

# **Consultation Analysis Report - Scotland's Adoption Register Regulations 2016**

**August 2015**

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## INTRODUCTION AND BACKGROUND OF THE CONSULTATION

### Scotland's Adoption Register

1. Scotland's Adoption Register was established in 2011, with a remit to facilitate family finding across Scotland and thereby increase the numbers of placements found for children who have been identified as suitable for adoption. The Register is a database which records and stores information that is a duplication of information already held by adoption agencies. The Register uses that information to identify potential links between children with a plan for adoption and prospective adopters. At 30 June 2015, the Register had matched 185 children with a new family, since its inception, and there were 157 children and 56 adoptive families on the Register, waiting to be matched.
2. The Children and Young People (Scotland) Act 2014 has now placed Scotland's Adoption Register on a statutory footing. This means every adoption agency in Scotland must use the Register, and must refer both children and approved adopters within a timescale to be specified in Regulations. Regulations giving effect to the Adoption Register powers in the 2014 Act are expected to commence in April 2016.
3. The Adoption Register Regulations will set out the key requirements for supplying, retaining and disclosing information to and from the Register. There is currently a Data Sharing Agreement between the Scottish Government and all registered adoption agencies in Scotland, which outlines the detailed procedures for data sharing through the Adoption Register. Our intention is for this Data Sharing Agreement – updated to take account of the 2014 Act and the finalised Adoption Register Regulations – to remain in place, and to specify the more detailed, administrative aspects and requirements of running the Adoption Register. A copy of the latest version of the Data Sharing Agreement can be found [here](#).
4. In order to allow the regulations to be drafted, we sought comments on certain matters as contained in the [consultation document](#) from paragraph 15 to 55. The consultation was launched on 30 March 2015 and closed on 22 June 2015. 33 responses were received with a number of comments made on each of the 21 questions as detailed under Analysis of Responses to the Consultation Questions.

## KEY FINDINGS OF THE CONSULTATION

5. A summary on the key proposals for the regulations to accompany the Adoption Register is as follows:

- Almost all respondents to the consultation agreed with the content contained within Annex A for both *Information relating to a child who ought to be placed for adoption* and *Information relating to persons suitable to be adoptive parents*.
- A small majority did not agree that the timeframe for referring information to the Register should be 3 months from the point of the Agency Decision Maker in deciding adoption is in the best of interests of a child and when approving a prospective adopter. Of those who took this view, it was felt that more flexibility is required primarily in respect of when a child's information should be added to the Register so that drift and delay can be avoided.
- Almost all respondents agree that the means for submitting information to the Register should be dealt with in the Data Sharing Agreement. This also includes how information should be kept secure. A large majority of respondents also favoured that the information on a child and prospective adopter should remain on the Register for 12 months once notified that the information is no longer required for linking. A small majority felt that non-identifiable information should be retained after 12 months and separately from the Register.
- A large majority of respondents felt that when an adoption agency becomes aware of any changes to the information it has submitted to the Register, this should be notified as soon as possible. This includes when a child is no longer available for adoption (including the reason/reasons for this) and when a prospective adopter/adopters is no longer available for matching.
- A large majority of respondents agreed that adoption agencies should be required to refer a child to the Register even when the birth parents have not consented to that child's information being shared. Similarly, respondents agreed that there were no other reasons for not disclosing information to the Register (except where there is not consent provided from prospective adopters or in certain circumstances, children who are available for adoption).
- A large majority of respondents agreed with the circumstances outlined in the consultation paper in respect of disclosing information from the Register to a specified person or group of people.
- A large proportion of respondents agreed that a standard inter-agency fee should be paid by the child's adoption agency to the adopter's adoption agency.
- There was a 50/50 split in those who wish the fee to be based on the same inter-agency fee structure in England and those who would like further research and consultation taken to produce a Scottish fee.
- A large proportion of respondents agreed that the adoption of a standard inter-agency fee structure should be endorsed by Scottish Ministers.

## CONSULTATION RESPONSES AND APPROACH TO ANALYSIS

### Written responses

6. The consultation paper was issued to over 70 public, private sector and third sector organisations, non-departmental public bodies (NDPB's), individuals and other interested parties identified as well as being made available on the BAAF Scotland website. The consultation was made available for online completion as well as being published on the Scottish Government website for electronic download with paper copies available when requested.

7. **Annex A** sets out a list of organisational respondents to the consultation document. The names of four individual respondents has not been included as they wished for their response to remain confidential. The consultation responses of those who gave permission for their response to be made public are available at the following link:

<http://www.gov.scot/Publications/2015/03/3094>

### Response rate

8. A total of 33 responses were received in response to the consultation document. As outlined in Table 1 below, organisations represented the largest respondent group at 27 with local authorities in particular providing the most responses at 19. Five individuals responded.

Table 1: Number of responses by respondent group

<b>Organisations</b>	<b>Numbers</b>
<b>Local Authority</b>	19
<b>Professional Body</b>	4
<b>Voluntary Organisation</b>	3
<b>Other</b>	2
<b>Individuals</b>	5
<b>Grand Total</b>	33

## **Approach to Analysis**

9. The Scottish Government has entered all of the response data, from every response received, into a spread-sheet. A quantitative analysis of response rates to each of the twenty one questions asked has been undertaken, the results of which are set out below. Responses to questions by respondents were assigned to one of two categories: agree or disagree. Only those respondents whose responses could be assigned to one of those categories were included in the quantitative analysis for each question. A qualitative analysis was also undertaken by the Scottish Government, with key themes and specific points outlined in the analysis and key findings section.

## ANALYSIS OF RESPONSES TO THE CONSULTATION QUESTIONS

10. This section presents a summary of the findings on the questions asked within the [consultation document](#).

11. A total of 33 responses to the consultation were received. One respondent did not complete the Respondent Information Form, but outlined their support for all of the proposals within the consultation document (in particular the inter-agency fee being introduced with the same fee structure as it is England). The respondent did however raise the point that some local authorities do not present a plan for adoption to the Agency Decision Maker (ADM) until a match has been identified. This aspect is covered in more detail under the summary for question 2. One respondent (The Information Commissioner's Office) provided their comments in a report and answered questions in blocks. Their points have been summarised where appropriate but are not included in the quantitative analysis, which is therefore based on 32 responses.

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

12. All 32 respondents whose responses could be analysed quantitatively confirmed that the types of information identified in Annex A were suitable for inclusion in the Register.

13. One respondent, the Information Commissioner's Office, (ICO) provided their view to cover questions 1 to 5 and 7. The ICO stated that in respect of these questions, they speak to the second and third Data Protection Principles in that they deal with purpose, adequacy and relevance.

14. Having reviewed the proposed information to be included on the Register, the ICO advised that it was clear that some of the data items are vital for the purpose while others might not necessarily be so but, provide a more holistic picture of the child for a more compatible match between children and adopters. It was noted that the ICO recommends that a review focussing on business need from the experience to date be undertaken to support the sharing of such information. In particular, the inclusion of the health history of both parties on the Register should be strictly limited to that which is relevant. Setting a timeframe for sharing the information is also consistent with adequacy in that the purpose cannot be achieved without adequate information.

15. There were suggestions from respondents for additions to the types of information in Annex A which is summarised as follows:

- For older children, perhaps their view could be included
- Whether the child has any disabilities or additional support needs
- The current legal status of the child could be expanded to include the future legal plan

16. Other suggestions (which may be more appropriate for Social Worker discussion when there is a potential match identified) included:

- Details of the Named Person, Lead Professional, school attended and whether a co-ordinated support plan in place (including summary of content)
- Family history of abuse, neglect or sexual abuse
- Length of time a child has been away from their family.

17. There was also clarity sought on some of the types of information as listed in Annex A. This included:

- Whether there needs to be specific question around number 19 on the qualities of the child so that a proper balance is achieved between being clear about the positives and the challenges of the child in question
- Under number 16 (Information relating to persons suitable to be adoptive parents), it is not clear why the details of any recommendation of the adoption panel needs to be passed on. It is the detail of the Agency Decision Maker which should be included.

18. A general point raised was that where possible, existing assessment paperwork should be used obtain this information in order to avoid duplication of effort.

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

19. Thirteen out of 32 respondents agreed that children's information should only be provided to the Register once the Agency Decision Maker has confirmed that adoption is in their best interests. Seventeen respondents disagreed with this proposal. Two respondents did not answer the question (one providing no view and the other stating that more flexibility was required). The Information Commissioner's Office advised given the purpose is linking a child with prospective adopters it should only be provided once it has been determined that the child is available for adoption. To provide the information before such a determination would be inconsistent with the purpose and, as a result, likely to be excessive processing under the Data Protection Act.

20. Of those who agreed with this proposal, it was felt that this was an appropriate point in the process for a child's information to be shared with the Register, however it was suggested that an exception in this regard could be where a child and prospective adopters have already been matched within 3 months of the Agency Decision Maker's decision. The Care Inspectorate advised that the timing of decisions throughout the adoption process varies nationally (in respect of LAC review, the Adoption panel and thereafter the ADM stage) so this has to be taken into account. One respondent also felt that it would be helpful if the necessary paperwork for a child who is hard to place could be submitted to the Register prior to ADM approval, but only activated once this has been confirmed.

21. Of those who did not agree, most respondents provided the same view in that some local authorities, primarily in the west of Scotland, do not seek the ADM decision until a match has been identified. These respondents felt that should this proposal be a requirement within Regulations, it would cause significant delay in



children being added to the Register in order to find a family therefore a degree of flexibility is required. Some suggested that the LAC Review stage and where it is agreed that it is in the best interests of a child to pursue adoption, would be an appropriate point for that the information to then be added to the Register.

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

22. Twenty out of 32 respondents felt that there was no further types of information which should be included in the Register as outlined in Annex A. Twelve Respondents however felt that there could be further additions and amendments made providing the following suggestions:

- Further clarification on how sibling profiles would be linked together. It would be helpful to state the placement type and date the current placement commenced and whether siblings to be placed for adoption together are currently in the same placement
- The provision of adoption allowances along with a clear statement that these will be means tested and reviewed regularly
- The proposed legal route to be used to pursue the plan for adoption
- Information about prospective adopters' health and health of household members
- Information on whether the prospective adopter is also a Foster Carer/other carer (outwith 'current occupation'), and their plans for this after placement
- The views of the child's carer's, social workers, and people who know the child and what it is like looking after him/her
- The child's current placement type and duration of current placement (it is helpful to know if the child is currently placed in a temporary foster placement for example)
- Expanding number 15 relating to the child's health. It would be helpful to know the practical implications of providing care if they have a particular condition or treatment requirement
- Amending number 20 (relating to any adoption support needs that the child has been assessed as having) to state specifically whether a settling in grant, contact expenses or adoption allowances have been approved or will be considered in relation to the child/sibling group registered for adoption.
- Amending number 21 – it could it be better to use a video clip rather than a film of the child. It was also recommend that a non-identifying short pen picture about what the child is like to care for on a day-to-day basis also be included
- Number 16 (Information relating to persons suitable to be adoptive parents). Rather than the recommendation of the adoption panel, this should be detail of the decision made by the ADM
- Post adoption contact arrangements.

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

23. All 32 respondents agreed that the types of information identified in Annex A should be provided by adoption agencies when a child is referred to the Register. Some general views on this proposal from the respondents who agreed included:

- Information should be straightforward, clear and shared at the earliest opportunity to enable matching as soon as possible
- Consideration should be given to caveats at a point of referral for example restricting a match to certain geographic areas. One organisation suggested that adoption agencies may wish to ask the Register to limit the links that are explored for an initial period – for example to families from within local consortia. Should this be acceptable, it is suggested that this is managed through the Data Sharing Agreement rather than the Regulations.

***Q4(b). Is there any further information relating to a child to be placed for adoption which should be provided to the Register?***

24. Seventeen out of 32 respondents agreed that there should be further additions to the types of information provided in Annex A and when information on a child is to be referred to the Register. Fifteen respondents felt that no further information should be provided. Some suggestions from the respondents who would like to see additions to Annex A included:

- Taking into account advances in digital technology, electronic information (such as storyboards) and video clips
- Current wellbeing of the child
- A written profile on the child which could be shared with prospective adopters covering what the child is like to care for (as well as being used for Adoption Exchange Days and Scottish Children Waiting newsletter with the relevant social workers consent). The profile could include:
  - Physical characteristics
  - Personality, social, emotional and behavioural development
  - The child's views in relation to adoption as appropriate
- A mechanism to ensure that information is updated periodically (perhaps every 3 months) for children who are on the Register for some time
- Any planned contact with birth family/relevant persons and if this is subject to review

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

25. Thirty one out of 32 respondents agreed that the information in relation to a prospective adopter in Annex A should be provided to the Register. One respondent answered no to this question and was unsure why information on a prospective adopter was required as progressing towards a match would require more than a look at the Register. It should be noted that in order for the Register to operate, it needs the information of both prospective adopters and children with a plan for adoption in order to make an initial match (taking into account the needs and requirements of all the parties involved) before progressing further.

26. Of those who agreed with this proposal, only two substantive views were provided. One was that prospective adopters should be able to check their information to ensure accuracy. The other suggestion was that perhaps a specific question concerning prospective families could be added in respect of their special interests and attributes (it was noted that this could be part of the assessment agencies use, but it could ensure a better balance of practicalities and potential positives).

***Q5(b) Is there any further information relating to a prospective adopter which should be provided to the Register?***

27. Seventeen out of 32 respondents considered that further information in relation to a prospective adopter in Annex A could be provided to the Register. Fifteen respondents felt that no further information should be provided. Suggestions from respondents who would like to see additions to Annex A included:

- A personal profile prepared by the prospective adopters themselves
- A profile (which could be in digital video format) on prospective adopters to be shared with social workers of children waiting for families and to aid matching. The profile could include:
  - The prospective adopters personality
  - Prospective adopters previous experience of caring for children for children and assessment of ability in this respect
- Details of significant health issues in relation of the prospective adopters (although it was noted that there may be difficulties with holding/sharing this kind of sensitive information)
- Details of the prospective adopter's sexuality
- Potential flexibility of employment arrangements for after the placement (for example: adopters leave, flexible/reduced hours and cease of employment).
- Their income
- Criminal history where appropriate.

28. Other suggestions in terms of possibly amending the entries in annex A included:

- Number 14 - details of adults not living in the prospective adopters household who have responsibility for prospective adopters' children on a regular basis. This could be more specific for example caring responsibilities to differentiate from maintenance payments or other such arrangements.
- Number 16 - the details of any recommendation of the adoption panel as to the children the prospective adopter is suitable to adopt. This could include any particular strengths/skills for example, sports instructor for children with special needs, British Sign Language accredited etc.
- Number 17 - contact. It may be helpful to distinguish between prospective adopter's views about contact with siblings in another permanent placement, a one off meeting with birth parents and maintaining contact with birth parents.

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

29. Twenty eight out of 32 respondents agreed that that the means of submitting information to the Register should be dealt with in the Data Sharing Agreement, rather than in Regulations. One respondent had no specific position on this aspect however felt that children's and prospective adopters' right to privacy and confidentiality should generally be respected and protected to the fullest extent possible. Two respondents did not answer the question and 1 did not agree with the proposal but gave no view why they chose to answer this way.

30. Of the 28 respondents who agreed with this proposal the only substantive comments received were that this was a common sense approach and would allow more flexibility making amendments (more specifically in terms of advancement in technology) without the need to amend regulations.

31. The ICO was pleased that the data sharing agreement to cover the current data sharing arrangements will remain in place, amended to reflect the detail of the final proposals. The ICO strongly recommends that reference is made to the ICO's Data Sharing Code of Practice and also to the Scottish Government's Scottish Accord for Sharing Personal Information during any amendment of the current agreement.

32. The ICO also confirmed that another aspect of the logistics of data sharing is matters of security and given the rate of technological advancement, it makes sense to outline security requirements in the data sharing agreement where they can be updated more easily and as necessary. The ICO would however expect to see fairly detailed requirements in this section of the data sharing agreement in relation to the standards set.

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

33. From the 32 responses received, some respondents chose to answer this proposal as one question. For those who did, 14 respondents agreed and 8 did not. One respondent selected both yes and no in their response suggesting more flexibility is required for both aspects.

34. For those who agreed with this proposal, the general view was that this would help to avoid drift and delay. BAAF Scotland (who administered the Register at the time of the consultation) also advised that in agreeing with this timescale and where local authorities have a link in progress at the 3 month stage, it would be possible for them to include the child and/or family on the Register but categorised as 'pursuing a link'. This would ensure that local authorities have the opportunity to properly explore locally identified links prior to wider options being considered while still ensuring there is no drift for the child or family.

35. One respondent suggested that agencies that refer children or families at an early stage may wish to specify that links are only pursued in the initial period within certain areas – for example only with families from within local consortia.

36. Of those who did not agree with this proposal, it was felt by some that six months would be more suitable as adoption agencies attempt to pursue local matches first where prospective adopters and children are concerned.

37. Three respondents chose not to answer yes or no and instead provided their views on the question. In general they felt that the three month timeframe was acceptable for a child, but also suggested that six months for prospective adopters with flexibility/exemptions for local matches would be their preferred option.

38. Six respondents chose to answer this question in two parts. For a) *deciding adoption is in the best of interests of the child*, two respondents agreed with three disagreeing and one respondent not answering the question. For b) *approving a prospective adopter*, three respondents agreed with two disagreeing and one not answering the question. No substantive views were recorded for these answers.

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

39. Twenty eight out of 32 respondents were in favour of an adoption agency notifying the Register as soon as possible of any changes. Many felt that this made common sense and that in order for the Register to operate effectively, the most up to date information needs to be available to ensure appropriate links are identified.

40. Three respondents did not answer the question and the one respondent who did not agree felt that an actual time scale had to be put in place and the type of changes should also be defined. One respondent felt that five days should be the timescale with another suggesting four weeks.

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

41. Thirty one out of 32 respondents were in favour of an adoption agency notifying the Register as soon as possible if the agency decides that adoption is no longer in the child's best interests together with the reasons for this. One respondent did not agree with this proposal.

42. Of those who agreed with this proposal, the only substantive comment related to the effectiveness of the Register depending on having the most up to date information available to ensure potential links are identified. The one respondent who disagreed with this proposal advised that a specific time limit should be set and suggested this as 28 days from the date the Agency Decision Maker makes their decision.

43. In respect of this question specifically, The ICO recommended that what is recorded as a reason for no longer considering adoption to be in the best interest of the child, be limited as this is for data collection purposes only. A drop down box with pre-defined options rather than a free text field would remove the possibility of excessive recording of information.

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

44. Thirty one out of 32 respondents were in favour of an adoption agency notifying the Register as soon as possible should a prospective adopter no longer be available for matching. Suggestions for a timescale for doing this included 7 working days, 10 working days and 4 weeks.

45. One respondent felt that it would be clearer if “as soon as possible” could be defined in terms of timescale and therefore did not agree with this proposal.

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

46. Twenty seven out of 32 respondents were in favour that personal, identifiable information about a child and a prospective adopter should be archived on the Register for a period of 12 months following notification that the information is no longer required for linking.

47. Four respondents did not agree, with two specifically wanting to know why 12 months was decided on and whether it would be necessary to keep the information for this long especially if a child has been matched to an adoptive parent/parents.

48. One respondent answered yes and no to this proposal as they has mixed views on it. On one hand they agreed that it would be beneficial to have the data for re-referrals, however the counter view was that there may have been a change in circumstances therefore a fresh set of data should be provided.

49. One respondent (the Information Commissioner’s Office) answered this and question 12 together. The ICO advised that retention of personal information is dealt with under the fifth Data Protection Principle which requires that it is ‘kept for no longer than is necessary’. The Data Protection Act cannot provide definitive retention timeframes for data controllers as organisations have different priorities and purposes for processing as well as being subject to different legislative regimes. To determine whether the retention is ‘necessary’ an organisation should use two measures: legislative mandate and business case.

50. Once legislative/business case justification has been met, the next step is to consider whether there is any benefit to keeping the record beyond this time. There could be value in a record for research or historical purposes and a good retention

policy will consider this in line with section 33 of the Data Protection Act which provides a qualified exemption for these purposes.

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

51. Seventeen out of 32 respondents were in favour of non-identifiable information about prospective adopters being retained as it is currently on the Register, but stored separately. BAAF Scotland (who were operating the Register at the time of the consultation) advised that the retention of this non identifiable information is an invaluable resource for monitoring and evaluation as well as research work that they carry out.

52. Fourteen respondents did not agree with this proposal with views querying why the information would have to be stored separately from the Register (with BAAF Scotland advising this would cause practical issues for them by having to create a parallel database together with this arrangement being resource intensive) as well as clarity being sought as to the purpose of retaining this information. One respondent did not answer this question, however their view was that again clarity for storing this information was required and if stored, it must be done so securely.

53. The ICO advised that there may be no need to keep the whole record so filtering would be an important part of such retention and are pleased to note that records being kept beyond the 12 month timeframe will be filtered to remove any identifiable data items. The ICO also welcomed the proposal that information archived during the adopted retention period be stored separately.

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

54. Thirty out of 32 respondents were in favour of the detailed requirements for the way in which the Register keeps information secure, being outlined in the Data Sharing Agreement. One respondent said no to this proposal, but gave no reason for their answer.

55. One respondent did not agree or disagree, however their view was that although they agreed with the proposal, the Data Sharing Agreement should be updated following consultation with all relevant parties so that views can be given on it.

***Q14 Do you agree that the two circumstances identified in paragraphs 34 and 35 of the consultation paper should prevent adoption agencies from disclosing information to the Register?***

56. The two circumstances identified in paragraphs 34 and 35 of the consultation document relate to a prospective adopter who has not provided consent for their information to be added to the Register and when a child has not provided their consent for their information to be added to the Register (taking into account their age, maturity and general understanding of what it means to give consent). It was

also suggested within the consultation document in respect of a child's consent, that a child over 12 would be presumed as capable of providing consent and a child under 12 would be decided on a case by case basis.

57. Twenty nine out of 32 respondents agreed that the two circumstances identified in paragraphs 34 and 35 of the consultation paper should prevent adoption agencies from disclosing information to the Register. Of those who agreed with this proposal, their suggestions included:

- Where an adoption agency intends to place a child for adoption with siblings and the sibling's personal details are being added to the record, consent should also be obtained from them
- Some reference in guidance to young people over the age of 12 with communication or learning difficulties may be useful
- That the Register is discussed with those making enquiries about adoption prior to their application
- That agreement is sought from children over 12 years and prospective adopters before sharing their information with Registers in other parts of the UK. It may be important for some young people to continue growing up in Scotland. Some prospective adopters may also have a strong preference for children from Scotland.

58. Three respondents selected no to this proposal, but did not give any views as to why they answered this way.

59. The ICO advised that these questions relate to the matter of consent and concern the sixth Data Protection Principle (shall be processed in accordance with the rights of data subject under the Act). The ICO confirmed that it had worked extensively with Scottish Government in the policy development stages in relation to the Children and Young People (Scotland) Act 2014 and in particular in relation to the sharing of personal information and matters of consent.

60. Paragraphs 34 and 35 of the consultation paper set out two specific circumstances in which adoption agencies should not disclose information to the Register both of which where the child/adopter withhold their consent. The DPA provides specific conditions for processing personal information where consent cannot be obtained or would not be appropriate in the circumstances. However, in order not to rely on consent the processing must be deemed to be 'necessary'. As the proposal is to establish specific circumstances when the information should not be disclosed to the Register and so long as the decision of the individual concerned will be upheld, the consensual model proposed is entirely appropriate.

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

61. Twenty nine out of 32 respondents were in favour of referring a child to the Register when birth parents have not consented to the child's information being shared. Two respondents were not in favour of this proposal, but did not provide a view as to why this was. One respondent did not answer yes or no to the question.



62. Of those who were in favour of referring a child to the Register when birth parents have not consented to the child's information being shared, the general view was that the welfare and needs of the child had to be the paramount consideration should adoption be decided in the child's best interests. It was also added that requiring parental consent would undermine the operation of the Register, deny many children access to the Register services and cause drift and delay for children.

63. Given that the Register is a means of pursuing child care plans and decisions made in other forums, rather than a part of the child care planning process itself, the issue of consent should not determine the referral process.

64. The ICO stated that in respect of paragraphs 36 to 39 where the intention is to continue with the current practice of seeking parental consent for inclusion on the Register in spite of the fact that any objection will be overruled, it would be entirely *inappropriate* to rely on a consensual model. In order to provide the information to the Register when parental consent is absent, adoption agencies will have to rely on other conditions for processing which is outlined in Table 1 of the Privacy Impact Assessment and page 21 of the consultation paper.

65. Where the disclosure is taking place without consent, the ICO believes that it is much more transparent to rely on one of the other conditions for processing and to be as open as possible with parents (should they be traceable) in informing them about what is happening and that non consent can be over-ruled. The ICO recommends that further consideration is given to this matter with a view to establishing a more pragmatic process.

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

66. Twenty seven out of 32 respondents felt that there were no other circumstances in which adoption agencies should not disclose information to the Register. One respondent did not the question providing no view and four respondents felt that the following circumstances should be taken into account:

- In relation to relinquished babies an adoption agency said that they would place the baby with prospective adopters with the birth parents consent prior to a Permanence Registration Panel or register the match at Permanence and then move the baby from foster carers to adopters in that situation. In these circumstances it would not be appropriate to refer to the Register (it should be noted that if a match for a child has already been finalised, they will not have to be referred to the Register).
- There may be unusual and specific circumstances where there are particular sensitivities where providing this information may not be wise. A process for agreeing where this is the case would be helpful.
- Where a Formal Kinship Carer has been looking after a looked after child and the plan for that child becomes adoption (following ADM decision and a match)

**Q17. Do you agree that information from the Register should be disclosed to those listed and for the purposes set out under paragraphs 41 and 42 of the consultation paper?**

67. A link to the consultation document and paragraphs 41 and 42 in relation to this question is available [here](#).

68. Twenty four out of 32 respondents were in favour of information from the Register being disclosed to those listed and for the purposes as set out under paragraphs 41 and 42 of the consultation paper.

69. Six respondents were not in favour of this proposal with the main reason being information being disclosed to a safe-guarder. The Care Inspectorate also queried this as well as stating that they felt it was unnecessary for a social worker to require non-identifying information from the Register for training purposes. Instead they suggested they use case examples. They also agreed with using information from the Register when appropriate to feature children in publications, but were unclear why this should only be confined to the publication Scottish Children Waiting.

70. Two respondents did not answer yes or no to the question. One advised that clear procedures and reliable safeguards should be established when such disclosures are appropriate. The other respondent advised that they agreed with the proposals at paragraphs 41 and 42, but would welcome more details on:

- Information to be entered in an adoption register in England, Wales or Northern Ireland
- Information to be disclosed to a social worker or a safeguarder appointed under the Children's Hearings (Scotland) Act 2011 with the condition that the information is in a non-identifiable form
- Information to be disclosed an inquiry following a request for information under The Inquiries Act 2005.

71. The ICO had no view on the appropriateness of the list of people to whom information may be disclosed. However, the Data Protection Act requirement is that access to personal information is on a purely need-to-know basis and would recommend that this is the benchmark used for inclusion on the list.

72. The ICO was particularly pleased to see the addition of specific purposes in respect of the disclosure as this provides clarity of purpose which circumscribes the use of the information.

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

73. Eighteen out of 32 respondents were in favour of information from the Register being disclosed to a specified person/group of people. Twelve respondents were not in favour of this proposal. One respondent did not answer the question providing no view. One respondent answered yes and no and only stated GP's and members of

the clergy. Of those who were in favour of information from the Register being disclosed to a specified person/group of people, the following were suggested:

- Non identifiable information for academic research on adoption in Scotland
- Scottish Children Waiting
- Information for family finding events such as Adoption Exchange days and Adoption Activity Days (perhaps calling this “other family finding activities being undertaken by the Register”)
- To the Police where appropriate
- To a relevant Court/Sheriff
- To social workers who require data in order to make recommendations to Permanence Panel regarding the “placeability” of children for adoption (for example the likelihood of achieving adoption based on the experiences of children of similar characteristics).

74. Of those who disagreed with this proposal, the only substantive view provided by one respondent was that the information should be disclosed to as few people/groups as possible.

75. The ICO had no view on any additional disclosures, but would recommend that it again be on a need-to-know basis qualified with specific purposes. They did however recommend that due consideration is given to the question of subject access rights (covered under section 7 of the Data Protection Act) and their fit within the legislative regime. Some clarity in respect of an individual’s right of subject access is needed at this point and a further amendment to The Data Protection (Miscellaneous Subject Access Exemptions) Order 2000 No419 may be required.

## **INTER-AGENCY FEE**

76. This section presents the findings relating to three questions relating to the inter-agency fee. It should be noted that this is a separate matter which will not be included in the Regulations to accompany the Adoption Register.

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

77. Twenty eight out of 32 respondents agreed that a standard interagency fee should be paid by the child’s adoption agency to the adopter’s adoption agency. Three respondents answered no to this question, but did not state why they answered this way. One respondent did not answer yes or no to this question and provided no view. One respondent chose not to answer this question or the subsequent questions relating to the inter-agency fee (the ICO).

78. Some of the views in relation to those who agreed with this question are summarised as follows:

- The current variation on charging arrangements across Scotland is unhelpful
- If adoption agencies are confident that they can recover the costs associated

with the recruitment of prospective adopters, they are more likely to be willing to invest the time and resources in this work

- There are currently inconsistencies in relation to which local authorities charge a fee and how much this is compared to voluntary adoption agencies. Having a standard fee in place would eradicate this
- Having a standard fee would ensure parity of opportunity for all children to ensure matching decisions are based on their needs and not budgetary constraints
- Some local authorities may have consortia or individual arrangements in place therefore a caveat should be in place to allow them to continue with these arrangements which would be easier for them to administer.

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

79. Fourteen out of 32 responses were in favour of endorsing the standard inter-agency fee structure used in England. Fourteen responses felt that a Scottish inter-agency fee structure should be established through research and further consultation. Four responses did not commit to a yes or no answer in respect of this question with two respondents providing no view, one respondent suggesting further research and consultation and one respondent commenting that direction from the Scottish Government over the level of a proposed fee would be welcome.

80. The views of those in favour of the Scottish Government endorsing the standard inter-agency fee structure as used in England is summarised as follows:

- The fee structure for England is current and has been well researched. It is also unlikely that there would be much difference in findings if further research was conducted on this issue in Scotland
- Research and consultation on a Scottish inter-agency fee would lead to delay and cost
- A standard fee may lead to increased referrals to the voluntary adoption agencies by local authorities (which are currently perceived by some as being more costly than local authorities)
- The fee should cover adopter recruitment and possibly a degree of post placement support
- Issues such as legal costs and the specific practical arrangements for the child's move should be clarified between agencies in preparation of a placement. It would not be practical or helpful to include these additional areas within the guidance on a standard fee structure.

81. The views of those in favour of a Scottish inter-agency fee structure being established through research and further consultation is summarised as follows:

- The circumstances and culture in Scotland is not the same as it is in England

- Currently the fee between local authorities is lower than that for voluntary adoption agencies as proposed therefore given current financial constraints, this should be taken into account
- Should the proposals for the Regulations to accompany the Adoption Register become part of legislation, information in the Scottish Register could be disclosed to adoption agencies and also be entered in adoption registers across the UK. It would therefore be appropriate to determine an inter-agency fee based on Scottish detail only.

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

82. Twenty eight out of 32 respondents were in favour of a standard inter-agency fee structure in Scotland being endorsed by Scottish Ministers in guidance. Three respondents did not agree with this proposal and did not provide any views on why they felt this way. One respondent chose not to answer the question (Children for Scotland).

83. The views of those in favour is summarised as follows:

- Having a standard inter-agency fee structure in Scotland would simplify the process of inter-agency fees
- This has been a long standing issue and having a standard approach would remove a barrier to effective matching for some children
- Establishing the standard fee structure through guidance provides the appropriate degree of flexibility to allow changes to be made in response to changing costs or emerging research.

## **NEXT STEPS**

84. The Scottish Government has considered fully the views expressed by stakeholders in written consultation responses and informal meetings held. The responses to the consultation will contribute to the development of the Regulations to accompany Scotland's Adoption Register.

85. This report will be submitted for ministerial clearance and then published on the Scottish Government website. Further information on implementation will also be made available on the Scottish Government website in due course.

## **ANNEX A – LIST OF RESPONDENTS**

86. The following organisations and individuals responded to the consultation and were willing for their responses to be made public.

### **Individuals**

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### **Organisations**

Adoption UK (Scotland)

Argyll and Bute Council

BAAF Scotland

Care Inspectorate

Centre for Excellence for Looked After Children (CELCIS)

Children in Scotland

Dundee City Council

Dumfries and Galloway Council

East Ayrshire Health & Social Care Partnership

East Dunbartonshire Council

Falkirk Council

Fife Council

Glasgow City Council

Highland Council

Information Commissioner's Office (ICO)

Midlothian Council

North Ayrshire Health & Social Care Partnership

North Lanarkshire Council

Perth & Kinross Council

Scottish Adoption

Scottish Borders Council

South Lanarkshire Council

Social Work Scotland

Social Work Scotland - Fostering and Adoption sub group

West Lothian Council



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