

Consultation: Scotland's Adoption Register Regulations 2016

The Children and Young People (Scotland) Act

March 2015

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THE CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT

1. The Children and Young People (Scotland) Act 2014 ("the 2014 Act") was passed by the Scottish Parliament on 19 February 2014, and received Royal Assent on 27 March 2014. The legislation is a key part of the Scottish Government's strategy for making Scotland the best place in the world to grow up. By facilitating a shift in public services towards the early years of a child's life, and towards early intervention whenever a family or young person needs help, the legislation encourages preventative measures, rather than crises responses. Underpinned by the Scottish Government's commitment to the United Nations Convention on the Rights of the Child 1989 ([UNCRC](#)), and the national children's services improvement programme, Getting it right for every child ([GIRFEC](#)), the Act also establishes a new legal framework within which services are to work together in support of children, young people and families.

2. The 2014 Act introduces a number of important changes for looked after children and care leavers in Scotland. In summary, these are:

- 600 hours of free early learning and child care for all two year olds who are 'looked after' or secured with friends or relatives through a Kinship Care Order (Part 6, section 49).
- Corporate parenting duties for certain public bodies (Part 9).
- Extends eligibility for aftercare assistance up to the age of 25; new duty on local authorities to report on the death of a young person in receipt of aftercare services (Part 10).
- 'Continuing Care', providing certain care leavers with the opportunity to continue with the accommodation and assistance they were provided with immediately before they ceased to be looked after (Part 11).
- Support for children at risk of becoming looked after (Part 12)
- Assistance for applicants and holders of a Kinship Care Order (Part 13)
- A duty placed on all adoption agencies to use Scotland's Adoption Register (Part 14).

3. This consultation relates to implementation of Part 14 of the 2014 Act around the operation and use of Scotland's Adoption Register.

4. The consultation will run from 30 March 2015 until 22 June 2015.

Background

5. The Scottish Government has grant funded the British Association for Adoption and Fostering (BAAF) to run the Adoption Register in Scotland since it was established in 2011. The Register has a remit to facilitate family finding across Scotland and thereby increase the numbers of placements found for children who have been identified as suitable for adoption. From a technical perspective, the

Register is a database which records and stores information that is information already held by adoption agencies. The Register uses that information to identify potential links between children with a plan for adoption and prospective adopters.

6. In addition to its core linking service, the Adoption Register is currently implementing new approaches to matching children with families. Adoption Exchange days feature profiles of children waiting for adoption, including photographs, drawings and letters, which help approved adopters to gain an insight into those children as individuals, with their own needs and personalities. The Adoption Register has also piloted Scotland's first adoption activity day, where adopters will be able to meet a range of children waiting to be adopted and to engage with them in a supported, safe and fun environment. These developments enable prospective adopters and children to make a real connection; and can challenge adopters' preconceptions about the kind of child they might initially feel they want to adopt.

7. This consultation is concerned only with the Register's core linking service.

8. In placing the Register on a statutory footing, and requiring every adoption agency in Scotland to use it, our intention is to maximise opportunities for, and accelerate the process of, finding suitable adoption places for children for whom adoption has been identified as the most appropriate way forward.

9. The 2014 Act amended the Adoption and Children (Scotland) Act 2007 ("the 2007 Act") to place the Register on a statutory footing and to empower Scottish Ministers to make regulations which would:

- Prescribe the information relating to adoption/types of information relating to adoption to be included in the Register (section 13A(2)(a));
- Provide for how information is to be retained in the Register (section 13A(2)(b));
- Prescribe the information to be provided by adoption agencies (section 13C(1));
- Provide that information is to be provided to a registration organisation, rather than Scottish Ministers (section 13C(2)(a));
- Provide for how and by when information is to be provided (section 13C(2)(b));
- Prescribe circumstances in which an adoption agency is not to disclose information to the Register (section 13C(2)(c));
- Authorise Scottish Ministers/the registration organisation to disclose information derived from the Register to adoption agencies, and to specific persons for purposes laid out in the 2014 Act (section 13D(2)(a));
- Specify steps to be taken by an adoption agency in respect of information received from the Register (section 13D(3)(b));
- Authorise an adoption agency to disclose information derived from the Register for purpose relating to adoption (section 13D(3)(c)); and
- Prescribe fees to be paid by adoption agencies in relation to the Register (section 13E(c)).

10. The Adoption Register Regulations will set out the key requirements for supplying, retaining and disclosing information to and from the Register. There is currently a Data Sharing Agreement between the Scottish Government and all

registered adoption agencies in Scotland, which outlines the detailed procedures for data sharing through the Adoption Register. Our intention is for this Data Sharing Agreement – updated to take account of the 2014 Act and the finalised Adoption Register Regulations – to remain in place, and to specify the more detailed, administrative aspects and requirements of running the Adoption Register. A copy of the latest version of the Data Sharing Agreement can be found [here](#).

11. In order to allow the regulations to be drafted, we would welcome comments on certain matters as contained in this document.

RESPONDENT INFORMATION FORM

12. This consultation paper outlines our thinking on the requirements, and highlights the areas about which we are particularly keen to receive your views.

13. The Respondent Information Form asks questions about the issues discussed in the consultation paper. While we would encourage you to use the Respondent Information Form for responses, we are happy to receive comments in any format.

14. The form also gathers information to ensure that we know how you wish us to treat your response. In particular we wish to know if you are willing for your response to be shared and published. The form provides a simple and consistent way of obtaining information which also allows us to meet Freedom of Information and Data Protection legislation.

CONSULTATION

Information to be included in the Register

15. The 2014 Act adds new sections 13A to 13G to the 2007 Act. Section 13A(2)(a) empowers Scottish Ministers to prescribe in Regulations the information relating to adoption or types of information relating to adoption, to be included in the Register. The information we propose for inclusion in the Register has been based on the practice of the existing, non-statutory Register, and is outlined in annex A.

16. We would intend the Register to include information about children at the point when a final decision has been taken that adoption is in a child's best interests. This comes when the Agency Decision Maker considers an Adoption Panel's recommendation under Regulation 13(1) of the Adoption Agencies (Scotland) Regulations 2009.

17. Until that point, it is possible that an earlier decision to pursue adoption for the child could be overturned. We therefore propose that information about a child is added to the Register once the Agency Decision Maker has considered and approved the Adoption Panel's recommendation that adoption is in the best interests of a child.

18. The trigger point for prospective adopters being included in the Register would be when they have been approved as suitable adoptive parents by the Agency

Decision Maker, under Regulation 8(1) of the Adoption Agencies (Scotland) Regulations 2009.

19. We would propose also including children and prospective adopters from other parts of the UK in the types of information it is possible to include in the Register. We do not intend to include such information as a matter of routine. We recognise, however, that there may be circumstances in which a child has specific needs and is unlikely to be found a family in his/her own country, or adopters are unlikely to find a match in their own country; where it is to the benefit of all to allow an inter-Register referral. We do not expect such referrals to be common place, or to occur simply because no placement has been found for the child or prospective adopters, through their own Register. We do wish to ensure, however, that in agreed circumstances, information regarding children or prospective adopters from elsewhere in the UK could be included in the Scottish Register. The circumstances for such situations will be identified through an inter-Register protocol which will be agreed by the administrations in all four nations.

Q1. Do you agree that the types of information identified in annex A are suitable for inclusion in the Register?

Q2 Do you think that children's information should only be able to be referred to the Register once the Agency Decision Maker has confirmed that adoption is in their best interests (under Regulation 13(1) of the Adoption Agencies (Scotland) Regulations 2009)?

Q3. Are there any additional types of information which should be included in the Register?

Information to be provided for entry in the Register

20. New section 13C(1)(a) of the 2007 Act places a duty on an adoption agency to provide the Scottish Ministers with such information as may be prescribed in regulations about children who it considers ought to be placed for adoption. Adoption agencies would be required to refer a child to the Register at the stage of the Agency Decision Maker confirming that adoption is in the child's best interests (see paragraph 24). The information which would be provided at this time would be for the purposes of informing the Register's linking service in order to consider suitable matches for the child. The information which it is proposed an adoption agency would require to provide to the Register when the child is referred is listed in annex A and is based on the current Data Sharing Agreement requirements.

21. New section 13C(1)(b) of the 2007 Act also places a duty on adoption agencies to provide the Scottish Ministers with such information as may be prescribed in regulations about persons who it considers as suitable to have a child placed with them for adoption. Again, this information should be provided for the purposes of informing the Register's linking service in order to consider a suitable match for the prospective adopter. Adoption agencies would be required to refer a prospective adopter to the Register once that adopter has been approved as an adopter under regulation 8(1) of the Adoption Agencies (Scotland) Regulations. The

information which it is proposed an adoption agency would require to provide to the Register when a prospective adopter is referred is listed in annex A and is based on the current Data Sharing Agreement.

Q4. Do you agree that the information in relation to children listed in annex A should be provided by adoption agencies when a child is referred to the Register?

Is there any further information relating to a child to be placed for adoption which should be provided to the Register?

Q5. Do you agree that the information in relation to a prospective adopter listed in annex A should be provided to the Register?

Is there any further information relating to a prospective adopter which should be provided to the Register?

22. New section 13C(2)(b) of the 2007 Act empowers Scottish Ministers to specify in regulations how and by when information should be provided by adoption agencies to the registration organisation.

23. We propose that the format in which information about a child or prospective adopter should be provided should be dealt with through the Data Sharing Agreement. Setting a timeframe within which adoption agencies should refer information, however, will be an important aspect of the Regulations.

24. One of the key purposes for requiring adoption agencies to use the Register is that we wish to find adoptive families as soon as possible, for children for whom adoption has been identified as the most suitable way forward. While we wish to enable adoption agencies to find matches from within their own pools of prospective adopters and children with plans for adoption where possible, we know that it is not in the interests of those children to wait any length of time, in the hope that a match from within a local authority will arise. For that reason, we propose that adoption agencies would be required to refer children to the Register within 3 months of the agency decision maker's decision that adoption is in their best interests; and prospective adopters within 3 months of the agency decision maker's decision that they are suitable to be adoptive parents.

25. Where adoption agencies are pursuing a match between a specific prospective adopter and a specific child, but where that match has not been finalised within the 3 month timeframe, there will be nothing to stop the agency progressing with their identified link or match even once they have referred the child or adopter to the Register.

26. We are aware that, following referral, information relating to a child or prospective adopters may require to be updated or amended. For example, a child's situation may change so that adoption is no longer considered to be in his or her best interests. It would not be appropriate for such a child to remain on the Register. We would propose that adoption agencies would be required to notify the Register of

any changes to the information previously supplied as soon as reasonably practicable.

27. Where it has been decided that a child is no longer suitable for adoption and is consequently removed from the Register, it may be helpful for the Register to understand the reasons for this. This would be primarily for data collection purposes providing an accurate sense of why children are moving off the Register which could inform broader policy developments. For this reason, we would propose that where a child is removed from the Register, the adoption agency would provide the Register with details of the reasons for this.

28. We also propose that information about a child should be archived on the Register as soon as possible, after an adoption agency notifies the registration organisation that it has decided to place that child for adoption with a particular prospective adopter. Likewise, information about a prospective adopter should be archived on the Register as soon as possible following notification from the adoption agency that it has placed a child for adoption with that prospective adopter.

Q6. Do you agree that the means of submitting information to the Register should be dealt with in the Data Sharing Agreement, rather than the Regulations?

Q7. Do you agree that the timeframe for referring information to the Register should be 3 months from the point of the agency decision maker a) deciding adoption is in the best of interests of the child, and b) approving a prospective adopter?

Q8. Do you agree that when an adoption agency becomes aware of any changes to the information it has submitted to the Register, it must notify the Register of these as soon as possible?

Q9. Do you agree that when an adoption agency has submitted information on a child to the Register, they must notify the Register as soon as possible if the agency decides that adoption is no longer in the child's best interests and the reasons for this?

Q10. Do you agree that when an adoption agency has submitted information on a prospective adopter to the Register, they must notify the Register as soon as possible should the prospective adopter no longer be available for matching?

Retention of Information

29. New section 13A(2)(b) of the 2007 Act enables Scottish Ministers to specify in regulations how information is to be retained within the Register.

30. As is the case for the current, non-statutory Register, we propose that the majority of information governance requirements for the Register should more appropriately be included in the Data Sharing Agreement.

31. The existing Data Sharing Agreement states that once notified by the referring agency that information is no longer required for the purpose of linking, all information will be archived on the Register for 12 months. After that 12 month period, all personal, identifiable information will be completely deleted and the remaining information will be archived.

32. We are conscious however that from a data protection point of view, information should only be held for as long as it is necessary for example following notification by an adoption agency of any change in circumstances and to assist in identifying a potential match for the child or adopter.

33. We would propose that information contained within the Register is at all times kept in secure conditions. This is currently detailed within the Data Sharing Agreement.

Q11. Do you think that personal, identifiable information about a child and a prospective adopter should be archived on the Register for a period of 12 months as is the current practice and following notification by the referring agency that the information is no longer required for the purposes of linking?

Q12. In future we would suggest that non-identifiable information about prospective adopters should continue to be retained as it is currently, but is stored separately from the Register. Do you agree?

Q13. Do you agree that the detailed requirements for the way in which the Register keeps information secure, should be outlined in the Data Sharing Agreement?

Regulation 6 - Provision of information

34. New section 13C(2)(c) of the 2007 Act empowers Scottish Ministers to provide through Regulations the circumstances in which adoption agencies should not disclose information to the Register. We would propose that information would not be provided to the Register where a prospective adopter has not provided consent to inclusion in the Register.

35. We would also propose that information would not be provided to the Register should a child not provide consent to his or her information being included in the Register taking into account their age, maturity and general understanding of what it means to give consent. We would suggest that a child over 12 would be presumed as capable of giving consent and the capacity of a child under 12 would be decided on a case by case basis.

36. For the purposes of the current non-statutory Register, consent of the child's birth parents is addressed in the current Data Sharing Agreement as follows:

"When adoption is planned for a child, parental permission may be given to share the child's information [with the Register]. However, in most cases, parental permission will not be given, or is not able to be sought. In those situations, the child's local authority may go ahead without it, although it is

good practice to seek permission and always to keep parents and children informed about developments.”

37. We would like the statutory Register to enable adoption agencies to continue to deal with birth parents’ consent on this basis.

38. It is important to recognise that the placing of information on the Register is by no means the point at which any substantive decisions about a child’s future will be taken. The local authority will already have taken the decision – via their Adoption Panel and Agency Decision Maker – that adoption is in the best interests of the child, following an extensive period of assessment and evaluation, during which the birth parents will have had ample opportunity to provide any substantive comments for consideration. We recognise, however, that in many cases, birth parents may oppose the decision to place their child for adoption, and so may be unwilling to assist with any part of the process of finding their child an adoptive placement.

39. One of the primary aims of the Adoption Register is to reduce drift and delay, so that permanent, stable, nurturing homes can be found as quickly as possible, for looked after children who have been identified as suitable for adoption. Making it necessary to obtain consent from a child’s parents before referring that child’s information to the Register could undermine that aim fundamentally.

40. Further information regarding our rationale for requiring adoption agencies to refer a child’s information to the Register when the birth parents have not consented is provided in our Privacy Impact Assessment at section 5.5 and annex B.

Q14. Do you agree that the 2 circumstances identified above should prevent adoption agencies from disclosing information to the Register?

Q15. Do you agree that adoption agencies should be required to refer a child to the Register when the birth parents have not consented to that child’s information being shared?

Q16 Do you think there are any other circumstances in which adoption agencies should not disclose information to the Register?

Disclosure of information

41. New section 13D(1) provides that it is an offence to disclose information derived from the Register except as provided for in regulations. We would propose to specify that information derived from the Register may be disclosed to an adoption agency on the basis that it is used for the purpose of helping it:

- To find an adoptive parent for a child for who the agency is acting and,
- To find a child who it would be suitable to place for adoption with prospective adoptive parents for whom the agency is acting.

42. We also propose that information contained in the Register may be disclosed in the following circumstances:

- To an English, Welsh or Northern Irish adoption agency for the purpose of finding a prospective adopter for a child;
- To an English, Welsh or Northern Irish adoption agency for the purpose of finding a child who is suitable for adoption by a prospective adopter;
- To allow information to be entered in an adoption register in England, Wales or Northern Ireland;
- To a social worker or a safeguarder appointed under the Children’s Hearings (Scotland) Act 2011 with the condition that the information is in a non-identifiable form;
- To a person compiling an annual report on the Register and on the condition that the information is in a non-identifiable form;
- To a social worker on the condition that the information is non-identifiable form and would be used for training purposes only;
- For the purpose of using information from the Register to feature children in the publication Scottish Children Waiting;
- To an inquiry following a request for information under The Inquiries Act 2005.

43. These circumstances are based on the current Data Sharing Agreement for the non-statutory Register.

Q17. Do you agree that information from the Register should be disclosed to the people listed and for the purposes set out above?

Q18 Do you think there are any other circumstances in which it would be appropriate for information from the Register to be disclosed to a specified person/group of people?

Fees

44. Section 13E(c) of the 2007 Act (as amended by the 2014 Act), contains a regulation-making power to prescribe fees to be paid by adoption agencies in relation to the Register.

45. At the time the 2014 Act was being debated in the Parliament, there was no expectation that this power would be used. The Bill’s Financial Memorandum states:

“The provisions allow for Scottish Ministers to charge fees for transactions that occur in relation to the Adoption Register. The intention at present is that these charges are not applied, and for that reason there will be no additional cost to local authorities, other bodies, individuals and businesses.”

46. That position has not changed and we still have no intention at this time of charging fees for use of the Register.

47. We would, however, like to use this consultation as an opportunity to explore the possibility of setting a standard inter-agency fee, for situations in which adopters recruited and approved by one agency are matched with a child in the care of another. It should be noted that any proposed inter-agency fee would be payable between adoption agencies and would not be regulated by the Adoption Register.

48. The payment of inter-agency fees currently varies considerably throughout Scotland. We recognise that this can create a disincentive amongst placing local authorities to pursue adoptions with some agencies, due to the additional costs involved, which, in turn, can cause drift and delay in the permanence process, as a child waits for a suitable adopter from within his or her own authority area.

49. Requiring all adoption agencies to refer their approved prospective adopters to the Adoption Register, will help to overcome this potential barrier – enabling us to match children with families on a national basis, where it has not been possible to identify a suitable placement through more localised arrangements.

50. The introduction of a standard inter-agency fee, however, may assist further in establishing a level playing field across all agencies. By covering the costs of recruiting prospective adopters, a standard inter-agency fee would also ensure that adoption agencies were not losing out on their investment in recruiting adopters who were ultimately matched with children from outwith the local area. In so doing, it should ensure that the best interests of the child were at the forefront of any match being pursued.

51. Our preference would be to use guidance to recommend a standard fee for all inter-agency matches, no matter how those matches were generated.

52. This approach would of course, require further consideration as to what an appropriate inter-agency fee would be.

53. The matter of inter-agency fees has been considered by other parts of the UK. Until recently, the inter-agency fees charged by local authorities in England were based on the local government pay scales for England and Wales. Research conducted by [Julie Selwyn](#) for the Department for Education in 2009, however, highlighted that this fee did not fully reflect the costs to local authorities of recruiting and assessing prospective adopters. Since April 2013, the Department for Education (DfE) has worked with the Consortium of Voluntary Adoption Agencies, the Local Government Association, the Association of Directors of Children's Services and the Society of Local Authorities Chief Executives in England, to encourage local authorities to charge the same inter-agency fee for placements as the voluntary adoption agencies – a standard fee of £27,000 for the placement of one child, increasing to £80,000 for the placement of a sibling group of 5 children. Further detail about inter-agency fees arrangements in the UK can be found on the [BAAF website](#).

54. While clearly, the context for the adoption process in Scotland is considerably different to that in England, it seems likely that the costs of recruiting and assessing prospective adopters would be broadly similar either side of the Border.

55. One possibility, therefore, would be for a standard inter-agency fee structure be established in Scotland, which is the same as that charged in England. This would have the added benefit of ensuring that a difference in cost between placing a child in Scotland and placing a child in England played no part in the thinking behind any cross border adoptions.

Q19. Do you agree with the suggestion in principle, that a standard inter-agency fee should be paid by the child's adoption agency to the adopter's adoption agency?

Q20. Do you think that the Scottish Government should endorse the standard inter-agency fee structure used in England or do you think that a Scottish inter-agency fee structure should be established through research and further consultation?

Q21. Do you agree that the adoption of a standard inter-agency fee structure in Scotland should be endorsed by Scottish Ministers in guidance?

Information to be included in the Register

Information relating to a child who ought to be placed for adoption

1. The full name of the child (“C”) and the name by which the C is known if different.
2. The name and address of the adoption agency providing the information about C.
3. The name and telephone number of C’s social worker.
4. C’s date of birth.
5. C’s gender.
6. C’s nationality.
7. C’s racial origin.
8. C’s religious persuasion if any (and whether C practises their religion).
9. The local authority area in which C lives.
10. C’s legal status.
11. Whether the adoption agency intends to place C for adoption with C’s siblings and if so the full name, gender and date of birth of each sibling to be placed.
12. C’s first language and details of any other languages spoken by C and details of C’s parents’ first languages and details of any other languages spoken by them.
13. Details of any geographical considerations in relation to C’s placement.
14. Details of any planned contact between C and any other person.
15. C’s state of health including C’s physical, emotional and mental health and any anticipated future problems and details of any medical treatment currently being undergone by C.
16. C’ health history including, so far as practicable, C’s family health history.
17. C’s past experience of neglect, physical abuse or sexual abuse.
18. Details of any co-ordinated support plan or additional support needs under the Education (Additional Support for Learning)(Scotland) Act 2004 and 2009.
19. Details of any qualities that the adoption agency is looking for in a family to meet the needs of C.
20. Details of any adoption support needs that C has been assessed as having and any adoption support services already being provided by the local authority or that the local authority has agreed to provide.
21. A photograph or film of C.
22. Any wishes expressed by C’s parents in respect of C’s religious upbringing.

Information relating to persons suitable to be adoptive parents

1. The full name of the prospective adopter ("P") and the name by which P is known if different.
2. P's gender.
3. P's date of birth.
4. P's nationality.
5. P's address including the local authority area.
6. P's racial origin.
7. P's religious persuasion if any and whether P practises their religion.
8. P's first language and details of any additional languages spoken.
9. The name and address of the adoption agency providing the information about P.
10. The name and telephone number of P's social worker.
11. P's current occupation and hours of work.
12. P's proposed employment arrangements for after the placement.
13. Details of other members of P's household (including any children of P whether or not resident in the household).
14. Details of any adults not living in P's household who have responsibility for any of P's children on a regular basis.
15. Details of any pets that P has.
16. Details of any recommendation of the adoption panel as to the children that P is suitable to adopt including the number and maximum number where applicable, the gender and age.
17. P's views about contact with C's birth family.
18. P's views about the health and past experience of children that might be placed with P.

Privacy Impact Assessment (PIA) – Scotland’s Adoption Register

1. Introduction

The purpose of this document is to report on and assess against any potential Privacy Impacts as a result of the implementation/use of Scotland’s Adoption Register

2. Document metadata

2.1 Name of Project – Scotland’s Adoption Register

2.2 Date of report – 25 February 2015

2.3 Author of report – Pat McAuley

2.4 Information Asset Owner (IAO) of relevant business unit – Robert Marshall, Looked After Children Policy

2.5 Date for review of Privacy Impact Assessment (PIA) – 31/12/15

3. Description of the project

3.1 Scotland’s Adoption Register was established in 2011, with a remit to facilitate family finding across Scotland and thereby increase the numbers of placements found for children who have been identified as suitable for adoption. The Register is a database which records and stores information that is a duplication of information already held by adoption agencies. The Register uses that information to identify potential links between children with a plan for adoption and prospective adopters. At 20th February 2015, the Register had matched 156 children with a new family, since its inception, and there were 225 children and 96 adoptive families on the Register, waiting to be matched.

The Scottish Government has grant funded the British Association for Adoption and Fostering (BAAF) to run the Adoption Register since it was established in 2011.

BAAF agree an annual work-plan with the Government as part of their funding to operate the Register. This details expected outcomes and includes a requirement for them to provide 6 monthly reports outlining progress and detailing any risks or issues which are followed up as appropriate. A quarterly Excel spreadsheet is also sent to the Government and includes details such as how many matches have been made and how many children are on the Register. Again, no personal information is provided.

At the end of each financial year the Register produces an annual report on the operation and achievements of the Register in the previous 12 months. The report is made available to the general public and only contains unidentifiable statistical information with no personal information provided.

A Data Sharing Agreement is in place between BAAF and each of the adoption agencies who currently use the Register. This was developed in conjunction with ISIS and can be provided separately if required.

The Children and Young People (Scotland) Act 2014 has now placed Scotland's Adoption Register on a statutory footing. This means every adoption agency in Scotland must use the Register, and must refer both children and approved adopters within a timescale to be specified in Regulations. Regulations giving effect to the Adoption Register powers in the 2014 Act are expected to commence in April 2016. We do not anticipate current processes for running the Register to change once the Regulations are in force, though it is feasible that some aspects of the Register (for example, the IT system in use), may change.

3.2 Describe the personal data to be processed.

This will be subject to consultation in spring 2015, but at present we anticipate:

Children's Personal Data

- Child's name
- Name and address of the local authority who has responsibility for the child
- Child's social worker name and telephone number
- Date of Birth (D.O.B.)
- Gender
- Nationality
- Racial origin
- Religion and if applicable whether practicing or not
- The local authority area in which the child lives
- Child's legal status
- Whether or not the child is to be placed with a sibling, and if so, name, gender and date of birth of each relevant sibling
- First and additional (if appropriate) languages spoken
- Geographical considerations in relation to the placing of the child
- Details of any planned contact between the child and any other person
- Child's state of health, including any current treatment and/or anticipated future problems
- Child's health history (including child's family health history, where appropriate)
- Child's relevant history of neglect or sexual or physical abuse
- The needs of the child - including whether the child has a coordinated support plan and/or additional support needs under the Educational (Additional Support for Learning) (Scotland) Acts 2004 and 2009.
- Details of any qualities that the adoption agency is looking for in a family to meet the needs of the child

- Details of any adoption support needs, including any support services being provided or to be provided.
- Photos/films
- Any wishes expressed by the child's parents in respect of religious upbringing

Adopters Personal Data

- Name (full name and name by which known)
- Gender
- Date of Birth (D.O.B)
- Nationality
- Address including the local authority area
- Racial Origin
- Religion and whether practicing or not
- First and additional (if appropriate) languages spoken
- The name and address of the adoption agency providing the information
- The name and telephone number of social worker
- Current occupation and hours of work
- Proposed employment arrangements for after the placement
- Details of other members in the household (including any children of the prospective adopter and whether or not they are resident in the household)
- Details of any adults not living in household who have responsibility for any of the prospective adopter's children on a regular basis
- Details of any pets
- Details of any recommendation of the adoption panel as to the children that the prospective adopter is suitable to adopt including the number and maximum number where applicable, the gender and age
- Views about contact with the child's birth family
- Views about the health and past experience of children that might be placed with the prospective adopter.

3.3 Describe how this data will be processed:

A secure database is used to collect and store data on children who have a plan for adoption and on approved adopters in Scotland. The current system uses software to generate potential links between the children and adopters on the database. These potential links are then sent to the agencies working with the child and the adoptive family via a secure portal. The portal is a means of communicating between the Register and the adoption agencies. All referral information is communicated to the Register electronically via the portal (this includes both the initial referral and any updating information). Two portal accounts are set up per agency. The operational contact holds one of these accounts and agencies decide upon the other account holder based on their own internal processes.

Only Registration organisation staff members employed to work on the National Adoption Register will have direct access to the Register.

Information is stored in the secure database. Once notified that the information is no longer required for the purpose of linking by the referring agency, all information will be archived on the Register for 12 months.

The circumstances which will determine the timing for when information is deleted are as follows:

- The Register is notified the child has been placed for adoption
- The Register is notified the child is withdrawn
- The Register is notified the family has had a child placed with them for adoption
- The Register is notified the family have withdrawn

The information is manually deleted from the system by a registration staff member.

The data will be shared between the Registration Organisation and the adoption agencies therefore there will be dual ownership. Once information is sent to the Registration Organisation, they will manage this via the Register.

Registration Organisation staff members check information submitted to them via the adoption agencies. The Register will not hold information that is not held elsewhere by other agencies.

3.4 If this data is to be shared with internal or external partners, explain the legal basis for the sharing.

Section 1 of the Adoption and Children (Scotland) Act 2007 requires local authorities to offer an adoption service that meets the needs, amongst others, of children in their area that may be adopted and persons who may adopt. This responsibility extends to ensuring that assessments take place (whether by the local authority or via another agency) when they are approached by persons in their authority wishing to be assessed as potential adopters. Local authorities must also be sure that all resources available for the permanence care of children are investigated to find an appropriate placement.

Regulations made under section 38 of the Adoption and Children (Scotland) Act 2007 provide for the disclosure of information for the purposes of the agencies' function, which includes the placement of children (Regulation 5) and requires local authorities to transfer copies of the case records to another adoption agency when it considers this to be in the interests of an adopted child or prospective adoptive parent (Regulation 8). Finally, the regulations allow Scottish Ministers to authorise a person to obtain this information for the purpose of research, if required (Regulation 5 (b)).

The Children and Young People (Scotland) Act 2014 received Royal Assent on 27 March 2014. Part 14 of the Act, section 75 amends section 13 of the Adoption and Children (Scotland) Act 2007, putting Scotland's Adoption Register on a statutory footing.

In summary, the Act places a duty on all adoption agencies in Scotland to provide the Scottish Ministers (who will have legal responsibility for establishing and maintaining the register) with such information as is prescribed by the Scottish Ministers in regulations in relation to children who ought to be placed for adoption and persons approved by the agency as suitable to adopt.

Following consultation with stakeholders in spring 2015, Regulations will describe:

- The information relating to adoption/types of information relating to adoption to be included in the Register (section 13A(2)(a));
- How information is to be retained in the Register (s13A(2)(b)),
- Identify information to be supplied to the Register (s13C(1))
- Identify information to be provided to the registration organisation, rather than Scottish Ministers (s13C(2)(a))
- How and by when information is to be provided (s13C(2)(b))
- Prescribe circumstances in which information is not be provided to the Register (s13C(2)(c)) (Please note that this relates to the issue of consent – this is covered in more detail within section 5.5 of this document)
- Authorise disclosure of information from the Register by Ministers or a registration organisation (s13D(2)(a))
- Specify steps to be taken by an adoption agency in respect of information received from the Register (section 13D(3)(b));
- Make further provision related to the disclosure of information under section 13D (s13D(3)(c))
- Make provision for fees and other payments in respect of the Register (s13E).

4. Stakeholder analysis and consultation

4.1 List all the groups involved in the project, and state their interest.

As stated to the answer to 3.1, regulations will be developed to accompany the Register. Stakeholder analysis and formal consultation will be carried out as a result which will also allow feedback to inform the development of the PIA. The following groups will be involved and their interest should be self-explanatory:

- Local authorities (in their capacity as adoption agencies)
- Voluntary Adoption Agencies
- BAAF who currently run the Register
- CELCIS (Centre for Excellence for Looked After Children in Scotland)
- Social Work Scotland
- COSLA

We would also expect to send a copy of the formal consultation paper to the Information Commissioner's Office.

4.2 Detail the method used to consult with these groups when making the PIA.

Primarily informal discussions although general meetings may also be arranged.

4.3 Discuss the means used to communicate the outcomes of the PIA with the stakeholder groups.

Face to face and via e-mail as appropriate.

5. Questions to identify privacy issues

5.1 Involvement of multiple organisations

The Registration organisation, the 32 local authorities (in their capacity as adoption agencies) and the 5 Voluntary Adoption Agencies in Scotland which assess and approve adopters.

5.2 Anonymity and pseudonymity

The Register software undertakes a data linkage process, whereby children on the Register are matched with prospective adopters, on the basis of specific matching criteria. The prospective adopter(s)' information is then shared with the adoption agency responsible for the relevant child, and vice versa, and agencies decide whether to pursue the link. Information is shared electronically via a secure portal, as outlined at paragraph 3.3.

Personal data is anonymised for use in statistical returns.

5.3 Technology

There are no new or significant changes envisaged at this time.

5.4 Identification methods

Please see the answer in 5.2. We anticipate that the statutory Register will be run on the same basis as the existing, non-statutory Register, and do not therefore expect any changes to existing identification methods.

5.5 Personal data

The current Data Sharing Agreement, states:

“When adoption is planned for a child, parental permission may be given to share the child’s information [with the Register]. However, in most cases, parental permission will not be given, or is not able to be sought. In those situations, the child’s local authority may go ahead without it, although it is good practice to seek permission and always to keep parents and children informed about developments.”

We do not intend to change this approach, but recognise that not requiring parental consent once the Register is operating on a statutory basis may cause concern for some individuals, in relation to Data Protection Act (DPA) or European Convention of

Human Rights (ECHR) issues. The background to and rationale for our approach are therefore outlined below.

When the Children and Young People (Scotland) Bill was first laid before Parliament, it contained a provision requiring the birth parent's consent to share a child's information with the Adoption Register. In light of concerns raised by key stakeholders, this provision was removed at Stage 2, and an undertaking was made to deal with matters relating to consent through Regulations. The Bill was amended to include a Regulatory making power to describe circumstances in which adoption agencies should *not* refer information to the Adoption Register. Pending consultation, we expect Regulations to identify such circumstances as refusal to consent to their information being shared on the Register by prospective adoptive parents and/or the child identified as suitable for adoption (where the child has a general understanding of what it means to consent; without prejudice to that generality a person twelve years of age or more shall be presumed to be of sufficient age and maturity to have such understanding – see The Age of Legal Capacity (Scotland) Act 1991, section 2(4A)). We do not intend to include birth parents' refusal to consent to information sharing in the list of circumstances in which information should not be referred to the Register.

It is important to recognise that the placing of information on the Adoption Register is by no means the point at which any substantive decisions about a child's future will be taken. For example, the local authority (as an adoption agency) will already have taken the decision that adoption is in the best interests of the child before making a referral regarding that child to the Register (using the powers under The Looked After Children (Scotland) Regulations 2009). Rather, the referral to the Register is a process for ensuring that those children for whom the decision to be placed for adoption has already been made, have the best possible chance of finding a suitable adoptive placement.

As appropriate conditions for processing information under the DPA are required at the outset of the local authority process of permanence planning for looked after children, it would be unreasonable to rely solely on parental consent. This is because reliance on consent would have a converse consequence in that the processing would have to stop if the parent did not consent or if consent was subsequently withdrawn.

As outlined in 3.4, The Children and Young People (Scotland) Act 2014 received Royal Assent on 27 March 2014. Part 14 of the Act, section 75 amends section 13 of the Adoption and Children (Scotland) Act 2007, putting Scotland's Adoption Register on a statutory footing. This amendment includes, amongst other provisions, section 13C which states:

“Section 13C - Supply of information for the Register

(1) An adoption agency must provide the Scottish Ministers with such information as may be prescribed in regulations made under section 13A(2) about —

(a) children who it considers ought to be placed for adoption or persons who were included in the Register as such children,

(b) persons who it considers as suitable to have a child placed with them for adoption or persons who were included in the Register as such persons.”

Section 13A(2) states that “such information” may include information relating to children who adoption agencies consider ought to be placed for adoption; prospective adopters; matters relating to such children or prospective adopters which arise after information about them is included in the Register; children outwith Scotland who may be suitable for adoption; and prospective adopters outwith Scotland.

It is therefore clear that adoption agencies have a statutory duty to refer details of children suitable for adoption and prospective adopters to the Register. This is perhaps more pertinent for local authorities who have the duty to refer such children’s details to the Register even if the children’s parents do not wish such information about their child to be referred to the Register.

In addition to the general principle that data processing must be fair and lawful, the DPA requires that at least one of the Schedule 2 conditions is met in the case of personal data, and in the case of sensitive personal data, one of the Schedule 3 conditions is also met. All conditions in Schedules 2 and 3 are considered to have equal weighting.

As the local authority has a statutory duty to provide the Register with relevant information about children who are suitable for adoption, it will rely on the conditions listed in table 1 below which have been confirmed in conjunction with the Information Commissioner’s Office.

Table 1

Schedule 2	Schedule 3
5(b) - the processing is necessary for the exercise of any functions conferred on any person by or under an enactment,	6(a) - the processing is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings)
5(d) - the processing is necessary for the exercise of any other functions of a public nature exercised in the public interest by any person.	7(1)(b) - the processing is necessary for the exercise of any functions conferred on any person by or under an enactment

Should a situation arise whereby the birth parents’ hereditary medical condition requires to be shared with the Register, Conditions 8(1) and 8(2) of Schedule 3 would be pertinent (“the processing is necessary for medical purposes and is undertaken by – (a) a health professional or (b) a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if that person were a health professional).

It should further be noted that there is already a legislative provision allowing sharing of birth parents' medical information without permission. Regulation 11 of the Adoption (Disclosure of Information and Medical Information about Natural Parents) (Scotland) Regulations 2009 provides that where an adoption agency (including local authority adoption services) has been unable to obtain information about transmissible genetic or other significant disease in the family history of the child's natural parents, a medical practitioner holding such information must disclose it to the adoption agency on request.

With respect to ECHR, we recognise that the disclosure of personal data could constitute an interference with the data subject's article 8 right to respect for his or her private and family life. This is not an absolute right, however, and article 8 rights can be overridden if to do so is in accordance with the law, in pursuance of a legitimate aim and necessary in a democratic society. The Adoption Register serves as a tool to find adoptive families as quickly as possible for children for whom adoption has already been identified as the best route to permanence. The requiring of parental consent would at the very least delay that family finding process (with the resulting detrimental impact on the child's development and future chances of successful adoption).

We believe that the sharing of a child's information with the Register, without the birth parents' consent is justifiable, as a means of maximising a child's chances of adoption, in accordance with the Adoption and Children (Scotland) Act 2007 and the Children and Young People (Scotland) Act 2014.

It should be noted that there are no new or significant changes envisaged at this time. The Register is already in operation and has been since 2011. Data Sharing Agreements are in place with those adoption agencies which already use the Register and as stated in 3.1, regulations will be developed in consultation with stakeholders over the next year, which we expect to come into force in April 2016.

5.6 Changes to data handling procedures

Please see the answer to 5.5.

5.7 Statutory exemptions/protection

Under S38 of the Freedom of Information (Scotland) Act 2002, the personal details held by the Register about individuals are exempt from FOI requests.

In respect of Data Protection Subject Access Requests, The Data Protection (Miscellaneous Subject Access Exemptions) Order 2000, SI 2000/419 (as amended) provides the legal framework which exempts individuals from gaining access to certain information held about them.

5.8 Justification

There will be a public consultation. The Register has been in operation since 2011. At the moment an adoption agency must sign a Data Sharing Agreement in order to use the Register. There are no new data handling procedures.

6. Risks identified and appropriate solutions or mitigation actions proposed

Risk	Ref	Solution or mitigation	Result
<p>The majority of data collected is sensitive personal data and therefore security measures need to be high</p>	<p>1</p>	<p>At the moment, the Data Sharing Agreement is a working document which was reviewed on 4 June 2014 by BAAF. At that stage there were no updates required. Since then, Information Asset Owners (adoption agencies) have been contacted and informed of capacity to include photographs on the record cards for children that are generated from the database. Agencies can decide on an individual basis whether to include a photo. We would expect to include photos as required information subject to consultation on the Regulations.</p> <p>Following a recommendation from the Scottish Government IT security team (Mark McKenny), penetration testing of the interface between BAAF and the linking service remote access was undertaken in July 2013. Recommended re-medial action has been undertaken. We would expect regular penetration testing to take place with the contracted registration organisation.</p>	<p>reduced</p>
<p>Risk of legal challenge where birth parents do not consent to their child's information being shared with the Adoption Register</p>	<p>2</p>	<p>Ensuring that the whole system around any data processing is fair and lawful.</p> <p>We have provided a narrative at section 5.5 which makes clear that the referral of information to the</p>	<p>reduced</p>

		Register is not a decision making point as regards whether children should be placed for adoption (and thereby removed permanently from their birth parents' care), but rather a process for ensuring that for those children for whom the decision to place for adoption has been taken, have the best possible chance of finding a suitable placement. Decisions relating to whether it is in a child's best interests to be adopted will be taken in advance of sharing information with the Register, and birth parents will be given every opportunity to participate in that decision making process.	
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7. Incorporating Privacy Risks into planning

Risk	Ref	How risk will be incorporated into planning	Owner
Data collected is sensitive personal data and security measures must be high	1	Penetration testing of the current infrastructure will continue to be carried out by the registration organisation in line with guidance from the Scottish Government IT security team.	Project Manager for the Register (registration organisation)
Parental consent before a child is placed on the Register	2	We have liaised with the Information Commissioner's Office regarding our proposals, who have confirmed that they have no concern with the fairness and lawfulness of our data processing system. We will also conduct a formal consultation exercise in spring 2015, which will outline our position as regards parental consent.	Pat McAuley

8. Authorisation and publication

I confirm that the impact of undertaking the project has been sufficiently assessed against the needs of the privacy duty:

Name and job title of a Deputy Director or equivalent	Date each version authorised
Robert Marshall	4 August 2014
	19 December 2014



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