



Department
for Education

Proposed changes to Ofsted inspection frequencies for children's social care providers from 2021 to 2022

Government consultation response

September 2021

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Introduction

Ofsted's inspections of children's social care providers operate on an annual cycle (e.g. to children's homes) or on a three-year cycle (e.g. to independent fostering agencies). These inspection cycles are applied through the Her Majesty's Chief Inspector of Education, Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) Regulations 2015 ("the Fees and Frequency Regulations") which set out the role and responsibilities of Ofsted under the Care Standards Act 2000.

In July and August 2021 we consulted on changes to amending these regulations in relation to:

- the minimum frequency of Ofsted inspections for children's homes; and
- The minimum frequency of inspections for children's social care provision more generally from 1 October 2021 to 31 March 2022

Changes to the minimum frequency of Ofsted inspections for children's homes

The minimum frequency of Ofsted inspections of children's homes in an inspection year (1 April to 31 March) is currently set by the judgement made in the previous year. Therefore, homes that are judged to be 'good' or 'outstanding' in the previous year are only required to receive one inspection the following year. Homes that are judged to be below good (ie. 'requires improvement to be good' or 'inadequate') are currently inspected twice per year.

We proposed changing the regulations so that the minimum frequency of inspection for children's homes is based on the judgement in the given current inspection year, rather than the judgement from the previous year. This proposal does not apply to secure children's homes.

Changes to the minimum frequency of inspection for children's social care from 1 October 2021 to 31 March 2022

Although Ofsted restarted routine inspections of children's social care providers in April 2021, the minimum frequency of Ofsted inspection is currently suspended under *the Adoption and Children (Coronavirus)(Amendment) Regulations 2021* until 30 September 2021. From 1 October 2021, Ofsted will again be required to meet the minimum frequency of inspections for all children's social care providers as set out under the Fees and Frequency Regulations.

Ofsted should comply with minimum inspection requirements as set out in the regulations; however we have proposed changing the regulations so that Ofsted should comply with the minimum frequency of inspections "so far as reasonably practicable" for the period 1 October 2021 to 31 March 2022. This flexibility would help Ofsted deal with the uncertainty brought about by the COVID-19 pandemic, which may affect their ability

to meet minimum inspection requirements during the 2021-22 inspection year. If Ofsted were unable to meet minimum inspections as required, the department would require Ofsted to provide their reasons for being unable to do so.

Stakeholder engagement

When the consultation launched, we alerted key stakeholders including children's charities, the Children's Commissioner, the Chief Social Worker for children and families, the Association of Directors of Children's Services (ADCS), the Local Government Association (LGA), Ofsted, children's rights organisations and organisations representing children's social care providers such as the Independent Children's Homes Association and Fostering Network. We also asked these stakeholders to promote the consultation amongst their own networks.

To further support this consultation, we held two webinars where we explained our proposals in greater detail and responded to stakeholders' questions. These webinars took place during the consultation period and were attended by 163 stakeholders from across the sector. This included representatives of children's homes, local authorities and children's rights organisations. We also engaged with the Office of the Children's Commissioner on our proposals.

Summary of responses received and the government's response

There were 84 responses to the consultation. We received responses from many different stakeholders from across the children's social care sector including local authorities, children's homes and children's rights groups.

Main findings from the consultation

Minimum frequency of children's homes inspections

Our analysis indicates that the majority of respondents (87 per cent) were in favour of our proposal to amend the Fees and Frequency Regulations so that the minimum inspection requirements are based on the judgement from the current year's inspection as opposed to the judgement from the previous year.

A small number of respondents did not agree with our proposals advising that rapid changes in staffing and management can have a major impact on the standard of provision in a children's home. This was also one of the main themes that respondents raised when asked if they could see any problems or issues created by our proposal.

Some respondents, both for and against our proposal, held a common view about the need to ensure that Ofsted considered whether homes had been consistently able to maintain a judgement of good or above and the need for greater scrutiny of the running of such homes.

A large number of respondents did not identify any problems with this proposal citing that they considered the current safeguards such as independent visitor visits (under Regulation 44¹) as sufficient in identifying where there may be concerns with a home. Respondents also highlighted the importance of the information that is generated through Regulation 44 visits, notification of serious events (as set out in Regulation 40²) and review of the quality of care (as set out under Regulation 45³) including the need to strongly focus on this information as a way to identify risks.

¹ Regulation 44 of *The Children's Homes (England) Regulations 2015 Act*, sets out that an independent person should visit a children's home at least once per month and produce a report about the visit. The report can recommend actions a home must take if they identify any issues and provides regular intelligence to Ofsted on safeguarding and wellbeing.

² Regulation 40 of *The Children's Homes (England) Regulations 2015 Act*, sets out who the registered person is required to notify should a serious event occur (such as the death of a child in their care).

³ Regulation 45 of *The Children's Homes (England) Regulations 2015 Act*, sets out the responsibility of the registered person to complete a review of the quality of care provided for children at least once every 6

Frequency of inspections from 1 October 2021 to 31 March 2022

An analysis of the responses indicates that there is a majority (88 per cent) in favour of our proposals to amend the regulations to allow Ofsted to comply with the minimum frequency of inspections for all children’s social care providers “so far as reasonably practicable” for the period 1 October 2021 to 31 March 2022.

Only a very small number of respondents suggested that Ofsted should continue to meet Ofsted minimum inspection requirements and this was due to the impact of the COVID-19 pandemic on children’s homes with the potential for it to have affected the quality of provision.

Like the response regarding additional safeguards to our first proposal, we also heard from respondents that there should be greater weight placed on the information that is gathered through, for example, independent visitor visits (under Regulation 44) and suggestions on further information that could be provided to Ofsted to identify any drop in the quality of provision for a provider. Additional suggestions were also provided on how Ofsted could better manage their inspections process including through the use of virtual visits should the COVID-19 pandemic further impact on Ofsted’s inspection timetable.

Equalities assessment

The majority of the respondents did not identify any negative impact that the proposals would have on a person’s protected characteristics. Additional points were raised on the impact of the COVID-19 pandemic on children and young people with special educational needs and any impact of longer lengths of time between inspections on those who are not able to verbally communicate and therefore, unable to raise concerns themselves.

months and provide a report to Her Majesty’s Chief Inspector and in most cases, make this available to, on request, to the placing authority.

Question analysis

Proposal 1 – Frequency of children’s home’s inspections

We have consulted on amending regulations so that the minimum frequency of inspections for children’s homes is determined by the inspection judgement in the given current inspection year (running from 1 April to 31 March every year).

This would mean more effective use would be made of Ofsted’s inspections’ focus, so that if a children’s home is judged ‘good’ or ‘outstanding’, it would receive a minimum of one full inspection during the year, including if it had been ‘requires improvement to be good’ or ‘inadequate’ the previous year (i.e. it would not necessarily have a second inspection that year). This would also mean the frequency of inspections would be based on more up-to-date intelligence and more proportionate.

Ofsted will base the frequency of inspections on the inspection outcome that year rather than the preceding year. That means a home that is judged as ‘good’ or ‘outstanding’ will have a minimum of one inspection per year, even if it had had two inspections the previous year because it was then rated ‘requires improvement to be good’ or ‘inadequate’. Do you agree?

There were 82 responses to this question (84 in total including 2 not answered)

| | Total | Percent |
|--------------|-------|---------|
| Yes | 73 | 87% |
| No | 9 | 11% |
| Not answered | 2 | 2% |

The majority of respondents agreed and most thought that there would be no problems created with moving forward with our proposal. They thought it allowed for Ofsted to use their resources more effectively, allowing them to focus on those providers that require more support. An example of a typical response when responding to whether our proposals would cause any problems was:

“No, it will allow for resources to be focused on the homes that currently have issues as opposed to homes that have made the necessary improvements.”

A common view from those that disagreed was that changes could happen very quickly within a children’s home and this can impact on the quality of provision that is provided with a view that reducing minimum inspections could impact on the ability of inspectors to identify issues. These views were also expressed by some respondents in favour of our proposals who identified this as a potential problem.

“With the frequency in which some homes can have children move in and out, the dynamics can change significantly and risk can change. This can change how well the home is run and the issues the team faces on a day to day basis.”

Likewise respondents against the proposal also identified that these proposals should only apply to homes who are able to sustain a rating of good or above over a consistent period of time. It was felt that some homes may raise the quality of provision prior to inspection to receive a higher judgement, then reduce this once this has been achieved.

When asked if there were any additional safeguards that we should put in place, many respondents thought that the current safeguards are sufficient. Specific safeguards that were identified by respondents highlighted the importance of information generated through Regulation 44 visits and other reporting requirements, such as notification of a serious event (Regulation 40) and the review of the quality of care for children carried out by the registered manager of a children’s home (Regulation 45).

Respondents also highlighted the importance of the visibility of Ofsted and the relationship between the Ofsted inspector and the children’s home. Others suggested additional or more regular information that could be provided to Ofsted to help improve their oversight of homes. A number of respondents also suggested triggers that could be considered for further inspection.

“looking at in house audits and reviews and actions from these processes are part of review when issues have been raised.”

“Potentially following significant concerns [or] following a complaint / notification or regulation 44 visit the inspector could conduct a follow up interview with the Registered Manager.”

During the webinars, some participants expressed concerns that this was a cost-cutting measure, and that government would reduce its funding for Ofsted (either directly, or indirectly via asking Ofsted to take on additional responsibilities for no extra funding). We explained that this is not a cost-cutting measure but intended to allow Ofsted to make better use of existing resources, targeting these at providers that were more in need of help to improve the quality of their services for children.

Government response

The government will amend the regulations so that the minimum frequency of Ofsted inspections is based on the judgement from the previous inspection rather than the inspection judgement from the previous year. This will mean that minimum inspection of children’s homes will be decided on the most up to date information. It will also allow Ofsted to more effectively target its resourcing on homes that require further support, enabling them to provide better provision for the vulnerable children they care for.

It is expected that this change will have minimal impact for many homes that are already rated as 'good' or 'outstanding'. Likewise, homes that are rated below good will not see any difference in the number of inspections they receive per year. This change will only apply to those homes that have moved from a rating that is below good to a rating of 'good' or above. There would not be a requirement for Ofsted to inspect these homes a second time in the year that they received the judgement of 'good' or above, although Ofsted could choose to carry out a second inspection if they felt this to be necessary.

We have heard the concerns that were raised about the impact that sudden changes in homes' staffing and management could have on the quality of provision, and the potential risk highlighted by stakeholders where homes have moved from previously been judged to be below 'good', to a rating of 'good'.

Ofsted have the discretion to conduct additional inspections and visits in the same inspection year for all providers, irrespective of judgement, as they determine necessary. To inform this decision they take into account a wide range of intelligence including the current judgement, recent notifications and monitoring, and changes to a home's management.

Respondents raised suggestions around further evidence that Ofsted could consider in helping them to identify issues that could potentially trigger an additional inspection above the minimum requirement. Ofsted's Social Care Common Inspection Framework includes a section on scheduling inspections⁴ and lists the following factors that Ofsted currently take into account when deciding whether homes should have additional inspections:

- The most recent interim inspection,
- Reports received under regulations 44 and 45,
- Notifications received under regulation 40,
- Information from complaints, whistle-blowers and local authorities,
- Changes to the home's management, and
- Any other relevant information.

⁴ See [Social care common inspection framework \(SCCIF\): children's homes - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/612212/social-care-common-inspection-framework-childrens-homes-2019.pdf) – the relevant section is on "Scheduling and the inspection team", subsection "Frequency of inspections"

The government will continue to work with Ofsted to ensure that they are considering all the information available to them to inform how often they need to inspect a children's home.

Overall, the government does not view this change as weakening safeguards for children, but as an opportunity to help Ofsted use their resources more effectively to help homes that are struggling provide a better standard of care for the children they care for.

Proposal 2 – Changes to the frequency of inspections from 1 October 2021 to 31 March 2022

The minimum frequency of inspections is currently suspended until 30 September 2021. From 1 October 2021, Ofsted will be required to meet minimum inspection requirements for all children's social care providers and inspect all remaining registered provision due an inspection by 31 March 2022.

Therefore, we have consulted on amending the regulations so that Ofsted should comply with the minimum frequency of inspections 'so far as reasonably practicable' for the remainder of the inspection year from 1 October 2021 to 31 March 2022.

Do you agree with the proposal that Ofsted should comply with the frequency of inspections as far as reasonably practicable in the remainder of the 2021-22 inspection year from 1 October 2021 to 31 March 2022?

There were 82 responses to this question (84 in total including 2 not answered)

| | Total | Percent |
|--------------|--------------|----------------|
| Yes | 74 | 88% |
| No | 8 | 10% |
| Not answered | 2 | 2% |

Most respondents were in favour of providing Ofsted with this added flexibility in meeting minimum inspection requirements during this inspection year.

For those not in favour of our proposals, some viewed the negative impact of the COVID-19 pandemic on children's homes as a reason why Ofsted should be required to continue to meet minimum inspection requirements as there was the potential that some standards had slipped. Alternatively, some thought Ofsted's focus shouldn't be on attempting to meet minimum inspection requirements, but to respond to concerns and focus on providers that could be considered high risk.

"The pandemic and the lockdowns in 2020 and 2021 have had a severe impact on children and young people's mental health. This suggests that the line of sight to

children’s homes should be strengthened. Although it is not known whether there will be future national or local restrictions during the course of the year that could affect Ofsted’s ability to inspect, any such restrictions would increase the need to inspect.”

The main potential problem identified by respondents was the potential length of time between inspections for children’s homes and independent fostering agencies, and that identification of risks could be missed.

Respondents highlighted a number of themes when asked about potential safeguards that should be considered if our proposal were to be introduced. As for the previous proposal focussed on children’s homes, respondents raised the importance of intelligence gained through independent visitor visits of children’s homes (under Regulation 44) and the need for Ofsted to consider using additional intelligence when making decisions on who to inspect such as robust monitoring of concerns and complaints.

Respondents also provided suggestions on how Ofsted should manage inspections should there be further impacts on the Ofsted inspection cycle caused by the COVID-19 pandemic. This included suggestions to maintain testing for inspectors and to monitor Coronavirus cases in homes.

Many suggestions were provided around how Ofsted should be managing inspections including the use of virtual monitoring visits as some thought this had previously worked well, and the need for Ofsted to focus on high risk providers and robust monitoring of those who are rated below ‘good’.

“Our experience of the process of virtual monitoring visits has been positive, and I think that this method of monitoring services, in the case of any further local or national lockdowns or restrictions would be a good solution to providing the ongoing assessment and monitoring of services.”

Government response

The government will amend the regulations to allow Ofsted to comply with the frequency of inspections ‘so far as reasonably practicable’ for the remainder of the inspection year from 1 October 2021 to 31 March 2022. This is in acknowledgment of the unpredictability of the COVID-19 pandemic and the impact this may have on inspections during the 2021-22 inspection year.

However, the government considers that in most cases, it will be practicable for Ofsted to meet minimum inspection requirements during the period 1 October 2021 to 31 March 2022, and if Ofsted are unable to meet minimum inspections as required, they will be required to provide their reasons to the Department for Education for being unable to do

so. The government is also clear that this change will only be in place for the second half of the 2021-22 inspection year.

The government agrees that inspections play a vital role in ensuring the quality of children's social care provision and acknowledges the challenges that both Ofsted and children's social care providers have faced throughout 2021 due to the COVID-19 pandemic. As stated above, Ofsted consider a wide range of intelligence to help inform who and when they inspect and this intelligence should help Ofsted to identify which providers will require further support or are struggling with their ability to provide the best possible care for the children they work with due to the pandemic.

Likewise, we have heard that there are concerns that this change may lead to a longer time between inspections for some providers, especially children's homes. Ofsted has previously stated that they consider a range of intelligence to inform inspection frequencies including the timing of the previous inspection. The government would expect this to continue.

Equalities assessment

Please provide any representations / evidence on the impact of our proposals on people with protected characteristics for the purposes of the Public Sector Equality Duty (Equality Act 2010).

For those that responded, most advised that they did not identify any situations where the proposals could impact on a person's protected characteristics. Additional points were raised on the impact of the COVID-19 pandemic on children and young people with Special Educational Needs or a Disability (SEND) and any impact of longer lengths of time between inspections on those who are not able to verbally communicate and therefore, unable to raise concerns themselves.

Government response

Taking account of the views of children who live in a children's home plays an important role in the Ofsted inspection process and is set out within Ofsted's Social Care Common Inspection Framework (SCCIF). Advice is also provided on how best to communicate with the children in the home they are inspecting, including communicating with those who have special needs or have difficulty communicating verbally.

Monthly independent visitor visits under Regulation 44 also play an important role in helping to report on the safety, welfare and progress of children. On each visit, independent visitors regularly communicate with the child and provide them with a chance to raise concerns. The reports provided after each monthly visit provide Ofsted with key information to identify if there are concerns and whether a home needs a follow

up inspection. We expect these visits to continue regardless of whether there is a slightly longer length of time between inspections.

Next steps

A statutory instrument setting out the amendments will be laid before parliament and we expect that these amendments will come into force on 1 October 2021.

Annex A: Breakdown of categories of respondents

| Local authority | Provider of children's homes | Provider of holiday schemes for disabled children | Fostering agency | Adoption agency | Charitable organisation | Specialist schools | Other | Not stated |
|-----------------|------------------------------|---|------------------|-----------------|-------------------------|--------------------|-------|------------|
| 12 | 32 | 1 | 3 | 1 | 9 | 3 | 13 | 3 |

Please note, this does not add up to 84 as we received multiple responses from some organisations.



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