



Department
for Education

Adoption: getting it right, making it work

Government consultation response

May 2014

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Introduction

The consultation sought views on amendments to statutory guidance and four sets of regulations about: placing a child with foster carers who are also approved prospective adopters when adoption is being considered, consideration of ethnicity when matching children with prospective adopters, placing siblings with an adoptive family, information to be provided about adoption support, the Adoption and Children Act Register and contact in respect of children in care and adopted children. The Government also consulted on the revision to the second outcome in standard 13 of the adoption National Minimum Standards and the revamped statutory adoption guidance.

Summary of responses received and the Government's response

The consultation ran between 28 February and 11 April 2014 and 61 responses were received. The consultation document, regulations and statutory guidance were published on the Department for Education's website and on GOV.UK's website. The consultation was also advertised using social media resulting in 2,314 people reading the documents.

A number of respondents who provided comments but did not select a 'yes' or 'no' response, were automatically selected as 'not sure' and therefore there is a high proportion of 'not sure' responses.

A list of organisations that responded to the consultation can be found in Annex A.

A breakdown of respondents is as follows:

Local authority	30
Other ¹	15
Prospective adopter/adopter	8
Voluntary adoption agency/adoption support agency	7
Birth parents	1

¹ Those that fell into the 'other' category include adoption panel chairs, professional associations, children's charities, members of the public, legal groups, social workers, public sector organisations and those respondents who did not specify.

Main findings from the consultation

The majority of respondents welcomed the proposals and agreed the four draft sets of regulations, draft statutory guidance and revised outcome for standard 13 of the Adoption National Minimum Standards. Placing a child with foster carers who are also approved prospective adopters when adoption is being considered, attracted the most detailed responses, particularly:

- whether such placements should be considered for children who are voluntarily accommodated under section 20 of the Children Act 1989, and the safeguards surrounding those children, and
- that the adoption Agency Decision Maker or a nominated officer should approve the placement decision, and not the Director of Children's Services as proposed.

Next steps

The Government will:

- amend the Care Planning, Placement and Case Review (England) Regulations 2010 to require a nominated officer be appointed to approve the decision to place the child with foster carers who are also approved prospective adopters in accordance with section 22C(9A) of the Children Act 1989 instead of the original proposal of the Director of Children's Services,
- move the requirement to notify the child's parent or guardian that the child is to be placed in accordance with section 22C(9A) of the Children Act 1989 from regulation 12B of the Adoption Agencies Regulations 2005 to regulation 22A of the Care Planning, Placement and Case Review (England) Regulations 2010,
- extend the scope of regulation 14 of the Adoption Agencies Regulations 2005 so that counselling and an explanation of the procedures and legal implications of a child being placed in accordance with section 22C(9A) of the Children Act 1989 is given (and put in writing) to the birth parents,
- amend the Adoption and Children Act Register (Search and Inspection) Regulations 2014: to require approved prospective adopters to provide the Register with written confirmation that their adoption agency has discussed with them whether they may be interested in fostering a child for whom the adoption agency is considering adoption and they have indicated their interest with their adoption agency, before they are able to access Part 2 of the Register; that approved prospective adopters must treat any information from the Register as confidential, and take reasonable steps to prevent unauthorised disclosure or loss of that information,

- change the title of Adoption and Children Act Register (Search and Inspection) Regulations 2014 to “The Adoption and Children Act Register (Search and Inspection) (Pilot) Regulations 2014”,
- change the title of the Adoption Agencies (Miscellaneous Amendments) Regulations 2014 to “The Adoption and Care Planning (Miscellaneous Amendments) Regulations 2014”,
- make no substantive amendments to the Adoption Support Services (Amendment) Regulations 2014 or the Adoption and Children Act Register Regulations 2014,
- amend the statutory adoption guidance around ethnicity, the placement of siblings, adoption support, the Register and post adoption contact,
- amend the Children Act 1989 Guidance and Regulations Volume 2: Care Planning, Placement and Case Review statutory guidance around the placement of children with foster carers who are also approved prospective adopters and contact with children in care, and
- replace the second part of the outcome in standard 13 of the Adoption National Minimum Standards to reflect indicators 1 and 2 of the adoption scorecards, and take into account the additional contextual data in the scorecard. The revision will be published in July 2014.

Three sets of regulations will come into force on 25 July 2014 and the statutory guidance will be published in July 2014. The Adoption and Children Act Register (Search and Inspection) (Pilot) Regulations 2014 are subject to Parliamentary approval.

Fostering for Adoption

Question 1

Does the draft Children Act 1989 Guidance and Regulations Volume 2: Care Planning, Placement and Case Review statutory guidance set out clearly the need to consider and give priority to family and friend carers? If no, please say what additional guidance you think is needed.

There were 53 responses to this question.

30 (57%) Yes 10 (19%) No 13 (24%) Not Sure

The main concerns were firstly that it was often difficult to identify family and friend carers, especially if the birth parents did not provide details, and sometimes proceedings were halted when family members came forward at a late stage, which could make placing children with foster carers who are also approved prospective adopters unattractive to potential carers.

A second concern was that the Care Planning, Placement and Case Review (England) Regulations 2010 and the Volume 2 statutory guidance do not provide sufficient safeguards to ensure that a child's chances of being raised by suitable family members are maximised. If a family member comes forward after a child has been placed, it may be too late to move the child.

Question 2

Do you consider that the Director of Children's Services is the right person to agree to the placement under section 22C(9A) of the Children Act 1989? If no, please say who you think is the right person and why.

There were 49 responses to this question.

15 (30%) Yes 21 (43%) No 13 (27%) Not Sure

Of those who offered additional comment, it was considered that the adoption Agency Decision Maker (ADM) or a nominated officer should approve the decision. It was considered that the Director of Children's Services (DCS) may be too remote from the individual children and so not best placed to make such a significant decision.

Some respondents felt that the guidance around the matching process is insufficient and that the guidance should either reiterate key principles about matching from Coram's *Fostering for Adoption Practice Guidance* or state that this practice guidance should be followed as if it were statutory guidance.

Question 3

Does the draft Children Act 1989 Guidance and Regulations Volume 2: Care Planning, Placement and Case Review statutory guidance set out clearly the circumstances in which a placement under section 22C(9A) of the Children Act 1989 may be appropriate/not appropriate for a child accommodated under section 20 of the Children Act 1989? If no, please say what additional guidance you think is needed.

There were 50 responses to this question.

28 (56%) Yes 14 (28%) No 8 (16%) Not Sure

While the majority of respondents agreed that the guidance is clear others wanted the guidance to make clearer that a placement in accordance with section 22C(9A) will be inappropriate in most section 20 cases, place more emphasis on family and friend carers before considering such a placement, be clearer on when a local authority is “considering adoption”, including a formal definition, and state that counselling should be given to birth parents as per regulation 14 of the Adoption Agencies Regulations 2005 so that they understand the implications of a placement made in accordance with section 22C(9A).

Next steps

The Government is persuaded that amendments are needed to the Volume 2 statutory guidance. The amendments will include:

- a restructuring of the paragraphs so that the duties relating to family and friends carers are clearer and easier to locate,
- improved wording around when a local authority should be “considering adoption” and that this will trigger duties of the local authority such as the provision of counselling under the Adoption Agencies Regulations 2005,
- further clarification that placements made in accordance with section 22C(9A) are likely to be inappropriate in most cases where the child is voluntarily accommodated under section 20 of the Children Act 1989,
- an explanation that in section 20 cases, parental agreement should be obtained, so far as is reasonably practicable, to the care plan as set out in regulation 4 of the Care Planning, Placement and Case Review (England) Regulations 2010. This will include birth fathers without parental responsibility,
- in section 20 cases, a reminder that the local authority will need to review the child’s care plan where parental agreement to a placement made in accordance with section 22C(9A) is not forthcoming and the birth parents do not want the child returned to them. Where the local authority considers adoption the preferred

permanence option, it will need to start care proceedings provided the threshold for obtaining a care order/placement order has been met, and

- a strengthening of the references to Coram’s *Fostering for Adoption Practice Guidance*. The Government agrees that matching in placements in accordance with section 22C(9A) of the Children Act 1989 requires careful consideration because it must address the carers’ ability to meet the child’s needs both in the short-term and potentially for their lifetime.

The Government accepts the arguments put forward that the Director of Children’s Services is not the most appropriate person to approve the decision to place the child in accordance with section 22C(9A) of the Children Act 1989. Although most respondents considered that the adoption ADM should make that decision, the Government is persuaded that the decision should be made by a nominated person in line with other placements in the Care Planning, Placement and Case Review (England) Regulations 2010, and will amend the regulations accordingly.

The decision to place a child in accordance with section 22C(9A) of the Children Act 1989 is a care planning rather than an adoption decision. Consequently, the requirement to notify the child’s parent or guardian that the child is to be so placed will be moved from regulation 12B of the Adoption Agencies Regulations 2005 to regulation 22A of the Care Planning, Placement and Case Review (England) Regulations 2010.

The Government will extend the scope of regulation 14 of the Adoption Agencies Regulations 2005 (*requirement to provide counselling and information for, and ascertain wishes and feelings of, the parent or guardian of the child and others*) so that birth parents are given an explanation of the procedures in relation to a placement in accordance with section 22C(9A) of the Children Act 1989, the legal implications of such a placement and that the birth parent is provided with written information about these matters.

Ethnicity

Question 4

Does the draft statutory adoption guidance set out clearly how factors relating to a child’s racial origin, should be taken into account in matching decisions? If no, please say what additional guidance you think is needed.

There were 57 responses to this question.

26 (46%) Yes 16 (28%) No 15 (26%) Not Sure

7% of respondents said that matching decisions should take account of a child’s “religious persuasion, racial origin, and cultural and linguistic background”. 5% of

respondents questioned the reference to research about the success of transracial adoptions with 4% asking that the guidance reflect that there were individual exceptions to this. 9% of respondents said that the guidance should be explicit about taking the views of children into account in making decisions. 5% of respondents said the guidance was wrong to suggest that very young children do not have a “background” or were “blank slates” making the point they did so by virtue of the background of their parents.

5% of respondents said that the guidance should refer to the importance of the nature of the community into which the child will be placed as well as the diversity of the extended family and social network of the adopter because such factors impacted on the need for, or availability of, support.

Next steps

The Government will amend the statutory adoption guidance to include reference to the requirement in section 1(4)(a) of the Adoption and Children Act 2002 to have regard to the views of children; and acknowledge in the reference to research on the success of transracial adoptions that there are individual exceptions.

Question 5

Does the draft statutory guidance set out clearly the nature of support that prospective adopters might need when they adopt children of a different ethnicity? If no, please say what additional guidance you think is needed.

There were 44 responses to this question.

13 (30%) Yes

15 (34%) No

16 (36%) Not Sure

Nearly 33% of respondents stressed the importance of adoption support with 9% of respondents saying that the guidance should make clear that a child’s needs can change over time, for example becoming curious about their birth heritage during adolescence, and the importance of racial identity in promoting positive self-esteem. 7% of respondents said that support needs should be enshrined in a detailed support plan. 11% of respondents said the guidance should say more about the need for adopters to demonstrate that they had the qualities to be able to meet the needs of children.

Next steps

The Government will amend the statutory adoption guidance to make an explicit reference to the legal requirement to assess the child’s and adopters’ adoption support needs, upon request, and to draw out more clearly that children’s views can change over time.

Placing siblings with an adoptive family

Question 6

Does the draft statutory adoption guidance set out clearly the importance of making a prompt and informed decision about whether siblings should be placed for adoption separately or together? If no, please say what additional guidance you think is needed.

There were 54 responses to this question.

30 (56%) Yes 13 (24%) No 11 (20%) Not Sure

9% of respondents said that the guidance appeared to presume that siblings should be separated, whereas 7% of respondents argued that there should be a presumption that siblings should be kept together, unless this was not in the interests of one of the children.

9% of respondents said that the guidance should be clear that the views of children should be taken into account in decision making.

7% of respondents considered there was a balance to be struck between making prompt decisions and making correct decisions. 15% of respondents highlighted the complexity of assessing sibling relationships, and 6% of respondents said that the guidance should emphasise the need to keep decisions under review.

7% of respondents said that the guidance should emphasise that the decision making process should include an assessment of contact arrangements.

Next steps

The Government considers there should be no presumption about whether to separate or place siblings together; decisions should depend on the individual needs of each child and local authorities should have in place a robust decision making process.

The Government will amend the statutory adoption guidance to make clear that decisions about whether to separate siblings or place them together should depend on the welfare of the individual child (as required under section 1(2) of the Adoption and Children Act 2002); and that the views of children should be taken into account in decision making as required under section 1(4) of that Act.

Adoption Support Services – duty to inform

Question 7

Does the draft statutory adoption guidance set out clearly the information about adoption support services that a local authority will have to provide to adopters and prospective adopters? If no, please say what additional guidance you think is needed.

There were 48 responses to this question.

30 (63%) Yes 11 (23%) No 7 (14%) Not Sure

86% of local authorities, at whom this guidance is focused, agreed that the draft statutory guidance clearly set out the information that they will have to provide to adopters and prospective adopters. Many local authority respondents welcomed the new legislation, and the publication of the Adoption Passport, with a typical response from a local authority being “this clearly fits with the direction of travel set out in the Adoption Passport and reflects our own aspirations for supporting adoptive families.” Several respondents suggested making it clear what information should be provided directly to adopted children and young people, in addition to adoptive parents and prospective adopters.

Prospective adopters and adopters were less sure that the guidance was clear. Some adopters asked for more detail on the role of the Adoption Support Services Adviser (ASSA) in the guidance, but the main concerns raised were about the lack of provision of adequate adoption support rather than specifically on this new duty. As one adoptive parent stated, “prospective adopters tend to be given vague promises of future support (both therapeutic and financial) but when pressed local authorities seem to offer very little and are reactive, not proactive, when approached for help.”

Question 8

Does the draft statutory adoption guidance set out clearly when and how the local authority should provide information to adopters and prospective adopters? If no, please say what additional guidance you think is needed.

There were 44 responses to this question.

31 (70%) Yes 4 (9%) No 9 (20%) Not Sure

86% of local authorities, and 4 out of 6 prospective adopters or adopters, agreed that the draft guidance set out clearly when and how the local authority should provide information. A small number of local authorities felt that adopters were already overloaded with too much information. Whilst some local authorities welcomed the suggestion in the guidance of a locally tailored version of the Adoption Passport, others felt that the Passport in itself was adequate information, or that the burden of knowing

what all services were in any one local authority was too onerous a task. Several adoptive parents and organisations thought that any service coming into contact with families should be able to provide consistent information but that it was unrealistic to assume that people advising on services such as SEN or health would know anything about adoption support. They suggested that guidance should make clear that it would be important for these staff to know who the ASSA was to refer parents to.

Question 9

Are the Adoption Support Services (Amendment) Regulations 2014 clear? If no, please say what you think is unclear

There were 41 responses to this question

31 (76%) Yes 4 (10%) No 6 (15%) Not Sure

76% of respondents felt that the draft regulations were clear and so no substantive amendments will be made to them. Where respondents were unsure, this was again linked to the responsibilities of other staff not working directly within Social Care. Some respondents felt that there should be a duty for the local authority to inform all services, such as health and education, about adoption support, so that any service coming into contact with an adoptive family could provide consistent information. The LGA and several local authorities wanted further information about the forthcoming implementation of personal budgets for adoption support.

Next steps

The Government will amend the statutory adoption guidance to:

- give further clarity on the role of the ASSA,
- encourage information on adoption support to be provided directly to adopted children and young people, in addition to adoptive parents and prospective adopters, depending on the circumstances and age of the child or young person, and
- make it clear that in order to carry out their new duty effectively, local authorities should engage teams who are likely to encounter adoptive families, to ensure that either they provide information about adoption support themselves, or that they are aware of who the ASSA is and can refer families to them.

The main concerns raised were not about the regulations or statutory adoption guidance related to this duty, but about the lack of provision of adoption support services, and worries about the risk of this deteriorating further with increased demand as a result of more parents knowing 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, which will provide funding for adoptive parents to access therapeutic services; grants to three voluntary adoption agencies to expand their adoption support services; and the introduction of further support for adopted young people in education (entitling children adopted from care to the Pupil Premium, priority school admissions, and early education for 2 year olds). The use of personal budgets is currently being piloted in 10 local authorities within the test of the Adoption Support Fund and these will inform how personal budgets for adoption support are implemented and what information local authorities should therefore give adopters about these in future.

The Adoption and Children Act Register

Question 10

Does the draft statutory adoption guidance set out clearly the requirement and time limit to refer details about children and approved prospective adopters to the Register? If no, please say what additional guidance you think is needed.

There were 43 responses to this question.

31 (72%) Yes 5 (12%) No 7 (16%) Not Sure

Nearly three-quarters of respondents agreed that the draft statutory adoption guidance set out clearly the arrangements around referring details about children and approved prospective adopters to the Register. Only 12% did not think these issues were clear. The main theme that respondents raised was the importance of having the correct consents in place before children's details, including those children requiring a placement made in accordance with section 22C(9A), were viewable on the Register.

Next steps

Existing regulations (regulation 19A of the Adoption Agencies Regulations 2005) and statutory adoption guidance state that adoption agencies must refer children waiting for adoption to the Register when they are not actively considering a local match for the child. Referrals must be made as soon as possible after, and no later than three months from, the ADM's decision that the child should be placed for adoption.

Regulations (regulation 30G of the Adoption Agencies Regulations 2005) and statutory adoption guidance makes clear that adoption agencies must refer approved adopters to the Register as soon as possible and in any event no later than 3 months from approval unless they have identified a particular child with whom they are considering placing with the prospective adopter. The agency must obtain the consent of the prospective adopter before referral to the Register.

Where the local authority wishes to place a child in a placement in accordance with section 22C(9A) of the Children Act 1989, they must obtain parental agreement to do so, so far as is reasonably practicable (see the response to questions 1-3 above). The Government will evaluate that process as part of the Register pilot.

Question 11

Do you think the proposed arrangements for approved prospective adopters to access the Register will offer suitable safeguards for children and approved prospective adopters? If no, please say what additional arrangements you think are needed.

There were 48 responses to this question.

21 (44%) Yes 4 (8%) No 23 (48%) Not Sure

Nearly half of respondents agreed that the proposed arrangements for approved prospective adopters to access the Register will offer suitable safeguards for children and approved prospective adopters. However, nearly half were not sure if this was the case. The respondents who were not sure that the proposed arrangements were adequate raised five main issues. These were:

- the importance of data protection,
- concerns that adopter-led matching might mean that the matching process promoted the interests of the adopter at the expense of the child,
- the need to keep agencies involved in the adopter-led matching process to ensure that suitable support was provided to adopters,
- the need for Register information to be up to date, and
- the need for social workers to respond quickly to links generated by adopters.

One respondent also emphasised that access to the Register by approved prospective adopters should be time-limited.

Next steps

The issues identified by the respondents around safeguards for children and approved prospective adopters are also those being prioritised by the Government in its preparation for the pilot. The Government is committed to ensuring the confidentiality of information about approved prospective adopters and children on the Register. As set out in the consultation document *Adoption: Getting It Right, Making it Work*, the safety of children and approved prospective adopters and the privacy of their information are of paramount importance.

The regulations will be reinforced by the Register contract which is designed to prioritise these issues. The Government will ensure that appropriate safeguards are put in place, including the need for approved prospective adopters to renew the passwords that will give them access to the Register at regular intervals.

The pilot will only allow access to the Register by prospective adopters approved by specified adoption agencies to enable them to search for children for whom they might be suitable adopters. This new access will not mean a change in focus for the Register service. The Register will remain a service that is focused on the child's needs by finding families for children. It is clear, though, that more children will be matched with families if approved prospective adopters are involved more fully in identifying children for whom they might be appropriate adopters. However, the final matching decision remains with the child's adoption agency.

The Government agrees that the Register, local authorities and adoption agencies must work closely together to ensure that the information on the Register is kept up to date and that social workers respond quickly to the links generated by approved prospective adopters and the Register. The Government will reaffirm the importance of this to social workers and the Register in advance of the start of the pilot. The pilot is being designed to test the best ways of dealing with all of these issues.

Question 12

What issues should the evaluation of the pilot examine?

There were 19 responses to this question.

There was a great deal of consensus from respondents about what the evaluation of the pilot should examine. The main issues included both quantitative and qualitative issues such as:

- impact on timeliness of matching,
- proportion of links that lead to matches,
- the kinds of child profiles that are accessed and how adopters search the Register e.g. popular searches,
- whether adopter access leads to a widening of the adopter's initial search parameters,
- experience and satisfaction of adopters, Register staff and social workers,
- how access to the Register works most effectively, such as how many links adopters should be able to pursue concurrently and how the social workers are involved in the adopter-led matching process,

- how any disagreements over suitability of adopters for the children they identify are handled, and
- workforce and training implications for agencies.

Next steps

The Government agrees that these are the right areas for the evaluation to cover. The vast majority of these were already in the specifications for the evaluation plans, but the Government will include all the suggestions in its final plans.

Question 13

Are the Adoption and Children Act Register Regulations 2014 clear? If no, please say what is unclear.

There were 41 responses to this question.

31 (76%) Yes 4 (10%) No 6 (15%) Not Sure

Over three-quarters of the responses agreed that Adoption and Children Act Register Regulations 2014 were clear. The respondents who commented on these regulations repeated comments made to question 10 that the relevant consents need to be obtained before details can be included on the Register.

Next steps

76% of respondents agreed that the Adoption and Children Act Register Regulations 2014 are clear. However, to make these even more straightforward to follow, the regulations will be amended. All the information the adoption agencies must give to the Register about children suitable for adoption and prospective adopters suitable to adopt will be located in the Adoption Agencies Regulations 2005. Moving them into these Regulations will make it much easier for adoption agencies to understand their responsibilities with regards to the Register.

Existing regulations and statutory adoption guidance provides that adoption agencies must refer children waiting for adoption to the Register when they are not actively considering a local match for the child. Referrals must be made as soon as possible after, and no later than three months from, the ADM's decision that the child should be placed for adoption.

There is no requirement to refer details of children to the Register where the local authority wishes to place them in a placement in accordance with section 22C(9A) of the Children Act 1989, but local authorities will be able to do so if they wish.

The details of all children on the Register will be able to be searched by approved prospective adopters. There will be some limits on which approved prospective adopters

can access details of children who are to be placed in accordance with section 22C(9A). The details of these children will be kept in a separate section of the Register (Part 2). The Adoption and Children Act Register Regulations 2014 set out that that before referring these children to the Register the local authority must confirm that they are considering adoption for that child. The Adoption and Children Act Register (Search and Inspection) Regulations 2014 make it clear that the approved prospective adopter must provide written confirmation that their adoption agency has discussed with them whether they may be interested in fostering a child for whom an adoption agency is considering adoption and they indicated their interest with their adoption agency, before they are able to access Part 2 of the Register.

Question 14

Are the Adoption and Children Act Register (Search and Inspection) Regulations 2014 clear? If no, please say what is unclear.

There were 29 responses to this question.

21 (72%) Yes 3 (10%) No 5 (17%) Not Sure

Nearly three-quarters of respondents thought that the Adoption and Children Act Register (Search and Inspection) Regulations 2014 were clear. Those who did not agree raised a number of issues such as the need for sufficient information on the Register about children to support adopter-led matching but also that care needed to be taken that information was screened to ensure that it did not contain material that might identify the child.

Next steps

The Government is committed to protecting the identities of the children and prospective adopters on the Register. The Register contractor will be checking all the details and information added to the Register to make sure this information will not lead to the identification of a child and will ensure that information is not disclosed without proper authority.

The Government will amend the regulations so that:

- the approved prospective adopter provides the Register with written confirmation that their adoption agency has discussed with them whether they may be interested in fostering a child for whom an adoption agency is considering adoption and they have indicated their interest with their adoption agency, before they are able to access Part 2 of the Register, and
- approved prospective adopters must treat any information from the Register as confidential, and take reasonable steps to prevent unauthorised disclosure or loss

of that information and inform the Register about any theft, unauthorised disclosure or loss of any of the information from the Register.

A list of the local authorities and voluntary adoption agencies who will be involved in the pilot is included in the Schedule to the regulations.

The title of the regulations will change to “The Adoption and Children Act Register (Search and Inspection) (Pilot) Regulations 2014”.

Contact – Children in Care

Question 15

Does the draft statutory adoption guidance set out clearly when the duty to endeavour to promote contact under Schedule 2, paragraph 15 no longer applies? If no, please say what additional guidance you think is needed.

There were 48 responses to this question.

34 (71%) Yes 6 (12%) No 8 (17%) Not Sure

Respondents commented that the guidance should be clear that any decision to refuse contact with a particular person (either temporarily under section 34(6) of the Children Act 1989, or following a court order) should be set out in writing to those affected, should include information about what course of action the individual can take (e.g. a formal appeal) and should be shared with the Independent Reviewing Officer.

Respondents also suggested that the guidance should set out that the duty of the responsible authority to endeavour to promote contact under Schedule 2, paragraph 15 of the Children Act 1989 reappplies:

- when the relevant court order expires or,
- in the case of a decision made under section 34(6) of that Act, when seven days expires.

Next steps

The Government will strengthen the Volume 2 statutory guidance to reflect these comments.

Contact – post adoption

Question 16

Does the draft statutory adoption guidance set out clearly who can apply for an order under section 51A of the Adoption and Children Act 2002 and when? If no, please say what additional guidance you think is needed.

There were 52 responses to this question.

33 (63%) Yes 2 (4%) No 17 (33%) Not Sure

82% of local authorities, at whom this guidance is focused, agreed that the guidance is clear who can apply for an order under section 51A of the Adoption and Children Act 2002.

17% of respondents said that contact arrangements should only be made that reflected the child's best interest while 6% of respondents said that a child's views about contact were likely to change or evolve over time. 8% of respondents said that the prevalence of social media made it difficult to prevent contact; one respondent had concerns about "giving adopters a belief that a no contact order can, in these days of social networking, mean that there will be no contact". 10% of respondents said that adoption support services should provide assistance on issues relating to contact. One respondent said that "no contact" orders should only be used after very careful consideration of the impact on the child. One respondent said that the consultation document "appears to load the argument against post adoption contact".

A small number of respondents suggested specific changes be made to the statutory adoption guidance. For example, that the guidance make clear that informal contact arrangements agreed between the birth family and adopters do not have legal force, and that guidance should make clear who can apply for section 51A Orders.

Next steps

It is already a legal requirement that in reaching decisions about adoption that the welfare of the child is paramount; section 1(2) of the Adoption and Children Act 2002 states that "the paramount consideration of the court or adoption agency must be the child's welfare, throughout his life".

Issues relating to contact are sensitive. This is why adopters and birth family can ask to be assessed for adoption support under section 4 of the Adoption and Children Act 2002 and the Adoption Support Services Regulations 2005.

The Government will amend the statutory adoption guidance to make clear that there is no presumption for or against contact with the child's birth family and that decisions on contact or no contact under section 51A(2)(a) and (b) are matters for the courts.

Adoption Agencies (Miscellaneous Amendments) Regulations 2014

Question 17

Are the Adoption Agencies (Miscellaneous Amendments) Regulations 2014 clear? If no, please say what you think is unclear.

There were 41 responses to this question.

31 (76%) Yes 2 (5%) No 8 (19%) Not Sure

2% of respondents considered that the proposed regulation 12B would more properly sit in the Care Planning, Placement and Case Review (England) Regulations 2010 because the decision is about a type of fostering placement rather than an adoption placement.

Next steps

The proposed regulation 12B is included in the Adoption Agencies Regulations 2005 because those regulations are triggered when a local authority is 'considering adoption'; something which the local authority will be doing when they are considering placing a child in accordance with section 22C(9A) of the Children Act 1989. The regulation requires the adoption agency to notify the prospective adopter of the decision to place the child. The placement remains a fostering placement which is why the Care Planning, Placement and Case Review (England) Regulations 2010 are being amended to set out the process for a decision to place a child in accordance with section 22C(9A) to be approved and for the child's parents to be notified. The amendments to the Adoption Agencies Regulations 2005 sit alongside these amendments.

The Government will amend the Adoption Agencies (Miscellaneous Amendments) Regulations 2014 as set out in responses to questions 1-3 and will change the title of the regulations to reflect the fact that amendments are being made to the Care Planning, Placement and Case Review (England) Regulations 2010. The new title will be "The Adoption and Care Planning (Miscellaneous Amendments) Regulations 2014."

Statutory adoption guidance

Question 18

Does the revised version of the statutory adoption guidance meet the needs of adoption agencies and adoption support agencies? If no, please say what guidance you think is needed.

There were 46 responses to this question.

22 (48%) Yes 10 (22%) No 14 (30%) Not Sure

7% of respondents said the sequence of chapters 5 (Contact), 6 (Adoption Support Services) and 7 (Placement and Reviews) should be reordered so that there is a natural and smooth transition from one topic to the next, but there was no agreement as to an alternative order.

17% of respondents made suggestions either for additional guidance, clarification or identified guidance that had been omitted which they felt to be useful. However, there were no common themes.

Next steps

The Government will revise the order of chapters 5 (Contact), 6 (Adoption Support Services) and 7 (Placement and Reviews) so that the guidance on placement and reviews comes before contact and adoption support services.

Question 19

Are the timescales the right ones to help achieve a quicker adoption process? If no, please say what changes you think are necessary.

There were 43 responses to this question.

11 (26%) Yes 9 (21%) No 23 (53%) Not Sure

Typical comments, even where the response was “unsure” were supportive of having timescales included, and that they support timely decision making. There was support for improving timeliness in adoption, although two respondents noted that some children would take longer to place than others, and one referenced the potential impact of recent court judgements. There were a few comments about the challenges of the two-stage adopter approval process (which are in existing regulations).

Next steps

Although there were a significant number of “not sure” responses, the detailed comments

were broadly supportive of the value of timescales in the statutory guidance. The guidance will therefore retain these references.

Adoption National Minimum Standards - outcome of standard 13

Question 20

Do you think that the scorecard indicators are a more appropriate measure of timely placement for the child than the current National Indicator 61, as they take into account both the time from entry to care to placement with the adoptive family and, separately, the time between a local authority receiving court authority to place a child and the local authority deciding on a match with an adoptive family? If no, please explain what you think is the appropriate measure.

There were 47 responses to this question.

21 (45%) Yes 8 (17%) No 18 (38%) Not Sure

Those responses that were supportive thought that the scorecards were a better measure, although a number thought that additional information was needed (see Question 21). The concerns raised highlighted the following points:

- that the scorecards will introduce an element of risk for certain cohorts of children as there will be pressure on some local authorities not to pursue adoption placements for older children, those with additional needs, and sibling groups in order to achieve timescales set by scorecards,
- that the scorecard measures potentially subvert the child's welfare by prioritising the speed of placing a child with a foster carer who is also an approved prospective adopter above meeting the child's needs, and
- that scorecards could be interpreted by the public as akin to adoption targets and the guidance could be used to make clear this is not the case. That would be consistent with the rest of the document which emphasise the importance of family first.

Question 21

Do you think that the contextual data in the scorecard should be taken into consideration? If no, please explain why you think the contextual data should not be taken into consideration.

There were 42 responses to this question.

32 (76%) Yes

1 (2%) No

9 (21%) Not Sure

The responses were strongly supportive of the proposal that the contextual data in the scorecards should be taken into consideration. Comments generally indicated that this was important for understanding the impact of individual cases, and would help local authorities who persisted in finding adoptive families for harder to place children. One response noted that the contextual data would support situations where a child had been placed in accordance with section 22C(9A) of the Children Act 1989.

“It will explain why some local authorities take longer time to achieve permanence via adoption for certain children. These authorities should be commended for their perseverance and conviction that adoption is the best plan for these children even though it may take longer to achieve this for them.”

“It offers some analysis of the circumstances and gives a sense of scale of adoption work in different local authorities and would support Fostering to Adopt situations.”

Next steps

The Government will replace the second part of the outcome in standard 13 to reflect indicators 1 and 2 of the adoption scorecards, and take into account the additional contextual data in the scorecard.

The Government does not agree that the scorecards drive either of the perceived risks set out in responses to question 20. This is because the scorecard measure is an average, and so allows for some cases to take longer, and that the data will be read with additional contextual data. The Government will amend the guidance to clarify these points, and specifically the legal framework for placing a child, on a fostering basis, with foster carers who are also approved prospective adopters, such as Fostering for Adoption or concurrent planning.

The Government also noted a comment that the scorecards could be interpreted by the public as akin to adoption targets, and which went on to note that the guidance could be used to make clear this is not the case, which would be consistent with the rest of the document which emphasise the importance of family first. The Government welcomes these comments, and the observations that the guidance overall emphasises the importance of family carers.

General – any other comments

Question 22

There may be other areas for revision that you think should be considered; we would be interested in hearing your views on what these might be and how these might reduce

delay and bureaucracy whilst continuing to help ensure the welfare and safety of looked after children. Please use the box below to make your comments.

There were 20 responses to this question.

The majority of respondents suggested areas for consideration, such as adoption support, which has been dealt with elsewhere in this Response.

20% of respondents considered that the statutory guidance should reflect caselaw, in particular the Supreme Court judgment in *Re B (a Child) (FC)* and the Court of Appeal's judgment in *Re B-S (Children)*.

10% of respondents suggested legislative changes around adoption pay and leave to encourage more people to come forward to adopt.

Next steps

The judgments of the Supreme Court and Court of Appeal are indeed important decisions which local authorities and the courts must comply with. The Government does not consider it necessary to reflect the caselaw in its statutory guidance as guidance has already been issued to local authorities by the Association of Directors of Children's Services and Cafcass.

The Government is currently reforming the system of family related leave more widely to reflect better the needs of our modern society, and changes to the rules around adoption are an important part of that.

From April 2015, a wider group of people will be able to access statutory adoption leave and pay:

- adoption leave is to become a day 1 right – available to primary employed adopters (or one of the adopters in a joint adoption) regardless of length of employment with the employer,
- adoption pay will be enhanced to 90% of salary for the first six weeks, bringing it into line with statutory maternity pay,
- adopters to be entitled to time off to attend adoption appointments after being matched with a child. For a primary adopter, this can be up to five half days paid at normal salary. For the other adopter in a joint adoption this can be up to two unpaid half days, and
- prospective adopters who have children placed with them in accordance with section 22C(9A) of the Children Act 1989 will be eligible for adoption leave and pay from the beginning of the placement.

In addition, adoption leave and pay will be available for intended parents in surrogacy arrangements who are eligible and intend to apply for a Parental Order. This will apply for babies who are due to be born on or after 5 April 2015.

Also from April 2015 shared parental leave and pay will be available to birth parents, adoptive parents, prospective adopters who have a child placed with them in accordance with section 22C(9A) of the Children Act 1989. Intended parents in surrogacy arrangements who meet the relevant qualifying criteria, will be eligible for adoption leave and pay. Shared parental leave and pay will allow employed parents greater flexibility about how and when to take their parental leave, enabling them to share caring responsibilities in a way which suits their family.

The Government is working on a package of guidance to explain the changes. This ranges from high level fact sheets, to more detailed guidance and interactive online tools to help parents and prospective parents and their employers understand their rights. Guidance materials will be available in advance of the changes taking effect.

Annex A: List of organisations that responded to the consultation

After Adoption

Association of Lawyers for Children

Barnardo's

Bath and North East Somerset Council Adoption Panel

Birmingham Law Society - Employment Law Committee

Birmingham Local Authority

Blackburn with Darwen Borough Council

Blackpool Council

British Association for Adoption and Fostering

British Association of Social Workers

Calderdale Metropolitan Borough Council

Cambridgeshire County Council

City of Stoke on Trent local authority

College of Social Work, The

Coram

Durham County Council

Employment Lawyers Association

Essex County Council

Faith in Families

Family Rights Group

Fostering Network, The

Haringey Council

Intercountry Adoption Centre

Leicester City Council
Lincolnshire County Council - Adoption Services
Local Government Association
London Borough of Barnet
London Borough of Croydon
London Borough of Lewisham
London Borough of Wandsworth
Milton Keynes Council
National Deaf Children's Society, The
North Lincolnshire Council
Office of the Children's Commissioner
Oxfordshire County Council
Peterborough City Council
Reading Borough Council
South Tyneside Council
Southend Borough Council
Staffordshire County Council
Suffolk County Council
Sunderland City Council
Trafford Council
Walsall Council
Who Cares? Trust, The
Worcestershire County Adoption Service

The list excludes individuals and those respondents who asked for their response to remain confidential.



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