



The Adoption and Children (Coronavirus) (Amendment) Regulations 2020 Briefing Note

1. Introduction

The Adoption and Children (Coronavirus) (Amendment) Regulations 2020, henceforth described here as 'the Regulations', were published on Thursday 23 April and came into force on Friday 24 April 2020.

This was followed by the Government issuing [An Explanatory Memorandum to the Adoption and Children \(Coronavirus\) \(Amendment\) Regulations 2020](#) on the 26th April 2020.

2. Key Changes to The Regulations

The changes relax the timescales and processes for specific duties covered by the Regulations during the Covid-19 outbreak. The amendments primarily affect care planning, fostering, residential care and adoption, covering the following pieces of legislation:

1. Children Act 1989 Representations Procedure (England) Regulations 2006
2. Education and Inspections Act 2006 (Inspection of Local Authorities) Regulations 2007
3. Children Act 2004 (Joint Area Reviews) Regulations 2015
4. The Adoption Agencies Regulations 2005
5. Children (Private Arrangements for Fostering) Regulations 2005
6. Fostering Services (England) Regulations 2011
7. Care Planning, Placement and Case Review (England) Regulations 2010
8. Residential Family Centres Regulations 2002
9. Children's Homes (England) Regulations 2015
10. Her Majesty's Chief Inspector of Education, Children's Services and Skills Fees and Frequency of Inspections) (Children's Homes etc) Regulations 2015

The Regulations expire on 25th September (Section 14) but may be renewed subject to a review by the Secretary of State (Section 13).

The safeguards against the continuation of these changes after 26th September 2020 appear minimal (a review by the Secretary of State).

The purpose of these legislative changes appears to relax some of the duties under each regulation so that they become, in essence, obligations to act with reasonable practicability in the current circumstance and reduce the timeframes for completing tasks. There are also some extensions of time limits (particularly to Regulation 24 of the Care Planning, Placement and Case Review (England) Regulations – which now allow for temporary approval of up to 24 weeks).

3. A Summary from Jerome O’Ryan

The changes are as follows: -

1. Children Act 1989 Representations Procedure (England) Regulations 2006

- Amends the statutory timeframes for the review process to require local authorities to comply with the existing timeframes or as soon as is reasonably practicable.
- A savings provision has also been included in respect of any representations made before the expiry of the amendments to enable them to continue to be processed and concluded under the regulations as amended.

2. The Education and Inspections Act 2006 (Inspection of Local Authorities) Regulations 2007

- Changes the timescale which a local authority has to publish its written statement of action following its Ofsted inspection report, which is now 70 working days or as soon as is reasonably practicable.

3. The Children Act 2004 (Joint Area Reviews) Regulations 2015

- Changes the timescale which a principal authority has to publish its written statement of action following its Ofsted inspection report, which is now 70 working days or as soon as is reasonably practicable.

4. The Adoption Agencies Regulations 2005

- Allows DBS and medical checks to be completed as part of stage 2 of the adoption process (assessment and training of potential adopters) rather than stage 1 (adopter approval process).

- Applicants will not be able to access the Independent Review Mechanism (IRM) where their applications are unsuccessful for reasons relating to DBS or health checks, as would have been the case if these checks were completed in stage 1. Adopters will be able to access the IRM after stage 2, if their application fails for any other reason not relating to DBS or health checks.
- A relaxing of the requirement for adoption reviews (the reviewing of a child's plan for adoption, if not placed, or a review of placement once placed) for agencies where it is not reasonably practical to do so, unless the agency has concerns about the welfare of the child.
- The requirement for an adoption panel (which make a recommendation to the agency on whether the adopters are suitable) has been removed. Should agencies decide to conduct a panel, the minimum number of panel members required has reduced from 5 to 3.
- Timescales for stage 1 and stage 2 of the process from the 2 months (stage 1) and 4 months (stage 2) remain in place but agencies are only required to meet the timescales where reasonably practicable during the outbreak. The 6-month limit on the length of time a prospective adopter could leave between stage 1 and stage 2 has been removed.

5. The Children (Private Arrangements for Fostering) Regulations 2005

- The requirement to act within seven days to a notice of private fostering has been changed to "as soon as reasonably practicable."

6. Fostering Services (England) Regulations 2011

- Removes the requirement for reviews of approval of foster carers to be carried out within a year of approval, and thereafter whenever considered necessary but at least at yearly intervals. Instead the Fostering Regulations now allow reviews of approval to be completed as soon as reasonably practicable.
- Timeframes to notify Her Majesty's Chief Inspector of certain events, such as the appointment of a manager to a fostering agency and changes to the service's statement of purpose if any are made has been relaxed from needing to be made without delay (which may not be possible with staff shortages and isolation measures), to as soon as reasonably practicable.
- Fostering panels are optional. In cases where the decision is not to set up a fostering panel, the relevant decision will be made by the fostering service provider based on their own assessment.
- Where a panel is formed the number of people required to be part of the foster panel is reduced.
- Foster carers can self-report medical information.

- Foster carer suitability assessments can be carried out whilst waiting for medical information and DBS (criminal records) checks.

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

- Short break placements can now be up to 75 days.
- The timeframes for preparing a placement plan and reviewing placements is now “as soon as practicable”.
- Reviews may be conducted by telephone and video link.
- A placement plan does not need to be completed before placing a child with parents and need only be done as soon as practicable afterwards.
- Temporary foster carers can now be approved for up to 24 weeks.
- Foster carers approved under reg 24 do not need to be “connected” to the child.
- Removes the requirement for a nominated officer from the local authority to approve a fostering for adoption placement. Decisions about the placements have now been moved onto the local authority.
- Independent Reviewing Officers can adjourn the review meeting for not more than 20 working days, and no proposal considered in the course of the meeting may be implemented until the review has been completed.

8. The Residential Family Centres Regulations 2002

- Alters the requirement to allow the registered person to use reasonable endeavours during the outbreak when promoting and making provision for the care, treatment, education and supervision of residents.
- Relaxes the timeframes around the registered person contacting a complainant with information about any action proposed in respect of a complaint made to ease administrative burdens.
- Eases requirements in relation to visits. Registered provider visits must still take place at least once a month as far as reasonably practicable during the outbreak, and the registered provider may use telephone or other video link equipment as appropriate to interview residents or those working at the residential family centre.

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

- Relaxes requirements in relation to the delivery of care relating to health and development, so it is met as far as reasonably practicable during the outbreak.

- Allows children’s homes to enforce a temporary deprivation of liberty where powers under the Coronavirus Act 2020 in relation to isolation are being exercised in respect of a young person who is infectious or suspected of being infectious with coronavirus (COVID-19) to prevent the virus from spreading where a Public Health Officer is involved.
- The registered person must ensure that suitable facilities are provided for a child to meet privately at any reasonable time with their parents, relatives advocates etc. The registered person must ensure that an independent person visits the children’s home at least once a month. The instrument allows reasonable endeavours to be taken to meet this requirement, and the expectation is that video-link or other electronic means will be used where appropriate.

10. Inspections (Children’s Homes etc) Regulations 2015

- Complaints must still comply with statutory procedures within 10 working days or “as soon as reasonably practicable”.
- The frequency of inspections to Children’s homes is temporarily removed.
- The timescale which a local authority has to publish its written statement of action following an Ofsted inspection report is “70 working days or as soon as is reasonably practicable”.
- The principal authority has to publish its written statement of action for Joint Area Reviews following the inspection report “within 70 working days or as soon as is reasonably practicable”.

4. **Response from Community Care Inform**

Community Care Inform undertook an in-depth analysis. Some of the key changes identified are as follow:

- The requirement for social workers to visit children in care a week after they commence a placement, and then at six-week intervals, has been replaced with an instruction that, when visits cannot take place in line with these timescales, they should take place “as soon as is reasonably practicable”. It also allows for ‘visits’ to take place by telephone, video or other electronic means.
- The requirement for reviews of children in care, beyond the first two reviews, to take place at least every six months must now also take place “where reasonably practicable”.
- Standards governing children’s homes have been significantly relaxed, notably by changing stipulations that care is delivered by appropriately skills and experienced staff, who are supervised by suitably skilled and qualified supervisors, by the addition of “where reasonably practicable”. Requirements

that homes graded 'inadequate' or 'requires improvement' are inspected twice-yearly by Ofsted have been removed (though routine social care inspections are currently suspended anyway), while providers are now only required to "use reasonable endeavours" to ensure that monthly independent 'regulation 44' visits take place.

- Children in residential care can also be deprived of their liberty and compelled to self-isolate by Public Health Officials, under powers introduced in the Coronavirus Act, if they are suspected to have Covid-19 or have symptoms. Previously, this was only permissible through a court order.
- The maximum timespan of emergency foster care placements has been extended from 16 to 24 weeks, and there is no longer a requirement for temporary foster carers to have a connection with the child.
- The requirement for fostering panels to assess prospective carers has been made optional "in order to help speed up the process in light of increasing demand and where places are required more urgently". Instead fostering providers are empowered to take decisions based on their own assessment.
- The requirement that adoption agencies establish panels to assess applications and issue advice around the suitability of prospective parents has been removed, while other checks on prospective parents have also been relaxed.

A copy of the full article can be accessed [here](#).

5. Response from the British Association of Social Workers (BASW)

The British Association of Social Workers (BASW) published the following key points and concerns in response to the legislative changes on 24th April 2020.

- The legislation does not convey the breadth of the changes.
- It covers 10 key legislation and statutory guidance.
- It does not provide an explanation therefore to interpret the changes the reader will need to access each legislation, and other 'connected law' and statutory guidance to understand what the exact changes are.
- There is an absence of a clear, documented and facilitated process for the rationale, structured introduction and delivering of the Regulations for local authorities.
- The Regulations, among other things, make significant changes to statutory visits and statutory reviews for looked after children, fostering and adoption panels, adoption agencies, fostering agencies, private fostering, children's homes, complaints and representations amongst other areas.

- A great deal of the text of the Regulations uses the phrase ‘as soon as is reasonably practicable’, thus while the Regulations lower ‘the floor’ of some key standards, local authorities are perfectly at liberty to maintain the current (higher) standards.
- This note has been developed at pace and will need to take into account further future expert opinion from a range of sources.
- Legislation and statutory guidance is often accompanied by a declaration of compatibility with human rights in law. These Regulations contain no such declaration.
- Looked after children and young people are among the most vulnerable in society. Hard won rights in law are not simply bureaucratic processes but exist to protect children and young people and promote their well-being.
- BASW focus on two specific areas of change: statutory visits and statutory reviews for looked after children.

- **Statutory Visits.** Social work visits and talking to the child are key to establishing the safeguarding and well-being of a child. Section 28 of the ‘Care Planning, Placement and Case Review Regulations 2010’ requires the minimum of a social work visit within one week of a new placement, thereafter every six weeks, and then in a long-term placement every three months. The Regulations (Section 13) amend this to only require a visit ‘as soon as is reasonably practical’ and also states the ‘visit’ can be ‘conducted by telephone, video-link or other electronic means’.
- **Statutory Reviews.** Regular ‘looked after child’ reviews, are key to the well-being and safeguarding of a child, ensuring all professionals work together in the child’s interests, and subjecting the process to the independent scrutiny of the Independent Reviewing Officer. Section 33 (2) of the ‘Care Planning, Placement and Case Review Regulations 2010’ requires ‘the second review must be carried out not more than three months after the first, and subsequent reviews must be carried out at intervals of not more than six months.’ The Regulations amend this six-month requirement to ‘where reasonably practical thereafter.’

They further note that:

Whilst Covid -19 presents a national threat, flexibility is required to meet this threat.

Social workers exercise professional judgement within a framework of law, policy and appropriate organisational accountability. This professional judgement is particularly valuable in working with the reality of Covid-19.

There is a parallel process for introducing changes to the Care Act. The changes (known as ‘Easements’) were preceded by ethical guidance, practical guidance on

criteria for applying the Easements and finally the requirement of a formal written declaration by the Director that the Easements would be adopted by the local authority. In contrast, none of these over-arching safeguards and standards are in place for children. The risk is that significant changes are ‘dribbled in’ on a case by case basis with no explicit rationale either within or between local authorities.

BASW has committed to:

- Ask that local authorities that are struggling to maintain current duties seek support from neighbouring local authorities and / or national bodies before considering any changes to their services.
- Ask local authorities for transparency through a clear public statement if they intend to adopt the Regulations, and consequently lower standards, or maintain their current (higher) standards.
- Continue to share creative and flexible practice that Social Workers are leading on, which enables them to manage essential duties.

A full BASW statement in response to the regulations will follow shortly.

6. Response from Community Care

A Community Care article dated 27th April 2020, noted the Government’s position as follows:

- The changes were needed to help councils prioritise needs at a time of staffing shortages and increased demand, and that waiting 21 days would “put extraordinary pressure on local authorities, providers and services to try to meet statutory obligations while continuing to provide care for vulnerable children and young people during the outbreak”.
- The decision was taken following informal consultation with sector bodies who had said that the changes needed to be implemented urgently.
- The document said that among those consulted were the Association of Directors of Children’s Services (ADCS) and Ofsted, and that the Children’s Commissioner for England had been informed.

Carolyn Willow, the director of Article 39, noted that many of the changes made under the new secondary legislation had been seen before, under 2016 proposals to allow councils to opt out of some duties, which were heavily criticised and then withdrawn by government.

Business as Usual: Responding to the concerns, ADCS president Jenny Coles said, “We recognise the concerns raised about the statutory instrument affording some flexibilities to local authorities due to the outbreak of Covid-19, however, it’s important to recognise that all local authorities and their staff will continue working hard to ensure that we can fulfil our statutory responsibilities to children and young people, particularly the most vulnerable.

“The best interests of children and families remain at the heart of any decision made by local authorities.”

7. Conclusion

These regulations have been introduced by the Government to support the Trust and other children’s services at a difficult time which when resources will be subject to staff sickness due to COVID-19, and in line with social distancing measures, difficulties in maintaining business as usual. During these times, the Children’s Trust is at liberty whether to maintain its current standards within existing policies and procedures or whether to implement these new short-term measures in part.

These regulations have been introduced by the Government to support the Trust and other children’s services at a difficult time which will be subject to staff sickness due to COVID-19, and in line with social distancing measures, difficulties in maintaining business as usual. However, the Children’s Trust is at liberty whether to maintain its current standards within existing policies and procedures or whether to implement these new short-term measures in part or not at all.

These Regulations will expire on 25th September 2020 (Section 14) but may be renewed subject to a review by the Secretary of State (Section 13).

8. Supporting Documentation

The following document is enclosed separately for reference:

- Explanatory Memorandum to the Adoption and Children (Coronavirus) (Amendment) Regulations 2020

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