

# The Adoption and Children (Coronavirus) (Amendment) Regulations 2020 (SI 2020 No. 959)

## St John's Family Forum

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### Background

- These [Regulations](#) purport to have been introduced to make it easier for Children's Services to meet their statutory duties whilst operating a reduced workforce as a result of Coronavirus. They are described in the [Explanatory Memorandum](#) as '*low risk changes to ease administrative and procedural duties*' whilst still '*maintaining a clear focus on safeguarding and promoting the welfare of children*'.
- The Regulations came into force on 24 April 2020, by-passing the convention that a Statutory Instrument should be laid in Parliament 21 days before coming into force. The justification for the lack of Parliamentary scrutiny is said in the Explanatory Memorandum to be the need for urgency:
  - Earlier implementation was impossible – social distancing was announced on 16 March 2020 followed by 'lockdown' on 23 March 2020, and a period of consultation was needed after that to understand the impact that this would have on the ability of Children's Services to carry out their duties;
  - Waiting a further 21 days was thought likely to place even greater pressure on Children's Services.
- The Regulations remain in force until 25 September 2020, which ties in with the date that the Coronavirus Act 2020 requires Parliamentary renewal. The effectiveness of the amendments made by the Regulations must be reviewed by the Secretary of State during the period for which they have effect.
- Some amendments can continue to apply in certain circumstances after the expiry of the amendments on 25 September 2020: *eg (1) where a child has been placed during the relevant period in an emergency placement under Reg 23 of the 2010*

*Care Planning Regulations, the placement has effect as if the amendments made by the Regulations remain in force; (2) when a child is being deprived of their liberty through the exercise of powers in the Coronavirus Act 2020, the children's home can continue to enforce this deprivation of liberty after the instrument itself has expired.*

## Criticism of the Regulations

- There is repeated reference throughout the Explanatory Memorandum to the changes having been implemented after 'informal consultation' with 'key stakeholders' in Children's Social Care. These key-stakeholders are unnamed save for The Association of Directors of Children's Services, and Ofsted. It has since become clear that the Children's Commissioner and NYAS were (although informed) not consulted, and that ADCS was not consulted on the detail of the specific changes introduced.
- The Children's Commissioner issued this [statement](#) on 30 April 2020. In it, she states that:
  - The changes are unnecessary (the information she has received is that staffing for social care is '*holding up well*').
  - She would have expected to see increased protections to ensure that the needs of children in care are met at this time, rather than seeing them removed.
  - The Regulations should be revoked, and if not, the Government should make clear that they should only be used as a last resort, and for as short a time as possible.
- The Chief Executive of NYAS also wrote a [strongly worded letter](#) to the Government requesting the withdrawal of the Regulations.

*'I completely understand the need for 'flexibility' in how visits are undertaken during the lockdown, including a shift towards 'virtual' visits and support. However, 'flexibility' must not be a byword for the unnecessary dismantling of children's rights. I would welcome clarification on your answer to the Education Select Committee, when asked by David Simmonds MP whether the changes in SI 445 are intended to provide evidence for the removal of certain duties beyond the COVID-19 pandemic. "That's exactly the point" was your opening response. Did you mean that SI 445 is an experiment designed to test the removal of protections currently set out in primary legislation?'*

- More recently, on 7 May 2020, the children's rights charity, 'Article 39', issued a [letter before action](#), requesting withdrawal of the Regulations, claiming they are

unlawful due to the failure to consult and the lack of time for Parliamentary scrutiny.

## The Key Amendments

- NB the Regulations are now to be read in the light of Updated [Guidance](#) issued by the Department for Education on 6 May 2020:
  - *Amendments have been made to provide for extra flexibility in some circumstances, but this should only be used when absolutely necessary, with senior management oversight, and must be consistent with the overarching safeguarding and welfare duties that remain in place.*
  - *The overarching approach to making use of these legislative flexibilities should be approved at chief officer level in local authorities, and top tier management level in other services and providers. Where it becomes necessary to utilise any of these flexibilities, it is important that this is properly recorded, along with the reasons for doing so. Each local authority should set out the local circumstances that have given rise to the need to use the flexibilities they have been afforded.*
  - *We expect the regulator/inspector of services, Ofsted, to take note of any use of these flexibilities, so providers should be ready to explain why their use was necessary. This should be available to share with Ofsted, and others such as Independent Reviewing Officers, as appropriate. The records may be used for Ofsted's annual engagement meetings as well as subsequent inspection activity. Ofsted will review the relevant records if they receive any complaints or concerns or whistleblowing.*
- **Visits to children in care:**
  - Visits to children in care *can now be carried out by telephone, video-link or other electronic means.*
  - The rules on frequency of visits have been relaxed. Formerly, under Regulation 28(1) of the Care Planning, Placement and Review (England) Regulations 2010, the general rule was that social work visits to children in the care of the local authority must take place within one week of the start of the placement, at intervals of no more than every six weeks for the first year of the placement, and at intervals of no more than every three months after that (if the placement is intended to last until the child is 18), or continuing at every six weeks (if not). Under Regulation 28(4) visits to children placed under an ICO were to take place every 4 weeks.
  - Now, as amended by Regulation 8(13) of the Adoption and Children (Coronavirus)(Amendment) Regulations 2020: where the LA is unable to visit the child within those timescales the LA must ensure that the visit takes place '*as soon as is reasonably practicable thereafter.*'

- *Even a 6 weekly telephone call (the least onerous of requirements) is no longer mandatory.*
- **Visits to children in children's homes:**
  - The obligation on the manager of the children's home to ensure that an independent person visits the children's home at least once a month has been relaxed. Reg 44 of the Children's Homes (England) Regulations 2015/541 has been amended so that the manager must '*use reasonable endeavours*' to ensure that these visits take place once a month.
  - *Guidance: We have amended regulation 44 of the Children's Homes (England) Regulations 2015 to provide greater flexibility during this period. This amendment means that providers should use reasonable endeavours to ensure that an independent person visits the children's home at least once each month. The requirement to secure an independent visitor remains and is an important safeguarding measure, however, we accept that it may not be possible to arrange a visit as frequently as once per month during the pandemic. If unable to secure a monthly visit, providers must be able to demonstrate what reasonable efforts they have made to facilitate such a visit. Technology, such as video calling, could be used to enable remote visits where possible and appropriate. The regulation 44 activity should continue to cover the aspects set out in regulation, including speaking to children, as far as is reasonably practicable. Reports should still be sent to Ofsted irrespective of whether there was an on-site visit or a remote visit.*
  - The duty on the manager to ensure that any child accommodated there is provided with appropriate facilities to meet with parents, friends, relatives, social worker, solicitor etc has been relaxed to enable the visit to take the form of a private telephone call or communication over video-link or any other form of electronic communication.
  - *Guidance: Face to face contact is still permitted, taking account of the social distancing guidelines, and children should be supported to manage this. Where it is necessary for safeguarding or welfare purposes to impose conditions, restrictions or prohibitions on a child's contact with family or friends this remains possible under regulation 22*
- **Visits to prospective private foster-carers and to children in private foster-care**
  - The rule requiring the LA to undertake a visit within 7 days of receiving notification that a person proposes to privately foster a child, or that a person is already privately fostering a child, has been relaxed. Such a visit must now take place *as soon as is reasonably practicable*.
  - The frequency of social work visits to privately fostered children has also been relaxed. Formerly, these visits were required to take place every 6

weeks during the first year of the arrangement, and no less than every 12 weeks thereafter. Now, the LA obligation is to visit at those frequencies 'where reasonably practicable.'

- **Amendments to the Care Planning, Placement and Case Review (England) Regulations 2010**

- **Placement Plans.** Under Regulation 9(2) of the CPPCRR 2010, the LA was required to prepare a placement plan *before* placing a child under section 22C, or, where there was not possible, *within 5 working days of the start of the placement*. Now, if a placement plan cannot be prepared before the child is placed it is required only '*as soon as is reasonably practicable after*' the start of the placement.
- *Guidance. Local authorities should still make every effort to agree a placement plan before the child is placed. Where this is not possible, local authorities must now prepare the placement plan as soon as reasonably practicable from the start of the placement. The local authority must be satisfied that it is the appropriate placement for the child and, that it will safeguard and promote their welfare. They must also be satisfied that the child's wishes and feelings have been ascertained and given due consideration, and that the Independent Reviewing Officer (IRO) has been informed.*
- **Emergency placement of children.**
- Under Regulation 23 of the Care Planning, Placement and Case Review Regulations, 2010, a child could be placed in an emergency with a LA foster-parent for up to 6 days (even if the terms of the foster-parent's approval were inconsistent with the placement). Practically speaking this would apply, for example, where the foster-carer has only been approved to care for a specific number of children and the emergency placement would take them over that number; or where the foster-carers has only been approved to care for children of a particular age-range etc. The emergency placement would have to come to an end after 6 days if the terms of the foster-carer's approval had not been amended by then.
- Under the amended Reg 23, a child can be placed in an emergency foster placement for up to 24 weeks and the LA has 24 weeks in which to amend the terms of approval.
- *This is a significant amendment, meaning that a child can be placed in an emergency with foster-carers for up to 6 months in circumstances where the terms of the foster-parents' approval are inconsistent with the child being placed with them. It is even more significant when it is considered alongside the amendments to the frequency of LAC Reviews (3<sup>rd</sup> and subsequent reviews now required only 'where reasonably practicable thereafter') and the relaxed requirements on visiting a child in care.*
- **Temporary approval of a person as a local authority foster-carer**

- Formerly, under Regulation 24 of the CPPCRR 2010, the Local Authority could grant temporary approval to a *connected person* ('friend, relative, or other person connected with the child') for a period of 16 weeks before they had been fully assessed as a local authority foster-parent.
- Under the amended Regulation, a Local Authority can now place a child for a period of 24 weeks with **anyone** who has not yet been finally approved as a Local Authority foster-parent, whether or not they are a friend or relative etc. *This is a significant erosion of protection, enabling children to be placed with a wider range of unapproved people, and undermining its original purpose (which was to enable children to be placed swiftly with people or persons known to them).*
- *Guidance: We recognise the importance of maintaining a permanent stable setting for children wherever possible. In most cases, we expect that children will continue living with their foster carers, observing government guidance on self-isolation and social distancing. In circumstances where this is not possible, we have amended the regulations to help fostering services identify alternative short-term placements such as extending temporary approvals to non-connected persons and extending the time a child can stay in an emergency placement.*
- *To help unlock capacity and build flexibility in the system during this period, we have made amendments to the Care Planning, Placement and Case Review (England) Regulations 2010 to amend the time restrictions around short breaks and emergency placements. This means that a short break placement with foster carers can last up to 75 days within a 12 month period, – we have removed the restriction on each short break placement being no more than 17 days. We continue to expect fostering services to prioritise placing a child with someone whom they already know first, if possible. Approvals for temporary foster carers have been extended to non-connected persons and placements can now last up to 24 weeks. This can be used whilst formal foster carer assessment and approval is undertaken, an alternative placement is found or they return to their usual home. These changes have been made to make it easier to identify potential placements, particularly in emergency situations, and to minimise unnecessary instability for children in foster care. The overarching principles of making children centred decisions that are in children's best interests remain.*
- **Placing a child permanently before the foster-carer's assessment has been completed.** Regulation 19 of the CPPCRR required that where it was thought necessary and consistent with the child's welfare to place the child before the Reg 17 assessment had been completed, the assessment had to be completed within 10 days of placement. As amended, it now needs only to be completed *as soon as is reasonably practicable thereafter.*
- **Placing a child outside the area of the responsible authority.**

- Formerly, a decision to place a child outside of area needed to be approved by a nominated officer (or, where the placement was at a distance) by the Director of Children's Services. This safeguard did not apply where the decision was to place the child outside of area but with a 'connected person' or someone who was already approved as a local authority foster parent.
- This safeguard no longer applies where the child is placed under the amended Regulation 24 (ie *it no longer applies to temporary placements even where the carers are not related to or otherwise connected with the child*).
- **Placing a child in a foster-to-adopt placement.** The procedure has been relaxed: the decision to place a child in a foster-to-adopt placement can now be put into effect without the approval of a 'nominated officer'. A nominated officer was a Senior Officer within the Local Authority who had been appointed by the Director of Children's Services. Approval is now to be given by the 'responsible authority.' Before making a placement, the responsible authority must (a) be satisfied that the placement is the most appropriate placement for the child; (b) be satisfied that the requirements of Reg 9(1)(b) (placement plan) have been complied with; and (c) notify the child's parent or guardian if their whereabouts are known.
- **Frequency of LAC Reviews:** under the amended regulations, the second review must still be carried out not more than three months after the first. However, subsequent reviews need no longer be carried out every six months but only '**where reasonably practicable thereafter.**'
- **Short-breaks/respite care:** no longer limited to periods of 17 days, but must still not exceed 75 days in 12 months
- **Fostering & Adoption Procedure**
  - The Registered provider of a fostering agency, where convicted of a criminal offence, must give notice to the Chief Inspector of the details of the offence. Formerly that notice was required to be given without delay; now it need be given only '**as soon as is reasonably practicable.**'
  - Setting up a Fostering Panel is now optional. The approval of X as a foster-parent can now be given by the Fostering Service Provider without the need to refer to a Fostering Panel for their approval.
  - **Approval of foster-carers by the fostering service provider:** formerly, the 1<sup>st</sup> review needed to be carried out in the first 12 months, with subsequent reviews at no more than yearly intervals. Under the amended regulations, a review within the first year is only now required '*where reasonably practicable*'; *subsequent reviews are only required 'whenever the fostering service provider consider it necessary'*
  - *Guidance: We recognise that fostering services may want to bring in more emergency foster carers to help build capacity within their services*



*in case of additional demand during this period. We would encourage them to do this. Whilst they will want to ensure that assessments and approvals are thorough and comply with regulations, we do not want these to be unnecessarily delayed.*

- Adoption Panels are now optional even where the adoption agency coming to a decision about whether a child should be placed for adoption is not a local authority.
  - Where an adoption agency makes a decision that a prospective adopter should be approved for a specific child, there is no requirement to refer to an adoption panel.
  - *Guidance. We have removed the legal requirement to have an adoption panel (regulation 4). We have listened to the concerns raised by the sector about the challenges of bringing together panels for matching and approvals. We know that agencies are utilising technology and holding virtual panels and the feedback is that these are working well. We would encourage these to continue where possible. Our changes, however, offer agencies flexibility to reduce the quoracy of their panels or to use their Agency Decision Maker to approve matches and approvals and the Agency Adviser for quality assurance without first going to panel. This is intended to help agencies continue to approve adopters and matches, when they are unable to hold a full panel due to sickness or other reasons. Where panels are used, they must consist of at least three members – a chair or vice chair, a social worker and one independent member. Medical, legal or professional advice can be provided in writing. The requirement to hold a central list remains. A record should be kept of all decision making.*
  - Adoption Reviews (ie the review of a child's plan for adoption if not placed, or review of placement once placed) need not be carried where 'it is not reasonably practicable', unless the adoption agency has concerns about the welfare of the child.
- **Deprivation of Liberty in Children's Homes.**
    - Regulation 20 of the Children's Homes (England) Regulations 2015/541 is amended so that a child can be deprived of their liberty in accordance with an exercise of powers under Schedule 21 of the Coronavirus Act 2020, ie where the child is infectious or suspected of being infectious. Formerly, a deprivation of liberty under Regulation 20 could only take place where authorised by Court Order.
    - *Guidance. As far as possible, arrangements for restrictions should be put in place with the consent of the young person and all professionals involved in the care of the young person are encouraged to explain how and why the temporary restrictions are being applied. The restrictions should last for no longer than is necessary and must be kept under careful and constant review...If the young person refuses to follow sensible public health guidance, as a last resort, advice can be sought from Public Health England on the possibility of imposing restrictions on an individual*



*who is potentially infectious under the Coronavirus Act 2020. This gives Public Health Officers power to impose proportionate requirements (including screening and isolation) on any person suspected or confirmed to be infected with coronavirus (COVID-19).*

- *We have amended regulation 20 of the Children's Homes (England) Regulations 2015 to provide that where it is agreed that restrictions on a child's movement amount to a deprivation of liberty, then this can be enforced temporarily where Public Health Officer powers under the Coronavirus Act 2020 (including a requirement for a person to remain in a specified place or to remain isolated) are being exercised. We would expect that any decisions relating to exercise of these powers must be recorded and carefully monitored, with the placing authority informed in accordance with the requirements to keep records in accordance with regulation 35(3) of the Children's Homes (England) Regulations 2015.*
- *The powers under the Coronavirus Act 2020 cannot be used to generally enforce restrictions on movement that amount to a deprivation of liberty. In all other cases where it is determined through care planning discussions that restrictions of movement that mean a child is not free to leave a place and is under constant supervision which amounts to a deprivation of liberty, local authorities must apply for a court order.*

#### Practical relevance for practitioners:

- Press the LA to set out a time-scale for visits and reviews (parents will need reassurance that their children will be visited, in circumstances where even a mere telephone call every six weeks is not compulsory)
- No longer any need to worry about a Reg 24 placement becoming unlawful when it expires (within proceedings) after 16 weeks and the full assessment has not been completed.

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