sections 125 to 131 of the 2002 Act (amended by the 2014 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

The Parliamentary Under Secretary of State for Children and Families has made the following statement regarding Human Rights:

In my view the provisions of the Adoption and Children Act Register (Search and Inspection) (Pilot) Regulations 2014 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 The Register was launched in August 2001. The Register is currently operated on a non-statutory basis as the provisions in the 2002 Act are uncommenced but operated in line with the 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. The current contract will expire on 31 March 2017.

7.2 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 for before the agency may place the child for the purposes of adoption) and approved prospective adopters (adopters). The Register increases the chances of a child being placed for adoption and reduces the delay in doing so. The Register 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.

7.3 Once a prospective adopter has been approved to adopt, their role in finding a child is limited; like all matching decisions, it is social worker led. Many wait for months and sometimes longer to be matched with a child, despite a chronic shortage of adopters. The Government wants to give adopters a more active role in identifying children for whom they might be suitable as adoptive parents. Experience has shown that they will often consider children that they would otherwise not consider (or be considered for) via traditional matching techniques. The Register has a key role to play in supporting this approach.

7.4 Adopters identifying children themselves is known as "adopter-led matching" and is part of a wider programme implementing 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 (both available on GOV.UK's website at www.gov.uk). A key aim of the adoption reform programme is for children to be adopted without delay and these Regulations play an important part in achieving that aim.

7.5 If the local authority is considering a range of placement options for the child, e.g. placing the child with members of the wider family or friends and is considering

adoption, it must consider placing the child in a placement under section 22C of the Children Act 1989 (the 1989 Act) following consideration in accordance with section 22C(9A) of the 1989 Act. This section was inserted by section 2 of the Children and Families Act 2014. The children would be placed on a fostering basis with adopters who are also foster carers, but who are likely to become the child's adoptive parents if the local authority decide that the best permanence option for the child is adoption and permission is given through parental consent or a placement order. Details of these particular children will be included in the Register for the first time and will be included in a separate Part of the Register (Part 2). Part 1 of the Register will hold information relating to those children for whom an adoption agency has determined are suitable for adoption. Part 2 of the Register may be accessed only by adopters who are interested in caring for a child on a fostering basis while the adoption agency is waiting for permission to place the child for adoption. The adopter's adoption agency must have discussed with them whether they may be interested in fostering a child in such circumstances and they must have indicated their interest. The adopter will need to obtain written confirmation of this from their agency and provide that written confirmation to the Register.

7.6 The Department for Education will pilot adopters searching and inspecting the Register to identify children for whom they might be appropriate adopters/carers. The objective of the pilot is to test whether allowing adopters access to children's information on the Register will improve the performance of the matching service being delivered by the Register. The pilot will last 9 months.

7.7 The adopters involved in the pilot will be those who were approved by the adoption agencies listed in the Schedule. The pilot is designed to test adopter access in agencies that represent the different characteristics of agencies across England. Therefore, the pilot agencies are a mix of both voluntary adoption agencies and local authorities (including a number who work together in partnerships or in consortia); urban and rural areas from all regions in England; and a mix of services which represent a range of performance (based on Ofsted judgements and recent data submitted as part of the adoption scorecard).

7.8 Adopters will only be able to access certain specified information about children. This information will not enable them to identify or make any direct approaches to the child or their birth family. The information will be anonymised with any identifying information having been removed. Adopters will continue to need 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 continue to have a crucial role to play in the process. The final decision whether the adopter is suitable to adopt the particular child will remain the responsibility of the adoption agency.

7.9 The Register is funded by central Government and there are no plans to charge adoption agencies or adopters to access the Register.

- Consolidation

7.10 This is the principal instrument.

8. Consultation outcome

8.1 A policy statement about the Register, indicative Regulations and guidance was 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 to understand the Government's reasons for opening up the Register to adopters.

8.2 The Department for Education undertook a public consultation on four instruments (including this one) and draft 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.

8.3 Respondents to the Register section of the consultation were very supportive of the Register proposals and this instrument, and identified the issues that the evaluation of the pilot should examine. The Government will include all the suggestions in its evaluation of the pilot. Of the 41 responses to the consultation question about whether the Adoption and Children Act Register (Search and Inspection) (Pilot) Regulations 2014 were clear, 76% agreed that the Regulations were clear and agreed with the Government that care needed to be taken that information was screened to ensure that it did not contain material that might identify the child.

9. Guidance

9.1 The Department for Education wrote to specific local authorities and voluntary adoption agencies on 30 May 2013 inviting them to take part in the pilot. The letter set out the nature of the pilot and indicated that, subject to Parliamentary approval of the Regulations, the pilot is likely to start in September 2014.

10. Impact

10.1 The impact on business, charities or voluntary bodies (i.e. voluntary adoption agencies) is minimal as they are already required to provide the Register with information about adopters, unless they have already identified a particular child with whom they are considering placing with the prospective adopter (see regulation 30G of the Adoption Agencies Regulations 2005). VAAs in the pilot will need to support their adopters to access the Register effectively and provide each of them with a user identification supplied by the Register. The agency's social workers will have to talk to their adopters about how they are going to use the Register. The voluntary adoption agencies listed in the Schedule agreed to participate in the pilot.

10.2 The impact on the public sector is minimal as local authorities are also already required to provide the Register with information about adopters, and information about children when they are not actively exploring a potential match with a named prospective adopter. Local authorities in the pilot will need to support their adopters to access to the Register effectively and provide each of them with a user identification supplied by the Register. The local authority's social workers will have to talk to their adopters about how they are going to use the Register. The local authorities listed in the Schedule agreed to participate in the pilot.

10.3 Social workers in all adoption agencies will need to commit to following up on links identified by their adopters in the way that they currently follow up any links they generate themselves by using the non-statutory register. The Government expects that allowing adopters to search the Register will lead to quicker matches for children. This might lead to reductions in cost in the public sector, as children will be in foster care for a shorter period of time.

10.4 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people (i.e. in the voluntary adoption agencies), these organisations have a choice as to whether they participate in the pilot.

12. Monitoring & review

12.1 The pilot will last for nine months. The Department for Education and BAAF will be monitoring the results of the new approach throughout the pilot and will publish a report within three months of the end of the pilot. The objective of the pilot is to test whether allowing adopters access to information on the Register to identify children for whom they may be suitable adopters or carers will improve the performance of the matching service being delivered by the Register. The areas to be evaluated by the pilot will be:

- numbers of matches made and speed of matches made under the new approach, as compared to the traditional approach, especially for children considered as harder to place,
- level of satisfaction among approved adopters, social workers and Register staff involved in the pilot and qualitative suggestions about what might need to be improved,
- changes in approach and working practices required among approved adopters, social workers and Register staff involved in the pilot, and
- other operational considerations, such as: costs relating to IT development; and the success and suitability of data security measures.

12.2 Following the evaluation of the pilot, the Government will make decisions on the future of adopter access to the Register.

13. Contact

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 instrument.