

Briefing on the Adoption and Children (Coronavirus) (Amendment) (No2) Regulations 2020

All regulations that are amended by [The Adoption and Children \(Coronavirus\) \(Amendment\) \(No2\) Regulations 2020](#) (including the Residential Family Centres Regulations 2002, Adoption Agencies Regulations 2005, and Children’s Homes (England) Regulations 2015) are listed [here](#) and all changes are outlined in the [explanatory note](#) to the legislation.

This briefing is focused on the temporary regulations that will directly impact on the assessment of foster carers and the placement of children in foster care, namely the amendments to the Care Planning, Placement and Case Review (England) Regulations 2010 (the ‘care planning regulations’) and the Fostering Services (England) Regulations 2011 (the ‘fostering regulations’).

The context

In April, the government made temporary legal changes to legislation on children’s social care in response to the Covid-19 (coronavirus) pandemic, see The Fostering Network’s briefing note [here](#). Those changes, enforced by [the Adoption and Children \(Coronavirus\) \(Amendment\) Regulations 2020](#), were due to lapse on 25 September 2020 but the government committed to reviewing them to ascertain whether there was a need for them to be extended or whether they should be allowed to expire.

The outcome of the review, which involved a [public consultation](#), was that the majority of temporary changes introduced on 24 April 2020 will expire on 25 September 2020. However, [The Adoption and Children \(Coronavirus\) \(Amendment\) \(No2\) Regulations 2020](#) continue the temporary amendment of a series of six regulations and replace the earlier 2020 Regulations. These regulatory changes are listed [here](#).

The DfE has produced provisional guidance on: [children’s social care flexibilities from 25 September 2020](#). This is non-statutory guidance that is provisional until regulatory changes come into force on 25 September 2020 and will remain in force until 31 March 2021. In this provisional guidance, it states that the intended usage is:

- where the flexibilities are still needed to provide effective support for children involved with children’s social care services during the pandemic; and
- only due to lockdown, self-isolation or social distancing due to coronavirus (Covid-19).

In the case of local intervention, senior management should consider and decide on the more widespread use of flexibilities.

The effectiveness of these new amendments must be reviewed by the Secretary of State during the period for which they have effect (that is, between 25 September 2020 and 31 March 2021).

The principles

It is our view that these changes should be seen as providing 'options' to be utilised as a last resort and only where, despite every effort, it has not been possible to comply with the usual regulatory requirements. In such circumstances, services should make decisions in the spirit of the [principles](#) set out by the Department for Education:

- child-centred - promoting children's best interests
- risk-based - prioritising support and resources for children at greatest risk
- family focussed - harnessing the strengths in families and their communities
- evidence informed - ensuring decisions are proportionate and justified
- collaborative - working in partnership with parents and other professionals
- transparent - providing clarity and maintaining professional curiosity about a child's wellbeing
- carry out a careful risk assessment of any action taken and keep a clear record of the decisions made, as advised by [Ofsted](#).

What do the new amendments mean for fostering?

The following briefing includes guidance on the following regulatory changes in force until 31 March 2021:

1. statutory visits to children
2. fostering assessments
3. arrangements for Ofsted inspections

It also includes an explanation about the 'savings provisions', which allow certain amendments to continue to apply beyond 25 September but **only** to work that had begun **before** 25 September. Relevant guidance published by the Department for Education is listed at the end of this briefing.

Care planning regulations

1. *Statutory visits to children*

Statutory visits to children in foster care made under Reg 28 or under Reg 48 (modifications to short breaks) can be made by telephone, video-link or other electronic means in certain circumstances. These circumstances are limited to those where, to carry out a visit other than by telephone, video link or other electronic means:

- a. would be contrary to any guidance relating to the incidence or transmission of coronavirus published by Public Health England or the Secretary of State for Health and Social Care, or
- b. is not reasonably practicable for a reason relating to the incidence or transmission of coronavirus.

Any visit carried out under this amendment must be made in accordance with any recommendations given by the nominated officer. When making recommendations, the [provisional guidance](#) states that nominated officers should consider:

- the wishes of the children and young people affected;
- the ability of the child or young person to engage in a virtual visit due to reasons such as their age, disability or learning difficulty;
- whether there is an established bond between the social worker and the child or young person; and
- any other factors the nominating officer thinks relevant.

The responsible authority must keep a record of any visit carried out under these amendments. As good practice, children and young people should be told why a face to face visit is not possible and be advised of their right to advocacy or support.

Fostering Regulations

2. Fostering assessments

The regulatory requirements for fostering assessments are set out in Reg 26 and Schedule 3. The amendment that allows a fostering service to begin stage two of an assessment whilst still awaiting the foster carer medical report has been extended to 31 March 2021. However, since the statutory guidance already states that *'The process for assessing a person's suitability to foster consists of two parts. These can be carried out concurrently, but the information required for stage one must be sought as soon as possible,'* this amendment has minimal impact on the fostering assessment process requirements. It is of far more significance for adoption assessments where stage one ordinarily *must* be completed before stage two can begin.

Of more significance for fostering assessments is the fact that the amendment that removed the requirement within paragraph 2 of Schedule 3 for health information to be 'supported by a medical report' expires on 25 September. The [provisional guidance](#) says, regarding Medical Checks (Fostering):

The temporary regulations do not remove the need for medical reports as they still must be obtained before the fostering agency can consider the suitability assessment of the prospective foster carer and their household. A final decision cannot be made without a medical report being obtained and considered as part of the suitability assessment. If medical reports are available at the initial stage, they should still be obtained and considered then.

As good practice, agencies should let prospective foster carers know that if their application is progressed to the next stage, their medical information, when received, could affect the outcome. Equally, if agencies are aware of medical history that could affect the outcome of the application, they may decide not to progress the application until the relevant information has been received from the GP or other health professional.

The decision to use this flexibility must be recorded. Agencies will wish to determine where such information could be recorded, although this should include individual case files.

It therefore follows that a medical report will be required as part of any fostering assessment commenced on or after 25 September and must be obtained prior to presenting the assessment to a fostering panel and reaching a decision regarding suitability (see below for information about assessments begun **before** 25 September).

There is no definition of what constitutes a 'medical report'. During the pandemic, CoramBAAF made changes to the AH1 adult health form used by the majority of fostering services. This enabled self-

declaration by applicants and virtual GP consultations. Whilst a form of medical report will be needed as part of all assessment begun from 25 September, the availability of GP appointments continues to be variable depending on local factors. You can find the most up to date advice on the use of the AH1 adult health form [here](#).

Fostering Panels

The amendments in relation to fostering panels cease to apply. Fostering panels will no longer be optional and quoracy will revert to the usual requirements set out in Reg 24 of the fostering regulations. However, the use of 'virtual' panels that meet using telephone, video-link or other electronic means was not dependent on changes to regulations and each service will need to decide the most appropriate format for their panel meetings moving forward.

3. Arrangements for Ofsted inspections

The Adoption and Children (Coronavirus) (Amendment) Regulations 2020 have been amended so that the changes made to the frequency of inspections now continue beyond 25 September and will now expire on 31 March 2021.

Further information about Ofsted's social care plans from September 2020 and their phased return to inspection can be found [here](#).

For further information on the Social Care Common Inspection Framework and assurance visits, go to: [Guidance on assurance visits to children's social care providers and the social care common inspection framework \(SCCIF\)](#).

For further information on focused visits to local authority children's services, go to the new section 'Guidance on ILACS focused visits during the restart of routine inspection': [Guidance on inspecting local authority children's services](#).

Does everything else revert to how it was before The Adoption and Children (Coronavirus) (Amendment) Regulations 2020 were made?

The savings provisions

All other amendments introduced on 24 April 2020 expire and cease to apply from 25 September 2020. However, The Adoption and Children (Coronavirus) (Amendment) Regulations 2020 included 'savings provisions' which made provision for certain of the original amendments to continue to apply beyond 25 September but **only** to work that had begun **before** 25 September.

These savings provisions, each quoted in italics below, have the following impact:

Suitability assessments

In a case where, on the 25th September 2020, a fostering service provider is in the process of assessing the suitability of a person to become a foster parent under regulation 26 of the 2011 Regulations, that assessment must continue as if the amendments made by these Regulations remain in force.

This means that, for an assessment started before 25 September:

- It can be completed without the health information being supported by a medical report, although the medical report should be obtained as soon as reasonably practicable.
- The fostering service can continue to choose whether to refer the case to the fostering panel for a recommendation on suitability.
- A panel can still be held with a minimum of three members reduced quoracy (not having enough members to carry out business and cast votes)
- The fostering service can notify the applicant of a decision not to approve them as suitable to foster *as soon as is reasonably practical*, once all the relevant information has been gathered.

The rationale given for this within the provisional guidance is to avoid restarting the assessment process for foster carers from the beginning when the 2020 regulations expire on 25 September 2020.

Follow up to obtain medical reports after approval

For any fostering assessment that is completed without health information having been supported by a medical report, it will be important for the fostering service to develop a process by which the medical report can be requested and obtained 'as soon is reasonably practicable'. This may include:

- communication with local GPs, practice managers and/or Clinical Commissioning Groups about the requirements to generate awareness and develop a collaborative approach;
- an internal administrative process to keep track of reports needed, requests made, and responses received; and
- a process for formally noting the medical adviser's comments and implications of these for the foster carer's approval.
 - If there is no information of significance, this will need to be recorded on the foster carer's file and could be shared with the fostering panel for information only.
 - If a medical adviser identifies issues that need to be addressed, an early first review could be held. This review would consider the significance of this new information, as well as other information from the applicant's time as an approved foster carer, for their continuing suitability to foster and the suitability of the terms of their approval.

Placement of children

When placing a child with parents before the assessment is completed

Where, during the relevant period, a child has been placed in accordance with regulation 19 of the 2010 Regulations, the responsible authority may proceed as if the amendments made by these Regulations remain in force.

This means that, where the responsible authority has, under regulation 19 of the care planning regulations, placed a child on or before 25 September 2020 with the child's parent, someone with parental responsibility for the child or someone named in a child arrangements order as a person with whom the child was meant to live, the assessment of suitability and review of the child's case in accordance with regulation 17 (of the care planning regulations) can still be completed as soon as reasonably practicable from the start of the placement.

Where such placements are made after the 25 September 2020, the responsible authority must comply with the original regulatory provisions and ensure that the assessment of suitability and review of the child's case is completed within 10 working days from the start of the placement.

Placing children outside a foster carer's terms of approval

Where, during the relevant period, the responsible authority placed a child under regulation 23 of the 2010 Regulations, the placement has effect as if the amendments made by these Regulations remain in force.

This means that emergency placements made outside a foster carer's terms of approval under regulation 23 (of the care planning regulations) before 25 September can continue to last for up to 24 weeks. Any such placements made after this date must comply with regulation 23 of the 2010 Regulations and must not last for longer than six working days.

Foster parents: temporary approval

In a case where, during the relevant period, the responsible authority —

(a) started to approve a person as a local authority foster parent, or

(b) approved a person as a local authority foster parent,

in accordance with regulation 24 of the 2010 Regulations, the responsible authority must proceed as if the amendments made by these Regulations remain in force.

This means that, where the responsible authority has started to assess a person as a temporary foster carer under regulation 24, or has approved a person under regulation 24, before 25 September 2020, the responsible authority can continue these assessments and approvals in accordance with the amendments made by the Adoption and Children (Coronavirus) (Amendment) Regulations 2020.

This means that temporary approvals for connected and non-connected persons can continue if the assessment was started before or on 25 September, and that these placements can continue for 24 weeks.

Assessments under regulation 24 started after 25 September must comply with the original regulations and as such can only allow the temporary approval of a connected person for a maximum of 16 weeks while an assessment of suitability is completed.

The application of Reg 25 (Expiry of temporary approval) is not affected by the above and applies to all temporary approvals under Reg 24.

Short breaks

In a case where, during the relevant period, a child has been placed in short breaks in accordance with —

(a) regulation 48 of the 2010 Regulations, or

(b) regulation 42 of the 2011 Regulations,

those regulations continue apply to the short breaks as if the amendments made by these Regulations remain in force.

Reg 48 of the care planning regulations and Reg 42 of the fostering regulations provides for modifications to regulations for children who live with their parent or someone with parental responsibility and access a series of short break placements with the same foster carer totalling not more than 75 days in any 12-month period.

This means that, for a child who remains in a short break placement that began before 25 September 2020, they may remain in that short break placement for up to a total of 75 days. This is because the amendments that removed the 17-day limit to any single placement made as part of a short break arrangement continue to apply under savings provisions. The changes made to visiting and review requirements will also continue to apply:

- visits should be agreed with the independent reviewing officer and parents (or someone with parental responsibility), and be at regular intervals;
- reviews should be held as soon as 'reasonably practicable' after the start of the first placement, with subsequent reviews carried out at 'regular intervals' during any short break; and
- visits can be conducted by telephone, video-link or other electronic means.

The overarching principles of making child centred decisions that are in child's best interests remain.

For short break placements beginning on or after 25 September, the usual regulations will apply:

- A single placement does not last longer than 17 days and does not exceed 75 days in total in any 12-month period [Reg 48(2)(c) (*care planning regulations*) and Reg 42((2)(b) (*fostering regulations*)].
- Modifications to social work visits and reviews for short break placements revert to those set out in Reg 48(3)(c)&(d) (*care planning regulations*).

Private fostering: notifications

Where, during the relevant period, a local authority has received notification under regulation 3, 5 or 6 of the Children (Private Arrangements for Fostering) Regulations 2005 Regulations, the local authority may proceed as if the amendments made by these Regulations remain in force.

Whilst in many local authorities, private fostering is managed by services for children in need, there are a minority of fostering service managers who retain responsibility for private fostering.

For those with responsibility for private fostering, this means that, for such notifications received up to and including 25 September 2020, they may act as though the amendments made by the Adoption and Children (Coronavirus) (Amendment) Regulations were still in force. These altered the statutory timeframe to allow for visits to be carried out within the statutory timeframe or 'as soon as is reasonably practicable'.

The usual statutory timeframes are:

- on receipt of notification that a child is being, or it is proposed that they will be, privately fostered – usually a visit within seven working days;
- subsequent visits in the first year of the private fostering arrangement – usually at intervals of not more than six weeks; and
- subsequent visits in any second or subsequent year – usually at intervals of not more than 12 weeks.

For notifications received after 25 September, the time limits in the Children (Private Arrangements for Fostering) Regulations 2005 Regulations as outlined above apply.

Department for Education Guidance

It is important to note that the DfE has published two separate non-statutory guidance for Children's Social Care Services:

Coronavirus (COVID-19): guidance for children's social care services

The DfE updates the [guidance for children's social care services](#) on a regular basis to reflect the latest changes on social distancing and shielding, and to reflect significant changes such as the reopening of schools, colleges and nurseries to all children and young people in the autumn term.

Provisional Guidance: children's social care flexibilities from 25 September 2020

The Department for Education (DfE) published non-statutory [provisional guidance](#) to accompany [The Adoption and Children \(Coronavirus\) \(Amendment\) \(No2\) Regulations 2020](#). This is provisional until regulatory changes come into force on 25 September 2020 and will remain in force until 31 March 2021.

The DfE have also published a [reference tool](#) designed to set out exactly what has changed in law. Ofsted, in their message to children's social care providers and local authorities from Yvette Stanley, Ofsted National Director Regulation and Social Care (4 September 2020) says that these should be used alongside seeking legal advice in the event of any uncertainty.

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