



Department
for Education

Evidence Pack

Adoption Reform: Children and Families Bill 2013

This evidence pack pulls together the information that has informed the Department's assessment of the impact of the provisions in Part 1 of the Children and Families Bill, including in relation to equalities. It is provided in support of Parliamentary scrutiny because formal regulatory impact assessments were not required in these areas of the Bill. Work continues to inform developing plans for implementation of the Bill provisions and the Department would be pleased to receive any additional relevant evidence. Please contact:

TheBillTeam.MAILBOX@education.gsi.gov.uk to make contact with the policy teams concerned.

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Contents

Introduction	3
Section 1: Consideration of the equality issues	4
The Adoption Reforms	4
The Evidence	6
Characteristics	6
Delay	10
Consideration	11
Section 2: Consideration of the economic evidence	13
Clause 1: The placement of looked after children with prospective adopters	13
Clause 2: Repeal of the requirement to give due consideration to ethnicity	16
Clause 3: Recruitment, assessment and approval of prospective adopters	20
Clause 4: Adoption support services: personal budgets	24
Clause 5: Adoption Support services: duty to provide information	27
Clause 6: The Adoption and Children Act Register	30
Clause 7: Contact: children in care of local authorities	32
Clause 8: Contact: post adoption	35

Introduction

This document presents a summary of the evidence considered in the development of the proposed adoption measures in the Children and Families Bill and an assessment of their equality and economic impacts.

The clauses on adoption in the Bill put in place elements of the Government's adoption reform programme, most of which does not require changes to primary legislation. The Government is pursuing improvements in timeliness and increases in adopter recruitment through a wide range of measures, for example the adoption timeliness scorecards, first published in May 2012, the new two-stage adopter approval process due to come into force in June 2013, a significant funding programme for voluntary adoption agencies, and wider revisions to guidance and regulations which will follow in the wake of the Bill. The rationale and evidence base for the reforms as a whole are set out more fully in a series of publications and announcements from the *Action Plan on Adoption: Tackling Delay* (March 2012) to *Further Action on Adoption: Finding More Loving Homes* (January 2013) and including proposals for placing children with their adopters earlier (July 2012) and supporting families who adopt (December 2012). This evidence pack should be read in the fuller context of these publications.

Section 1 presents the current equality issues shown by the data, principally the significant length of time taken between a child entering care and being placed for adoption. If a child enters care when they are already past their infancy, for example, at the age of two and a half, on average they will be nearly five by the time they are placed for adoption. Children's chances of adoption reduce by almost 20% for every year of delay. The evidence also suggests that the number of children for whom adoption is in their best interests wait unacceptable lengths of time because of the individual circumstances of some children, for example, complex needs arising from disability, but also because of a general shortage of prospective adopters coming forward.

The evidence also shows that Black children take a year longer to be adopted than White children or children from other ethnic backgrounds. Section 1 includes a consideration of how each of the proposed legislative changes will address the issue of delay.

Section 2 presents further information on the problems each of the legislative proposals seeks to address. It includes the policy consideration of the impact the measures may have upon both the people affected and the monetary burdens where this information is available.

There is substantial evidence which shows that delays can damage children's development, contribute to further emotional harm, and possibly reduce their chances of finding a permanent family or increase the chance of adoption breakdown. As part of the wider adoption reform programme, the proposed adoption legislative changes will support the drive to address the inexcusable levels of drift and delay in adoption services and improve the system so that permanent loving families for more children can be found quickly and effectively.

Section 1: Consideration of the equality issues

The Adoption Reforms

The Action Plan (An Action Plan for Adoption: Tackling Delay), published in March 2012, and subsequent publications and announcements set out a programme of reform to increase the number of prospective adopters, reduce unnecessary delays in the system, improve the quality and timeliness of adoption services, and expand the support available to adopters and adopted children.

The key legislative changes include:

- **The placement of looked after children with prospective adopters** – would encourage local authorities to place children, for whom adoption is an option, with their potential permanent carers more swiftly by requiring a local authority looking after a child to give consideration to placing them in a ‘Fostering for Adoption’ placement where appropriate.
- **Repeal of the requirement to give due consideration to ethnicity** - would reduce delay by removing the express statutory requirement that adoption agencies must give ‘due consideration’ to a child’s ethnicity when placing them for adoption, so that children are not left waiting in care longer than necessary because professionals are seeking a perfect or partial ethnic match.
- **Recruitment, assessment and approval of prospective adopters** - would give the Secretary of State the power to require local authorities to make arrangements for the recruitment, assessment and approval of prospective adopters to be carried out on their behalf by one or more adoption agencies (local authorities or voluntary adoption agencies).
- **Adoption support services: personal budgets** – would improve the provision of information about adoption support services and related matters by placing a new duty on local authorities to inform prospective adopters and adoptive parents about their entitlements, and improve choice and control over the provision of adoption support by giving parents the option to choose a personal budget in place of support services the authority was proposing to provide.
- **Adoption support services: duty to provide information** – would give approved prospective adopters a more active role in identifying children for whom they might be suitable adoptive parents by amending the current restrictions around “public inspection or search” of the adoption register so that they can access the register directly, subject to appropriate safeguards.
- **The Adoption and Children Act Register** – would give approved prospective adopters a more active role in identify children for whom they might be suitable adoptive parents’ by amending the current restrictions around “public inspection or search” of the adoption register so that they can access the register directly, subject to appropriate safeguards.
- **Contact** – would reform the arrangements for contact between children in care and their birth parents or guardians and certain others, and between adopted children and their birth relatives and certain others, to reduce the disruption that inappropriate contact can cause to children.

The consideration of equality issues for each of the adoption changes described above has centred on differentiation of impact by ethnicity, disability and to a lesser extent, differences by gender and by age. This is because the research and information

available suggests that the widest 'equality' differentiations for birth family, prospective adopters or children waiting for adoption arise from ethnicity and disability.

- **Adoption leave and pay** – would increase statutory adoption pay to 90% of a person's average salary for the first 6 weeks (in line with statutory maternity pay), introduce a new right for adoptive parents to attend adoption appointments to get to know a child being matched for adoption, and provide statutory leave and pay for those parents expecting to adopt a child entering a "Fostering to Adopt" arrangement. The consideration of impact for these changes will be completed separately as part of the wider parental leave provisions.

The Evidence

Characteristics

Adopted children

The Statistical First Release *Children Looked After by Local Authorities in England (including adoption and care leavers) – year ending 31 March 2012*, published in September 2012 (SFR March 2012), show that there were 67,050 looked after children as of 31 March 2012. The majority of children looked after at 31 March 2012 (74%) are from a White British background. The ethnic breakdown for children looked after has varied little since 2008.

For children who were adopted between 1 April 2009 and 31 March 2012, 73% of White children were aged under 5 years. This proportion was higher for children of mixed ethnicity (79%) and Asian children (85%) but lower for Black children (69%). A different pattern was the case for children who were the subject of a Special Guardianship Order for which 53% of White children and the same percentage of Black children were under 5 years - a proportion which rose to 61% for children of mixed ethnicity but dropped to 42% for Asian children.

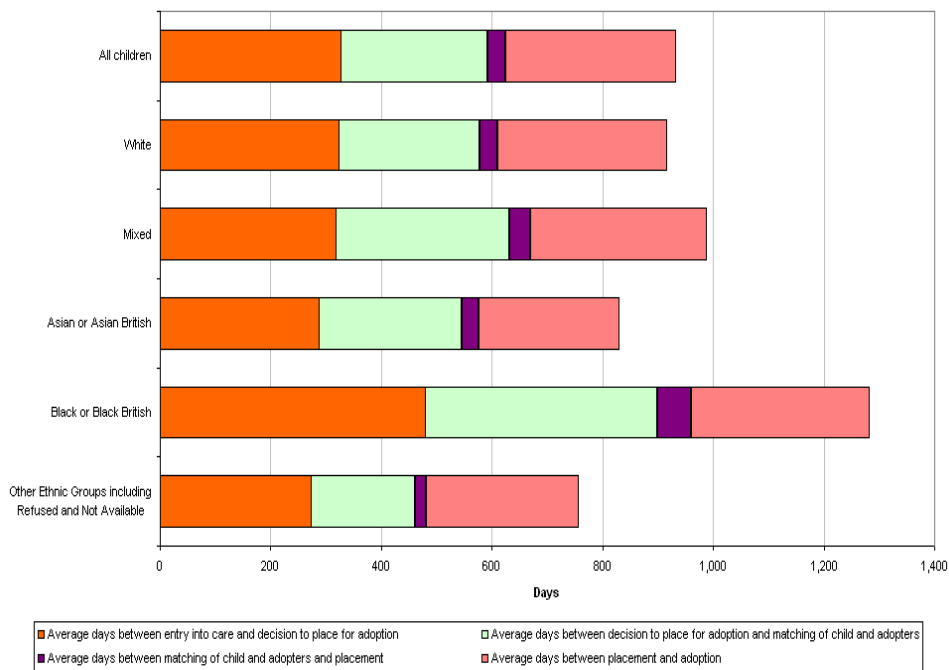
The annual data¹ shows that 15% of White children and 14% of children of mixed ethnicity ceased to be looked after because of adoption but the equivalent proportion was just 3% for Asian children and 4% for Black children. A similar pattern was seen for those subject to a Special Guardianship Order which was 9% of all children ceased to be looked after for White children and 10% for those of mixed ethnicity compared to 2% of Asian children and 6% of Black children. The pattern for residence orders was more even (5% for White, 5% for mixed, 3% for Asian and 4% for Black children).

For a breakdown of the timescales for children waiting to be adopted by ethnicity, analysis of the three years up to 31 March 2011 was published in the *Adoption and Special Guardianship Data Pack*, in July 2012². It shows that Black children took, on average, around a year longer to be adopted than children of other ethnicities. While this has not been updated for the most recently available data, investigation has shown that this pattern does not change greatly between years.

¹ The annual SSDA903 (2012) collated from local authorities:
<http://www.education.gov.uk/rsgateway/DB/SFR/s001084/index.shtml>

² Adoption and special guardianship data pack:
<http://www.education.gov.uk/childrenandyoungpeople/families/adoption/b0076713/datapack>

Average time between the various stages in the adoption process by ethnicity - 2008 to 2011



Evidence also shows that Black and Asian children who went onto to be adopted were younger when they started to be looked after than White children. The *Adoption and Special Guardianship Data Pack* showed that Asian children adopted between 1 April 2008 and 31 March 2011 started to be looked after aged 7 months on average, compared to an average age of 10 months for adopted Black children and 1 year and 4 months for adopted White children. Although these averages have not been updated for the most recent available data, they do not change substantially between years.

Ethnic group	Average age of entry to care for adopted children
All children	1 year 3 months
White	1 year 4 months
Mixed	10 months
Asian or Asian British	7 months
Black or Black British	10 months
Other ethnic groups including refused and not obtained	8 months

Age

The *Adoption and Special Guardianship Data Pack* also provides information on children's age and the time between entering care and placement for adoption. Over the most recent three years, 73% of the children adopted from care were under 5 years old, 26% were aged from 5 to 12 years and 1% over 12 years.

The Statistical First Release 2012 indicates that the number of looked after children who were under 1 year old at adoption has decreased over the last 5 years from 110 in 2008 to 70 in 2012. However, the small numbers reflect the length of time taken to complete the adoption process (currently on average 21 months). Following a downward trend in recent years, the figure has increased slightly in the latest year.

The majority of adopted children are aged between 1 and 4 years at adoption. Of all

looked after children adopted, 74% are in this age group with the average age at adoption being 3 years and 8 months old.

The length of the average final period of care for looked after children adopted is 2 years and 7 months. In younger children the process was generally shorter. For children aged less than 1 year (on first entering care) the average length of the adoption process was 2 years and 3 months. Although there are small numbers of older children adopted, the process does appear to be taking longer than in 2009, when the average time was 3 years and 6 months.

Gender

The Statistical First Release 2012 shows that in the year ending 31 March 2012, roughly the same proportions of males (12%) and females (13%) who ceased to be looked after were adopted. Girls (9% of all who ceased to be looked after) were slightly more likely than boys (7%) to be subject to a Special Guardianship Order.

The *Voluntary survey on adoption and adopters*, published 30 November 2012³ (*Voluntary survey*), shows that the average time between entering care and the adoption placement was very similar between males and females.

Disability:

Data from the 2010-11 Children in Need Census⁴ suggests that 14% of children in need (i.e. receiving a social care service) are disabled. The SFR 2012 data does not breakdown the data for disability or sibling groups. However, the *Voluntary survey* shows that disabled children represented 4% of all children placed for adoption. This is a fairly small number of children, but it is not possible to determine if this is due to underreporting or if adoptions of disabled children were disproportionately low. The adoption process for disabled children was found to be slightly longer than for all children, taking 4 months longer to be placed for adoption compared to all children.

Siblings:

The *Voluntary survey* also shows that over a third of children who were placed with their adoptive families in a 6 month period were considered for adoption as part of a sibling group and that the adoption process for sibling groups was 2 months longer than for all children.

Prospective adopters

Additional information on characteristics of adopters and children waiting for adoption is available from Ofsted's first adoption statistics published in November 2012. This is a set of data on adopters for both local authorities and voluntary adoption agencies for the period 1 April 2011 to 31 March 2012⁵. Ninety per cent of all adoption agencies (local

³ Voluntary survey on adoption and adopters collects child-level data and aggregate information on prospective adopters on a quarterly basis:
<http://www.education.gov.uk/childrenandyoungpeople/families/adoption/a00217712/voluntary-survey-on-adoption-and-adopters>

⁴ <http://www.education.gov.uk/researchandstatistics/datasets/a00199334/children-in-need-in-england-2010-11>

⁵ Ofsted: *Adoption quality assurance and data forms 2011-12* first statistical release. The Ofsted data has only been collected for one year was not a complete sample and is published as experimental statistics as they are still subject to testing in terms of their volatility. <http://www.ofsted.gov.uk/resources/adoption-quality-assurance-and-data-forms-2011-12-first-statistical-release>.

authorities and voluntary adoption agencies) submitted data. It includes data on over 4,250 approved prospective adopters, the length of time prospective adopters wait for a child, the outcome of 25,400 initial enquiries about becoming an adoptive parent made to adoption agencies in 2011-12, and the likelihood of sibling groups being placed together.

Ethnicity

The Ofsted data⁶ showed the following profile of adopters by ethnicity as approved by local authorities and by voluntary adoption agencies:

- The largest ethnic origin of all adopters approved by LAs was White at 92% (4,528), and respectively: 2% (120) Asian, 2% (104) Black and 2% (83) were mixed race.
- The largest ethnic origin of all adopters approved by voluntary adoption agencies was White at 86% (631), with Asian the next largest with 5% (38), then Black and mixed with 2% each (24 and 22 respectively).

Gender, marital status and sexuality of adopters

Single people and married couples have been eligible to adopt since 1927. No data was collated for adopters by sexuality until 2006.

The law changed in December 2005 to extend eligibility to include civil partners and unmarried couples (same sex and opposite sex) to adopt jointly. This change was backed by the overwhelming majority of organisations in the adoption field.

The Ofsted survey findings are broadly consistent with the Department for Education adopter profile in the SFR 2012. The Ofsted data shows that of the 4,263 approved adoptive families as at 31 March 2012 (and of the adopters who provided the relationship status information (3,039)) the approved adopters were as follows:

- 75% (2,282) married
- 10% (292) single
- 8% (243) opposite sex couples
- 3% (98) civil partnership
- 2% (70) same sex couples

The Statistical First Release 2012 shows that:

- the majority of children (80% of all children adopted in the year ending 31 March 2012) were adopted by married couples;
- 8% were adopted by a single adopter (of whom the vast majority were female, but the data does not provide a further breakdown by sexuality);
- 7% by different-sex couples; and

⁶ Ofsted: *Adoption quality assurance and data forms 2011-12* first statistical release. Suppression has been used on this data. Where a figure is less than five it has been suppressed and excluded from the percentages.

- the remaining 5% were adopted by a same sex couple, around two thirds of whom were in a civil partnership.

Placement times by gender and marital status of adopters is not available.

Birth parents

The Department for Education does not collect any information on the characteristics of the birth parents of adopted children.

Delay

An *Action Plan for Adoption* published in March 2012⁷ introduced the local authority (LA) performance scorecards and in November 2012, the Department for Education published an update to cover data covering the period 1 April 2009 to 31 March 2012⁸.

The adoption scorecards show, against three key indicators⁹, how swiftly children awaiting adoption are placed for adoption, in each local authority area. The first indicator measures the average time it takes for a child who goes on to be adopted from entering care to moving in with his or her adoptive family and the threshold is set at 21 months (639 days). The second indicator measures the average time it takes for a local authority to match a child to an adoptive family once the court has formally decided that adoption is the best option and the threshold is set at 7 months (213 days). The third indicator measures the proportion of children waiting less than 21 months from entering care and moving in with their adoptive family (including children not yet adopted).

The performance thresholds were introduced to start the assessment at a level that takes account of the current levels of performance across the system. However, they will be raised incrementally until they reflect the levels set out in statutory guidance, in time for the 2013-2016 data period.

The 2009-12 England averages for the scorecard timeliness thresholds show¹⁰:

- the average time for a child entering care to moving in with their adoptive family was 636 days (around 21 months) just short of the required threshold
- the average time between the local authority receiving a placement order for a child and matching a child with prospective adopters was 195 days (around 7 months). The local authority figures range from 20 days to 343 days (11 months)
- 56% of children waited less than 21 months from entering care and moving in with their adoptive family (note: this percentage includes children not yet adopted).

The *Voluntary survey* also shows that children from black minority ethnic (BME) groups

⁷ *An Action Plan for Adoption: Tackling Delay*.

<http://www.education.gov.uk/childrenandyoungpeople/families/adoption/a00205069/action-plan-for-adoption-tackling-delay>

⁸ 2012 Adoption Scorecards:

<http://www.education.gov.uk/childrenandyoungpeople/families/adoption/a00208817/adoption-scorecards>

⁹ These key indicators will be updated in late 2013 with data for 2012-13 when these become available.

¹⁰ Adoption Scorecards:

<http://www.education.gov.uk/childrenandyoungpeople/families/adoption/a00208817/adoption-scorecards>

took on average 1 year and 10 months to be placed for adoption. This is 2 months more than the national figure for all children. BME children represent approximately a quarter of the children in care, and therefore a disproportionately low percentage of children who are adopted. Unfortunately due to the small number of BME children within the survey of local authorities it is not possible to breakdown the timeliness for Black children only and make meaningful comparisons.

BME children represent 13% of all children who are placed with their adoptive family in the 6 month period and 17% of all children who have a decision within the 6 month period. The number of BME children who are placed is very similar across the two quarters.

The impact of timeliness of adoption by age, in brief:

- 44% (1500) of the children who were adopted in 2011-12 first became looked after when they were less than one month old
- 14% (480) of all children adopted in 2011-12 were under the age of one when they moved in with their adoptive parents
- Children who were less than one month old when they became looked after moved in with their adoptive families on average over 16 months after becoming looked after (the national average for all children is 22 months).

Consideration

The placement of looked after children with prospective adopters: the proposal to introduce a new duty to consider placing children, for whom the local authority is considering adoption, with foster carers who are also approved prospective adopters should benefit all children for whom the local authority considers it to be appropriate. Child development and attachment research draws strong evidence of the benefits arising from early bonding between parent and child. These benefits should be particularly strong for younger children, who are more vulnerable to the effects of delay and lack of a permanent carer. It will also benefit children traditionally hard to place e.g. those with disabilities, older children and ethnic children who take the longest to be adopted after entering care, and should see more children living with their permanent carers at a younger age, with the benefits described above.

Repeal of the requirement to give due consideration to ethnicity: a significant cause of delay for children is the search for a perfect or partial ethnic match for a child. The proposals to remove the prominence given to a child's ethnicity in matching decisions should reduce the time children have to wait for an adoptive placement. A more balanced consideration of the best available match for a child will be required to take a child's full welfare in to account, including the child's wishes and feelings.

The Select Committee on Adoption Legislation interim report¹¹ indicated that race, religion and culture should be taken into account when matching children in care with adoptive families. These changes do not remove the need to consider these characteristics as there will remain a duty to take into account the child's background and any of the child's characteristics which the court or adoption agency considers relevant. The changes will simply mean that fewer children are left waiting in care longer than necessary - because professionals want a perfect or partial ethnic match.

¹¹ Adoption Legislation - First Report, Adoption: Pre-Legislative Scrutiny
<http://www.publications.parliament.uk/pa/ld201213/ldselect/ldadopt/94/9402.htm>

Recruitment, assessment and approval of prospective adopters: There is a large and growing number of children waiting for adopters. The total was 4,600 at the last point it was measured in March 2012. The Government believes that this shortfall of adopters disproportionately affects harder to place children (for example, older children and those with disabilities) as younger children with less complex needs are available. Few prospective adopters will choose an older or more complex needs child when others are available. By addressing, in a sustainable way, the systemic problems which lead to this long-term shortage in adopters, our recruitment reforms should improve life chances for children with more complex needs.

Adoption support: The proposals to introduce a new duty for local authorities to inform prospective adopters of their entitlements around adoption support should improve the provision of information to prospective adopters and adoptive parents and introduce more consistency in this regard. This should lead to better responses to initial enquiries about adoption, and to more prospective adopters entering the system. The introduction of personal budgets will give adopters more choice and control over the provision of adoption support services, and a much greater say over which providers are best suited to them and their child. These changes should be particularly helpful to adoptive families willing to take on the additional resource/challenges of children who require additional support, for example children with disabilities, sibling groups or older children.

The Adoption and Children Act Register: The proposals to increase transparency and provide access to the Adoption Register to approved prospective adopters should address the major complaints from prospective adopters that decisions for 'matching' a child are not transparent and they are not involved in the decision making process. It is anticipated that, once prospective adopters are able to view and initiate possible matches directly, this should be of particular benefit for the harder to place children. Adoption activity days are events where prospective adopters have the opportunity to meet in person a range of children who need adoptive placements.

Contact: Arrangements for contact between children in care or children that will be, or have been, adopted and their birth families should always be determined with the best interests of the child as the key consideration. There is some concern that existing legislation on contact between children in care and their birth parents, guardians and certain others is being interpreted incorrectly, resulting in contact arrangements that are not necessarily consistent with the best interests of the children involved, or appropriate for their particular circumstances. Amendments to the legislation will make it clear that the local authority's duty to allow reasonable contact is subject to its wider duty to safeguard and promote the welfare of the child. It would also remove any possible confusion around the duty on local authorities to promote contact between looked after children and certain other people by disapplying it in relation to any person where the local authority is refusing contact either temporarily or following a court order

We are also creating new court orders to govern contact arrangements between an adopted child and their birth family, former guardians and certain others. This will, for the first time, allow a court to make pre-emptive and enforceable orders for 'no contact', enabling adoptive parents to prevent disruptive, unauthorised or unsolicited contact from the birth family. This might be appropriate, for example, where there has been a past history of disruptive or harmful contact.

Section 2: Consideration of the economic evidence

Clause 1: The placement of looked after children with prospective adopters

The rationale and impact of this policy proposal was first set out in the *Proposals for earlier placement of children with their potential adopters*, published July 2012.¹²

What are the problems that the measure addresses?

For looked after children who go on to be adopted, the average time between entering care and then moving in with their adoptive family is 22 months¹³. Analyses of the national data on adoption shows that 44% of children who were adopted in 2011-12 first became looked after when they were less than one month old. On average, these children moved in with their adoptive families around 16 months after becoming looked after.

This is problematic as research shows that children need to form attachments, or secure and stable relationships, with one or two main carers in order to develop physically, emotionally and intellectually¹⁴. Children who are insecurely attached have more difficulties regulating their emotions and showing empathy for others. They may also have difficulties forming attachments later in life¹⁵. The brain develops most rapidly during the first years of a child's life so children's experiences during that period, and particularly their attachment to their primary carers, shape the way in which the brain develops¹⁶. Stress associated with disrupted attachments during this period can harm children's physical, cognitive, emotional, and social growth¹⁷, so delay in the adoption system is particularly harmful to infants.

The current average timescales across all local authorities for the child's journey through the adoption process is presented below. This shows that the average time between the decision that a child should be placed for adoption and a child being placed for adoption is 11 months.

Average time between key stages	Years: months
Average time between entry into care and decision that child should be placed for adoption	0:11
Average time between decision that child should be placed for adoption and matching of child and adopters	0:10
Average time between date of matching and date placed for adoption	0:01

¹² <http://www.education.gov.uk/childrenandyoungpeople/families/adoption/a00211400/earlier-placement>

¹³ See Table E2 of National Statistics on Children Looked After
<http://www.education.gov.uk/researchandstatistics/statistics/allstatistics/a00213762/children-looked-after-las-england>.

¹⁴ Ward, H.; Brown, R. and Westlake, D. (2012) *Safeguarding Babies and Very Young Children from Abuse and Neglect*. Jessica Kingsley Publishers.

¹⁵ Child Welfare Information Gateway (2009) *Understanding the effects of maltreatment on brain development*.

www.childwelfare.gov/pubs/issue_briefs/brain_development/

¹⁶ Ward, H.; Brown, R. and Westlake, D. (2012) *Safeguarding Babies and Very Young Children from Abuse and Neglect*. Jessica Kingsley Publishers.

¹⁷ Child Welfare Information Gateway, 2009.

Average time between key stages	Years: months
Average time between date placed for adoption and the date child adopted	0:09

Source: Table, E2 National statistics on Children looked after by local authorities in England
<http://www.education.gov.uk/researchandstatistics/statistics/allstatistics/a00213762/children-looked-after-las-england>.

Note: estimates refer to children when were adopted during the year ending 31 March 2012.

What is the policy measure and what is the rationale for its introduction?

The policy measure is:

To require local authorities to consider placing a looked after child, for whom the local authority is considering adoption as an option, but has not yet made a formal decision, in a fostering for adoption placement. This is a foster placement with foster carers who have also been approved as prospective adopters.

This measure will mean that children will be able to move in with their potential permanent carers earlier than they currently do. This will be a fostering placement, which may become an adoptive placement, subject to the local authority deciding that the child ought to be placed for adoption and subject to the court agreeing to make a placement order.

The policy intention was outlined in the *Adoption Action Plan* in March 2012¹⁸. The legislative proposal was put forward by the Prime Minister on 6 July 2012 and described in a policy paper published by the Department: *Proposals for earlier placement of children with their potential adopters*¹⁹.

To complement the proposed duty, because the current process for approving prospective adopters as foster carers can be lengthy, the Government has consulted on changes to the regulations to make it easier for local authorities to approve prospective adopters as temporary foster carers for a named child. Once approved, the named child can move in with their new carers. The regulations will come into force by June 2013.

The practice of “concurrent planning” already applies the principles of ‘Fostering for Adoption’ and the Government know that it has been successful in achieving the aim of placing children with their carers earlier. 95% of children who were identified for concurrent planning placements between 2000 and 2011 were adopted by their concurrent planning carers. On average, children who went on to be adopted by their concurrent planning carers were 17 months old at the date of adoption.

‘Fostering for Adoption’ is used by few local authorities. The Government believes that many local authorities are nervous that using this approach would open them to challenge and criticism.

What are the impacts of the measure and which groups of people does it affect?

This policy intends to make it easier for local authorities to place children, for whom adoption is the likely outcome, with foster carers who are also approved prospective adopters prior to the local authority deciding whether the child ought to be placed for adoption and subject to a placement order from the courts.

The main impact of the policy measure will be on children who will benefit at an earlier

¹⁸ Department for Education (2012) An Action Plan for Adoption: Tacking Delay

¹⁹ Proposals for earlier placement of children with their potential adopters:
<http://www.education.gov.uk/childrenandyoungpeople/families/adoption/a00211400/earlier-placement>

stage from the stability of a placement which could well become permanent. The policy could benefit on prospective adopters interested in fostering a child, thus giving them the opportunity to start forming a bond with the child, should the placement, subject to a placement order being granted, become an adoptive one. There is a risk that the court may not agree to the placement order application, however the risk is low.

What other measures were considered and why were they not pursued?

It is already possible under the Children Act 1989 to place a child with foster carers who are also approved prospective adopters. That is why in the Action Plan, the Government sought to promote practices aimed at the early placement of children with their potential permanent carers, including through concurrent planning. Few local authorities apply these practices however. That is why the Government considered legislative options that might encourage the spread of this practice.

Are there any key assumptions or risks?

One of the assumptions the Government has made is that there will be people who will come forward to care for a child in this way, despite the risk attached to these types of placements. It will be necessary that local authorities provide support for temporary foster carers to manage this so that they are aware of their role as the foster carer and how it differs from the role of the adoptive parent, if that were the decision of the court.

Local authorities and voluntary adoption agencies have indicated that there is a perception within the family justice system (in particular courts) that this practice is sometimes seen as pre-empting the decision of a court. Whilst there can be no question of pre-empting a court decision, the Government does want to see local authorities working with family-finding teams as early as possible to find potential permanent carers for children, who may, if the court agrees, go on to adopt them. These placements will be foster placements under the Children Act 1989 unless and until the courts make a placement order.

Local authorities will need to make sure that temporary foster carers have the necessary skills, training and on-going support to meet the needs of the child who is being fostered; the birth family will continue to be supported during this period.

There is a risk that the court then does not grant the placement order for. However, the risk is low. In 95% of cases local authority applications for a placement order are granted by the courts.

Clause 2: Repeal of the requirement to give due consideration to ethnicity

This should be read alongside the rationale for this measure described in *An Action Plan for Adoption: Tackling Delay*, published in March 2012, and our response to the House of Lords Select Committee on Adoption legislation, published in February 2013: *Children and Families Bill 2013: Contextual Information and Responses to Pre-Legislative Scrutiny*²⁰.

What are the problems that the measure addresses?

Research evidence demonstrates that, in some parts of the adoption system, the belief persists that ensuring a perfect or near perfect match based on the child's ethnicity is necessarily in the child's best interest, automatically outweighing other considerations such as the need to find long-term stability for the child quickly. Farmer et al (2010), for example, found that attempts to find families of similar ethnicity were a cause of delay for 70 per cent of the black and minority ethnic children who experienced delay²¹. Another study found that children's profiles often included the specific requirement for the prospective adoptive parents to match the child's ethnicity, with "same-race" placements dominating the Child Permanence Report over and above other needs. This study also found that some social workers were so pessimistic about finding ethnically matched adopters that there was little family finding activity²².

This is problematic due to the unequivocal evidence about the negative impact of delay on children's development and wellbeing. Children need to form attachments, or secure and stable relationships, with one or two main carers in order to develop physically, emotionally and intellectually²³. A study following up a sample of children who were adopted or in long-term foster care, found that the later a child was placed with permanent carers the lower the chances of improvement in relation to their emotional and behavioural difficulties²⁴. These difficulties, in turn, are associated with an increased risk of the adoptive placement breaking down²⁵.

In addition to this, evidence shows that some local authorities add additional constraints in the way they advertise children needing adoption by stating the ethnicity of prospective adopters who can apply to adopt the children. There is anecdotal evidence to show that some agencies may turn down prospective adopters simply because they do not match the ethnicity of the children to be placed for adoption in that locality. This is problematic due to the current national shortfall in approved adopters. At March 2012 there were 4,600 children in care waiting for adoption without an adoptive family.

What is the policy measure and what is the rationale for its introduction?

²⁰

<https://www.education.gov.uk/publications/eOrderingDownload/Children%20and%20Families%20Bill%202013.pdf>.

²¹ Farmer, E.; Dance, C.; Beecham, J.; Bonin, E. and Ouwejan, D. (2010). An investigation of family finding and matching in adoption – briefing paper. DfE-RBX-10-05.

²² Selwyn, J et al. (2010). *Pathways to Permanence for Black, Asian and Mixed Ethnicity Children*. British Association for Adoption and Fostering.

²³ Ward, H.; Brown, R. and Westlake, D. (2012) *Safeguarding Babies and Very Young Children from Abuse and Neglect*. Jessica Kingsley Publishers.

²⁴ Biehal, N.; Ellison, S.; Baker, C. and Sinclair, I. (2010) *Belonging and Permanence. Outcomes in long-term foster care and adoption*. British Association for Adoption and Fostering.

²⁵ Selwyn, J.; Sturgess, W.; Quinton, D. and Baxter, C. (2006) *Costs and outcomes of non-infant adoptions*, British Association for Adoption and Fostering.

The policy objective is to reduce barriers and delay in the adoption process so that all children for whom adoption is in their best interest are placed as quickly as possible with adopters who can meet their needs. In the context of ethnicity, this means that the Government does not want the ethnicity of the child or the prospective adopter to constitute an unnecessary barrier to speedy adoption.

The Government has brought forward primary legislation to remove the wording from the Adoption and Children Act 2002 which leads some local authorities and local authority staff to delay an adoption by searching for a perfect or partial match based on a child's "ethnicity".

The intention of the measure is to remove the legal wording that leads some social workers to introduce delay into the adoption process in the search for a perfect or partial ethnic match when prospective adopters who are suitable are available and able to provide a loving and caring home. The measure seeks to influence the decision-making process at the point of matching, ensuring that balanced weight is given to considerations of the child's background and characteristics (including things that would be considered as components of ethnicity) and the overwhelming research evidence pointing to the adverse effects of delay on a child's welfare.

What are the impacts of the measure and which groups of people does it affect?

Looked after children from minority ethnic groups with placement plans for adoption are the main people affected by the policy option. In particular, statistics show that black children currently wait much longer to be adopted than all other ethnic groups. This group in particular, therefore, is expected to benefit from swifter adoption.

Swifter adoption also benefits prospective adopters due to the increased amount of time they are able to spend with their adopted child. Finally, there are also financial and resource savings to local authorities due to the higher cost of maintaining children in foster care or residential care placements compared to adoptive placements.

Key statistics on differences on adoption outcomes across child ethnicity

Numbers of children adopted. The annual national statistics on children looked after by local authorities in England show adoption numbers broken down by the ethnicity of the children²⁶. These estimates are depicted below.

	Numbers adopted during the years ending 31 March				
	2008	2009	2010	2011	2012
<u>Ethnic origin</u>					
White	2,640	2,730	2,670	2,600	2,930
Mixed	330	410	350	320	330
Asian or Asian British	60	70	50	60	60
Black or Black British	110	100	100	80	90
Other ethnic groups	30	20	20	20	30
Other	.	x	10	20	20

Notes: "Other" comprises of information refused or not yet available which were collected for the first time in 2009. Numbers have been rounded to the nearest 10.

In November 2012, the Department for Education published an update to the adoption

²⁶ <http://www.education.gov.uk/researchandstatistics/statistics/allstatistics/a00213762/children-looked-after-las-england>.

scorecards covering the period 1 April 2009 to 31 March 2012²⁷.

Adoption timeliness. The adoption scorecard shows, against three key indicators²⁸ how swiftly children in need of adoption are placed for adoption by local authority area. The first indicator measures the average time it takes for a child who goes on to be adopted from entering care to moving in with his or her adoptive family and the threshold is set at 21 months (639 days).

The second indicator measures the average time it takes for a local authority to match a child to an adoptive family once the court has formally decided that adoption is the best option and the threshold is set at 7 months (213 days). The total, three-year average for 2009-12 showed that 56% of children wait less than 21 months from entering care and moving in with their adoptive family. This dropped to 50% for children of mixed ethnicity and to 34% for black children. The figure for all BME children is 48%.

Proportion that leave care through adoption. BME children represent approximately a quarter of the children in care, and therefore a disproportionately low percentage of children who are adopted. White and mixed ethnicity children under 5 are more likely to leave care through a combination of adoption, Special Guardianship Orders and residence orders than Black and Asian children in the same age range. Black and Asian children are more likely to return home.

Evidence on transracial adoption outcomes

A review of research on transracial adoption by the Evan B. Donaldson Institute concluded that adoption across ethnic boundaries does not, in itself, produce psychological or behavioural problems in children. However, where a child is adopted across ethnic boundaries, they and their families can face a range of additional challenges. The manner in which parents handle these challenges, particularly their sensitivity and approach to racism, facilitates or hinders children's development. The authors conclude that these challenges need to be addressed when matching children with families and in preparing families to meet their children's needs²⁹.

A recent review of international evidence on matching in adoptions from care has also shown that adoptions across ethnic boundaries are at no greater risk of disruption³⁰.

Sometimes an ethnic match will be in a child's best interests, for example where an older child expresses strong wishes. However, it is not in the best interests of children for social workers to introduce any delay at all into the adoption process in the search for a perfect or even partial ethnic match when parents who are otherwise suitable are available and able to provide a loving and caring home for the child.

What other measures were considered and why were they not pursued?

This measure would be implemented in the context of non-legislative adoption reforms,

²⁷ 2012 Adoption Scorecards:

<http://www.education.gov.uk/childrenandyoungpeople/families/adoption/a00208817/adoption-scorecards>.

²⁸ These key indicators will be updated in late 2013 with data for 2012-13 when these become available.

²⁹ Evan B. Donaldson Institute, (2009) *Finding Families for African American Children*.

www.adoptioninstitute.org.

³⁰ Quinton D (2012) *Matching In Adoptions From Care: A Conceptual And Research Review*. . British Association for Adoption and Fostering.

many of which will support this measure and address the needs of black and ethnic minority children. These include supporting wider sector understanding of the impact of delay and on a child's development and identifying (through the adoption scorecards) and approaching local authorities who perform badly to explain the reasons for delay.

We considered including in legislation a balanced list of a range of factors that should be considered by the local authority, including their ethnicity element of the match. However, it proved difficult to settle on a finite list of factors which could provide a stronger basis for decision-making than the best interests of the child.

Are there any key assumptions or risks?

A key assumption is that the specified legislative change influences the behaviour of local authority staff. Prospective adopters' intentions will also influence the characteristics of adoption matches that materialise.

Clause 3: Recruitment, assessment and approval of prospective adopters

The full rationale and analysis behind this policy proposal is set out in *Further Action on Adoption: Finding More Loving Homes*, published in January 2013:

<https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-00003-2013>.

What are the problems that the measure addresses?

In the current market for adoption services, local authority commissioners and social workers are on the demand side, acting on behalf of children whom they have agreement to place for adoption. Local authorities also act on behalf of prospective adopters on the supply side of the market, along with voluntary adoption agencies. There is no normal price signal within the market – for matches made within the local authority, the ‘price’ is effectively zero; for matches made with external organisations (either other local authorities or voluntary adoption agencies) there is a schedule of fees.

The way the system is currently structured means that the market does not function as efficiently as it could. The Government has identified a number of issues with the current system: there is little national level recruitment activity and the supply of prospective adopters isn’t keeping up with the demand of children waiting to be adopted; the majority of agencies are operating at very small scale; sequential decision-making takes place, where local authorities look to their in-house provision before considering adopters from other local authorities and voluntary adoption agencies; the fixed inter-authority and inter-agency fees, which dull the incentives agencies face to respond to demand. Each of these issues is examined in more detail below.

Firstly, statistics show that the number of prospective adopters being approved is not keeping up with the number of children waiting for adoption. The number of children being approved by the courts for adoption each year has risen from just over 3,000 in 2010 to over 4,200 in 2012. In the same period, the number of children moving in with adoptive families has risen much more slowly from 3,100 each year to 3,500. As a result, at the end of March 2012 there were over 4,600 children with a placement order waiting to move in with a new family.

The way the market is currently structured, the majority of local authorities are rationally focused on meeting their own local level of demand rather than considering the national demand for adopters. There are a number of reasons why this may be the case. The inter-agency fee charged when a local authority places a child with an approved adopter from another local authority is currently set at £13,138 (for one child outside London) and is often reduced further, sometimes to zero. Research by Selwyn et al (2009)³¹ has shown that this is well below the average cost of an adoption, so it does not make sense for authorities to intentionally over-recruit and then ‘sell’ on these adopters to other authorities because they will be making a loss. This means that the national supply of adopters is not being used in the most effective way. There is anecdotal evidence that adopters are being turned away from some local areas because that authority has no need for them, despite there being a shortage of adopters at a national level.

³¹ <http://www.bristol.ac.uk/sps/research/projects/completed/2009/rk6582a/rk6582afinalreport.pdf>

Secondly, the majority of agencies are operating at very small scale – on average each agency approved 17 adopters last year and around a quarter of agencies recruited fewer than 10 adopters³². This relatively small scale will reduce the scope for specialisation and innovation in recruitment. It also means agencies are likely to face higher unit costs because management overheads and fixed costs are shared over a smaller base, and there will be much replication of activity between agencies.

Thirdly, there is evidence that local authorities look in-house first before considering prospective adopters from other local authorities and voluntary adoption agencies. For example, Dance et al (2010) found that local authorities ‘often proceed sequentially, beginning with their own resources, proceeding to use families from their agency consortium if necessary and only involving Voluntary Agencies if they have no success with their own or local resources’³³. Again, this may be a rational response to the way the system is currently structured. The cost of an in-house placement is zero or near zero at the time a match is made with an approved prospective adopter whereas an external placement comes with the explicit price tag of the inter-agency fee, currently £27,000 (for one child, outside London). Other factors that may explain this practice include feeling that placements with locally approved adopters are easier to arrange because they are within closer geographic proximity, or having pre-existing relationships within the authority.

However, there is no evidence that placements with prospective adopters approved by voluntary adoption agencies are less effective. Farmer et al (2010)³⁴ looked at the quality of adoption matches and found that voluntary adoption agencies are just as successful, even though they tend to provide placements for children with more complex needs. Sequential decision making affects the way the market works. It limits the ability of good voluntary adoption agencies to expand as their adopters are not considered for all adoption matches. It also reduces the incentives on local authority agencies to improve their service as they do not have to compete with other agencies for matches.

What is the policy measure and what is the rationale for its introduction?

The measure introduces a power for the Secretary of State to direct some or all local authorities to contract out their adopter recruitment, assessment and approval functions. This would, if exercised, remove the current link between adopter recruitment and assessment and individual local authority areas.

It aims to improve the efficiency of the market, leading to a greater number of prospective adopters being assessed and approved in a more efficient way, and more and faster adoptions for the children waiting. Changing the supply side of the market in this way will alter the incentives in the system. Improved performance could take a number of different forms – increasing efficiency by reducing unit costs; improving the experience for prospective adopters so that fewer drop out during the assessment process or move to a different agency; increasing the number of approved adopters to meet demand.

Removing this link between recruitment and assessment and individual areas would have

³² Ofsted adoption quality assurance and data forms 2011-12 first statistical release.
<http://www.ofsted.gov.uk/resources/adoption-quality-assurance-and-data-forms-2011-12-first-statistical-release>.

³³ Dance et al (2010) *Adoption Agency Linking and Matching Practice in England and Wales: Survey Findings* DCSF-RBX-16-08.

³⁴ *An investigation of family finding and matching in adoption* – briefing paper, Farmer et al (2010)

an impact on the problems listed above. Voluntary adoption agencies will be incentivised to respond to the national, or at least regional, level of demand coming from a number of authorities. There would be an incentive to increase the scale at which agencies operate, to increase efficiency by making the most of economies of scale and to operate at a size that allows for greater innovation or specialisation. It will also remove the current stages of sequential decision-making because only adopters from external providers would be available. Behaviour on the demand side should also change as there will now be a 'price' attached to all adopters, not just those from external agencies, which will improve transparency around costs.

What are the impacts of the measure and which groups of people does it affect?

As described above, the Government expects this change to improve the efficiency of the system as a whole, by changing the incentives facing those on both the demand and supply side of the market. The impact of the change will vary across the following groups involved in the adoption process, and these are discussed in more detail below:

- a. Local authorities
- b. Voluntary Adoption Agencies
- c. Prospective adopters
- d. Children.

Over the longer term, many local authorities would need to adjust their commissioning practices as they move to a system in which they commission with adoption agencies for all adoption matches. Authorities would have a greater incentive to commission effectively as all placements will now be made with external organisations. This commissioning could be through a block contract or on a spot purchase basis, and is likely to involve a mix of the two for each authority. The Government expects authorities to benefit from this change because of lower spending on foster care as a result of more and faster adoptions.

Existing voluntary adoption agencies would face greater incentives to improve their performance, possibly by expanding their agency or merging with other agencies to benefit from greater economies of scale or to allow greater investment in recruitment and assessment activity. By opening up the market, good agencies will be able to expand as they would no longer be constrained by sequential decision making on behalf of the local authority. There will be stronger incentives for new providers, including possibly agencies currently providing fostering services, to enter into the adoption market.

For prospective adopters looking for an agency to carry out their assessment, they would have a different set of agencies to choose from compared to the current system, one that is less tied to their local area. The Government expects the recruitment and assessment experience to improve for adopters as agencies increase their efforts to recruit and keep hold of a good supply of prospective adopters to meet the level of demand from across local authorities. This increased effort could also bring more prospective adopters into the system who would not otherwise have progressed as far as the assessment process.

For children, the Government expects the change to add to the impact of the other adoption reforms being introduced. Improving the efficiency of the market would help to get more adopters through the door and speed up the matching process by increasing the incentives that agencies have to meet the current level of demand, both in terms of numbers and the needs of the children waiting to be adopted.

What other measures were considered and why were they not pursued?

We considered a range of measures that would impact on local authorities and prospective adopters but did not directly alter the structure of the market. These included making more information available to local authorities on how the cost of adoption compared to the cost of foster care (to emphasise the importance and possible benefits of faster adoption) and how in-house costs compared to voluntary adoption agencies, building on the research done by Selwyn³⁵ and others which showed that the actual cost was similar between the two different types of agencies and was greater than the inter-agency fee. However, these measures were unlikely to produce the kind of behaviour change required to address the shortage of adopters in the system. Much of this information is known already, particularly by authorities, but hasn't brought about a change in behaviour. Also, these measures would not address the current incentives in the system than the national level of demand.

We also considered whether introducing a central pot for inter-agency fees would bring about the change required by removing one of the main drivers of sequential decision-making, the explicit price tag that comes with a prospective adopter from a voluntary adoption agency. However, there are a number of downsides to this option. In particular, if the central pot has to be set in advance then this will ration the number of matches that can be made with prospective adopters from voluntary adoption agencies each year. It also does nothing to increase the scale at which adoption agencies currently recruit and assess adopters.

Are there any key assumptions or risks?

A key risk of this proposal is that it would introduce a significant change into the system, which may distract those working in the sector at a time when the Government is introducing many other reforms designed to improve the system for children and adopters. This disruption could reduce the impact of other changes and lead, in the short term, to a reduction rather than an increase in recruitment. There is also a risk that the supply-side proves slow to develop - that new providers are slower to enter the market than anticipated. The Government is considering a range of measures that will mitigate this risk. It is also asking local authorities to bring forward their own proposals for sustainable, systemic change. The Secretary of State will not use this new power if such proposals are convincing.

Local authorities would no longer have direct control over the way adopter recruitment and assessment was done, and would need to improve their commissioning practice to successfully commission a range of external matches.

³⁵ <http://www.bristol.ac.uk/sps/research/projects/completed/2009/rk6582a/rk6582afinalreport.pdf>

Clause 4: Adoption support services: personal budgets

What are the problems that the measure addresses?

A large number of adoptive parents report that they feel constrained or reluctant in asking their agency for support. A survey of non-infant adoptions, for example, found that only a third of the adopters interviewed were happy to ask for services, whilst others were reluctant to seek help for fear of seeming to have failed or feeling blamed³⁶. 15% of adopters in the Adoption UK survey reported a 'fear of being seen as a failure' as a barrier in their access to adoption support services. Other anecdotal evidence shows that parents struggle with the idea of going back to an agency whose primary role has, up to the point of adoption, been to judge them.

There is also evidence of gaps in the provision of the services that adoptive parents want and what they can currently access. The Adoption UK survey found that 61% of respondents stated the need for therapeutic services, but only 28% of their agencies provided this support. 19% of respondents to this survey also reported the 'agency not understanding their problem' as a barrier to them accessing support services.

What is the policy measure and what is the rationale for its introduction?

The policy measure is to take power in legislation to allow for an eventual full national roll-out of personal budgets for adoption support. Local authorities would be placed under a duty to provide a personal budget (which can be a notional personal budget, direct payment or a combination of both) to an eligible person, if requested. Personal budgets would be made available for adopted children and their adopters who have been assessed as requiring adoption support services and for whom the local authority has decided to provide such services. Eligibility for particular types of adoption support services is governed by existing regulations and this will not change as a result of the personal budget provisions.

The adoption support system can be opaque for adopters. The process of assessment and the decision about whether to provide support to meet identified needs is entirely in the hands of the local authority, as is how support should be provided and by whom. Personal budgets seek to change that by giving adoptive parents the right to play a bigger part in decisions about who provides the adoption support they have been assessed as needing, and how that support is provided.

We believe that personal budgets will help provide a greater degree of control for adoptive parents in the adoption support services system and empower them to play a more active role in identifying and securing the help that best meets their needs and circumstances.

Personal budgets also have the potential to stimulate the market in the provision of specific adoptive services. With more choice and control for adopters, providers of related services (subject to meeting the existing legislative requirements) might be encouraged into the adoption support services market as parents will have different preferences about what type of provision they want. It should also lead to increased competition, including amongst existing providers, with the most cost-effective providers being more sought after by adopters. Less effective providers will need to grow and

³⁶ Sturges and Selwyn (2007) 'Supporting the placements of children adopted out of care', *Clinical Child Psychology and Psychiatry*, 12, 1, 13 – 28.

develop their services to meet demand.

What are the impacts of the measure and which groups of people does it affect?

Personal budgets allow the recipient to exercise greater choice and have more control over the services they receive and who provides those services. Evidence from other similar initiatives shows that the provision of more control to the service user can have positive implications for their satisfaction and access to services. Families who participated in the pilots of Individual Budgets (IBs) for disabled children³⁷, for example, reported:

- greater satisfaction with the services they received (a net 40% of families reported an improvement)
- greater control over services (reported by 57 per cent of families)
- that they felt more involved in decisions about support (reported by 24 per cent of families)
- a shift in the types of service that they use and improved access to social care services.

Local authorities will be affected as they will be responsible for preparing the personal budget system and ensuring that appropriate safeguards are in place.

Were any other measures considered and why were they not pursued?

The introduction of personal budgets is one of a range of reforms being made in the area of adoption support services. No other measures to specifically allow adoptive families more choice and control over the adoption support that local authorities have agreed to provide were considered.

Are there any key assumptions or risks?

There are a number of risks and uncertainties associated with the effective implementation of this measure.

There is a risk that smaller adoption support agencies, in particular, may struggle in the short term with a move towards more spot purchasing. Under current practice, local authorities may enter into longer term block contracts with some support providers. Personal budgets may lead to increased pressure from adopters for services, but no increased local authority capacity to provide support. The budgets provided may be felt to be insufficient for buying the services needed.

Adopters will hold the responsibility for deciding how their personal budgets will be spent. However, they might not have the knowledge to be able to make the right choices on what is most suitable. Moreover, some may not wish to have the responsibility in deciding which services to choose. The mechanism will require the provision of sufficient information and guidance to enable families to best select the services to purchase. There is a risk personal budgets will introduce extra bureaucracy into the system. A survey by Community Care in 2012³⁸ found that 82% of social care professionals thought there was more bureaucracy in their role as a result of personalisation. Explanations

³⁷ Individual Budgets for Disabled Children, Final Evaluation Report, SQW.

³⁸ Community Care (2012), Annual Personalisation Survey, www.communitycare.co.uk/the-state-of-personalisation-2012/. This compared to 73% in the previous year.

included long and complex assessment forms and the need for personal budget support plans to be signed off by council panels, rather than social workers. We will look to minimise the bureaucracy that might be associated with personal budgets.

The local market for adoption support may not be developed well enough to allow adopters to exercise greater choice and more control over the services they receive and who provides those services. The Government is taking a range of measures, including funding a number of programmes to develop the provision of adoption support services that seek to mitigate this risk.

Clause 5: Adoption Support services: duty to provide information

Inform Adopters of their Rights to Support Services

What are the problems that the measure addresses?

Local authorities are under a duty, via the Adoption Support Services Regulations of 2005, to carry out an assessment of need for adoption support when requested by an eligible person. However evidence suggests that many adoptive parents are unaware of this. An Adoption UK survey of 455 adoptive parents, for example, found that 64 per cent were not informed by their adoption agency about their right to an assessment³⁹. More generally, 38 per cent of respondents to this survey reported that they did know about their entitlements to adoption support services.

Evidence from the same source also shows that when those eligible do request an assessment, not all local authorities are carrying out the assessments. 6 per cent of adoptive parents who requested an assessment had this request refused. Many adoptive parents are also unaware that regulations require local authorities to have an adoption support service advisor in place, who should be available to help them navigate the adoption support system.

What is the policy measure and what is the rationale for its introduction?

We are proposing legislation what will place local authorities under an explicit duty, on the face of the primary legislation, except in circumstances prescribed in regulations, to inform potential adopters and adoptive parents of their entitlements in relation to adoption support. Local authorities will be required to provide information to any person who has contacted the local authority to request information about adopting a child, or has informed the local authority that they wish to adopt a child. Local authorities will also be required to provide such information to any person in their area who they are aware is the parent of an adopted child, or to any such person on request. Voluntary adoption agencies are not affected by this change.

The duty will require local authorities actively to provide the information to individuals rather than simply making information available which people would then have to seek out by themselves. For example, simply putting information on a webpage and not informing prospective adopters and adoptive parents about that webpage will not discharge the duty.

We want all adoptive families who need it to get as early an assessment of need as possible, so that they can be offered the support they need to give the child the best chances in life and provide the best possible support to the adoptive placement. The Government also wants all adopted children to benefit from the full range of support they are entitled to. For this to happen, prospective adopters and adopters need to be aware of their rights to support and the provision available.

In terms of rationale, the Government owes people who are willing to adopt a child the support and encouragement they need to make their new family work. Adopters are offering to make an inspiring life-long commitment and do a great service to society. The way they are treated by the adoption system should reflect this.

³⁹ Adoption UK (2012). It takes a village to raise a child: Adoption UK survey on adoption support.

Increased awareness and provision of support has the potential to aid recruitment of prospective adopters, make adopters more open to adopting the kinds of children who currently wait the longest to be placed, and reduce the chances of adoptions breaking down.

What are the impacts of the measure and which groups of people does it affect?

There are already duties on local authorities regarding the provision of information advice and guidance on adoption support (e.g. the Adoption Support Services Adviser). This new duty will strengthen the existing requirements and should not in themselves bring significant costs. The Government will not prescribe how local authorities should fulfil the duty, but strengthen and make clear what the Government is expected of them in terms of making prospective adopters and adopters aware of existing services and entitlements.

This measure should dramatically increase prospective adopters' and adoptive parents' awareness of adoption support and other related services that might be available to them. It will also enable them to have better, more informed, conversations with agencies about what support may be provided.

3,450 children were adopted from care in 2011-12⁴⁰. The Government expects approximately this number of children and their new adoptive families to benefit annually from these changes. However, these and other related reforms are intended to increase this number further. There are also many current adoptive families who may benefit from this measure; if the local authority becomes aware of them or if they make themselves known to their local authority the authority will be required to advise them of their rights in relation to adoption support.

Evidence shows that the right kind of support, where provided, is valued by parents. An Adoption UK survey of 455 adoptive parents, for example, found that, of those who received services, 63 per cent rated them as either excellent or good. 60% felt that the services provided had helped their families⁴¹.

A randomised control trial of parenting support for adoptive children with behavioural issues reported increased parenting confidence and more positive parenting approaches for those who received interventions. Small improvements were found in the level of child emotional and behavioural difficulties - although not statistically significant, researchers felt that improvements in children's outcomes may be longer term (the study's follow-up finished 6 months after intervention)⁴².

The Donaldson Institute found that in the USA the availability of post-adoption services was linked with parents' greater ability and willingness to adopt children. The lack of such services was identified by both agency staff and adoptive parents (43%) as a barrier to adoption from care⁴³.

⁴⁰ SFR 2012: <http://www.education.gov.uk/rsgateway/DB/SFR/s001084/index.shtml>

⁴¹ Adoption UK (2012). It takes a village to raise a child: Adoption UK survey on adoption support.

⁴² Rushton and Monck (2009), Enhancing Adoptive Parenting, Adoption Research Initiative, BAAF, http://www.adoptionresearchinitiative.org.uk/summaries/ARi_summary_11.pdf.

⁴³ Evan B. Donaldson Institute (2010), Keeping the Promise: The Critical Need for Post-Adoption Services to Enable Children and Families to Succeed, Donaldson Institute.

Were any other measures considered and why were they not pursued?

Doing nothing would mean that many adopters would remain unaware of their rights to an assessment of their support needs and of the support services that may be available to them.

We considered a duty to provide adoption support on local authorities and while this would, on first consideration, seem like something that would be worthwhile doing, such a duty would bring with it considerable on-going financial costs. Funding for such a duty would be difficult to find in the current financial climate and, given the potential for perverse incentives if such a duty is not properly funded – for example under assessment of support needs – the Government decided against pursuing this option.

This regulatory measure is complemented with other non-regulatory measures that seek to better inform adopters of their rights. For example, details of the rights to adoption support will be available through the National Gateway for Adoption. This gateway will be a central point of contact for anyone interested in adoption and will operate via a telephone helpline and website.

Are there any key assumptions or risks?

Some local authorities already provide approved and prospective adopters information about their entitlements in relation to adoption support. This duty seeks to enforce this best practice nationally.

Ofsted inspections of local authority adoption services confirm whether a service is compliant with law and will monitor whether authorities are fulfilling this duty. Where Ofsted report a service is not meeting its obligations there is scope for ministers to intervene in an authority.

A legitimate risk is that local authority capacity may be stretched during implementation through an increase in the number of support assessments they must deliver should adopters' increased awareness lead to a spike in requests.

Clause 6: The Adoption and Children Act Register

What are the problems that the measure addresses?

The Adoption Register is a database holding information on children awaiting adoption and prospective adopters awaiting a match. Under current statutory guidance, adoption agencies refer approved prospective adopters to the Register either at the point the prospective adopter is considered suitable to adopt, or three months after approval to adopt and if the agency is not actively considering a local match with a child. Adopters who haven't been referred to the Adoption Register three months after their approval can refer themselves to the Register.

The Register is a tool currently used only by local authorities to search out potential adopters for a looked after child. Upon referral of a child, details of prospective adopters identified as a potential match are sent to the child's social worker who can consider the proposed link further.

Once individuals or couples have been approved as adopters by a local authority or a voluntary adoption agency they have to wait to be matched with a child. They currently have very little role in that process. Despite the current shortage of adopters, many wait for a significant period after being approved to be matched with a child. Adopters, on average, remain on the Adoption Register for more than nine and a half months. Some of this delay can be explained by an information mismatch in the current system for adopters. The wholly social worker led process can be a slow and frustrating process for prospective adopters.

What is the policy measure and what is the rationale for its introduction?

By properly engaging adopters in the matching process the Government aims to see better matches being made, especially for children that might be harder to place. There is little research evidence to support the belief that matching specific adopters to specific children can be done with any real confidence⁴⁴. Professors Julie Selwyn and David Quinton from the University of Bristol's Hadley centre for adoption and foster care studies have concluded: *"Given the effort that goes into matching, it might be thought that there is good evidence that the Government know how often matching is achieved and that a good match makes a difference. Such research evidence is lacking: not just sparse, but virtually absent."* There is, therefore, certainly scope for social worker initiated matching to be supplemented by links generated by approved adopters.

In order to bring this about, the Government intends to amend the existing legislation relating to the adoption register. This would enable access to the register to be opened up to prospective adopters who, subject to appropriate safeguards, would be able to identify children for whom they might be suitable adopters. This will not mean that adopters can simply choose their child. They will need professional support on such a vital issue so social workers will still be responsible for the decision.

What are the impacts of the measure and which groups of people does it affect?

This measure will give adopters a more active role in the matching process. They will be able to access and search for children on the Adoption Register themselves. This will

⁴⁴ Hadley Centre for Adoption and Foster Care Studies:
<http://www.bristol.ac.uk/sps/research/centres/hadley>

give them a greater role in the process and involve an investment of time on their part, but will lead to quicker adoption matches and less frustration for adopters. The reformed Adoption Register will need to adapt to the new environment in order to allow secure access to adopters (The Department for Education will be commencing a procurement exercise later this year). All local authorities and children's social workers will need to be prepared to work more closely with adopters to find effective matches. This should lead to greater numbers of matches, made more quickly. This should reduce the financial burden on local authorities which will be able to get more children placed and therefore incur fewer care costs. It will also benefit children with adoption recommendations through the potential earlier identification of suitable matches which should lead to better outcomes.

What other measures were considered and why were they not pursued?

This is the only option considered. The Government will be working with the British Association for Adoption and Fostering through its recent successful grant bid to increase the number of adoption activity days and use of expert researchers in development of adopter led matching.

Are there any key assumptions or risks?

The key risk to manage will be to ensure the security and confidentiality of adopters' and children's information and to make sure that social workers are not overburdened by new work resulting from prospective adopters expressing an interest in children listed on the register. The Government plans to pilot this change to test implementation.

We are still working on the finer detail of operation and will need new contractor and sector input, but the Government expects that the child's social worker to respond to the prospective adopter when they identify a child. However, the Government is mindful of potential burdens so the Government intends to limit the number of children that a prospective adopter could identify (perhaps three) and ensure that there was a suitable dormant period when no more children could be identified (perhaps two weeks). This would be piloted to test suitability.

Clause 7: Contact: children in care of local authorities

The notes on Clauses 7 and 8 should be considered alongside our call for views exercise on contact, where the Government explored more fully the problems it is seeking to address and our response to the views received, published February 2013⁴⁵.

What are the problems that the measure addresses?

Local authorities are under a duty to allow reasonable contact between a child in care and their birth parents (and guardians and certain others), and to endeavour to promote contact between looked after children (a wider group than just children in care)⁴⁶ and their parents, other relatives and friends.

There is growing concern that some contact arrangements between children in care and their birth families are inappropriate for the child, badly planned and badly monitored. These are being driven by the view that contact should take place, rather than on the basis of the individual needs, circumstances, views and wishes of the child. As the number of children in care rises: so the burden and negative impact of poor contact increases.

Research shows that some children experience behavioural difficulties and anxiety before and after contact. In some cases, children were exposed to further abuse during contact⁴⁷. Earlier research, which looked at contact arrangements for 106 children in care, found that the proportion of children suffering very negative consequences from contact was twice the proportion for which contact had a positive effect⁴⁸.

Contact can, however, also be a positive experience for children in care. It is therefore important that arrangements are driven by the best interests and the evolving individual circumstances of each individual child.

What is the policy measure and what is the rationale for its introduction?

We propose to amend section 34 of the Children Act 1989 to make it clear that the duty on local authorities to allow reasonable contact between a child in care and their birth parents (and guardians and certain others) is subject to the duty on local authorities to safeguard and promote the welfare of looked after children under section 22(3)(a) of the same Act.

We also propose to disapply the duty on a local authority to endeavour to promote contact between a looked after children and a member of their birth family and certain others (schedule 2, paragraph 15 of the Children Act 1989) where they have been authorised by a court order to refuse contact with that person, or are doing so temporarily (both under section 34).

⁴⁵ <http://www.education.gov.uk/childrenandyoungpeople/families/adoption/a00212027/consultation-review>

⁴⁶ Looked after children include voluntarily accommodated children and children who are looked after under a care order (full or interim), or who are detained on child protection grounds (police protection, emergency protection orders or child assessment orders)

⁴⁷ Selwyn, J. (2004) Placing older children in new families: changing patterns of contact, in Neil, E. and Howe, D. (eds) Contact in Adoption and Permanent Foster care: Research, theory and practice, London: BAAF

⁴⁸ MacAskill, C. (2002). Safe contact? Children in Permanent Placement and Contact with their Birth Relatives. Dorset: Russell House Publishing

We have also taken a power to specify in regulations the matters that a local authority must consider when deciding whether contact would be consistent with safeguarding and promoting the child's welfare.

The proposed changes are intended to address our concerns, confirmed by academic research, that a significant proportion of contact arrangements continue to be made which exposed children to the risk of further harm. Changes are needed to primary legislation to make it absolutely clear that the duty on local authorities to 'safeguard and promote the welfare of looked after children' is of fundamental importance when making contact arrangements.

The above changes should reduce cases of inappropriate and damaging contact arrangements and result in an overall improvement in welfare for children in care.

What are the impacts of the measure and which groups of people does it affect?

The expected impact of the measure is that fewer inappropriate contact arrangements are made for children in care. This will consequently lead to fewer adverse and damaging outcomes for these children. This measure will affect the 40,100 children in care (at 31 March 2012)⁴⁹ and their birth families and the 152 local authorities in England.

What other measures were considered and why were they not pursued?

The Department for Education published a call for views exercise on a number of proposals for reforming the law around contact between children and care and their birth families⁵⁰. The proposals that are not being taken forward were to:

- Remove the duties to allow reasonable contact and endeavour to promote contact. This was an alternative to amending these duties, but it was felt that this option could result in a dramatic reduction in beneficial contact for the majority of children in care who return home to live with their parents.
- Introduce a presumption of 'no contact' between children in care and their birth parents once there is a placement order. It was felt that this had the potential to reduce cases of potentially beneficial contact and that the existing 'neutral' position at this stage of the process was preferable.
- Introduce a permission filter for birth parents applying for contact at the placement order stage, which would mean that they would have needed to get the permission of the court to apply for contact. It was felt that this would have little impact given that the numbers of applications for contact under these provisions are thought to be very small. It was also felt that there was the potential for increased burdens on the courts.
- Introduce a provision to explicitly seek the views of the prospective adopters at an early point in relation to contact at the point of the placement order. It was felt that this would have little impact given that the numbers of applications for contact under these provisions are thought to be very small.

⁴⁹ DfE: Children Looked After by Local Authorities in England (including adoption and care leavers) - year ending 31 March 2012 <http://www.education.gov.uk/rsgateway/DB/SFR/s001084/index.shtml>

⁵⁰ <http://www.education.gov.uk/childrenandyoungpeople/families/adoption/a00212027>

Are there any key assumptions or risks?

There is a risk that legislative change will not have the impact that the Government has assumed that it will, meaning that there is little change in social worker practice. This will mean no change in the number of contact arrangements that are made which aren't in the child's best interests.

There is a risk that, even where social worker practice changes as the Government hopes, there might continue to be some cases where contact continues where it is not in the best interests of the child, despite the proposed changes to the law.

There is a risk that some beneficial contact might not happen as a result of the changes to the law, and local authorities taking a more risk averse approach.

Clause 8: Contact: post adoption

What are the problems that the measure addresses?

From the point at which an adoption order is made the adoptive parents have full parental responsibility for their child and are responsible for their welfare and best interests. Any further contact between their child and their child's birth parents is now a matter exclusively for the adoptive family. However, in some cases, unsolicited harmful and disruptive contact can occur between an adopted child and their birth relatives or former guardians. Sometimes such contact could have been foreseen, but there is currently no effective recourse to the courts for the adoptive family until disruptive contact actually happens, by which time damage could already have been done.

What is the policy measure and what is the rationale for its introduction?

Clause 8 of the Children and Families Bill will insert two new sections, 51A and 51B, into the 2002 Act to deal with contact arrangement between adopted children and their birth family, former guardians and certain others from the point of the adoption order onwards.

This amendment will replace, in relation to cases for which section 51A applies, orders dealing with contact under section 8 of the 1989 Act. The amendments provide for two types of order: (1) orders requiring the adoptive parent to allow the child to visit or stay with the person named in the order, or otherwise have contact with them a 'contact order'; and (2) orders prohibiting the person named in the order from having contact with the child - a 'no contact' order. The aim is, through the new 'no contact' order, to enable adoptive parents to get an order to prevent unsolicited, disruptive and harmful contact between birth parents (or former guardians/certain others) and their former child.

Although courts already make 'no contact' orders, the existing provisions in section 8 of the 1989 Act are not appropriate for the full range of circumstances where such an order might be sought. Given that the adoptive parents have parental responsibility for the child and can decide who the child should / shouldn't have contact with, it is unlikely that the court would make a contact order providing that they should not allow the child any contact with the child's birth family. The 'no order' principle in section 1 of the 1989 Act is likely to prevent the court from making such an order. Secondly, no conditions could be attached to the order under section 11(7) of the 1989 Act against the child's former parents as they are not persons to whom such conditions can be attached.

Prohibited Steps Orders (PSOs), also made under the 1989 Act, were also considered but, although they would be fully enforceable against the child's birth family (or former guardians/certain others), they are not pre-emptive in nature, meaning that in cases where there has not been a history of disruptive contact the Government would not expect the court to make a PSO. As none of the existing provisions under the Children Act 1989 provide for the sort of pre-emptive, enforceable 'no contact' order that is needed, it is necessary to create a new order under the Adoption and Children 2002 Act.

What are the impacts of the measure and which groups of people does it affect?

The proposed changes are intended to provide for new provisions to deal with contact between an adopted child and their birth parents, former guardians and certain others. The new provisions will, for the first time, allow adoptive parents to apply to the court for a pre-emptive, enforceable order to prevent unwanted contact from such people.

The changes proposed in this clause will also have an impact upon the court and a separate Justice Impact Test assessment has been completed. The changes proposed in this clause will also have an impact upon the court and a separate Justice Impact Test assessment has been completed. Additional assessment of impact will be completed separately to explore the impact on HM Courts & Tribunals Service which could include changes to the IT system and training requirements (with associated costs).

Applications for contact under the new provisions should be offset by a corresponding reduction in applications for adoption related currently dealt with under section 8 of the 1989 Act. This includes pre-emptive applications for 'no contact' under section 8 (which may already be made, but to which no conditions could be attached against a child's birth family). Similarly, any applications under the new provisions for 'no contact' after the making of the adoption order, should be offset by a reduction in the number of Prohibited Steps Order applications that are likely to be made.

Requiring the majority of persons that might be subject to an order under the new provisions to apply to the court for permission to apply for a section 51A order might slightly increase burdens for the courts in comparison to the less restrictive section 8 provisions. This would be offset, at least in part, by reduced burdens because the court will be able to deal with some applications without the need to proceed to a full contact application. As no data is available to illustrate the number of applications for contact under section 8 which are adoption related, the Government cannot be certain about the numbers that the Government are dealing with. The new provisions requiring the majority of people to apply to the court for permission to apply for an order might increase burdens for the courts in comparison to the less restrictive section 8 provisions. However, this should be offset, at least in part, by reduced burdens through the court being able to make the 'permission' assessments without a need to proceed to a full contact application.

What other measures were considered and why were they not pursued?

Amending the existing provisions in the 1989 Act was also considered. However, although the existing legislation in section 8 of the 1989 Act already makes provision for contact orders, this legislation also deals with a variety of other circumstances, such as contact arrangements when parents separate or divorce, residence orders and other orders and it was felt that adoption related orders should be dealt with in free standing provisions in the 2002 Act.

Prohibited Steps Orders (PSOs) are another type of order made under the 1989 Act which the Government considered for this purpose. While PSOs could be used to stop unwanted contact it is our understanding that a court would not make a PSO pre-emptively. So, in cases where there was a known past history of disruptive contact at the time an adoption order was made, a PSO could not be used to try to prevent such contact happening again after the adoption. As none of the existing provisions under the 1989 Act provide for the sort of pre-emptive, enforceable 'no contact' order that is needed, it is necessary to create a new type of 'no contact' order under the 2002 Act.

Are there any key assumptions or risks?

There is a risk that these changes do not succeed in helping to prevent cases of unsolicited, harmful and disruptive contact between an adoptive child and their birth relatives or former guardians.

There is also a risk that some potentially helpful and constructive contact might not happen because of these new provisions. The risk is small, though, because it will be mitigated by the continuing duty of the court to ensure decisions are made with the paramount consideration of the child's welfare throughout his life.



Department
for Education

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