



Provisional Children's Rights Impact Assessment regarding proposed extensions to some children's social care regulations during the coronavirus (COVID- 19) pandemic

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) pandemic 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 are due to expire on 25 September 2020.

There are a small number of regulations (listed below) that we are proposing to extend beyond 25 September until 31 March 2021 that we believe are essential to being able to maintain delivery of children's social care during the recovery stage of the pandemic. These regulations specifically address the following points:

Medical reports

Our National Health Service still faces significant challenges as we enter a period of recovery. We are proposing to amend the time frame in which medical information needs to be provided. Some of the amendments 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. The medical report must be provided before approval.

Virtual visits

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, we propose to continue to enable contact in these situations only 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. We therefore propose to continue the suspension of the frequency 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. Failure to extend the revocation of Regulation 27 would reinstate the prescribed inspection intervals, despite Ofsted having lost several months of the inspection year. For example, this would mean some children's homes would need to be inspected twice in the remaining six months of the inspection year, rather than allowing Ofsted to direct their resources towards providing assurance about those settings that they are currently concerned about or that have not been inspected for some time. This could also prevent Ofsted from being able to return more frequently to homes where serious or widespread concerns have been identified.

Please note, that it is the continued suspension of these prescribed intervals and not the specifics of Ofsted's assurance visits which is the focus of this consultation question.

An overview of the proposed amending regulations to be extended are set out in the consultation document.

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

Yes – these changes will directly affect children in foster placements, adoptive placements, in children's homes and other looked after children.

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. We are also proposing that the majority of the temporary changes to regulations are allowed to expire on 25 September.

In relation to the small number of temporary changes we are proposing to extend, we believe they 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.
- Only in the case of local lockdown and self-isolation, children can be virtually visited by their social worker with whom they have established a relationship as opposed to someone they do not know face to face.

Subject to consultation, we are considering how additional safeguards on the use of the flexibilities we extend beyond 25 September could be employed. This will be reflected in our revised [guidance](#) for children's social care settings.

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 lockdown 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.

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 – that would be for the local authority to risk assess on an individual basis.

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.

The proposals are subject to consultation and we are currently exploring how best to seek the views of children on the proposals.

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. Of course, this is on a risk basis and local authorities will need to assess whether some vulnerable children at greater risk will still need a face to face visit.

Ofsted continue to inspect where there are safeguarding concerns. They are also planning to carry out a phased return to routine inspections, which include 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 continuing 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 proposed to continue support the approval process of much needed potential adopters and foster parents for children to have stable and supportive families.

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 none of the regulations we are minded to extend 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 proposed 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.

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.

We are proposing to extend provisions enabling virtual visits so that vulnerable children can still have visits if face to face visits cannot occur in the case of local lockdown and self-isolation 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.

While our guidance sets out clear safeguards about how and when temporary regulations should be used, we are seeking further views through our consultation on how additional safeguards could be employed.

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?

We are currently considering whether to introduce further safeguards in relation to the extended flexibilities and will test that through consultation.

Our published guidance sets out a range of safeguards in relation to the broader set of temporary flexibilities including the ones we are proposing to extend. It makes clear that these flexibilities should only be used if absolutely necessary.

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

We are open to a range of views and other options and hope to generate these as part of the consultation.

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

We have engaged widely on the use of the temporary flexibilities with a range of providers, charities, and others.

Stage 3 – monitoring

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

These amendments will remain under review. We have shared details of monitoring to date through the consultation document published alongside this assessment.