

# HOUSE OF LORDS

## Secondary Legislation Scrutiny Committee

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49th Report of Session 2017–19

**Proposed Negative Statutory Instrument under  
the European Union (Withdrawal) Act 2018**

**Drawn to the special attention of the House:  
Children’s Homes etc. Inspection Fees,  
Childcare Fees, Adoption and Children  
Act Register (Amendment) Regulations  
2019**

**Includes information paragraphs on:**

Draft Higher Education and Research  
Act 2017 (Further Implementation etc.)  
Regulations 2019

Town and Country Planning (Permitted  
Development, Advertisement and  
Compensation Amendments) (England)  
Regulations 2019

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### *Secondary Legislation Scrutiny Committee*

The Committee's terms of reference, as amended on 11 July 2018, are set out on the website but are, broadly:

To report on draft instruments and memoranda laid before Parliament under sections 8, 9 and 23(1) of the European Withdrawal Act 2018.

And, to scrutinise –

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in the terms of reference.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

### *Members*

Rt Hon. Lord Chartres	Lord Goddard of Stockport	Baroness O'Loan
Rt Hon. Lord Cunningham of Felling	Lord Haskel	Lord Sherbourne of Didsbury
Lord Faulkner of Worcester	Rt Hon. Lord Janvrin	Rt Hon. Lord Trefgarne (Chairman)
Baroness Finn	Lord Kirkwood of Kirkhope	

### *Registered interests*

Information about interests of Committee Members can be found in the last Appendix to this report.

### *Publications*

The Committee's Reports are published on the internet at <http://www.parliament.uk/seclegpublications>

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at <http://www.legislation.gov.uk/uksi>

### *Committee Staff*

The staff of the Committee are Christine Salmon Percival (Clerk), Helen Gahir (Adviser), Nadine McNally (Adviser), Philipp Mende (Adviser), Jane White (Adviser), Louise Andrews (Committee Assistant), Ben Dunleavy (Committee Assistant) and Paul Bristow (Specialist Adviser).

### *Information and Contacts*

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is [hlseclegscrutiny@parliament.uk](mailto:hlseclegscrutiny@parliament.uk).

# Forty Ninth Report

## PROPOSED NEGATIVE STATUTORY INSTRUMENT UNDER THE EUROPEAN UNION (WITHDRAWAL) ACT 2018

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### Proposed Negative Statutory Instruments about which no recommendation to upgrade is made

- Euratom Research and Training Programme (Revocation) (EU Exit) Regulations 2019

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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### Children’s Homes etc. Inspection Fees, Childcare Fees, Adoption and Children Act Register (Amendment) Regulations 2019 (SI 2019/835)

*Date laid: 9 April 2019*

*Parliamentary procedure: negative*

*These Regulations include the revocation of the duty on adoption agencies to provide relevant information to the Secretary of State about children approved for adoption and approved prospective adopters who have not been matched, in order to be placed on the Adoption Register. The Department for Education (DfE) states that “These revocations are necessary as the Secretary of State will not be operating or maintaining an Adoption Register from 01 April 2019.” The Committee is concerned that, in relation to this element of the Regulations, DfE does not provide a more detailed explanation in the Explanatory Memorandum of its policy intentions and additional background information to assist scrutiny.*

*The Committee held an evidence session with the Parliamentary Under Secretary of State for Children and Families on 14 May 2019 to ascertain additional context to these Regulations. Although grateful to the Minister for explanations given during the evidence session, the Committee has concerns about the potential implications of the Department having ceased provision of the Adoption Register for England before a replacement system is ready, and without a clear timetable for when it will be ready. The Committee has serious concerns about any potential impact on service provision in relation to those children who are harder to match with prospective adopters.*

**The Regulations are drawn to the special attention of the House on the ground that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation.**

#### *Policies covered by this instrument*

1. The Department for Education (DfE) has laid these Regulations with an Explanatory Memorandum (EM). **The Regulations are subject to the negative resolution procedure. As such, they do not require the approval of the Houses and will be the subject of a debate in the House only if a motion is tabled in relation to them.**
2. DfE summarises in the EM (at paragraph 6.1) that the purpose of the Regulations is threefold. The instrument includes amendments to:
  - The *Adoption Agencies Regulations 2005*, to revoke the duty on adoption agencies to refer unmatched children and approved prospective adopters to the Adoption Register, and amendments to the *Adoption and Children Act Register Regulations 2014* to revoke the reference to the related provisions of the 2005 Regulations.
  - The *Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (Fees and Frequency of Inspections) (Children’s Homes etc.) Regulations 2015*, in order to increase certain fees payable to the Chief

Inspector by 10%; and to lower the threshold for the higher fee, for residential special schools and for children's homes.

- The *Childcare (Fees) Regulations 2008*, to extend the transitional provision for certain childcare providers to continue to pay a lower annual fee until 31 August 2021.

3. **This Report focuses on the first of these purposes, namely the element of the Regulations involving changes to the Adoption Register.**

*Background*

4. The Committee was concerned that the EM provided insufficient context and background information to assist scrutiny on the changes these Regulations make in relation to the Adoption Register. The Committee was not satisfied with the additional information that had been received from the DfE (Appendix 1) and held an evidence session on 14 May 2019 with Nadhim Zahawi MP, the Parliamentary Under Secretary of State for Children and Families,<sup>1</sup> to seek further information about why the Adoption Register for England had been allowed to lapse and the potential implications.

*Adoption Register for England*

5. The EM (at paragraph 7.10) states that the *Adoption Agencies Regulations 2005* place a duty on adoption agencies to refer unmatched children and approved prospective adopters to the Adoption Register. The Adoption Register is a database that includes details of: (a) children who are approved for adoption but who are waiting to be matched; (b) approved prospective adopters; and (c) prescribed information about children for whom the adoption agency is considering adoption.

6. DfE told us that:

“The Register operates on a statutory basis under section 125 of the Adoption and Children Act 2002, which permits the Secretary of State to establish and maintain a register. The Secretary of State is also permitted to make arrangements with an organisation to operate the Register. The Adoption and Children Act Register Regulations 2014 set out the content of the Register and the disclosure of information requirements. The Adoption Agencies Regulations 2005 currently require an adoption agency to provide information to the Register where it has not identified particular prospective adopters with whom a child suitable for adoption should be placed. This should happen as soon as possible, but no later than three months from the date on which the agency determines that the child should be placed for adoption.”<sup>2</sup>

7. We asked DfE how the Adoption Register operates. In response, DfE stated that:

“When a local authority is considering placing a child for adoption, they look for a match with a suitable family, which is often found locally. For some children, they need to look further afield to families ‘recruited’ by another adoption agency. The Register was an online database of

1 The transcript of the oral evidence session of 14 May 2019 can be accessed at: <https://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/TRANSCRIPT%20SLSC%2014-05-19%20Zahawi%20-%20corrected.pdf> [accessed 22 May 2019].

2 Appendix 1, additional information from DfE. Response to Q1.

unmatched children and approved prospective adopters. It was used by social workers and approved prospective adopters to seek matches...”.<sup>3</sup>

8. The Committee raised further questions about the operation of the Adoption Register during the evidence session. Given that local authorities are under a statutory duty to register children for adoption on the Adoption Register, a question was asked about why all children should be registered on the Adoption Register whilst some are also registered on the commercial registers. We were told: “In reality, as we understand it, some local authorities did not comply. Often, despite it being a statutory requirement, they were not taking it up...”.<sup>4</sup>
9. **We are concerned by this apparent non-compliance with the statutory requirement and query why it had not been followed up at an earlier stage. Should this instrument be the subject of a motion for debate, the House may wish to press the Minister further about this matter.**

*Contractual running of the Adoption Register*

10. In the EM (at paragraph 7.11), DfE states that “The present contract for running the Adoption Register comes to an end on 31 March 2019 and the Department is exploring what may take its place”. We asked the Department whether this will leave a gap in provision. In response, the Department stated that it would not and that whilst there is currently no statutory provision, there will continue to be commercial systems available that are well established and more popular than the statutory Adoption Register.<sup>5</sup>

*Timetable for future provision*

11. We asked whether there was a reason that the Department had not completed its consideration of future provision before the present contract ended. DfE stated that:

“The Department has been considering possible future provision over a long period, exploring a variety of options. Given the potential synergy between fostering and adoption, as highlighted by Fostering Better Outcomes,<sup>[6]</sup> it was important that the two could be considered together. This consideration commenced in Autumn 2018. Contractually, the Department had already extended the Adoption Register contract for the maximum permitted period, to allow time to explore options for the fostering and adoption sectors. As the other commercial systems in the market are operating effectively, there will not be a gap in provision for adoption agencies.”<sup>7</sup>

12. During the evidence session, the Minister stated that:

“It was a close call whether we re-procured or not ... but ultimately I thought the right thing to do was to focus our resource and energy on the next iteration of what we think we should be doing rather than re-

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3 Appendix 1, additional information from DfE. Response to Q1.

4 [Q 7](#) (Katy Willison).

5 Appendix 1, additional information from DfE. Response to Q2(i).

[6] Department for Education, *Fostering Better Outcomes*, Cm9662, July 2018: <https://www.gov.uk/government/publications/fostering-better-outcomes> [accessed 2 May 2019].

7 Appendix 1, additional information from DfE. Response to Q2(iii).

procure and embed more siloed thinking, with the message going out from the centre that that is our modus operandi.”<sup>8</sup>

13. In terms of how long the consideration of future provision is anticipated to take, DfE stated that the initial phases of this work have concluded, demonstrating similar findings in both fostering and adoption with promising options identified; that the Department was now planning the next phases of work, including further engagement with the sector; and, that they found it difficult to put a timescale on this work due to the many different considerations, but will ensure that both the fostering and adoption sectors are kept updated and engaged in the work as it progresses.<sup>9</sup>
14. During the evidence session the timetable was questioned further. We were told that the new system “could require investment” so until there was clarity about “the Department’s position in the spending review and the timing of that, it is quite difficult to set a timetable ...”.<sup>10</sup> The Department offered to write after the spending review to give an indication of the timing.
15. **The Committee remains concerned that the Department cannot offer a timetable for when the future provision in relation to an adoption register may be implemented, particularly as the statutory Adoption Register has already ceased operating. The House may wish to press the Minister for further explanation.**

#### *Commercial provision*

16. We asked DfE for clarification about any differences between the Adoption Register and the commercial provision in relation to security of data. DfE stated that:
 

“Commercial providers would be required to comply with relevant data protection legislation in the same way as the Secretary of State or any organisation operating and maintaining the Adoption Register would have been.”<sup>11</sup>
17. During the evidence session, assurance was given that the safeguards and governance provisions that operated with the statutory register are no less robust for the commercial provider.
18. We also asked DfE for clarification about any differences between the Adoption Register and the commercial provision in terms of geographical coverage. The Department stated that:
 

“Commercial providers cover the whole of the UK. The duty that is being revoked is applicable to adoption agencies in England only. The Adoption Register may contain details of children and prospective adopters provided by adoption agencies in Wales, Scotland and Northern Ireland, although in practice, it contained limited information from them.”<sup>12</sup>
19. During the evidence session, DfE added that:

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8 [Q 2](#) (Nadhim Zahawi MP).

9 Appendix 1, additional information from DfE. Response to Q2(iv).

10 [Q 3](#) (Katy Willison).

11 Appendix 1, additional information from DfE. Response to Q6(i).

12 *Ibid.* Response to Q6(ii).

“... this is the Adoption Register for England and it primarily has details of children from England; there is a very small number from Scotland and Wales. Separate registers continue to cover Scotland and Wales, and there is a non-statutory register operating in Northern Ireland...”.<sup>13</sup>

20. We sought clarification about the costs of using a commercial alternative and who would be expected to meet these costs. We also asked how the commercial alternatives differ from using the Adoption Register. DfE told us that the adoption agency meets the cost of subscription to alternative commercial systems and, despite the Adoption Register being a free service, nearly all adoption agencies already paid for alternative services, so there is no additional cost being borne. The Department added that commercial systems serve the same purpose as the Adoption Register, but feedback suggests there is a preference from users for the functionality the commercial systems offer.<sup>14</sup>
21. The Committee questioned the costs further during the evidence session. The Minister confirmed:
- “... the statutory register was a free service to adoption agencies and local authorities. Our contract to operate the service cost the department £645,000 in 2017-18 ... the commercial alternative, depending on the size of the local authority, and the size of the looked-after children population in that local authority, is typically around £10,000 or less per local authority. The costs of subscription will continue to fall to adoption agencies, as they did while the statutory register was in operation. The department does not provide funding to commercial matching systems...”.<sup>15</sup>
22. Following the evidence session, we received a submission from the Chief Executive of Link Maker (Appendix 2) and a letter from the Minister (Appendix 3) which provide additional information relating to costs. We have subsequently written to the Minister to ask whether the commercial providers are established as not-for-profit organisations; and to seek clarity on how many commercial providers there are and the relative proportion of local authorities subscribed to each of these providers. We have also asked about the proportion of local authorities that are paying approximately £5,000 subscription costs and the proportion that are paying approximately £10,000 subscription costs, to seek further clarity on this cost range (see Appendix 4).
23. **The Minister’s response to these further inquiries will be made available to the House. The House may however also wish to raise the issue of the status of the commercial providers and the range of subscription costs paid by local authorities to them in debate.**

#### *Evaluation of the Adoption Register*

24. The Minister was asked about any formal evaluation of the success of the Adoption Register. We were told that:

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13 [Q 4](#) (Sheila Shuttlewood).

14 Appendix 1, additional information from DfE. Response to Q4.

15 [Q 11](#) (Nadhim Zahawi MP).

“We carried out some evaluation of it, in reconsidering. We spoke to social workers and adopters, and they uniformly told us that they preferred the other processes.”

“... They found it clunky and difficult to use, and the adopters all told us that they preferred the depth of information about the children on the commercial products rather than the statutory one.”<sup>16</sup>

### *Consultation*

25. In response to a question about discussions with the sector (see paragraph 7.13 of the EM), DfE told us that it had communications with the Association of Directors of Children’s Services, the Adoption and Special Guardianship Leadership Board and its members, the Consortium of Voluntary Adoption Agencies, the Regional Adoption Agencies Leaders Group, Local Government Association, Ofsted, and Adoption UK.<sup>17</sup>
26. We further asked whether there had been any public consultation carried out on the changes in this instrument relating to the Adoption Register. DfE stated that: “There has been no public consultation carried out. The changes were though discussed with the sector and endorsed by all parts of the sector.”<sup>18</sup>

### *Referrals and matches*

27. DfE provided additional information stating that 751 approved prospective adopters and 1817 children approved for adoption were referred to the Adoption Register in 2018. DfE also stated that in 2018-19, the Adoption Register for England made 257 matches between approved adopters and children and in 2017-18 it made 277. DfE added that, in 2018-19, commercial systems matched 967 children to approved adopters.<sup>19</sup>
28. After seeking additional clarity during the evidence session, the Committee remain unclear about the data. **The House may wish to invite the Minister to explain how the Department is planning to ensure that there will not be a corresponding drop in the number of matches and adoptions now the Adoption Register has ceased operating.**

### *Risk of diminution of provision*

29. Lord Russell of Liverpool participated in the evidence session, for which we are grateful. He declared his interest as a Governor of Coram.<sup>20</sup> He raised the issue of difficult-to-place children:

“As I understand it, the way the national adoption register was being used primarily was to deal predominantly with the children that the commercial adoption agencies found almost impossible to place. It was focused on a sub-group of children being put up for adoption who were the most difficult to find matches for, particularly at local level. The primary purpose that it achieved was to take that sub-group of particularly challenging potential adoptees and, by providing the extraordinarily

16 Q 8 (Katy Willison).

17 Appendix 1, additional information from DfE. Response to Q5.

18 *Ibid.* Response to Q5(i).

19 *Ibid.* Responses to Q1(i),(ii) and (iii).

20 Coram runs one of the largest independent adoption agencies in the UK: <https://www.coramadoption.org.uk/> [accessed 22 May 2019].

successful matching events, enable children and potential adopting parents to be introduced in a way that completely removed the normal boundaries between local areas. That enabled matches to take place that otherwise probably would not have done. That, as I understand it, was the greatest achievement of the national adoption register.”<sup>21</sup>

30. The Minister was asked what is happening to the children who are the hardest to adopt, and stated in response:

“You are right to ask about the children who are the hardest to adopt. The voluntary adoption agencies and the voluntary sector play a significant role in that area, and I am encouraging them more and more to work with the regional adoption agency infrastructure we have put together. Most matches for difficult-to-place children need much greater expertise, effort and capacity building, and that is delivered by the voluntary sector and the voluntary adoption agencies, which I meet regularly. The element of the work that is about those events is carrying on.”<sup>22</sup>

31. We were also told about exchange and activity days:

“... a feature of the contract with the statutory register was something called exchange and activity days. Indeed, around 50% of the matches that came through the statutory process came through those exchange and activity days, which is when you give prospective adopters a chance to meet children. That part of the work will carry on. The institution we contracted to provide the statutory register will carry on that part of the work. Around 50% of the matches that came through before were achieved through those activities, and those activities will not stop. That was something that was considered valuable and useful, and it will not end.”<sup>23</sup>

32. **We are concerned by any potential risk of a diminution of provision relating to children who may be harder to place and the House may wish to seek further assurance from the Minister about this matter, including how the Government will seek to mitigate this risk.** The Committee has written to the Minister to raise a concern in relation to this (Appendix 4).

*Inquiry into fostering,<sup>24</sup> and independent review ‘Foster Care in England’<sup>25</sup>*

33. The EM (at paragraph 7.11) notes that:

“In its response to the Education Select Committee’s inquiry into fostering and Foster Care in England (an independent review commissioned by the Department), the Government said it would look at where and how technology could be used to enhance the national infrastructure that supports foster care. It also signalled a move away from considering the component parts of the care system in isolation which ‘creates an unhelpful divide in the way we approach a child’s experience in

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21 Q 14 (Lord Russell of Liverpool).

22 Q 14 (Nadhim Zahawi MP).

23 Q 8 (Katy Willison).

24 Education Committee, *Fostering*, (First Report of Session 2017-19, HC340)

25 Department for Education, ‘Foster Care in England’, February 2018: <https://www.gov.uk/government/publications/foster-care-in-england> [accessed 22 May 2019].

the system and his or her routes to permanence.’ Responding to the recommendations made by the two reports allowed the Department to explore potential solutions that could potentially bring the fostering and adoption sectors closer together.”

34. The EM also states (at paragraph 7.12) that a Digital Discovery Phase was carried out, and this found that information is not shared effectively, causing inefficiency. An Alpha phase is now underway to analyse whether there is viable means of collating, storing and sharing real-time, sensitive information across fostering, adoption and potentially other parts of children’s social care. DfE states that “Whilst this work continues, adoption agencies are still able to undertake matching by using commercial alternatives to the Adoption Register which are already widely used by adoption agencies.”
35. The EM notes (at paragraph 7.13) that:
- “In discussions with the sector, adoption agencies questioned how they would fulfil their statutory duty to refer children and approved prospective adopters to the Adoption Register in the meantime. We agreed that it was best to revoke the duty on adoption agencies and communicated that we would do so at the earliest opportunity. This Instrument will do this. We will consider any longer term legislative requirements as part our continuing work to explore technological solutions that potentially bring the fostering and adoption sectors closer together”.
36. During the evidence session, we were told the reasons why the decision had been taken to cease the Adoption Register, including that: the preferences of the child and the voice of the child had been missing from the statutory Adoption Register; that the child should be at the heart of the future product; and that the Adoption Register in its previous form was not fit for purpose. It was stated that the Minister would not have taken the decision if he was not satisfied that there is provision in place from commercial providers that can deliver better than the statutory register.<sup>26</sup>
37. The Minister told us:
- “Let me try to take you through my thinking, which I hope will explain our reasons to the Committee. It is certainly not simply to end a service for the most vulnerable children in our society; it is to look at how we can do much better, and hopefully I will go through that with you today. The register came to an end at the end of March, and both the Education Select Committee and the work that Martin Narey and Mark Owers did for me in reviewing foster care in England suggested that the work we do for the most vulnerable children in our care is far too siloed; fostering sits in one place and adoption somewhere else. We need to bring together our thinking, and that is what the future will look like ...”<sup>27</sup>

### *Conclusion*

38. **The Regulations are drawn to the special attention of the House on the ground that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation.** Despite extensive additional information and an evidence session, the Committee

<sup>26</sup> [Q 3](#).

<sup>27</sup> [Q 2](#) (Nadhim Zahawi MP).

remains unclear about the Department's plans, timetable and budget for the replacement service.

39. Whilst acknowledging the objective of trying to improve the service, the Committee remains concerned by some of the potential implications of having ceased the Adoption Register before a replacement has been identified, and in particular the potential diminution of provision during this interim phase for those children who may be more difficult to place.

## INSTRUMENTS OF INTEREST

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### Draft Higher Education and Research Act 2017 (Further Implementation etc.) Regulations 2019

40. According to the Department for Education (DfE), the main purpose of these draft Regulations is to make legislative amendments that are needed following the commencement of provisions in the Higher Education and Research Act 2017 (“the 2017 Act”). DfE explains that, amongst other changes, the 2017 Act replaced the system of higher education (HE) grant funding as administered by the Higher Education Funding Council for England (HEFCE) with a system overseen by a new sector regulator, the Office for Students (OfS). Under this new system, which will become fully operational on 1 August 2019, the OfS will administer grant funding, register HE providers, oversee access to HE and impose and enforce registration conditions. This instrument proposes consequential amendments which are needed as result of these regulatory changes, such as replacing references to HEFCE with references to the OfS. In addition, the draft Regulations propose to bring the OfS formally into scope as a listed regulator subject to the Regulators’ Code. They also seek to amend the list of exempt charities under the Charities Act 2011 to permit only those HE providers that are registered with, and regulated by, the OfS to continue to be exempt, and to allow new registered HE providers to become exempt and be regulated by the OfS rather than the Charity Commission in relation to charities law obligations, if they choose to apply for this status. According to DfE, the aim is to support effective and proportionate regulation by allowing charities to make a single set of returns to the OfS, rather than to both the OfS and the Charity Commission. While the territorial extent and application of the instrument is the UK, the Department told us that the provisions in relation to education that are amended by the instrument do not apply or extend to Scotland or Northern Ireland. It would have been helpful for the Department to be clearer about this in the Explanatory Memorandum.
41. The Committee received a submission from *defenddigitalme*, an advocate group for children’s privacy in data and digital rights, which raised concerns about the way the draft Regulations would enable the OfS to share pupil and student data with third parties. In its response, DfE explained that the instrument does not propose new data sharing powers but seeks to substitute the bodies involved in the sharing of existing datasets without extending the scope of those datasets, and that these amendments are necessary following the changes made to the sector by the 2017 Act. The data sharing arrangements allowing the OfS to share data with third parties were originally introduced by the Higher Education and Research Act 2017 (Cooperation and Information Sharing) Regulations 2018, which the House debated and approved in July 2018.<sup>28</sup> We are publishing the submission from *defenddigitalme* and the Department’s response on our website.<sup>29</sup>

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28 HL Deb, 24 July 2018, cols 1650-1661.

29 SLSC Publications page: <https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/publications/> [accessed 22 May 2019].

**Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 (SI 2019/907)**

42. These Regulations, laid by the Ministry of Housing, Communities and Local Government (MHCLG), bring forward some of the proposed measures set out in the Government's consultation 'Planning Reform: supporting the high street and increasing the delivery of new homes'.<sup>30</sup> These measures include: allowing for the erection of taller upstands for off-street electric vehicle charging points; amending the existing right additionally to allow the change of use from takeaways to residential use; allowing the change of use from retail, takeaways, betting offices, payday loan shops, and launderettes to office use; amending the existing right additionally to allow the temporary change of use to specified community uses: exhibition hall, public library, museum, clinic or health centre, or art gallery (other than for sale or hire), and to extend the period of temporary use from two years to three; and, removing the existing permitted development right which allows the installation, alteration or replacement of a public call box by, or on behalf of, an electronic communications code operator (subject to certain conditions).
43. In addition, the existing law, which grants permitted development for larger extensions to be completed by 30 May 2019, is being amended to remove the date by which a larger extension must be completed, thereby making the right permanent.
44. The Regulations make some further minor amendments, such as making clear that dwelling-houses, developed as a change of use from agricultural buildings to residential use, may not be bigger than 465 square metres, amending references to the National Planning Policy Framework and making clear that where there is a temporary use of a building as a state-funded school, the building retains its original use or use class.

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<sup>30</sup> Ministry of Housing, Communities and Local Government, *Planning reform: supporting the high street and increasing the delivery of new homes* (May 2019): <https://www.gov.uk/government/consultations/planning-reform-supporting-the-high-street-and-increasing-the-delivery-of-new-homes> [accessed 22 May 2019].

## **INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE**

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### **Draft instruments subject to affirmative approval**

Child Support (Miscellaneous Amendments) Regulations 2019  
 Higher Education and Research Act 2017 (Further Implementation etc.) Regulations 2019

### **Draft instruments subject to annulment**

Cornwall (Electoral Changes) Order 2019  
 Hartlepool (Electoral Changes) Order 2019

### **Instruments subject to annulment**

- SI 2019/884 Housing (Approval of Codes of Management Practice) (Student Accommodation) (England) Order 2019
- SI 2019/904 Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2019
- SI 2019/907 Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019
- SI 2019/909 Healthy Start Scheme and Welfare Food (Amendment) (England and Wales) Regulations 2019
- SI 2019/915 Assured Tenancies and Agricultural Occupancies (Forms) (England) (Amendment) Regulations 2019
- SI 2019/916 Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) (No. 2) Regulations 2019
- SI 2019/925 Tribunal Procedure (Amendment) Rules 2019
- SI 2019/939 Communications Data Acquisition Regulations 2019

## APPENDIX 1: CHILDREN'S HOMES ETC. INSPECTION FEES, CHILDCARE FEES, ADOPTION AND CHILDREN ACT REGISTER (AMENDMENT) REGULATIONS 2019 (SI 2019/835)

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### Additional Information from the Department for Education

*Q1: How does the Adoption Register operate?*

A1: When a local authority is considering placing a child for adoption, they look for a match with a suitable family, which is often found locally. For some children, they need to look further afield to families 'recruited' by another adoption agency. The Register was an online database of unmatched children and approved prospective adopters. It was used by social workers and approved prospective adopters to seek matches.

The Register operates on a statutory basis under section 125 of the Adoption and Children Act 2002, which permits the Secretary of State to establish and maintain a register. The Secretary of State is also permitted to make arrangements with an organisation to operate the Register. The Adoption and Children Act Register Regulations 2014 set out the content of the Register and the disclosure of information requirements. The Adoption Agencies Regulations 2005 currently require an adoption agency to provide information to the Register where it has not identified particular prospective adopters with whom a child suitable for adoption should be placed. This should happen as soon as possible, but no later than three months from the date on which the agency determines that the child should be placed for adoption.

*Q1(i): How many approved prospective adopters have been registered on the Adoption Register?*

A1(i): In 2018, 751 approved prospective adopters were referred to the Adoption Register.

*Q1(ii): How many children who are approved for adoption but are waiting to be matched, have been registered on the Adoption Register?*

A1(ii): In 2018, 1817 children approved for adoption were referred to the Adoption Register.

*Q1(iii): How many matches between approved prospective adopters and children approved for adoption, have been due to the Adoption Register?*

A1(iii): In 2018/19, the Adoption Register for England made 257 matches between approved adopters and children and in 2017/18 it made 277. In 2018/19, commercial systems matched 967 children to approved adopters.

*Q2: Paragraph 7.11 of the EM states that 'The present contract for running the Adoption Register comes to an end on 31 March 2019 and the Department is exploring what may take its place':*

*Q2(i): Will this leave a gap in provision?*

A2(i): No. Whilst there is currently no statutory provision, there will continue to be commercial systems available that are well established and more popular than the statutory Adoption Register.

*Q2(ii): Is there an enduring duty on the Secretary of State to operate and maintain the Adoption Register?*

A2(ii): Section 125 of the Adoption and Children Act 2002 says that the Secretary of State “may” establish and maintain a Register. Therefore, there is no duty on the Secretary of State to operate and maintain a Register.

*Q2(iii): Was there a reason that the Department didn’t complete its consideration of future provision before the present contract ended?*

A2(iii): The Department has been considering possible future provision over a long period, exploring a variety of options. Given the potential synergy between fostering and adoption, as highlighted by Fostering Better Outcomes, it was important that the two could be considered together. This consideration commenced in Autumn 2018.

Contractually, the Department had already extended the Adoption Register contract for the maximum permitted period, to allow time to explore options for the fostering and adoption sectors. As the other commercial systems in the market are operating effectively, there will not be a gap in provision for adoption agencies.

*Q2(iv): How long does the Department anticipate that the consideration of future provision will take?*

A2(iv): The initial phases of this work have concluded, demonstrating similar findings in both fostering and adoption with promising options identified. We are now planning the next phases of work, including further engagement with the sector. It is difficult to put a timescale on this work due to the many different considerations; however the Department will ensure that both the fostering and adoption sectors are kept updated and engaged in the work as it progresses.

*Q2(v): Is there a published policy document about the consideration of future provision?*

A2(v): There is no published policy document on the consideration of future provision, but please see the copied text below which has been used in communications to the sector in January 2019 relating to the end of the current statutory Adoption Register:

In August, the Department for Education communicated:

- Pausing procurement for a new Adoption Register to consider synergies with fostering during the digital discovery announced in Fostering Better Outcomes.
- A period without a statutory Register, with further details provided in due course.

We intend to remove the duty to refer at the earliest opportunity. Given parliamentary time constraints, this will be after 1 April although in practice agencies would not need to refer.

Ofsted confirmed under the Inspection of Local Authority Children’s Services (ILACS) framework, inspectors do not consider use of specific matching tools, e.g. the Register. Inspectors focus on needs of individual children, their journey and how matching practice impacts on this.

The Register will be open as long as practical until 31 March. The contractor, Coram, will provide registered users with details including last dates for referrals

and system use. In planning, agencies should satisfy themselves they are operating within legislation.

As stated in August, considering parts of the care system in isolation ‘creates an unhelpful divide in the way we approach a child’s experience in the system’. The digital discovery investigated fostering information flows and overlaps with adoption. It found information is not shared effectively causing inefficiency. We will now undertake an ‘alpha’ phase:

- Exploring how fostering information on gov.uk could be improved.
- Analysing whether there is viable means of collating, storing and sharing real-time, sensitive information across fostering, adoption and potentially other parts of children’s social care.

The latter has strong synergies with the Register, we are focusing on taking this forward and will provide updates in due course.

If you have any questions, please contact [raa.mailbox@education.gov.uk](mailto:raa.mailbox@education.gov.uk).

*Q3: Paragraph 7.13 of the EM notes that the statutory duty on adoption agencies to refer children and approved prospective adopters to the Adoption Register is being revoked by this Instrument. Why is the duty being revoked, rather than either being suspended or continuing, while the Department continues with the Alpha Phase referred to in paragraph 7.12 of the EM?*

A3: There is no mechanism in the legislation which would enable the suspension of this duty. As the Secretary of State does not currently maintain a Register, by continuing to require adoption agencies to refer details to a Register which is not in operation would be a redundant duty on adoption agencies and contrary to best practice.

*Q4: Paragraph 7.12 of the EM states that ‘...adoption agencies are still able to undertake matching by using commercial alternatives to the Adoption Register which are already widely used by adoption agencies.’ What are the costs of using a commercial alternative and who would be expected to meet these costs? How do these commercial alternatives differ from using the Adoption Register?*

A4: The cost of commercial systems is not known and will likely vary depending on, for example, the size of the adoption agency. The adoption agency meets the cost of subscription to alternative commercial systems and, despite the Adoption Register being a free service, nearly all adoption agencies already paid for alternative services so there is no additional cost being borne.

The commercial systems serve the same purpose as the Adoption Register, but feedback suggests there is a preference from users for the functionality the commercial systems offer.

*Q5: Paragraph 7.13 of the EM refers to discussions held with the sector - who was involved in those discussions?*

A5: The Department had communications with the Association of Directors of Children’s Services (ADCS), the Adoption and Special Guardianship Leadership Board (ASGLB) and its members, the Consortium of Voluntary Adoption Agencies (CVAA), the Regional Adoption Agencies Leaders Group, Local Government Association (LGA), Ofsted, and Adoption UK.

*Q5(i): Has there been any public consultation carried out on the changes in this instrument relating to the Adoption Register?*

A5(i): There has been no public consultation carried out. The changes were though discussed with the sector and endorsed by all parts of the sector.

*Q6: Are there any differences between the Adoption Register and the commercial provision (referenced at paragraph 7.12 of the EM) with respect to:*

*Q6(i): security of data?*

A6(i): Commercial providers would be required to comply with relevant data protection legislation in the same way as the Secretary of State or any organisation operating and maintaining the Adoption Register would have been.

*Q6(ii): geographical coverage?*

A6(ii): Commercial providers cover the whole of the UK. The duty that is being revoked is applicable to adoption agencies in England only. The Adoption Register may contain details of children and prospective adopters provided by adoption agencies in Wales, Scotland and Northern Ireland, although in practice, it contained limited information from them.

**25 April 2019 (Answers to questions 5-6 provided on 1 May 2019)**

**APPENDIX 2: CORRESPONDENCE ON CHILDREN’S HOMES  
ETC. INSPECTION FEES, CHILDCARE FEES, ADOPTION AND  
CHILDREN ACT REGISTER (AMENDMENT) REGULATIONS 2019**

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**Letter from Mr Andy Leary-May, Chief Executive of Link Maker, to the  
Rt Hon. Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny  
Committee**

I am the co-founder and Chief Executive of Link Maker, and have just listened with interest to the Lords Committee from 14th May in which my organisation was discussed in the context of the closure of the Adoption Register. Some of the information shared wasn’t quite accurate or up-to-date, and I hope the points below might be helpful to the committee:

- (1) As of this month, all local authorities and regional adoption agencies are using Link Maker. The three that were not have recently purchased licences.
- (2) The average cost per local authority is closer to £5,000 than £10,000 – the total cost is not significantly higher than statutory register.
- (3) Link Maker’s platform has actually included fostering, as well as residential care, since 2017. One of our aims has always been to reduce silos, and we are working in partnership with a group of 8 London boroughs on a DfE funded project to improve commissioning, and data use, within fostering and children’s homes.

You can find additional information about how Link Maker is working to fill the gap left by the Register here:

[https://www.linkmaker.co.uk/static/best\\_chance\\_for\\_every\\_child.pdf](https://www.linkmaker.co.uk/static/best_chance_for_every_child.pdf)

If the committee would like any further clarification on any aspect of our work, please don’t hesitate to contact me.

**15 May 2019**

### **APPENDIX 3: CORRESPONDENCE ON CHILDREN'S HOMES ETC. INSPECTION FEES, CHILDCARE FEES, ADOPTION AND CHILDREN ACT REGISTER (AMENDMENT) REGULATIONS 2019**

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#### **Letter from Nadhim Zahawi MP, Parliamentary Under-Secretary of State for Children and Families at the Department for Education, to Lord Trefgarne**

I would like to thank you again for giving me the opportunity to speak to the committee about the decision to close the Adoption Register and the work we are doing on the future provision for fostering and adoption.

Following my appearance before the Secondary Legislation Scrutiny Committee on 14 May 2019, I received a letter from the Chief Executive of Link Maker, Andy Leary-May, who had listened to the evidence provided and wrote to me to clarify some of the points I made about Link Maker during the evidence session. I understand Andy has also submitted supplementary evidence to the committee.

Andy has confirmed to me that all local authorities and regional adoption agencies are now using Link Maker. During the evidence session, I explained that the majority of local authorities (93%) had been using Link Maker whilst the Adoption Register was in operation, however I was not aware that now 100% of local authorities are using Link Maker. I had said that we were following up with those local authorities that we did not think had a subscription to any of the alternative matching tools available; however, following this additional information, I can now say that all local authorities are using alternate matching services.

Andy also wrote to me to provide further detail on the cost of a Link Maker subscription. In my evidence to the committee, I said that a subscription to Link Maker costs around £10,000 a year for a local authority. Whilst some local authorities do pay £10,000, I am now aware that the average cost per local authority for their subscription is closer to £5,000 than £10,000.

I hope this additional detail provides further clarity for the committee, however please do contact myself, or my officials, if you have any questions regarding this.

As I said during the evidence session, I am happy to write to the committee following the Spending Review to set out a more detailed timeline for the work we are doing on a future system in fostering and adoption and following that, I would be happy to discuss those plans with the members of this committee.

**21 May 2019**

## **APPENDIX 4: CORRESPONDENCE ON CHILDREN'S HOMES ETC. INSPECTION FEES, CHILDCARE FEES, ADOPTION AND CHILDREN ACT REGISTER (AMENDMENT) REGULATIONS 2019**

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### **Letter from Lord Trefgarne to Nadhim Zahawi MP**

Thank you for your letter of 21 May 2019 responding to points raised in a letter from Mr Andy Leary-May, the Chief Executive of Link Maker. The Committee considered the *Children's Homes etc. Inspection Fees, Childcare Fees, Adoption and Children Act Register (Amendment) Regulations 2019* at its meeting yesterday and will be publishing its report to the House tomorrow. I will, of course, ensure that a copy is sent to you.

Meanwhile, the Committee remains concerned about aspects of these Regulations and would welcome further information on the following matters:

- What is the status of the commercial providers? Are they established, for example, as not-for-profit organisations?
- How many commercial providers are there and what is the relative proportion of local authorities subscribed to each of these providers?
- It appears from your further evidence that the subscription paid by local authorities varies, some pay £10,000 a year but the average is nearer £5,000. What proportion of local authorities pay in the region of £5,000 a year and what proportion £10,000? Can you give an indication of the range of payments made and the distribution of local authorities across that range?
- At the end of the evidence session we asked you about the provision for hard-to-place children. The Committee remains very concerned about this matter. What assurance can you give that there will be no diminution in provision for these children, particularly in this period immediately after the cessation of the Adoption Register? Indeed, are you able to state whether there will be any improvements in the adoption arrangements for these children, either immediately or the longer term?

We would welcome your reply by Friday 31 May. Your reply will be made available to the House. Finally, may I thank you again, and your officials, for attending the Committee to give evidence about these Regulations.

**22 May 2019**

## APPENDIX 5: INTERESTS AND ATTENDANCE

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 21 May 2019, Members declared no interests.

### **Attendance:**

The meeting was attended by Lord Chartres, Lord Cunningham of Felling, Baroness Finn, Lord Goddard of Stockport, Lord Haskel, Lord Janvrin, Lord Kirkwood of Kirkhope, Baroness O'Loan, Lord Sherbourne of Didsbury and Lord Trefgarne.