



Department
for Education

Children's Rights Impact Assessment Amendments to children's social care regulations during the COVID-19 outbreak:

The Adoption and Children (Coronavirus) (Amendment) Regulations 2021 April – September 2021

Stage 1 – Screening

1. What is the policy/legislation?

Background

During the coronavirus (COVID-19) pandemic we introduced a series of temporary changes to children's social care regulations to enable the most effective support and protection to children and their families, by local authorities, local safeguarding partners and regulated services, within the statutory framework. These changes provided flexibilities to local authorities and other children's social care settings if services suffered from both high levels of staff absence and an increased need for services supporting vulnerable children. Since their introduction, we have always been clear that the regulations would be kept under regular review and that they would only remain in place if they were needed.

Over the summer, based upon evidence available and following a consultation, it was felt that the majority of temporary flexibilities introduced in April 2020 were no longer needed, and these lapsed in September that year. The Government laid regulations to retain a very small number of provisions beyond September 2020, namely those related to medical reports, virtual visits, and Ofsted inspections. These flexibilities are due to expire on 31 March 2021.

On 22 February 2021, the Government set out a four-step roadmap for easing lockdown restrictions in England. Before proceeding to the next step, the Government will examine data to monitor the impact of easements. The challenges from the COVID-19 pandemic remain significant, with the need for some continuation of restrictions over the next few months, and pressure on health services in particular. With this in mind, the continued availability of a small number of flexibilities, drawing on the experience and evidence gathering of the last few months, may still be needed as we move into recovery.

In that context, we now need to review these flexibilities given the impending expiration date. To do this, we undertook a public consultation to seek views on extending or amending the current flexibilities beyond March 2021. The consultation was open between 9 February and 28 February 2021 and was supplemented by three events open to interested parties, including local authorities, charities, children's rights organisations and other government departments.

Amendments to regulations relating to children's social care

The duties to our most vulnerable children that are set out in primary legislation (such as in section 22(3) of the Children Act 1989 and section 1 of the Adoption and Children Act 2002) remain in place. However, given the impact of the COVID-19 pandemic, the Government brought in a small number of amendments to secondary legislation to ensure support for those that need it, including vital children's services, is maintained. These amendments are set out in the Adoption and Children (Coronavirus) (Amendment) (No. 2) Regulations 2020, which came into force on 25 September 2020 following a public consultation over summer 2020. The amendments are in place until 31 March 2021.

There are likely to be circumstances in which some services will continue to face specific and exceptional challenges into the Spring/Summer as we enter the roadmap out of lockdown. The lifting of restrictions will be guided by data at each step with the hope of removing all legal limits on social contact from 21 June 2021 onwards. With this in mind, the continued availability of a small number of flexibilities, drawing on the experience and evidence gathering of the last few months, may still be needed, as we must be prepared for the potential additional demands that may still be placed on services. Following the public consultation, we are extending all the flexibilities in the current regulations, to provide effective support for children and young people involved with children's social care services during the pandemic. The flexibilities should only be used when absolutely necessary, and in response to COVID-19.

These regulations specifically address the following points:

Medical reports

In order to become a foster carer or adoptive parent, one needs to provide a medical report from a general practitioner (GP). The current flexibilities allow fostering and adoption applications to be progressed from stage 1 to stage 2 of assessment without a formal medical report or assessment, although this is still required to inform a final approval decision. This supports local authorities (LAs), Regional Adoption Agencies, fostering and adoption services to continue to ensure a supply of placements and homes for vulnerable children and young people. These flexibilities recognise the increasing pressures on local NHS and GP services as a result of COVID-19 and subsequently the vaccination programme and the impact of that on their capacity to complete medical reports and assessments for prospective foster carers and adopters. It is unlikely that the delays and/or blockages will ease in the coming months as GPs prioritise the vaccination programme and then there will be continued delays as the backlog is cleared.

Extending the existing flexibility until 30 September 2021, will allow more time for GPs and other health professionals to provide information to support the process of approving much needed potential adopters and foster carers. This will not remove the requirement for medical information to be provided but provides additional time during the process for these. In all cases the medical report will continue to be needed before approval.

Virtual visits

It is important that we keep essential services, such as social worker visits, operating both in the case of national or local lockdown situations, and in cases where households are being required to self-isolate in line with medical advice from the NHS test and trace service (e.g. due to a case, or suspected case, of coronavirus, or contact with someone who has tested positive for COVID-19). The flexibilities allow, in such situations where it may be appropriate, to continue to enable social worker visits to happen virtually, that is by

telephone, video-link or other electronic means. However, in all other situations we would expect face-to-face visits to take place. The Government believes it is important for this flexibility to be extended up to a further six months. This need will be monitored alongside the four-step roadmap to recovery.

Ofsted inspections

At present (February 2021), Ofsted inspection cycles are suspended due to COVID-19, although it is continuing to register social care providers and managers, and to monitor children's homes where there are safeguarding concerns. Both we and Ofsted are keen that routine inspections of children's social care providers are resumed as soon as it is safe to do so. We are extending the suspension for a further six months, until 30 September 2021, of the regulation that details the minimum frequency of Ofsted inspections for all children's social care providers. This suspension does not prevent Ofsted from inspecting services or change their inspection powers, it only affects the frequency with which they must inspect. During the COVID-19 pandemic Ofsted is aiming to restart graded inspections from April although they will balance this with the nature and extent of any COVID-19 restrictions that might be in place moving into the 2021-22 inspection year.

We will look to consult shortly on other potential changes to the frequency of Ofsted inspections from 1 October 2021.

2. Will aspects of the policy/legislation affect children up to the age of 18 either directly or indirectly?

These changes will directly affect children in need of care, and those already in care. Providing flexibility in the foster carer and adopter assessment processes will help ensure that children needing care are more likely to be able to secure a place than might otherwise be the case if pressures in the NHS at this time caused delay in the provision of medical reports. Allowing virtual visits to looked after children will mean that if face-to-face visits within statutory timeframes prove not to be possible as a result of public health requirements a virtual visit can go ahead, and their wellbeing protected.

3. Are there particular groups of children and young people who are more likely to be affected than others?

Yes – children receiving support from children's social care, specifically those who are looked after.

Stage 2 – Assessing impact

4. Set out briefly below how your policy/legislation might impact on children and young people.

The duties to our most vulnerable children that are set out in primary legislation (such as in section 22(3) of the Children Act 1989, section 1 of the Adoption and Children Act 2002 and section 11 of the Children Act 2004) remain in place and local authorities and other bodies must continue to comply with these duties.

The Government has always been clear that these temporary amendments should be used only when absolutely necessary and only if consistent with the overarching safeguarding

and welfare duties that have remained in place. Our guidance has been clear that the regulatory flexibilities should only ever have been used with senior management oversight and that all decisions should be recorded.

The temporary flexibilities provided by these regulations will have an overall positive impact on children and young people. Examples of the possible impact include:

- The approval of prospective adopters is not slowed down by a delay in provision of medical information until the final stage of the assessment process, meaning that children achieve permanence sooner through adoption.
- The approval of foster carers is not slowed down by a delay in provision of medical information helping to support the capacity of foster placements in a local area, which could both reduce the use of out of area placements and promote stability for children in foster care.
- In the case of local lockdown and self-isolation, children will be able to be visited through virtual means by their social worker with whom they have established a relationship as opposed to someone they do not know face-to-face.

5. Which UNCRC Articles are relevant to the policy/legislation?

The Children's Rights Impact Assessment looks at the changes from the perspective of articles 2, 3, 6 and 12 (i.e. general principles of the UNCRC) and articles 19 and 20, 25 and 34. It does not consider or reference other documents published by the UN Committee after the Day of General Discussion regarding violence against children within the family and in school (2001); children without parental care (2005) and other UN documents regarding children in alternative care.

Article 2 (non-discrimination) states that the Convention applies to every child without discrimination, whatever their ethnicity, sex, religion, language, abilities, or any other status, whatever they think or say, whatever their family background.

We are confident that these changes will not lead to a discriminatory application of the Convention. The temporary changes will not fundamentally change the existing provisions of support and protection for looked after children.

Article 3 (best interests of the child) states that the best interests of the child must be a top priority in all decisions and actions that affect children.

The purpose of the flexibilities is to enable the most effective support and protection to children and their families, at a time when services may otherwise struggle to meet children's needs. The flexibilities will allow virtual visits where face-to-face contact is not possible in the case of local lockdowns and self-isolation. They will also promote stability and permanence by reducing delays in the approval of foster carers and adoption. Local authorities still have a duty to act in the best interests of the child and safeguard and promote the child's welfare. They should consider children's wishes when determining the appropriate course of action when considering using the flexibilities provided by the regulations.

Article 6 (life, survival and development) states that every child has the right to life. Government must do all they can to ensure that children survive and develop to their full potential.

Safeguarding and acting to ensure that decisions are made in the best interest of the child is integral to our response to COVID-19. These flexibilities aim to protect and support children by enabling services to continue to provide effective support despite the challenging circumstances of the pandemic due to, for example, lockdown and social distancing restrictions and pressures on those providing services due to illness and self-isolation.

Article 12 (respect for the views of the child) states that every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously. This right applies at all times, for example during immigration proceedings, housing decisions or the child's day-to-day home life.

We are confident that none of these changes remove any mechanism that currently gives a voice to looked after children, and in fact we have a range of feedback that children and young people have valued online contact with their social worker. Guidance will however emphasise that local authorities and providers should consider individual children's wishes when determining whether face-to-face visits should continue to go ahead.

Article 19 (protection from violence) states that governments must protect children from all forms of physical or mental violence, injury or abuse, maltreatment or exploitation including sexual abuse and being neglected by anyone who looks after them.

Protecting vulnerable children has been at the heart of the government's response to the virus and the temporary changes. Local authorities still have a duty to act in the best interests of the child and safeguard and promote the child's welfare.

The changes allow virtual visits to continue if face-to-face visits are not possible, which is an important safeguard for protecting children when face-to-face visits cannot occur due to isolation requirements and local lockdowns. Local authorities are expected to assess whether even in these circumstances face-to-face visits should still happen for some children if individual circumstances mean that a virtual visit would not be appropriate.

Both we and Ofsted are keen that they resume routine inspections of children's social care providers as soon as it is safe to do so. In the meantime, Ofsted continues to monitor and inspect children's homes where there are safeguarding concerns. As inspections resume, Ofsted will want to be assured that any flexibilities have been used in the best interests of children, following careful risk assessment and with clear records of decisions made by local authorities and providers.

Medical reports will still be required for prospective adopters and these will continue to play an important role in identifying any safeguarding concerns. The same information, as set out in Part 2, Schedule 4 to the *Adoption Agencies Regulations 2005*, will still be required to complete this report, ensuring the report is thorough and continues to perform a safeguarding role for children. Guidance will encourage agencies to use the flexibilities only where entirely necessary.

Article 20 (children without families) states that every child who cannot be looked after by their own family has the right to special protection and assistance and to be given alternative care which pays due regard to continuity in a child's upbringing and to the child's ethnicity, religion, culture, language and other aspects of their life.

We are confident that the changes do not affect a child's right to be looked after by people who respect the different aspects of their life. The flexibilities that are being provided in the

approval process of much needed potential adopters and foster parents for children to have stable and supportive families are intended to reduce any delays that may otherwise occur as a result of continuing COVID-19 pressures on the NHS.

Article 25 (review of a child's placement) states that every child who has been placed somewhere away from home – for their care, protection or health – should have their situation checked regularly to see if everything is going well and if this is still the best place for the child to be.

We are confident that the flexibilities provided by the regulations do not affect the review process of a child's placement. Local authorities must continue to act in the best interest of the child, with their safeguarding and welfare duties in mind. The changes also mean that social workers can continue to check in with children virtually if lockdown restrictions or isolation means a face-to-face visit is not possible. However, it must be risk assessed on an individual basis whether some children still require a face-to-face visit.

While we recognise not all children will have access to technology, the Department has provided laptops and tablets and connectivity for children with social workers and care leavers to help them keep in touch with the services they need. Therefore, we are more confident that children will have access. However, this still may be an issue for some children, and a child's disability, for example, may mean that they are unable or struggle to use virtual means. This will therefore need to be considered by the social worker and local authority and risk assessed on a case-by-case basis.

Article 34 (protection from sexual abuse) states that the government should protect children from sexual exploitation (being taken advantage of) and sexual abuse, including by people forcing children to have sex for money, or making sexual pictures or films of them.

The safety and protection of vulnerable children remains paramount for our response to COVID-19 and any further changes to regulations. Local authorities must continue to act in the best interests of the child with their overarching safeguarding and welfare duties in mind.

Medical reports will still be required for prospective adopters. The same information, as set out in Part 2, Schedule 4 to the *Adoption Agencies Regulations 2005*, will still be required to complete this report, ensuring the report is thorough and continues to perform a safeguarding role for children.

Provisions enabling virtual visits mean that vulnerable children can still have visits if face-to-face visits cannot occur in cases of self-isolation or due to lockdown restrictions. Continuing these visits is a crucial safeguard to ensure children are still being seen by their social worker and any forms of abuse can be reported. Children should be assessed on a risk basis and face-to-face visits may still need to continue for more vulnerable children who face greater risk.

Guidance will set out clear safeguards about how and when the temporary flexibilities should be used.

6. Have you made any modifications to the policy/legislation to address any negative impacts (whether on children generally or on specific groups of children)? If no modifications have been made, what barriers exist to doing so?

Since the introduction of The Adoption and Children (Coronavirus) (Amendment) (No. 2) Regulations 2020) we have kept the flexibilities under constant review. Our approach to monitoring is based on bringing together information from the Regional Educational and Care Teams (REACT) and a range of delivery partners, to understand which of the regulations are being used and why. As a result of feedback since flexibilities were introduced in April, and following public consultation in summer 2020, we have strengthened safeguards on the use of virtual visits to help ensure that they are only used where necessary, that face-to-face visits are the norm, and that decisions are properly recorded. We ended some flexibilities, where they proved not to be necessary, to ensure we were only taking powers which were proportionate.

7. Are there any alternative options being considered? What would their projected impacts on children’s rights be?

We have sought to take the minimum powers necessary to mitigate the risk that the system is unable to meet the needs of vulnerable children. We have kept these under review and sought views through our consultation, both in the summer and in February this year. This is part of much broader work by LAs to ensure children and young people continue to be protected and supported throughout the pandemic.

8. Has there been any public or stakeholder consultation on the policy/legislation? If yes, how have the public/stakeholders responded? Please provide evidence.

The Department undertook a public consultation between 9 and 28 February 2021 and received 211 responses. We also held three engagement events, which were attended by a range of stakeholders. Analysis of the responses indicated that the majority agreed with our proposals to extend the existing flexibility in relation to virtual visits, medical reports for fostering and adoption and the minimum frequency of Ofsted inspections.

Stage 3 – monitoring

9. How will the policy’s/legislation’s impact be monitored?

The use of the flexibilities will continue to be monitored, including through Ofsted visits and inspections where they occur and through the Department for Education’s REACT teams.