



Department
for Education

Public Sector Equality Duty: Equalities 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

Introduction

1. This document provides an equality impact assessment of a small number of amendments to children's social care regulations to provide continued flexibility in a limited number of circumstances during the coronavirus (COVID-19) pandemic. These are intended to support children's social care services to continue to provide the best support to vulnerable children.
2. This document and the analysis within fulfil the Secretary of State's duty under section 149 of the Equality Act 2010 to have due regard to the need to:
 - a. *Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;*
 - b. *Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, in particular the need to:*
 - *Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;*
 - *Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;*
 - *Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.*
 - c. *Foster good relations between persons who share a relevant protected characteristic and persons who do not share it, in particular the need to:*
 - *Tackle prejudice, and*
 - *Promote understanding.*

Amendments to regulations relating to children's social care

3. 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, to ensure support for those that need it, and that vital children's services are maintained, following a public consultation over summer 2020, a number of amendments to secondary legislation came into force on 25 September 2020 (the Adoption and Children (Coronavirus) (Amendment) (No. 2) Regulations 2020. These amendments expire on 31 March 2021.
4. The Government has been clear that these temporary amendments will only remain in place for so long as they are needed. 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.
5. We therefore 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. 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.

Medical reports

6. We want to ensure that children that cannot live with their birth families are placed with foster carers or adopters that are best placed to meet their needs and that there is sufficient choice to be able to make those matches. Our National Health Service (NHS) continues to face unprecedented challenges during the ongoing pressure from the pandemic. This is unlikely to ease for some time, even as the country enters a period of recovery.
7. Extending the flexibility that permits medical reports to be completed at any stage of the assessment process allows more time for General Practitioners (GPs) and other qualified and registered healthcare professionals to provide information needed to support the process of approving much needed

prospective adopters and foster carers. This will not remove the requirement for medical information to be provided. In all cases the medical report will continue to be needed before approval. A medical report would still provide the same information currently required, ensuring the assessment and approval process remains thorough and performs an important safeguarding role.

8. These flexibilities will support Local Authorities (LAs), adoption agencies and fostering services to continue to ensure that children and young people are matched to a fostering or adoption placement that best meets their needs. Their aim is to support adoption agencies and fostering services to continue to recruit, assess and approve foster carers and prospective adopters to meet the needs of children waiting. These flexibilities should only be utilised in cases where usual practice is not possible due to pressures on the NHS resulting from the COVID-19 pandemic.

Virtual visits

9. Virtual visits should only take place in exceptional circumstances, such as where an in-person visit would either be contrary to public health advice in relation to COVID-19 or where it is not reasonably practicable for the visit to take place face-to-face because of COVID-19. Visits by social workers to looked after children provide important opportunities to consider children and young people's safety and wellbeing, something that virtual visits may not always provide the best conditions to do.
10. Departmental guidance makes clear that this extension does not provide a blanket cover for all such visits to be held virtually, and that the use of this flexibility must be recorded by LAs. As such we are clear that visits should happen, whenever possible, face-to-face and should be sufficient to meet the intended purpose of the visit whether that is safeguarding or promotion of the child's welfare.
11. The temporary flexibilities will continue to require any virtual visits to be held in accordance with any recommendations from the nominated officer, and do not change the existing general duties on local authorities, under section 17 of the Children Act 1989, in relation to safeguarding and promoting the welfare of children in need in their area.

Ofsted inspections

12. 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. 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, and Ofsted is continuing to register social care providers and managers, and to monitor children's homes where there are safeguarding concerns. 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.

Evidence and analysis

13. The changes introduced by the Regulations affect all local authorities, children's homes, secure children's homes, fostering services, adoption agencies and Ofsted during the COVID -19 pandemic. The flexibilities provided are much more limited than initially provided in April 2020 and reflect our understanding and consideration of which flexibilities have needed to be used, which continue to be needed whilst COVID-19 remains, and those we need to amend further, to protect and safeguard vulnerable children, young people and their families, and prevent widespread disruption to children's social care services. We undertook a public consultation to seek views on extending or amending the current flexibilities beyond March 2021 with sector partners and interested parties. The consultation was open between 9 February and 28 February 2021 and was supplemented by three events. The intention is that the new flexibilities will remain in force up until 30 September 2021.
14. Core child protection and safeguarding requirements remain unchanged, as does the clear principle that the best interests of the child should always be the primary consideration in the delivery of children's social care services. As an example, during autumn 2020, Ofsted carried out assurance visits to children's social care providers as part of a phased return to routine inspection. The aim of these visits was to provide reassurance to parents and carers, the public and professionals that children were safe and well cared for and that leaders and managers were exercising good leadership. The visits followed existing principles for inspection. The visits resulted in a report that gave no graded judgement but did highlight any serious or widespread concerns and included requirements or recommendations for improvement.
15. We have not identified any negative impacts that will affect those with certain protected characteristics more than others and no equality issues have been raised in relation to the flexibilities that have been in place since April 2020. We have considered the Public Sector Equality Duty ("PSED") in relation to each individual regulation which is being extended. Where other extensions have not been specifically mentioned below, this is because we consider them neutral and therefore will not have a negative impact on equality. A summary of the key issues that arise from this extension in relation to the PSED are set out below.

Ethnicity

16. In 2011, the proportion of all under 18s in England that are BAME was 21%¹. In 2020, 26% of looked-after children were from BAME backgrounds,² Therefore, it appears that BAME children are over-represented in care and may be disproportionately affected by these changes, however we are comparing different data sources from different times.

¹ [Nomis 2011 dataset DC2101EW - Ethnic group by sex by age](#)

² [Children looked-after in England including adoption statistics.](#)

17. According to the Department's annual census of child and family social workers of those social workers whose ethnicity was recorded, 78% were white, 12% black, 6% Asian and 4% mixed³.
18. For foster carers, 25% of 'Non-white' foster carers (in the Ofsted categorisation) are in the 60+ group.⁴
19. Based on adopters approved during 2014-15, 7% of adopters approved were BAME.⁵
20. In a review of 'disparities in the risk and outcomes of COVID-19' published by [Public Health England](#) on 7 June 2020, data showed people belonging to BAME groups were most likely to be diagnosed with COVID-19. A total of 10,841 COVID-19 cases were identified in nurses, midwives and nursing associates registered with the Nursing and Midwifery Council. Among those who are registered, this represents 4% of Asian ethnic groups, 3.1% of Other ethnic groups, 1.7% of White ethnic groups and 1.5% of both Black and Mixed ethnic groups.
21. Our extensions to allow virtual visits will have a positive impact and should benefit both children and workers in this group as they promote virtual contact where face-to-face contact with a social worker is not possible due to local lockdown or self-isolation.

Age

22. The temporary flexibilities are more likely to impact on children than any other age group, although they will also affect how social workers are able to do their jobs, and the wider children's social care workforce including adoptive parents and carers care for children.
23. The extensions to allow virtual visits will have a positive impact by promoting virtual contact where face-to-face contact with a social worker is not possible due to lockdown; self-isolation or a reason relating to COVID-19. Some children may, however, be less able to use technologies as a result of their age. Our guidance outlines that local authorities should continue to carry out face-to-face visits wherever possible, and particularly when they are necessary to meet the needs of individual children.
24. According to the Department's annual census of child and family social workers 29% were aged 50 or over.
25. Looking at the proportion of foster carers who are over 60 and therefore more at risk, 14% of carers are aged 60-64 and a further 11% are over 65, approx.

³ [Children's Social Work Workforce 2020](#)

⁴ Ofsted fostering release - [Fostering in England 2019 to 2020: main findings - GOV.UK \(www.gov.uk\)](#)

⁵ Adoption leadership Board Headline measures and business intelligence report 2014-15 - [Adoption Leadership Board headline measures and business intelligence \(publishing.service.gov.uk\)](#)

10,200 and 7,900 respectively⁶.

26. Based on adopters approved during 2014-15, less than 1% of all adopters were aged 60 and over.⁷
27. In a review of 'disparities in the risk and outcomes of COVID-19' published by [Public Health England](#) on 7 June, the risk of contracting, or dying from, COVID-19 was found to be higher in older people. The extensions should benefit social workers in this group as they allow for virtual contact by social workers who may need to self-isolate, instead of requiring face-to-face contact, enabling them to continue their important work.

Disability

28. The Government does not publish data on disabilities for looked after children. In 2019, 55.9% of looked-after children had a special educational need, compared to 46.0% of children in need and 14.9% of all children⁸.
29. In a review of 'disparities in the risk and outcomes of COVID-19' published by [Public Health England](#) on 7 June, the risk of contracting, or dying from, COVID-19 was found to be higher in people with pre-existing health conditions. The extensions should benefit both children and social workers in this group as they promote virtual contact where face-to-face contact with a social worker is not possible due to local lockdown and self-isolation.
30. The extensions to allow virtual visits will have a positive impact by promoting virtual contact where face-to-face contact with a social worker is not possible due to, for example, lockdown; self-isolation or a reason relating to COVID-19. Some children may, however, be less able to use technologies as a result of their disability. Our guidance outlines that local authorities should continue to carry out face-to-face visits when they are necessary to meet the needs of individual children.
31. We do not expect the temporary flexibilities on medical reports to have a disproportionate impact on disabled foster carers or adopters. The extension relates to all prospective foster carers and adopters.

Sex

32. Government is of the view that this protected characteristic should not be adversely affected by the changes. On 31 March 2020, of the 78,150 looked-after children, 56% were male, 44% were female.⁹

⁶ Ofsted fostering release - [Fostering in England 2019 to 2020: main findings - GOV.UK \(www.gov.uk\)](#)

⁷ Adoption leadership Board Headline measures and business intelligence report 2014-15 - [Adoption Leadership Board headline measures and business intelligence \(publishing.service.gov.uk\)](#)

⁸ [Outcomes for children looked after by LAs: 31 March 2019](#)

⁹ [Children looked after in England including adoption: 2019 to 2020](#)

33. The overwhelming majority of full time education children and family social workers are female (86%), compared to male (14%).
34. In a review of 'disparities in the risk and outcomes of COVID-19' published by [Public Health England](#) on 7 June, the risk of contracting, or dying from, COVID-19 was found to be higher in men. Our extensions should benefit both children and workers in this group as they promote virtual contact where face-to-face contact with a social worker is not possible in cases of local lockdowns, self-isolation a reason relating to COVID-19.

Other characteristics

Deprivation

35. The temporary flexibility on extending virtual visits is likely to impact on children from low income families who may not have access to technology to be able to have a virtual visit. School-aged children in need are more likely to live in income deprived families than is the case for all pupils, based on the Income Deprivation Affecting Children Index (IDACI) bands. Analysis¹⁰ of 2016 data shows 28% of CIN pupils live in the highest deprivation band (above 0.35) compared to 18% of other pupils, 31% of CIN live in the middle deprivation bands (0.2 to 0.35) compared to 27% of other pupils, and 41% live in least deprived bands (below 0.2) compared to 56% of other pupils.
36. Where families do not have access to technology to be able to hold a virtual visit, a face-to-face meeting would always be necessary. All children in need were eligible for the roll out of free devices last year, though we do not know how many have received them.
37. In light of the above, we do not consider that any negative impacts on equality are disproportionate, and that limits on the use of the flexibilities provided along with effective decision making at a local level will provide appropriate constraints limiting any adverse impact balanced against the positive enhancements to safety and wellbeing that the flexibilities provide within the context of the COVID-19 pandemic. We have considered the need to advance equality and foster good relations.
38. During the period of national lockdown, primary, secondary, alternative provision, special schools and FE providers have remained open for [vulnerable children and young people](#), including those with a social worker or those with an Education Health and Care plan. In particular, children with a social worker are expected to attend provision (subject to public health advice), given their safeguarding and welfare needs.

¹⁰ Table 4 here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690896/Children-in-need-data-and-analysis.xlsx

Mitigations and next steps

39. To mitigate the effect of these flexibilities on affected children Government will issue guidance on the use of flexibilities and has set out specific requirements on the use of virtual visits within the regulations as outlined above that the Government considers provide an appropriate level of assurance that any detriment will be limited. Furthermore, while the Government recognises not all children will have access to technology it 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. The use of the flexibilities will continue to be monitored, including through the Regional Educational and Care Teams (REACT) and through Ofsted visits and inspections where they occur.