



Department
for Education

Children's Social Care

Government consultation response

August 2020

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Introduction

On 11 March 2020, the World Health Organisation (WHO) confirmed coronavirus (COVID-19) was a global pandemic. The UK Government has taken an unprecedented series of actions to address the pandemic across all parts of society including to support vulnerable children and families.

As part of its response to coronavirus (COVID-19) the Department for Education carefully considered flexibilities to support the effective delivery of children's social care services, whilst always ensuring children's safety remained paramount.

The Adoption and Children (Coronavirus) (Amendment) Regulations 2020 ("the 2020 Regulations") made temporary amendments to a set of 10 children's social care regulations and came into force on 24 April 2020. They provide for extra flexibility in some circumstances which may arise as a direct result of coronavirus (COVID-19) for example high levels of staff sickness. Local authority duties towards children which are contained within primary legislation remain unchanged. The temporary amendments which have been made do not reduce the responsibility that local authorities have towards protecting children from significant harm and protecting their welfare.

The 2020 Regulations will expire on 25 September 2020. We sought views on those regulations that the Government proposes should lapse and those that may be extended for continued use to 31 March 2021.

The consultation was available online at [gov.uk](https://www.gov.uk) between 16 July and 5 August 2020, in addition to this we held events and arranged discussion forums with children's charities and groups of looked after children and young people.

Summary of responses received and the government's response

In total there were 189 responses, most of the responses were individuals who worked with or had contact with children in care (for example social workers, health professionals, adoption/fostering panel members).

	Number of respondents	Percent of respondents
Individual	91	48.15%
Local authority	37	19.58%
Charity	25	13.23%
Other organisation	36	19.05%
Not Answered	0	0%

In addition to the written responses received, we also discussed the proposals with a range of stakeholders, including several children's charities and groups of young people.

The consultation received a number of 'campaign responses', these are organised responses to influence the results of the consultation.

A list of organisations that responded to the consultation can be found at Annex A.

Main findings from the consultation

A majority of responses were in favour of each of the proposals to extend individual regulations on medical reports, virtual visits, and the continued suspension of the regular cycle of Ofsted inspections of children's services providers. The majority of responses also agreed that all other temporary flexibilities introduced in April 2020 should lapse and the need to introduce additional safeguards.

Consultees offered a range of opinions and many agreed the flexibilities were required to manage the initial stages of coronavirus (COVID-19). Local authorities commented the flexibilities had been rarely applied and only with management oversight and they should be trusted to use flexibilities in a proportionate, risk-assessed way to meet the needs of children, young people, and families. Some suggested all flexibilities should be extended to allow for waves of coronavirus (COVID-19) and in particular were concerned about the predicted rise in cases in autumn, whilst others felt that services would be back to normal by September and that the flexibilities would no longer be needed.

However, many consultees also raised concerns in the way the regulations were introduced, and many felt the regulations should not be extended and should be revoked immediately.

On the basis of responses to the consultation the Government has decided to continue with plans to allow the majority of regulations to lapse on 25 September, save those specifically set out in this document, on medical assessments, virtual visits and Ofsted inspections.

The Government has no plans to extend the regulations beyond March 2021.

Question analysis

Proposal 1: Medical reports

The National Health Service still faces significant challenges as we enter a period of recovery. We proposed to amend the time frame in which medical information needs to be provided during the fostering and adoption assessment processes. This would not remove the requirement for medical information to be provided but would provide additional time during the process for these.

Do you agree we should extend relevant parts of the regulations to allow the approval process for adopters and foster carers to progress to the next stage, for example if there are delays in receiving medical reports?

Regulation	Agree		Disagree		Neither agree nor disagree	
	Total number of respondents	Percent of respondents	Total number of respondents	Percent of respondents	Total number of respondents	Percent of respondents
Adoption Agencies Regulations 2005 - Regulation 26(b) and (e) – Other pre-assessment information	109	69.87%	31	19.87%	16	10.26%
Adoption Agencies Regulations 2005 - Regulation 27(1A) – pre-assessment decision	106	67.95%	34	21.79%	16	10.26%
Adoption Agencies Regulations 2005 - Regulation 30B(1A) – Adoption agency decision and notification	92	58.97%	43	27.56%	21	13.46%
Adoption Agencies Regulations 2005 - Regulation 30B (5) and 5A - Adoption agency decision and notification	91	58.33%	43	27.56%	22	14.10%
Fostering Services (England) Regulations 2011- Regulation 26 (2A)– assessment of prospective foster parents	91	58.33%	40	25.64%	25	16.03%

The majority of responses supported the proposal. Respondents who agreed felt the proposal was, “entirely appropriate in the circumstances” reflecting continuing “significant challenges in prospective adopters being able to access GP surgeries to

complete medicals” and it would be in the, “child’s best interest to be placed with a suitable adoptive parent or foster carer as soon as possible”. A response from an adopter who had been through the process prior and during the pandemic, noted that “the adapted process was still thorough and adequate to assess suitability as fosterers/adopters”. Many campaign responses suggested the regulation should state this flexibility could only be used for coronavirus (COVID-19) purposes only.

Respondents who disagreed felt that the health service was back to normal and that, “the situation has stabilised in primary care and that the rapid development of remote GP consultations means that these health assessments can now be completed in a timely manner”. Many of the respondents that disagreed felt decisions should only be made once all information had been gathered otherwise placements had the potential for breakdown. There was a misunderstanding from some that decisions would be made without medical information but as we made clear in the original consultation, medical information still must be provided before any decisions are made.

Regulation	Agree		Disagree		Neither agree nor disagree	
	Total number of respondents	Percent of respondents	Total number of respondents	Percent of respondents	Total number of respondents	Percent of respondents
Virtual visits - Residential Family Centre Regulations 2002. Regulation 25 (4A) - Visits by registered provider	100	64.10%	21	13.46%	35	22.44%
Virtual visits - Care planning, Placement and Case Review (England) Regulations 2010. Regulation 28(1A) – Frequency of visits	111	71.15%	31	19.87%	14	8.97%
Virtual visits - Care planning, Placement and Case Review (England) Regulations 2010 - Regulation 48 (3) (e) - Application of	103	66.03%	27	17.31%	26	16.67%

these Regulations with modifications to short breaks						
Virtual visits - Children's Homes (England) Regulations 2015 - Regulation 22(1) – Contact and access to communications	100	64.10%	24	15.38%	32	20.51%

Many consultees commented that potential foster carers/adopters could complete a self-assessment form initially with a GP completing an assessment at a later date, but some noted individuals may have unknown medical issues which would not be identified through a self-assessment. Some respondents also suggested their experience has been GPs do not consider the assessments to be of importance and the department should impress upon health professionals the urgency of assessments.

Government response

The Government will extend the regulations to March 2021. The Government recognises that the medical report forms an important part of the decision-making process. Whilst the temporary flexibility will allow the report to be received at a later stage it will still need to have been received and considered before final decisions are made. We have considered whether it is possible to include a requirement that the flexibility should only be used where the delay specifically relates to coronavirus (COVID-19), however we believe this would be difficult for agencies to determine and may create an additional burden for already stretched medical services.

Proposal 2

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, or contact with someone who has tested positive for coronavirus, in line with medical advice from the NHS test and trace service. Therefore, we propose to continue to enable contact in these situations to happen virtually, and only where a face to face visit is not practicable.

Do you agree we should extend the relevant parts of regulations to allow virtual contact/visits where a face to face visit is not possible?

The majority of responses supported the proposal. Respondents who agreed felt it was only appropriate in cases, or suspected cases of coronavirus (COVID-19) and face to face visits should recommence as soon as possible. Those who disagreed with the proposal, also commented that the flexibility should only be used in cases, or suspected cases of coronavirus (COVID-19).

The Association of Directors of Children's Services noted, "the ability to use hybrid approaches meant LAs were able to increase the frequency of visits/contact at a time when most children weren't being seen in school". Many responses suggested a 'hybrid' model in the future where virtual visits and face to face were allowed as they felt some young people responded much more positively to virtual contact and were better engaged with services. Barnardo's suggested training and best practise guidance on the use of virtual visits for professionals should be provided.

The Department sought the views of children and young people in relation to the proposal to extend the regulations on virtual visits; children from four local authorities gave their views. There was a mixture of responses, ranging from preferring virtual visits, to viewing them positively but acknowledging barriers and limitations to this type of contact. Several shared that they were grateful to have been able to have virtual contact during this time but that they prefer face to face contact and hope to be able to resume that when it is safe to do so. None of the children or young people shared that they did not want virtual visits to continue and moving forward most would like a mixture of both virtual and face to face contact.

Some of the benefits that were shared by children and young people in relation to virtual visits included feeling more settled due to not having social workers coming in and out of the home, being able to communicate one on one with the social worker, having more regular contact and feeling more confident and at ease during the virtual visit. One young person shared that, "my social worker has video-called me a lot during lockdown. We even made cakes together via Microsoft Teams". In one local authority, young people reported that they feel more confident now in contacting their social workers as they felt they were readily available during the lockdown and that they had friendly and meaningful conversations.

The barriers and limitations mentioned in relation to virtual visits included disruptions due to connection issues, shorter virtual visits with issues not always being picked up properly, visits feeling less personal than talking face to face and less private due to staff being at home and the children and young people getting distracted or feeling disengaged. Several children and young people shared that they thought there are circumstances where face to face contact is important and more effective, for

example when important news needs to be shared or behaviours need to be observed in person and for review meetings, especially if there are language barriers.

Government response

The Government will extend the regulations to March 2021. The Government recognises that visits by social workers to looked after children provide important opportunities to consider children and young people’s safety and wellbeing and that virtual visits may not always provide the best conditions. As such we are clear that visits should happen, whenever possible, face to face. The regulations will explicitly provide that virtual visits should only happen when face to face visits would be contrary to public health advice, or where face to face visits would otherwise not be reasonably practicable as a result of coronavirus. The Government also recognises the importance of ensuring that social workers are well equipped to use virtual visits effectively and intends to work with sector organisations to disseminate guidance.

Proposal 3

As announced on 6 July 2020, 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 proposed to continue the suspension of the regulation that sets out the minimum number of Ofsted inspections required in various settings until 31 March 2021.

Do you agree we should extend the regulation regarding frequency of inspections?

	Total number of respondents	Percent of respondents
Agree	104	55.03%
Disagree	61	32.28%
Neither agree nor disagree	24	12.70%
Not Answered	0	0%

The majority agreed to extend this regulation. Respondents that agreed felt the, “proposal is sensible and will enable the maximum number of children's homes to be inspected within this period as possible” and that inspections should consider the recent situation. Many cautiously agreed as they felt ‘catching up’ inspections would

be an inefficient use of resources. Some agreed but felt that Ofsted should prioritise local authorities that ‘require improvement’, however this was a misunderstanding as the proposed regulations only relate to social care settings.

Respondents that disagreed felt the gap between inspections would be too long and inspections highlighted safeguarding issues. Some suggested Ofsted should be carrying out more inspections in the pandemic. Approximately half of those who disagreed were campaign responses and many cited the same reason, ‘inspections of all settings and services is critical and essential component of safeguarding’.

Government response

The Government will extend the regulation to March 2021. The Government agrees that inspection is a vital tool in ensuring that children are effectively safeguarded but believe it is impractical for the cycle of inspections to resume immediately. Ofsted’s proposals will mean that a greater number of providers will be visited than would otherwise be possible.

If we did not extend this regulation 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 providers where serious or widespread concerns are identified.

Ofsted continues to have the ability to inspect any regulated social care provider where they have concerns about practice.

Ofsted has published [guidance](#) on its plans for assurance visits.

Proposal 4

Do you agree we should allow all of the other regulations to expire on 25 September?

	Number of respondents	Percent of respondents
Agree	114	60.32%
Disagree	54	28.57%
Neither agree nor disagree	21	11.11%
Not Answered	0	0%

The majority of respondents agree with the proposal to allow the regulations (with exception of those listed above) expire. Most campaign responses we received via email stated that they either agreed or disagreed but commented that they would like

the regulations to expire immediately (rather than responding ‘neither agree or disagree’ and offering a comment). Those who clearly agreed with the proposal felt, “the legislation which was the right thing to do in the context of considerable uncertainty about the challenges that we could face from Covid”. Many respondents suggested that while these should expire in the current circumstances there should be a mechanism to re-introduce them quickly if we experience further waves of coronavirus (COVID-19). Some local authorities commented that they had been very useful and had been used sparingly with managerial oversight but as the initial crisis had been managed, they should revert to the original regulations.

Some respondents that disagreed commented that they, “anticipate an increase in Covid cases in the Autumn. It has been proven the sector used the flexibilities wisely so I think you should trust the sector to do the right thing again”. Some suggested additional regulations should be extended, in particular those relaxing the number of people required to attend fostering and adoption panels. Another suggested, “given there is still a high level of uncertainty about further pandemics and spread I believe it’s sensible to keep all current regulations in place until March 2021”.

Approximately 15% of the total respondents commented all regulations should expire immediately - these were almost all campaign responses.

Government response

The Government will allow all regulations (except those listed above) to lapse on the 25 September 2020. The Government is clear that in establishing the regulatory flexibilities put in place in April 2020 it needed to plan for the possible worst-case scenario, including for significant staff absence. Thankfully, the effect of coronavirus (COVID-19) on the children’s social care sector has not been as severe as initially feared and local authorities and providers have had to use the flexibilities rarely. Updated monitoring information on their use can be found at Annex B. The Government is therefore clear that the majority of those flexibilities can now lapse.

Proposal 5

Do you agree that additional safeguards should be introduced on the use of any flexibilities that remain in place after 25 September? If you answered yes, please provide details on what safeguards you consider may be appropriate and how they could be employed.

	Number of respondents	Percent of respondents
Agree	95	60.90%
Disagree	34	21.79%
Neither agree nor disagree	27	17.31%

Not Answered	0	0%
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The majority of respondents agree additional safeguards should be introduced on the use of any flexibilities that remain in place after 25 September. However, only some of the respondents that agreed with the proposal suggested additional safeguards. These included improving monitoring and a limit on the number of times a flexibility is used with a family. One local authority suggested, “a minimum level of visiting during the response to Coronavirus may be useful, e.g. children and young people being seen face to face a minimum of three monthly or two monthly with virtual visits in the other months”. Many suggested regulations and/or statutory guidance should state for covid purposes only.

Respondents that disagreed that any additional safeguards were needed felt the current safeguards were appropriate. The Local Government Association commented, “Existing safeguards are clear, requiring management approval and proper recording of rationale for use of any flexibilities. We believe that these are appropriate. Children’s social care professionals at all levels work hard to keep children safe and well, and outside of a pandemic are expected to take appropriate action at all times within the parameters of legislation, guidance and local management and oversight structures. We expect professionals to continue to act in this manner even with the additional pressures imposed by the pandemic, putting children at the centre of decision-making and using these flexibilities only when absolutely necessary to ensure positive outcomes for children”. This view was shared by many. Some respondents disagreed, as they felt no flexibilities should remain beyond 25 September.

Government Response

The Government has always been clear in guidance that the flexibilities provided during the pandemic should only be used where necessary and this remains its position. The Government has considered the views expressed carefully and as a result will introduce some additional safeguards in the regulations on the use of virtual visits as set out above. Guidance will continue to explain that use of the flexibilities should be agreed by senior management and decisions recorded. Guidance will also be strengthened to provide additional detail on the circumstances in which Government anticipates use of the flexibilities would be appropriate and the factors that local authorities and providers should consider.

Annex A: List of organisations that responded to the consultation

Action for Children
Association for Directors of Children's Services
Adopt London West - Regional Adoption Agency
Adoption Counts RAA
Adoption East Midlands
Adoption in Merseyside (RAA)
Adoption South East
APPG for Adoption and Permanence
Article 39
Aspire Adoption Services
Barnardo's
Barnardo's Fostering and Adoption North East
BECOME
Berkshire Healthcare NHS Foundation Trust
Bournemouth, Christchurch and Poole Council
Bristol City Council
British Association of Social Workers
CAFCASS
Caldecott Fostering Ltd
Care 4 Children
Caritas Care
Cheshire East Council
Children and Families Across Borders
Children England
Consortium of Voluntary Adoption Agencies
CoramBAAF
Cumbria County Council
Derby City Council
Derbyshire County Council
Every Child Protected Against Trafficking
FosterTalk Ltd
IAC - The Centre for Adoption
ICHA
Lancashire County Council
Law Society
Leeds and One Adoption West Yorkshire
Leicestershire County Council
Local Government Association
London Borough of Croydon
London Borough of Merton
Middlesex Law Society
National and Local Government Officers' Association
National Centre for Excellence in Residential Child Care

National IRO Managers Partnership
National Network of Designated Healthcare Professionals for Children
National Youth Advocacy Service
Nationwide Association of Fostering Providers
North East ADCS
North Lincolnshire Council
North West Association of Directors of Children's Services
North Yorkshire County Council
Northumberland CCG
Nottingham City Council
NSPCC
Office of the Children's Commissioner
Ofsted
One Adoption West Yorkshire
Parents and Children Together
Sefton MBC
Somerset County Council
St Christopher's Fellowship
St Francis' Children's Society
Surrey County Council
The Adolescent and Children's Trust
The Care Leavers Association
The Children's Services Development Group
The Children's Family Trust
The Children's Society
The Fostering Network
UNISON
Warrington BC
West Sussex County Council

Please note, other organisations responded to the consultation but have chosen to remain anonymous.

Annex B: Updated information on use of current flexibilities

Regulation number	June*	July**	August***
Adoption Agencies Regulations (England) 2005			
Regulation 4 – constituting an adoption panel	1	4	1
Regulation 6 – meetings of adoption panel	6	12	7
Regulation 17 – requirement to prepare a child’s permanence report	0	1	0
Regulation 19 – review panel	2	0	0
Regulation 23 – case record of adoption panel	0	0	0
Regulation 26 – Other pre-assessment information	4	7	12
Regulation 27 – pre-assessment decision	2	4	1
Regulation 28 – Stage 2 assessment	0	3	2
Regulation 30 – adoption agency notifying prospective adopter	0	0	0
Regulation 30B – Adoption agency decision and notification	1	5	0
Regulation 30D – review and termination of approval	1	0	2
Regulation 31– proposed placements	0	0	0
Regulation 33– adoption agency decision in relation to proposed placement	0	0	0
Regulation 36– adoption agency reviews	0	0	0
Care Planning, Placement and Case Review (England) Regulations 2010			
Regulation 2 – connected person	0	0	0
Regulation 5 –information care plan must include	0	0	0
Regulation 9 – Placement plan	2	1	3
Regulation 11 – Placement decision	0	0	1
Regulation 18 – approval by nominated officer	0	0	0
Regulation 19 – assessment and review of placement with P	1	1	1
Regulation 22 (A) – conditions to be complied with before placing a child with a local authority foster parent	0	0	0
Regulation 22 (B) – conditions to be complied with before placing a child with a local authority foster parent (long term foster carer placement)	0	0	0

Regulation 23 – emergency placement with a local authority foster parent	1	5	6
Regulation 24 – Temporary approval of relative, friend or other person connected with the child.	19	13	13
Regulation 25 - Temporary approval extension	0	0	0
Regulation 28 – Frequency of visits	7	7	7
Regulation 33 – timing of reviews	1	0	0
Regulation 36 – role of Independent Reviewing Officer	0	0	0
Regulation 42- Assessment of child's needs and consideration of support from C's parents and other connected persons	0	0	0
Regulation 47C - Application of these Regulations with modifications to children on remand	1	1	1
Regulation 48 - Application of these Regulations with modifications to short breaks	4	3	2
Schedule 4 – Matters considered when assessing the suitability	0	0	0
Children Act 2004 (Joint Area Reviews) Regulations 2015			
Regulation 4 - requirement for written statement of proposed action following a written report	0	0	0
Children Private Arrangements for Fostering Regulations 2005			
Regulation 4 – Action to be taken by local authority on receipt of notification of proposal to foster a child privately	1	1	0
Regulation 7 – Action to be taken by local authority on receipt of notification about a child being fostered privately	0	1	0
Regulation 8 – Subsequent visits to children who are being fostered privately	1	2	0
Children's Homes (England) Regulations 2015			
Regulation 6 – The quality and purpose of care standard	0	3	1
Regulation 8 – The education standard	1	5	0
Regulation 22 – Contact and access to communications	6	15	6
Regulation 44 – Independent person: visits and reports	9	7	3
Education and Inspection Act 2006 (Inspection of Local Authority) Regulations 2007			
Regulation 3 – publication of written statement of proposed action	0	0	0
Fostering Services (England) Regulations 2011			
Regulation 4 - notification of review of statement of purpose	0	0	0
Regulation 6 - appointment of a manager of a fostering services provider	0	0	0
Regulation 9 -notifying of a conviction	0	0	2

Regulation 10 – appointment of local authority manager of fostering service	0	0	0
Regulation 23 – Constitution and membership of fostering panel	20	16	5
Regulation 24 – Fostering panel	0	0	1
Regulation 25 – Function of fostering panel	0	0	0
Regulation 26 – Assessment of prospective foster parents	3	9	0
Regulation 27 - Fostering panel has considered the application	0	0	0
Regulation 28 – Reviews and terminations of approval	3	5	1
Regulation 30 – Case records	0	0	0
Regulation 42 - Related to application of Regulations with modifications to short breaks	0	2	0
Schedule 3 – Information as to prospective foster parent and other members of their household and family	8	12	4
Schedule 7 - Notify Chief Inspector of pandemic at the home of a foster parent of an infectious disease serious	0	0	0
Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspection) (Children's Homes etc.) Regulation 2015			
Regulation 27 – Frequency of inspections	0	0	0
Residential Family Centre Regulations 2002			
Regulation 10 – Health and welfare of residents	0	1	0
Regulation 20 – Dealing with complaints	0	0	0
Regulation 25 – Visits by registered provider	18	20	15
Regulation 27 – Fostering panel approval	0	0	0
The Children Act 1989 Representations Procedure (England) Regulations 2006			
Regulation 18 – Request for Review Panel	1	1	0
Regulation 19 – appointment of review panel	0	0	0
Regulation 20 – Recommendations	1	0	0

*Data capture covers 3 to 4 weeks. June data reflects Regulations used in May.

**Data capture covers 3 to 4 weeks. July data reflects Regulations used in June. Additional information received so numbers vary to previously published data.

***Data capture covers 6 to 7 weeks. August data reflects Regulations used in July and mid-August. Information from 80 local authorities.



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