

EXPLANATORY MEMORANDUM TO
THE ADOPTION AND CHILDREN (CORONAVIRUS) (AMENDMENT) (NO. 2)
REGULATIONS 2020

2020 No. 909

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument temporarily amends 6 sets of Regulations relating to children’s social care to support services to manage the coronavirus (COVID-19) outbreak (“the outbreak”). The changes prioritise the needs of children with appropriate safeguards, whilst relaxing some procedural obligations to support delivery of children’s services.

2.2 The changes will help maintain delivery of children’s social care during the recovery stage of the outbreak and to support continued effective operation of children’s social care. The regulations amended are:

In relation to local authorities:

- The Care Planning, Placement and Case Review (England) Regulations 2010.

In relation to adoption:

- The Adoption Agencies Regulations 2005.

In relation to foster care and care planning:

- The Fostering Services (England) Regulations 2011.

In relation to residential care:

- The Residential Family Centres Regulations 2002.

In relation to Children’s Homes

- The Children’s Homes (England) Regulations 2015.

In relation to the frequency of Ofsted Inspections

- The Adoption and Children (Coronavirus) (Amendment) Regulations 2020 which themselves amended Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (Fees and Frequency of Inspections) (Children’s Homes etc.) Regulations 2015.

2.3 Further detail about these Regulations and the amendments is set out in the policy background section of this explanatory memorandum.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

- 6.1 Changes to existing secondary legislation are required to provide children's social care with additional flexibility in meeting a small number of statutory duties during the outbreak, while maintaining a clear focus on safeguarding and promoting the welfare of children.
- 6.2 This instrument follows one laid on 23 April 2020 (The Adoption and Children (Coronavirus) (Amendment) Regulations 2020 which introduced a larger number of flexibilities to respond to the developing pandemic. Use of those flexibilities have been monitored and have been used rarely. As such the Government has determined, following a public consultation that the majority of those flexibilities should lapse on 25 September.
- 6.3 This instrument amends the following : The Residential Family Centres Regulations 2002; The Adoption Agencies Regulations 2005; The Care Planning, Placement and Case Review (England) Regulations 2010; The Fostering Services (England) Regulations 2011; The Children's Homes (England) Regulations 2015 and also amends The Adoption and Children (Coronavirus) (Amendment) Regulations 2020 in relation to a previous amendment to Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) Regulations 2015.
- 6.4 The amendments will be in place until the 31 March 2021. The legislative changes are being made in the context of the continuing public health emergency.
- 6.5 The instrument contains an obligation for the Secretary of State to monitor the effectiveness of the amendments. Should the outbreak or its impacts last longer, there will be an opportunity to make another statutory instrument considering any potential needs of the sector.

7. Policy background

What is being done and why?

- 7.1 Ensuring that vulnerable children are properly safeguarded and have their welfare promoted remains a top priority for Government. At the same time, the challenging

context of the continuing coronavirus (COVID-19) outbreak means that local authorities and others may experience some barriers to meeting their full range of statutory duties relating to child protection, safeguarding and care at present, while being able to comply with public health advice.

- 7.2 The Department previously made amendments to a larger number of regulations to help local authorities and providers to continue to deliver services in light of the outbreak.
- 7.3 That instrument came into effect from 24 April 2020 and lapses on 25 September. The use of those flexibilities provided was monitored closely by the Department.
- 7.4 Alongside this statutory instrument, guidance relating specifically to how these amended regulations will be applied, a Children’s Rights Impact Assessment and an Equality Impact Assessment will be published.¹

Care Planning

- 7.5 The Care Planning, Placement and Case Review (England) Regulations 2010, amongst other things, set out timings and circumstances for social workers to visit looked after children in placements or short-term placements “short breaks”.

Virtual Visits of Looked after Children

- 7.6 The changes to regulations 28 and 48 allow social workers to conduct these visits “virtually” where appropriate. This could be via video conference, telephone, or any other electronic means.
- 7.7 The decision to allow the use of a virtual visit will have had to be carried out in accordance with any recommendations given by a nominated officer.
- 7.8 The Regulation provides that this flexibility must only be used when a face to face visit would be contrary to any guidance relating to the incidence or transmission of coronavirus published by Public Health England or the Secretary of State for Health and Social Care, or is not reasonably practicable for a reason relating to the incidence or transmission of coronavirus. Guidance will further explain that the circumstances in which Government envisages this being relevant including in the event of lockdown, self-isolation, or Public Health England and Government social distancing advice due to coronavirus (COVID-19). Guidance will explain that in cases where there are concerns and a face to face visit is still the most appropriate, these visits should be conducted in line with public health advice and the use of personal protective equipment guidance.
- 7.9 In all cases the use of a virtual visit will need to be recorded. Guidance will provide further advice although this will include recording in individual case documentation.

Adoption

- 7.10 The Adoption Agencies Regulations 2005 (“the Adoption Regulations”) govern how adoption agencies exercise their functions in relation to adoption under the Adoption and Children Act 2002 and includes a two-stage process for adopter approval. Stage 1 of the adopter approval process includes initial registration with the adoption agency

¹ <https://www.gov.uk/government/publications/coronavirus-covid-19-guidance-for-childrens-social-care-services>

as well as checks and references. Stage 2 of the process is the assessment and training of potential adopters.

Stage at which Medical Checks are completed

- 7.11 The Adoption Regulations require the adoption agency to secure medical checks by the end of stage 1 of the assessment process. As a result of ongoing pressures on the NHS these checks may continue to take longer than usual to clear.
- 7.12 Therefore regulations 26 and 27 of the Adoption Regulations have been amended to allow the assessment process to progress to stage 2 without a medical report, as long as a medical check has been requested.
- 7.13 The decision to use this flexibility should be recorded and guidance will provide that if medical reports are available at stage 1 of the assessment process the usual requirements should still apply.
- 7.14 The Regulations continue to require a medical report to have been obtained (where necessary) and duly considered before a final decision is made.
- 7.15 In recognition of this, applicants will not be able to apply to the Secretary of State for a review by an independent review panel where their applications are unsuccessful for reasons relating to health checks, as would have been the case if these checks were completed in stage 1. Adopters will be able to access the independent review panel after stage 2, if their application fails for any other reason not relating to health checks.

Fostering

- 7.16 The Fostering Services (England) Regulations 2011 (“the Fostering Regulations”) govern how fostering agencies exercise their functions in relation to fostering applications. The initial stage of the foster carer approval process includes initial registration with the fostering agency as well as checks such as DBS and references. The next stage of the process is the assessment and training of potential fosterers.

Stage at which Medical Checks are completed

- 7.17 The Fostering Regulations require the fostering agency to source medical checks for prospective foster carers by the end of the initial stage of the process. As a result of ongoing pressures on the NHS these checks may take longer than usual to clear.
- 7.18 Regulation 26 of the Fostering Regulations has been amended to allow fostering agencies to progress application to the next stage of the assessment process, even if the information requested has not been obtained before that decision point.
- 7.19 The decision to use this flexibility should be recorded and guidance will provide if medical reports are available during the initial stage of the assessment process the usual requirements should still apply.
- 7.20 The amended regulation continues to require a medical report to have been obtained and duly considered before a final decision is made.

Residential Family Centres

- 7.21 The Residential Family Centre Regulations 2002 govern the processes and procedures followed by residential family centres.

Virtual Visits by the Registered Person

- 7.22 As part of the assessment of the services and facilities of a residential family centre, a registered person is required to conduct regular visits to provide assurance on the conduct on the centre, and to form an opinion on the standard of care provided including through interviews with residents and persons working at the residential family centre.
- 7.23 Regulation 25, which has been amended to allow such interviews to be held on a virtual basis, must only be used when face to face contact would be contrary to any guidance relating to the incidence or transmission of coronavirus published by Public Health England or the Secretary of State for Health and Social Care, or is not reasonably practicable for a reason relating to the incidence or transmission of coronavirus. Guidance will further explain that the circumstances in which Government envisages this being relevant include in the event of lockdown, self-isolation, or Public Health England and Government social distancing advice due to coronavirus (COVID-19)
- 7.24 The use of virtual interviews must be recorded.

Children's Homes

- 7.25 The Children's Homes (England) Regulations 2015 set out how children's homes conduct themselves and what facilities they provide for looked after children or visitors.

Contact with Children and Young People via Virtual Visits

- 7.26 Regulation 22 provides for a child or young person to be visited by family members and social workers.
- 7.27 Regulation 22 has been amended to allow such interviews to be held on a virtual basis must only be used when face to face visits would be contrary to any guidance relating to the incidence or transmission of coronavirus published by Public Health England or the Secretary of State for Health and Social Care, or is not reasonably practicable for a reason relating to the incidence or transmission of coronavirus. Guidance will further explain that the circumstances in which Government envisages this being relevant include in the event of lockdown, self-isolation, or Public Health England and Government social distancing advice due to coronavirus (COVID-19)
- 7.28 The use of virtual visits must be recorded (additional information will be provided in guidance).

Ofsted

- 7.29 Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) Regulations 2015 (the 2015 Regulations) includes provision setting out the frequency of inspections in respect of children's homes, residential family centres, holiday schemes for disabled children, fostering and voluntary adoption and adoption support agencies.

Scheduling of Inspection and Visits

- 7.30 Under the 2015 Regulations Ofsted has to conduct inspections of the establishments and agencies in accordance with the frequencies as set out in regulation 27.
- 7.31 This instrument amends the Adoption and Children (Coronavirus) (Amendment) Regulations 2020 to provide that the amendment to the 2015 Regulations expires on

31 March 2021 and not 25 September 2020. This means that the minimum frequency of inspections is suspended until 31 March 2021. In the interim, Ofsted will conduct assurance visits, inspections via a risk-based approach instead.

- 7.32 If there are concerns about a provider, Ofsted retains the ability to maintain oversight and to undertake any necessary regulatory action

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 The instrument does not make any provision for consolidation given the temporary nature of the amendments.

10. Consultation outcome

- 10.1 As part of developing this instrument a 20-day public consultation was conducted which concluded on 5 August 2020. Departmental officials also had discussions with a group of major children's charities including Barnardo's and the NSPCC, the Association of Directors of Children's Services (ADCS) and with a number of local authority children in care forums.
- 10.2 The outcome of the consultation was that the majority of the respondents agreed that the regulations covered by this instrument should be extended.
- 10.3 The outcome of the consultation and discussions with the sector indicated that the use of the amendments in this instrument should have safeguards around recording their use and appropriate level oversight, these have been incorporated into the regulations.
- 10.4 The report on the consultation has been published on the same date as this instrument and is available on GOV.UK.

11. Guidance

- 11.1 The Department is publishing guidance² for local authorities and providers to reflect changes implemented by the instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities, or voluntary bodies. Whilst children's homes are predominantly in the private and voluntary sector the proposed changes are not anticipated to increase costs or significantly amend working practices.
- 12.2 There is no, or no significant, impact on the public sector. Whilst local authorities are responsible for the children's social care system the proposed changes are not anticipated to result in additional costs or significant changes to working practices.

1. <https://www.gov.uk/government/publications/coronavirus-covid-19-guidance-for-childrens-social-care-services>

12.3 An Impact Assessment has not been prepared for this instrument because the changes are temporary (in force for less than 12 months) and there is no, or significant, impact on businesses, charities, voluntary bodies, or the public sector.

12.4 The impact is limited as the amendments are only in force during the outbreak and are in place to support children's social care meet its statutory obligations more flexibly so services can continue to provide high quality care. The changes will only impact local authorities, Ofsted, residential care and fostering and adoption agencies to ensure stability and continuity of children's social care during the outbreak.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses, namely independent children's homes, and independent fostering agencies, which are not run by local authorities.

13.2 It is the Department's view that these amendments will alleviate temporary burdens on small businesses caused by coronavirus (COVID-19) as the instrument enables them to provide support to vulnerable children in their care more flexibly during the period of the outbreak in support of public health outcomes.

13.3 The guidance published on GOV.UK will be available for small businesses to understand the regulatory changes.

14. Monitoring & review

14.1 The instrument contains an obligation for the Secretary of State to review the regulations. This will be undertaken by the relevant policy officials by keeping in touch with the sector. The amendments will be in place until the 31 March 2021.

14.2 The Department will continue to monitor and review the amendments and should the outbreak last longer, a statutory instrument will be laid if required.

15. Contact

15.1 David Shreeves at the Department for Education, Telephone: 07384 520988 or email: David.Shreeves@education.gov.uk can be contacted with any queries regarding the instrument.

15.2 John Myers, Deputy Director for Children's Social Care Regulation and Guidance, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 Vicky Ford MP, Parliamentary Under Secretary of State for Children and Families can confirm that this Explanatory Memorandum meets the required standard.