

EXPLANATORY MEMORANDUM TO
THE ADOPTION AND CHILDREN (CORONAVIRUS) (AMENDMENT)
REGULATIONS 2021

2021 No. 261

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 changes the expiry date for the flexibilities provided for by the Adoption and Children (Coronavirus) (Amendment) (No.2) Regulations 2020 (“the No.2 Amendment Regulations”). That SI temporarily amended 6 sets of Regulations relating to children’s social care to support services to manage the coronavirus (COVID-19) pandemic. We are extending those changes for a further six months. The changes prioritise the needs of children, young people and their families, with appropriate safeguards, whilst allowing some limited flexibility in the way that certain services are delivered during the pandemic. This instrument also makes provision to revert the fees payable by certain children’s social care establishments and agencies to Ofsted to rates as provided for in the 2019-20 inspection year.

2.2 The changes will enable the most effective support and protection to children, young people and their families, whilst helping maintain delivery of children’s social care during national lockdown and during the recovery stage of the pandemic, 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 (S.I. 2010/959).

In relation to residential care:

The Residential Family Centres Regulations 2002 (S.I. 2002/3213).

In relation to Children’s Homes:

The Children’s Homes (England) Regulations 2015 (S.I. 2015/541).

In relation to adoption:

The Adoption Agencies Regulations 2005 (S.I. 2005/389).

In relation to foster care and care planning:

The Fostering Services (England) Regulations 2011 (S.I. 2011/581).

In relation to the frequency of Ofsted Inspections, registration fees and annual fees to rates set out in regulations for the 2019-20 inspection year

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”) and the Adoption and Children (Coronavirus) (Amendment) Regulations 2020 which themselves amend the 2015 Regulations.

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 maintain a clear focus on safeguarding and promoting the welfare of children, while providing children’s social care with additional flexibility in meeting a number of statutory duties during the pandemic.

6.2 This instrument is the third instrument dealing with the impact of the COVID-19 pandemic on children’s social care. The first instrument, laid on 23 April 2020 (The Adoption and Children (Coronavirus) (Amendment) Regulations 2020), introduced a larger number of flexibilities to respond to the early days of the developing pandemic. Use of those flexibilities was monitored showing they had been rarely used, as such the Government determined, following a public consultation, that the majority of those flexibilities should lapse on 25 September 2020.

6.3 However, given the impact and ongoing challenges of the COVID-19 pandemic, the Government continued a small number of flexibilities through the No.2 Amendment Regulations, which came into force on 24 and 25 September 2020. These expire on 31 March 2021.

6.4 This instrument amends the expiry date of the No.2 Amendment Regulations to continue the flexibilities for a further six months. This extends the amendments to the following: The Care Planning, Placement and Case Review (England) Regulations 2010; The Adoption Agencies Regulations 2005; The Fostering Services (England) Regulations 2011; The Residential Family Centres Regulations 2002; The Children’s Homes (England) Regulations 2015; and also amends the Adoption and Children (Coronavirus) (Amendment) Regulations 2020 in relation to previous amendments to Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (Fees and Frequency of Inspections) (Children’s Homes etc.) Regulations 2015.

- 6.5 The amendments to these regulations will continue to be in place until 30 September 2021 and they continue to include a requirement on the Secretary of State to monitor the effectiveness of the amendments. The legislative changes are being made in the context of the continuing public health emergency.
- 6.6 Government has been clear that these temporary amendments will only remain in place for so long as they are needed.

7. Policy background

What is being done and why?

- 7.1 Ensuring that vulnerable children and young people are properly safeguarded and have their welfare promoted remains a top priority for Government. At the same time, the ongoing challenging context of the continuing COVID-19 pandemic means that local authorities and providers may experience some barriers to meeting their full range of statutory duties relating to child protection and safeguarding 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 pandemic. That instrument came into effect from 24 April 2020 and lapsed on 25 September. However, given the ongoing impact of the COVID-19 pandemic, the Government brought in a small number of amendments through the No.2 Amendment Regulations, to ensure support for those that need it, including vital children's services, is maintained. These amendments came into force on 24 and 25 September 2020 and expire on 31 March 2021 but we are extending the amendments to 30 September 2021 through this further instrument.
- 7.3 Alongside this statutory instrument, [guidance](#) will be updated with the extension date and provide advice on how the extended Regulations should be applied. The Government's response to the consultation, a Children's Rights Impact Assessment and an Equality Impact Assessment will be published alongside this instrument.
- 7.4 This instrument continues the effect of amendments to the following regulations:

Care Planning

- 7.5 The Care Planning, Placement and Care Review (England) Regulations 2010 ('the 2010 Regulations') set out timings and circumstances for social workers to visit looked after children in placements including in short-term placements ('short breaks').

Virtual Visits of Looked After Children

- 7.6 The changes to regulations 28 and 48 of the 2010 Regulations 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 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 COVID-19 published by Public Health England or the Secretary of State for Health and Social Care, or when it is not

reasonably practicable for a reason relating to the incidence or transmission of COVID-19.

- 7.9 The COVID-19 guidance for children's social care services sets out examples of 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 COVID-19. This guidance explains that in cases where there are concerns and a face-to-face visit is still the most appropriate, we expect these visits should be conducted in line with public health advice and the use of personal protective equipment,
- 7.10 In all cases the use of a virtual visit must be recorded. Guidance sets an expectation that this will include recording in individual case documentation.

Residential Family Centres

- 7.11 The Residential Family Centre Regulations 2002 ('the 2002 Regulations') govern the processes and procedures followed by residential family centres.

Virtual Visits by the Registered Person

- 7.12 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.
- 7.13 Regulation 25 of the 2002 Regulations, 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 COVID-19 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 COVID-19. The COVID-19 guidance explains 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 COVID-19.
- 7.14 The use of virtual interviews must be recorded (additional information is provided in guidance).

Children's Homes

- 7.15 The Children's Homes (England) Regulations 2015 ('the Children's Homes Regulations') 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

- 7.16 Regulation 22 of the Children's Homes Regulations provides for a child or young person to meet privately family members, social workers and other professional or authorised persons.
- 7.17 That regulation has been amended to allow such meetings to be held on a virtual basis but must only be used when face to face visits would be contrary to any guidance relating to the incidence or transmission of COVID-19 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 COVID-19. Guidance explains 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 COVID-19.

- 7.18 The use of virtual visits must be recorded (additional information is provided in guidance).

Adoption

- 7.19 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 as well as checks and references. Stage 2 of the process is the assessment and training of potential adopters.
- 7.20 The Adoption Regulations also set out a requirement for a medical report to be provided by a registered medical practitioner following a full examination and covering the health of the prospective adopter.

Stage at which Medical Checks are completed

- 7.21 The Adoption Regulations require the adoption agency to secure medical reports by the end of stage 1 of the assessment process. The National Health Service (NHS) continues to face unprecedented challenges during the ongoing pressure from the COVID-19 pandemic. This is unlikely to ease for some time, even when the country enters a period of recovery.
- 7.22 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 report has been requested.
- 7.23 The decision to use this flexibility should be recorded and guidance provides that if medical reports are available at stage 1 of the assessment process, the usual requirements should still apply.
- 7.24 The Adoption Regulations will continue to require a medical report to have been obtained (where necessary) and duly considered before a final decision is made.
- 7.25 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

- 7.26 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

- 7.27 The Fostering Regulations require the fostering agency to obtain health details supported by a medical report for prospective foster carers by the end of the initial stage of the process. The NHS continues to face unprecedented challenges during the ongoing pressure from the COVID-19 pandemic. This is unlikely to ease for some time, even when the country enters a period of recovery.
- 7.28 Regulation 26 of the Fostering Regulations has been amended to allow fostering agencies to progress an application to the next stage of the assessment process, even if the information requested has not been obtained before that decision point.
- 7.29 The decision to use this flexibility should be recorded and guidance provides that if medical reports are available during the initial stage of the assessment process the usual requirements should still apply.
- 7.30 The amended Fostering Regulations continue to require that full health details supported by a medical report must be obtained and considered before a final decision is made.

Ofsted Inspections

- 7.31 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') include provisions 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

- 7.32 Under the 2015 Regulations Ofsted is required to inspect establishments and agencies in accordance with the minimum frequencies as set out in Regulation 27.
- 7.33 This instrument extends the provision that amends the 2015 Regulations so that the minimum frequency of inspections is suspended until 30 September 2021.
- 7.34 This suspension does not prevent Ofsted from inspecting services or change their inspection powers, it only affects the minimum frequency with which they must inspect. During the COVID-19 pandemic, Ofsted have continued to register social care providers and managers, and to monitor children's homes and other regulated settings where there are safeguarding concerns.
- 7.35 A snapshot of how Ofsted has operated to support Children's Social Care (CSC) provision during the various phases of recent lockdown shows 910 Ofsted assurance visits were carried out across CSC provision from 1 September 2020 to 7 February 2021, of which 820 were to 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>.
- 7.36 Ofsted is aiming to restart graded inspections from April 2021 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.

Continued fees freeze payable to Ofsted in 2021-22

7.37 The 2015 Regulations, set out registration, annual and variation fees that Ofsted charges children's social care providers. Usual registration and annual fee increases in regulations for 2020-21 were disappplied because of the impact of COVID-19 on children's social care services.

7.38 In view of the direct and continued impact of COVID-19 on these services, this instrument makes provision to revert all fees as set out in the 2015 Regulations to rates provided for in the 2019-20 inspection year.

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 This instrument does not make any provision for consolidation given the temporary nature of the amendments.

10. Consultation outcome

10.1 Given the continued impact of the COVID-19 pandemic, we sought views on those regulations that may be extended for continued use to 30 September 2021. As part of developing this instrument, a three week public consultation was conducted and available online at [gov.uk](https://www.gov.uk) between 9 February and 28 February 2021 and respondents could response to the consultation either online, by email or post. In total there were 212 responses. Most of the responses were from individuals who worked or had contact with children in care (for example social workers, health professionals, adoption/fostering panel members).

10.2 To support the consultation Departmental officials held discussions with Children's Rights Organisations, the Children's Commissioner, member organisations including the Association of Directors of Children's Social Care, charities, local authorities, Partners in Practice and with a number of children and young people forums via local authorities. This was done through stakeholder events, meetings, telephone and email exchange.

10.3 A sizeable majority of respondents agreed that the regulations in relation to virtual visits, medical reports (for fostering and adoption) and the minimum frequency of Ofsted inspections should be extended to 30 September 2021. In addition, the Government consulted on two new proposals in relation to adoption: to allow other relevant healthcare professionals to complete medical reports for adoptions and to remove the requirement for a full medical examination. A majority of respondents agreed that other relevant healthcare professionals should be considered to complete medical reports for adoptions, but concerns were raised about who these professionals would be and whether they would have the appropriate skills. The proposal to remove the full examination in adoption received the most disagreement on the grounds of safeguarding.

10.4 Based upon the responses to the consultation, the Government has decided to continue with plans to extend the existing flexibilities on medical reports (for fostering and adoption), virtual visits and Ofsted inspection cycles, as set out in this document. At

this time, the Government will not proceed with the two proposals in the consultation to amend adoption regulations.

- 10.5 The Government response to the consultation has been published on Tuesday 9 March alongside this instrument and can be found at [Changes to the Adoption and Children \(Coronavirus\) \(Amendment\) \(No. 2\) Regulations 2020 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/changes-to-the-adoption-and-children-coronavirus-amendment-no-2-regulations-2020).

11. Guidance

- 11.1 The Department is updating the COVID-19 guidance for children's social care services for local authorities and providers on changes implemented by this instrument. The guidance can be found at [Coronavirus \(COVID-19\): guidance for children's social care services - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/coronavirus-covid-19-guidance-for-childrens-social-care-services).

12. Impact

- 12.1 There is no, or no significant impact on businesses, charities or voluntary bodies. Whilst children's homes are predominantly in the private and voluntary sectors, 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.
- 12.3 A full Impact Assessment has not been prepared for this instrument and there is no, or no significant, impact on businesses, charities, voluntary bodies, or the public sector.
- 12.4 The amendments in these regulations are temporary, reflecting the pressures of the pandemic, 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 help local authorities, Ofsted, residential care and fostering and adoption agencies to ensure stability and continuity of children's social care during the pandemic.

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 the COVID-19 pandemic enabling them to provide support to vulnerable children and young people in their care more flexibly during the period of the pandemic in support of public health outcomes.
- 13.3 The guidance published on [GOV.UK](https://www.gov.uk/government/guidance/coronavirus-covid-19-guidance-for-childrens-social-care-services) will be available for small businesses to understand the regulatory changes.

14. Monitoring & review

- 14.1 There is a continuing requirement for the Secretary of State to review the effectiveness of the flexibilities. This will be informed by the relevant policy officials through a number of channels including through monitoring information collected from the Regional Educational and Care Teams and delivery partners. The amendments will be in place until the 30 September 2021 and the freeze on fees will be in place until the end of the March 2022.

14.2 The Department will continue to monitor and review the use of the amendments whilst they remain in force.

15. Contact

15.1 Dharini Patel at the Department for Education. Email: Dharini.Patel@education.gov.uk can be contacted with any queries regarding the instrument.

15.2 Madeleine Percival and Catherine Pearson, Deputy Directors for Children's Social Care Regulations 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.