



Department  
for Education

# Children's Social Care

**Government consultation**

**Launch date 9 February 2021**

**Respond by 28 February 2021**

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## Introduction

The government's overriding objective in any amendments to the statutory framework is 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.

On 24 April, the Adoption and Children (Coronavirus) (Amendment) Regulations 2020 came into force to provide local authorities (LAs) and children's social care providers with temporary flexibilities to support them during the coronavirus (COVID-19) pandemic. In August 2020 we consulted on whether to continue some of the flexibilities in the children's social care sector that came into effect in April. These were in relation to the stage of the respective approvals process for adopters and foster carers that the medical reports would be needed, virtual visits/contacts and Ofsted inspection intervals. Following the consultation, a further set of regulations were laid. These are due to elapse 31 March 2021.

Given the continued impact of the coronavirus (COVID-19) pandemic, we are now consulting on a proposal to extend or amend those regulations and we are inviting interested individuals and organisations to comment on our plans.

## Who this is for

- Children and young people with experience of care
- Children's charities/advocates
- Local authorities and children's trusts
- Children's social care providers, including children's homes and fostering and adoption agencies
- Children's social care workforce
- Children's Commissioner
- Any other interested organisations or individuals

## Issue date

The consultation was issued on 9 February 2021.

## Enquiries

If your enquiry is related to the policy content of the consultation you can contact the team by email on:

[CSCregulations.CONULTATIONS@education.gov.uk](mailto:CSCregulations.CONULTATIONS@education.gov.uk)

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the DfE Ministerial and Public Communications Division by email: [Consultations.Coordinator@education.gov.uk](mailto:Consultations.Coordinator@education.gov.uk) or by telephone: 0370 000 2288 or via the DfE Contact us page.

## **Additional copies**

Additional copies are available electronically and can be downloaded from [GOV.UK DfE consultations](#).

## **The response**

The results of the consultation and the Department's response will be [published on GOV.UK](#) in Spring 2021.

## About this consultation

This consultation document sets out:

- The regulations we propose to extend and amend beyond 31 March 2021.
- The reasons for extending and amending the regulations and what we have been doing to monitor the use of the flexibilities.

We would like to hear your views on our proposals.

## Respond online

To help us analyse the responses please use the online system wherever possible. Visit [www.education.gov.uk/consultations](http://www.education.gov.uk/consultations) to submit your response.

## Other ways to respond

If for exceptional reasons, you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may download a word document version of the form and email it or post it.

### By email

[CSCregulations.CONULTATIONS@education.gov.uk](mailto:CSCregulations.CONULTATIONS@education.gov.uk)

### By post

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Ground Floor  
Bishopsgate House  
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DL1 5QE

All postal responses must be received by 28 February 2021.

## Deadline

The consultation closes on 28 February 2021.

## Background

On 11 March 2020, the World Health Organisation (WHO) confirmed coronavirus (COVID-19) was a global pandemic. The UK Government has taken an unprecedented series of actions to address the pandemic across all parts of society including to support vulnerable children and families.

### Amendments to regulations

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 coronavirus (COVID-19) pandemic, the Government has brought in a 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.

We published [guidance](#) for children's social care services setting out the circumstances where LAs, working with their partners and providers, can make use of the additional flexibilities that the Adoption and Children (Coronavirus) (Amendment) (No. 2) Regulations 2020 provide, including:

- where staff shortages, due to sickness or other reasons, make it difficult or impossible to meet the original requirements;
- where making use of flexibilities to take a different approach is the most sensible, risk-based response in light of other demands and pressures on services, this might involve focussing services on those most at risk;
- where there is a consequential reason to make use of flexibilities, for example, due to limited capacity in other providers or partners making it difficult or impossible to comply with the original requirements.

The guidance is also clear that the duties to our most vulnerable children and young people as 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 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 proposals we are consulting on in this consultation seek to respond to the unprecedented challenging context that coronavirus (COVID-19) continues to pose on the normal operation of services.

Following this public consultation, we will revise and update the guidance, as necessary, to provide clarity on how LAs should use the flexibilities.

### Delivery of services

The coronavirus (COVID-19) pandemic continues to present significant challenges to the country, including the way in which children's social care services are delivered. The Government has been clear that these temporary amendments will only remain in place for so long as they are needed. The flexibilities introduced in the Adoption and Children (Coronavirus) (Amendment) (No. 2) Regulations 2020 have been kept under constant

review, for example through monitoring information collected from the Regional Educational and Care Teams (REACT) and delivery partners. The government's overriding objective in any amendments to the statutory framework is 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.

## **Consultation**

The existing temporary (Adoption and Children (Coronavirus) (Amendment) (No. 2) Regulations 2020) Regulations will expire on 31 March 2021. This consultation seeks your views:

1. On two options for the health assessment provision for fostering and adoption:
  - i. extension of the current flexibilities on fostering and adoption allowing medical reports to be completed at any point of the assessment process for a further six months, until 30 September 2021;
  - ii. amendment of the adoption regulations to manage growing delays in placing children with their new families, by removing the requirement for a full medical examination and allowing the medical report to be completed by other relevant healthcare professionals, such as nurses, in addition to doctors, until 30 September 2021.
2. On extending the current virtual visits provisions, for a further six months, until 30 September 2021.
3. On extending suspension of the regulation that details the minimum frequency of Ofsted inspections for all children's social care providers for a further six months, until 30 September 2021.

## Rationale and outline of proposals

In September 2020, we reviewed the Adoption and Children (Coronavirus) (Amendment) (No. 1) Regulations 2020 that had been in force since April 2020 and many of the flexibilities expired at that point. A small number of flexibilities were continued in The Adoption and Children (Coronavirus) (Amendment) (No. 2) Regulations 2020 and we have always been clear that these would remain in place only for as long as they were needed and would expire on 31 March 2021. However, the challenges from the coronavirus (COVID-19) pandemic remain significant, not least given the context of the new, more transmissible variants of the virus and an increase in infection rates. As such, we are seeking views on our proposal to extend a limited number of flexibilities in order to ensure that children and families can be supported in the best way possible in the circumstances.

There are likely to be circumstances in which some services will continue to face specific and exceptional challenges into the Spring/Summer. Continued availability of a small number of flexibilities, drawing on the experience and evidence gathering of the last few months, may still be needed, so we must be prepared for the potential additional demands that may still be placed on services. We are proposing to extend or amend 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.



## Proposal and rationale for safeguards

The [guidance](#) sets out a series of safeguards on the use of the flexibilities provided. Whilst the Government is proposing to extend and amend the existing flexibilities up to 30 September, it continues to believe that use of the flexibilities should only be used when absolutely necessary, and in response to coronavirus (COVID-19).

The overarching approach to making use of these legislative flexibilities should include:

- approval at chief officer level in local authorities and, where appropriate, top tier management level in other services and providers
- properly recording the use, along with the reasons for doing so and communicating to the other safeguarding partners and providers
- each local authority and provider recording the reason or reasons for use of a flexibility.

## Monitoring of amendments

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 REACT and a range of delivery partners, to understand which of the regulations are being used and why. Data provided is for the period from 25 September to 24 November 2020. We are actively seeking regular feedback from a variety of sources, including LAs, children's charities, Ofsted, and other key partners.

Our monitoring data suggests that over half of LAs are using both the existing temporary flexibilities. Out of 113 LAs that we have spoken to, 92 LAs have made use of the regulations.

For example, the LAs that indicated they were using the amendments to the fostering and adoption regulations, said that, for example, this enabled medical reports to be considered at a later stage in the fostering and adoption processes, minimising delays in approving foster carers and adopters for children needing a new, secure or forever family.

**Further monitoring information is available at Annex B.**

## **Proposal and rationale for extending and/or amending regulations**

The flexibilities that we believe are essential to being able to maintain delivery of children's social care during the ongoing pandemic and preparation of recovery from the pandemic (listed below) are those we are proposing to extend or amend beyond 31 March 2021. We are proposing that any flexibilities that are kept in place beyond 31 March 2021 should remain in place until 30 September 2021 so that they remain in place throughout the Spring and Summer.

Should the temporary regulations be extended and/or amended, the flexibilities are intended to be used where they are still needed to provide effective support and protection for children involved with children's social care services during the pandemic.

## Proposal 1: Medical Reports

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 when the country enters a period of recovery. These proposed flexibilities recognise these challenges and aim 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.

### Current position

These flexibilities should only be utilised in cases where usual practice is not possible due to pressures on the NHS resulting from the coronavirus (COVID-19) pandemic. A medical report would still provide the same information currently required, continuing to ensure the assessment and approval process remains thorough and performs an important safeguarding role.

The current amendments 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 allows fostering services and adoption agencies to continue with the next stage of the assessment whilst waiting for the medical report or assessment. This recognises the pressures on the health service allowing more time for GPs and other health professionals to provide information to support the process of approving much needed prospective adopters and foster carers.

We know that this is one of the flexibilities used most by fostering services and adoption agencies and that it continues to ensure that confirmation that a foster carer or adoptive parent has their health assessed by an appropriately qualified health professional before they assume responsibility for a child. In the fostering sector, placement choice is heavily constrained, and children may not be able to remain within their locality or for their local authority to find a suitable placement to meet their needs when they need it. For adoption, there are hundreds of children waiting to be matched with their new adoptive families. Increasing the number of prospective adopters able to adopt the children that wait longest is important to ensure that there is sufficient capacity in the system to make the right matches.

### Proposal

At a time when we know there is a continued demand for fostering and adoption placements, we are keen to avoid delays in the process that prevent children from being found the home that they need. That is why we are seeking views on whether to extend the current flexibilities that allow medical reports to be completed at any stage of the assessment process for both fostering and adoption. By extending these provisions, we are not removing the requirement for medical information to be provided but allowing additional time during the assessment process for these to be completed. The medical report or assessment must be completed before approval. The flexibility should only be utilised in cases where usual practice is not possible due to pressures on the NHS resulting from the coronavirus (COVID-19) pandemic.

We would also like to seek views on whether the existing temporary flexibilities are sufficient to enable the continued recruitment and approval of adoptive parents and foster carers and ensure that we have enough fostering and adoptive homes for children who need them in the immediate and longer term.

For adoption, we are seeking views on an additional amendment to the regulations. The current requirement is that a medical report has to be provided by a registered medical practitioner following a full examination and covering the matters set out in Part 2, Schedule 4 to the *Adoption Agencies Regulations 2005*. We propose a two-fold amendment to this. Firstly, we propose to change the regulations to enable the medical report to be completed by other relevant, appropriately qualified and registered healthcare professionals, such as nurses, where insufficient GP capacity is available. We propose, as a minimum, to include nurses, in addition to GPs and doctors and would welcome views on whether other qualified and registered healthcare professionals should be considered for the purpose of providing necessary reports.

Secondly, we are considering whether to remove the need for a full examination. The requirement remains for the medical report to provide full details of the health of the prospective adopter and cover the matters as required by Part 2, Schedule 4 to the *Adoption Agencies Regulations 2005*. This information can be accessed via the prospective adopter's GP record, of which prospective adopters are entitled to request a copy. Other measures can be taken by nurses, in pharmacies or at home, as currently happens for virtual medicals. This would be a new position for adoption.

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. These flexibilities should only be utilised in cases where usual practice is not possible due to pressures on the NHS resulting from the coronavirus (COVID-19) pandemic.

**Do you think that we should:**

- a. extend the existing temporary flexibilities allowing medical reports or assessments to be completed at any stage of the assessment process for a further six months, to 30 September 2021?**

- Agree**  
 **Disagree**

**And;**

- b. amend relevant parts of the adoption regulations to remove the reference to a full examination and to allow the medical report to be completed by alternative, appropriately qualified and registered, healthcare professionals, such as nurses, in addition to doctors until 30 September 2021?**

- Agree**  
 **Disagree**

**Comments (maximum 250 words)**

## Proposal 2: Virtual Visits

Virtual visits, that is a visit that may be conducted by telephone, video-link or other electronic means, should only take place in exceptional circumstances; where an in-person visit would either be contrary to public health advice in relation to coronavirus (COVID-19) or where it is not reasonably practicable for the visit to take place face-to-face for a reason relating to the incidence or transmission of coronavirus (COVID-19).

The temporary regulations 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 22(3) of the Children Act 1989, in relation to safeguarding and promoting the welfare of children in need in their area.

The continuing inclusion of virtual visits recognises that there are some circumstances where face-to-face visits may be contrary to public health guidance and guidance on coronavirus, for example, if children or workers were required to self-isolate. Virtual working and visits enable the delivery of local children's social care services and safeguarding to continue, with a level of contact with children to check that they are safe, that they would not have otherwise. The LA, as the responsible authority, must keep a record of any visit it carries out.

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. 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.

**Do you think that we should extend the existing temporary flexibilities to allow virtual contact/visits where a face to face visit is not possible, for example due to the circumstances described above, for a further six months, until 30 September 2021?**

Agree

Disagree

**Comments (maximum 250 words)**

## Proposal 3: Ofsted inspections of children's social care providers

### Proposal

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 but, at this stage, we do not know whether inspections will be able to resume safely in April 2021. Therefore, we propose the suspension of the requirement for a minimum frequency of Ofsted inspections for all children's social care providers be extended for six months, until 30 September 2021. This suspension does not prevent Ofsted from inspecting services or change their inspection powers, it only affects the frequency with which they must inspect. Ofsted will set out their plans for inspection between April to September in due course.

At present (February 2021), Ofsted inspections are suspended due to coronavirus (COVID-19), although it is continuing to register social care providers and managers, and to monitor children's homes where there are safeguarding concerns. A snapshot of how Ofsted has operated to support CSC provision during the various phases of recent lockdown shows 399 Ofsted assurance visits were carried out across CSC provision from 1 September to 13 November, of which 372 were to children's homes, 11 to residential special schools registered as children's homes and 4 visits to secure children's homes. The following link provides a publication with more information on the figures: <https://www.gov.uk/government/publications/data-on-covid-19-visits-social-care-providers>.

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

**Do you think that we should extend the regulation relating to Ofsted, suspending the regulation that details the minimum frequency of Ofsted inspections for all children's social care providers for a further six months, until 30 September 2021?**

Agree

Disagree

**Comments (maximum 250 words)**



## **For information - Continued fee freeze for Ofsted inspections in 2021-22**

In previous years, fees have been increased by 10% each year for those providers not already paying for the full cost of inspections, following annual consultations. In the light of coronavirus (COVID-19), the Secretary of State for Education directed Ofsted to waive collection of the fee uplift until 1 April 2021. Fees will remain frozen at 2019-20 rates for a further one year only. Changes will be made to the Regulations in respect of fees (annual, variation and registration fees) to reflect this.

As for the 2020-21 inspection year, Ofsted fees for children's social care providers will be frozen at 2019-20 rates with the intention that Ofsted will resume increasing fees in future years to those providers who have not reached full-cost recovery.

# Annex A: Personal Information

## About You

1. Please provide your name

2. What is your email address?

3. What local authority area are you based in?

4. Are you responding as an individual, or as part of an organisation (please circle)?

5. What is your role?

6. What is the name of your organisation?

7. If you are responding as an individual, are you a?

**8. Are you happy to be contacted directly about your response (please circle)?**

Yes/No
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**9. How did you hear about the consultation?**

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Information provided in response to consultations, including personal data, may be subject to publication or disclosure under the Freedom of Information Act 2000, the Data Protection Act 2018, or the Environmental Information Regulations 2004. If you want all, or any part, of a response to be treated as confidential, please explain why you consider it to be confidential. If a request for disclosure of the information you have provided is received, your explanation about why you consider it confidential will be taken into account, but no assurance can be given that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department. The Department for Education will process your personal data (name and address and any other identifying material) in accordance with the Data Protection Act 2018, and your personal information will only be used for the purposes of this consultation. Your information will not be shared with third parties unless the law allows it. You can read more about what the DfE does when we ask for and hold your personal information in our personal information charter.

**I) Do you wish for your response to remain confidential? Yes / No**

## Annex B: Monitoring and Usage of Flexibilities information<sup>1</sup>

We have spoken with 113 local authorities altogether from 25 September to 24 November 2020, of these 92 (81%) have used at least one regulation. The tables below show how many local authorities have used the medical reports and virtual visits regulations.

### Proposal 1 – Medical Reports

Regulation	Regulation number	Number of local authorities
Adoption Agencies Regulations (England) 2005	Regulation 27(1A) – pre-assessment decision	35
Adoption Agencies Regulations (England) 2005	Regulation 26(b) and (e) – Other pre-assessment information	46
Adoption Agencies Regulations (England) 2005	Regulation 30B(1A) – Adoption agency decision and notification	19
Adoption Agencies Regulations (England) 2005	Regulation 30B (5) and 5A - Adoption agency decision and notification	9
Fostering Services (England) Regulations 2011	Regulation 26 (2A)– assessment of prospective foster parents	32

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<sup>1</sup> This is based on data collected in the REACT calls that took place between 25 September to 24 November 2020 during those conversations LAs were asked which of the regulations they were making use of and why. The information was collected over a 2–3 week timeframe.

## Proposal 2 – Virtual Visits

<b>Regulation</b>	<b>Regulation number</b>	<b>Number of local authorities</b>
Residential Family Centre Regulations 2002	Regulation 25 (4A) - Visits by registered provider	17
Care Planning, Placement and Case Review (England) Regulations 2010	Regulation 28(1A) – Frequency of visits (addition of provision that enables virtual visits)	62
Care planning, Placement and Case Review (England) Regulations 2010	Regulation 48 (3) (e) - Application of these Regulations with modifications to short breaks	19
Children’s Homes (England) Regulations 2015	Regulation 22(1) – Contact and access to communications	31



Department  
for Education

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