



Children's Rights Impact Assessment

Amendments to children's social care regulations during the COVID-19 pandemic: The Adoption and Children (Coronavirus) (Amendment) (No 2) Regulations 2020

Stage 1 – Screening

1. What is the policy/legislation?

In April 2020, the government made changes to ten sets of regulations to ensure children's social care providers and local authorities have sufficient flexibility to respond to coronavirus (COVID-19) while still maintaining safe and effective care. The amending regulations are called the Adoption and Children (Coronavirus) (Amendment) Regulations 2020.

These amendments have been kept under review since their introduction and will expire on 25 September 2020.

Following a public consultation, the Government has decided to provide a small number of flexibilities for a further period ending on 31 March 2021. Government believes these are essential to being able to maintain delivery of children's social care during the recovery stage of the pandemic and to support continued effective operation of children's social care. The use of these flexibilities will be limited, and guidance will set out that their use will require senior management oversight and on the basis on an assessment of risk. These regulations specifically address the following points:

Medical reports

The National Health Service still faces significant challenges as we enter a period of recovery. Amended regulations will allow more time for General Practitioners 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 final approval.

Virtual visits

Over the last few months virtual visits have been used successfully across children's social care and in many cases virtual contact has been welcomed by children. Whilst national measures to reduce the spread of coronavirus (COVID-19) have been gradually relaxed we must be able to keep essential services operating during any local lockdowns to contain the spread of the virus and in cases where households are being required to self-isolate due to

a case, or suspected case, of coronavirus (COVID-19), or contact with someone who has tested positive for coronavirus (COVID-19), in line with medical advice from the NHS test and trace service. Therefore, flexibility will continue to enable contact in these situations to happen virtually. However, in all other situations we would expect face to face visits to take place.

Ofsted inspections

As announced on 6 July Ofsted are planning to carry out a phased return to routine inspections. This will include risk-based assurance visits to children's social care settings, based on the previous inspection judgement, the amount of time since a setting was last inspected and other information Ofsted hold about the setting. These assurance visits will occur between September 2020 and March 2021. At this point full graded inspections will recommence. The regulations therefore enable the continued suspension of the regulation that sets out the minimum number of Ofsted inspections required in various settings until 31 March 2021. This will better allow Ofsted to provide the most assurance, to the sector and the wider public, about the safety and care of children by enabling them to carry out visits to as many settings as possible based on the criteria set out above. Without this amendment the prescribed inspection intervals would be reinstated. This would mean some children's homes would need to be inspected twice in the remaining six months of the inspection year, and would therefore prevent Ofsted directing their resources towards providing assurance about those settings that they are currently concerned about or that have not been inspected for some time.

Ofsted continue to have the ability to inspect any regulated social care provider where they have concerns about practice.

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 provide not 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 and those affected by coronavirus (COVID-19). For example, those suffering from coronavirus (COVID-19) and those social distancing from others because they have been in contact with others suffering from coronavirus (COVID-19).

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 small number of 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 rationale for these proposals is that they are in the best interests of children – particularly allowing virtual visits where face to face contact is not possible in the case of local lockdowns and self-isolation, and helping to 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 and 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. Governments 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 coronavirus (COVID-19). Included in these changes are measures to protect children from the spread of coronavirus (COVID-19), for example

through the use of remote contact where necessary. Of course, for more vulnerable children, who might be at greater risk, a visit via video-call may not be sufficient and guidance will explain that local authorities should determine whether individual circumstances mean a face to face visit would continue to be necessary.

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, however, 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 proposed 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 will be 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.

Ofsted continue to inspect where there are safeguarding concerns but the regulations enable a phased return to routine inspections, allowing risk-based assurance visits to children's social care settings, to provide the most assurance to the sector and the wider public about the safety and care of children. 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.

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 none of the proposed changes 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 coronavirus (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 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 coronavirus (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.

Provisions enabling virtual visits mean that vulnerable children can still have visits if face to face visits cannot occur in cases of self-isolation and local lockdown only. 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?

As a result of feedback since flexibilities were introduced in April, and following public consultation 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.

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

We tested our proposals for continued flexibility through a public consultation. The results of which have been published separately. Within that consultation there were a wide range of

views with some suggesting that the continued flexibilities provided were no longer necessary, although the majority of respondents were in favour of the proposals.

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

A public consultation was held, along with discussions with a wide range of stakeholders including children and young people. Responses to this consultation are set out in a separate document.

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.

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