

## **Briefing on The Adoption and Children's (Coronavirus) (Amendments) Regulations 2020 and related guidance**

This briefing is written for fostering services and foster carer members to assist their understanding of the implications of the amendments for their work with foster carers and looked after children in foster care.

Please note that the amendments also make changes to legislation relating to other areas of children's social care (for example adoption, children's homes and residential schools and alternative provision amongst others). In addition, the guidance addresses some issues in relation to wider service delivery.

This briefing does not seek to cover all aspects of the amendments and guidance, only those pertaining to foster care. Links to the amendments and updated guidance are provided below.

Full details can be found in the legislation: [The Adoption and Children's \(Coronavirus\) \(Amendments\) Regulations 2020](#)

The [Explanatory Memorandum](#) sets the amendments in context and outlines the changes and their intended impact.

The Department published an updated version of [COVID 19: guidance for children's social care services](#) on 6 May to reflect changes implemented by the instrument. This updated guidance should be read alongside other coronavirus (COVID 19) guidance as set out in the introduction.

***This document was last updated 20 May.***

### **Purpose of the amendments**

To make temporary changes to provide additional flexibility for children's social care services to meet statutory duties whilst maintaining a clear focus on safeguards and promoting the welfare of children.

### **Who is affected?**

Local authorities (LA), children's homes, fostering services, adoption agencies and Ofsted inspections.

## **When do the changes come into force?**

The changes were implemented from 24 April 2020 and remain in place until 25 September 2020 (the date that powers in the Coronavirus Act 2020 are subject for Parliamentary renewal). However, under the 'savings provisions', certain amendments will still apply after 25 September, for example, where a fostering assessment has already commenced, a placement been made outside a foster carer's approval, or a person temporarily approved as a foster carer for a child.

## **What is changing?**

Most changes are procedural: easing administrative burdens, allowing visits and contact to take place remotely and relaxing strict timescales where possible. Changes have been made to 10 sets of regulations – the [Explanatory Memorandum](#) lists these in full.

In relation to foster care and care planning, it affects:

- The Children (Private Arrangements for Fostering) Regulations 2005
- The Care Planning, Placement and Case Review (England) Regulations 2010 (as amended)
- The Fostering Services (England) Regulations 2011 (as amended)

## **How should the flexibility offered by these amendments be used?**

Guidance has confirmed that statutory duties remain unchanged, other than in the very specific circumstances where the amendments have made changes to secondary legislation. The amendments made:

- should only be used when absolutely necessary
- should only be used with senior management oversight, and
- must be consistent with the overarching safeguarding and welfare duties that remain in place

The Department envisages that children's social care services may wish to make use of the additional flexibility provided in certain circumstances, for example where staff shortages (due to sickness or other reasons) make it difficult or impossible to meet the original requirements, or where taking a different approach is the most sensible, risk-based response in light of other demands and pressures on services, for example, focussing services on those most at risk.

Where a service makes use of the flexibility provided, it should:

- operate within an overarching approach approved at chief officer level (local authorities) or top tier management level (providers).
- ensure the use is properly recorded, including the reasons for its use and setting out the local circumstances that have made this necessary.

The associated guidance is underpinned by the following set of principles which should inform local decision-making and day to day practice with children and families:

- child-centred - promoting children's best interests: nothing is more important than children's welfare; children who need help and protection deserve high quality and effective support as soon as help is identified

- 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

Many services are risk assessing and reviewing the circumstances of each child and family they are working with to inform their decision making. Ofsted are tasked to take note of any use of the flexibilities, so providers should be ready to explain to Ofsted and others why their use was necessary. Records of such decisions may be used by Ofsted in their engagement meetings, subsequent inspection activity, and will be reviewed should any complaints, concerns or whistleblowing be received.

Although Ofsted's regulatory role and work is continuing, routine inspections have been suspended. Urgent inspections in response to specific concerns will take the format of a monitoring inspection focused on the issues raised, with no inspection judgement being made. Some Ofsted staff are being redeployed to support frontline delivery. Where this is the case, they are not acting as inspectors.

The amendments are to be reviewed prior to 25 September and guidance states that they will remain in place only for so long as is necessary.

## The Fostering Network's view

The coronavirus pandemic is creating an unprecedented set of circumstances for all sectors of society, including children's social care. Whilst we recognise the need behind these amendments to social care regulations – to ease administrative burdens and to ensure that there is sufficient capacity within the sector – we are concerned that new regulations could risk undermining the essential safeguarding practices that have, until now, been in place.

In this briefing, we have sought to outline the key changes for our fostering members, but we have also highlighted the key regulatory requirements that remain in place. We feel it is just as important to identify the duties that have stayed the same. The Department for Education's guidance gives the clarity that most of the statutory duties remain in place.

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:

- operate within an overarching approach agreed by senior management
- make decisions in the spirit of the [principles](#) set out by the Department for Education: carry out a careful risk assessment of any action taken and keep a clear record of the decisions made, as advised within the updated guidance and by [Ofsted](#).

These amendments have the potential to impact negatively on the safeguarding and wellbeing of children and the effective support of foster carers. For example, in relation to children in foster care, we are concerned about:

- reaching decisions about suitability of foster carers in a context of 'virtual visits' and non-availability of some key checks and references without the independent scrutiny of a foster panel
- temporary approval of people without a connection with the child in a context where subsequent visits have only to be done via electronic means 'as soon as is reasonably practicable'

Placing children with temporarily approved foster carers with whom the child has no prior connection, where opportunities for preparation and support of those carers is limited and the requirement for a placement plan has been relaxed. All these carry potential risks and services should make every effort to guard against these at all times.

Whilst there is a requirement to record all decisions when the amendments are used, the Fostering Network believes there should be a more robust monitoring arrangement in place. This would allow for a clear national picture of how the amendments are being used and inform understanding of the impact on children and young people.

## **Part 8 Fostering Services:**

### **(amendments made to The Fostering Services (England) Regulations 2011)**

**Key points affecting fostering services are summarised below:**

#### **Notifications to Ofsted**

The timeframe for the following notifications to Ofsted have been temporarily amended and should now be made 'as soon as is reasonably practicable':

- Review of the statement of purpose and children's guide [Reg 4(b) – usually within 28 days
- Appointment of the registered manager [Reg 6(3)] – usually 'without delay'
- Notification of offences [Reg 9] – usually 'without delay'
- Notification of LA manager of foster services commencing or ceasing [Reg 10] – usually 'without delay'
- The requirement to notify Ofsted under Schedule 7 of an outbreak at the home of a foster carer of any infectious disease considered sufficiently serious by a GP to be so notified has been suspended. The fostering agency is, however, still required to notify the responsible authority.

#### **Constitution and membership of fostering panel**

There are significant changes to the Regulations regarding Foster Panels which allow fostering services to choose whether to hold foster panels or not (to fulfil the functions of foster panels as listed in Reg 25 (1)) for the duration of these amendments.

Many fostering services have already successfully held 'virtual' foster panels using telephone, video-link or other electronic means, so it remains possible to continue to hold foster panels whilst complying with social distancing requirements.

If a fostering service continues to hold foster panels, they will continue to constitute panel membership from their central list. Regulations do not dictate the maximum number of people who can attend a panel, but the minimum number of people required to be part of the panel (quoracy) is temporarily reduced from five members to three members. Under these amendments, a panel must include at least three people, including:

- either the person appointed to chair the panel or one of the vice chairs,
- one member who is a social worker who has at least three years' relevant post-qualifying experience
- one other independent person

The updated guidance for children's social care services states that the Department for Education would still expect a panel to be convened, making use of remote meetings and the flexibility provided around panel numbers. However, where a panel cannot be convened, approval can take place without a panel although they would not expect this to be the norm.

The requirement to ensure '*the fostering panel has sufficient members*' has been temporarily been removed, but the service must still ensure '*that the individual members have between them the*

*experience and expertise necessary, to effectively discharge the functions of the panel*'. [Reg 23(7) as amended).

The amendments also remove the requirement for the fostering panel to fulfil its additional responsibilities under Reg 25(4), though it may still do so: to advise about procedures for reviews and to monitor their effectiveness, to oversee the conduct of assessment, and to give advice and make recommendations on other matters that the fostering service refer to it.

## **Assessments of prospective foster carers**

### ***Stopping an assessment at stage 1***

Should a decision be made that the applicant is unlikely to be suitable to foster based on information obtained during stage 1 of an assessment under Reg 26, the timescale for written notification to the applicant has been relaxed – under the amendments, it must be sent to the applicant 'as soon as is reasonably practicable', instead of within the usual 10 working days.

### ***Health information and DBS checks***

Reg 26 (Assessment of prospective foster parents - as amended by [The Care Planning, Placement and Case Review and Fostering Services \(Miscellaneous Amendments\) Regulations 2013](#)) has been temporarily amended.

The amendments add a new paragraph 2A to Reg 26. This states that 'the fostering service may comply with para 2(a) [i.e. obtaining information specified in Part 2 of Schedule 3 and any other information it considers relevant], even if the information required by paragraphs 2 and 9 of Schedule 3 have yet to be obtained':

- *Para 2: Details of health (supported by a medical report)*  
The requirement for details of an applicant's health to be supported by a medical report has been temporarily removed, thus allowing self-reporting of health information by the applicant. CoramBAAF have produced a [self-declaration form](#) for use in such circumstances.
- *Para 9: An enhanced criminal record check (DBS) in relation to the applicant(s) and any other member of the applicants' household aged 18 and over.* No amendments have been made to this paragraph of Schedule 3.

The changes to Sch 3(2) mean that prospective foster carers can, whilst these amendments remain in force, be approved without obtaining a medical report to support the health information but the fostering service is expected to continue to seek formal medical reports as soon as reasonably practicable. Prior to the issuing of these amendments, Ofsted ([27 March](#)) stated '*We expect providers to gather as much information as possible for the assessment. Panels should be able to make recommendations based on the health information provided in carers' assessment reports. Serious health concerns should be assessed by a GP as soon as it is possible to do so.*

The amendments in relation to DBS checks are intended to prevent assessments being delayed but do not remove the requirement from Schedule 3. The Department for Education guidance clarifies that the assessment process can continue to the second stage whilst awaiting medical information and DBS (criminal record) checks. Before making a final decision about a person's suitability to foster, the fostering service will still need to have the medical information and DBS checks, along with the other information specified in Schedule 3 of the regulations.

Fostering services should continue to request enhanced DBS checks on all applicants and adult members of their household. There are amended [DBS guidelines](#) on identity checking, and information on DBS processes during coronavirus can be found [here](#).

### **Home visits**

The latest guidance acknowledges some services will want to undertake home visits prior to approving new fostering households. In such cases, the fostering service should undertake a full risk assessment and discuss a visit with the prospective carer, ensuring the necessary precautions are taken to reduce the risks to the household and the social worker (see general guidance on maintaining contact with children and families towards the end of this briefing).

### **The role of panel and the decision maker**

An assessment that continues beyond Stage 1 may be presented to a fostering panel, but the amendments permit the fostering service provider to present the assessment directly to the decision maker, without first seeking a recommendation from the fostering panel.

If the fostering panel has been asked to consider an assessment, the usual processes must be followed, and the decision maker must take account of the panel's recommendation in reaching their decision or qualifying determination. Where a decision has been taken not to hold a foster panel to consider the assessment report, the decision maker can make a decision or qualifying determination regarding the applicant's suitability to foster. This decision or qualifying determination would be reached with reference to the information available to the decision maker, but in the absence of and without reference to the reasons for a fostering panel recommendation.

Irrespective of whether an assessment has been presented to a foster panel, where a decision maker has made a qualifying determination not to approve, the applicant must be advised that they can either a) submit written representations to the fostering service provider or b) apply for a review of the qualifying determination by the independent reviewing mechanism. Should the applicant decide to send written representations to the fostering service provider (option 'a' above), the fostering service may refer the case to the fostering panel for consideration, but it is not required to do so.

Services should consider the implications of their decision maker reaching decisions about the suitability of prospective carers without any reference to a foster panel, particularly at a time when significant aspects of the preparation, training and assessment of prospective foster carers are being conducted virtually and access to checks and references to verify self-reported information may be limited.

### **Reviews of foster carers**

The timeframe for completing foster carer reviews within 12 months has been relaxed. Under the amendments, *'A review must, where reasonably practicable, take place not more than a year after approval and thereafter whenever the fostering service provider consider it necessary'*

The amendments do not remove the requirement for a first review report to be referred to a fostering panel [Reg 28(5)]. Whilst the amendments also make it optional for the service to hold foster panels the guidance says the Department for Education still expects a panel to be convened (making use of remote meetings and the flexibility provided around panel numbers). In this way, it is still possible to comply with the above regulation and the use of virtual panels is encouraged by the Department for Education.

## **Part 7 Care Planning:**

### **(amendments made to the Care Planning, Placement & Case Review 2010 Regulations)**

Timescales around formalising a placement plan and deadlines for placement reviews have been relaxed to allow placements to proceed without delay and reviews to continue flexibly. The amendments also clarify that visits from the child's responsible authority may be conducted by telephone, video-link or other electronic means.

#### **Placement plans**

When making arrangements for the placement of a looked after child under S22C of The Children Act 1989, Reg 9(1) requires the responsible authority to prepare a placement plan which sets out how the placement will contribute to meeting the child's needs and includes the matters specified in Schedule 2. Where it is not reasonably practicable to prepare the placement plan before making the placement, these amendments relax the timescale within which the placement plan should be prepared following the start of the placement from 'within 5 working days' to 'as soon as is reasonably practicable'. This amended timescale also applies when placing children:

- with parents under Reg 18(1) (placement with parents)
- with approved adopters under Reg 22A (foster to adopt)
- in a long-term foster placement under Reg 22B

Every effort should be made to agree a placement plan before the child is placed. However, it is recognised by the Department for Education that it may not be possible to develop a full and detailed placement plan in the current circumstances. It is essential that any information that the foster carer(s) need to provide safe care to the child must be made available to them at the start of the placement.

#### **Placement decisions**

##### ***When placing a child with parents before the assessment is completed***

The timescale of 10 working days following placement for the completion of the assessment and review has been relaxed, as has the requirement for a placement plan to be prepared before placement. They must both be completed 'as soon as it reasonably practicable after' the child is placed. The nominated officer still needs to approve the decision to place the child within 10 working days after the assessment is completed.

##### ***When placing a child with temporarily approved foster carers who are also approved adopters under Reg 22A (foster to adopt)***

The nominated officer is no longer required to approve the placement for it to proceed. The requirements regarding decision making have been moved from the nominated officer to the responsible authority which must still:

- a) be satisfied that the placement is the most appropriate placement available for the child and will safeguard and promote the child's welfare



- b) be satisfied that the child's wishes and feelings have been ascertained and given due consideration, and
- c) notify the child's parents or guardian of the placement if their whereabouts are known.
- d) keep a record of all decision making

## **Visits to children**

The minimum requirements in respect of the frequency of visits to looked after children by the responsible authority are set out in Regulation 28. The amendment allows that, where the responsible authority is unable to visit the child within these timescales (within the first week and within every six weeks thereafter), they must ensure that the visit takes place 'as soon as is reasonably practicable'.

The usual timescales for visits vary under Reg 28 according to the circumstances in which the child is placed. For example, the visiting requirements for looked after children placed with parents when placed before the assessment is completed [Reg 28(3)] and with foster carers temporarily approved under Reg 24 [Reg 28 (4)] are, at least initially, more frequent, and those for children in long term foster placements can be made less frequently after the first year [Reg 28 (3A)]. The relaxation of timescales also applies to visits to children in short break arrangements as outlined in Reg 48.

These amendments allow flexibility in relation to minimum visiting timescales but do not amend Reg 28 (7) which says that, in addition to the minimum visiting requirements, the responsible authority must ensure that their representative visits the child whenever reasonably requested to do so by the child, or the person responsible for the child's living arrangements.

Any visit to a child under Reg 28 may be conducted by telephone, video-link or other electronic means. It is expected that these will be utilised appropriately and proportionately in response to the risk assessment undertaken for the child on a case by case basis. Visits should return to usual arrangements once the regulations expire.

## **Children's reviews**

The timing of reviews under Reg 33(2) is relaxed, meaning that where reviews should usually be held at intervals of not more than six months, they must now take place 'where reasonably practicable thereafter'.

The timescales for initial reviews (within 20 days of initial placement) remain in place. However, the role of the independent reviewing officer has been amended to enable them to adjourn the review meeting for not more than 20 working days, without the need to satisfy the condition that there is insufficient information to consider matters in relation to Schedule 7.

These changes are intended to allow reviews to continue flexibly, although it continues to be the case that 'no proposal considered in the course of the meeting may be implemented until the review has been completed'.

Good practice examples have emerged where timescales are being kept to in line with social distancing guidelines, including virtually. It is encouraged that agencies consider alternative ways to carry out reviews, using technology wherever possible to keep in touch with the child and family to ensure that the needs of the child are being met.

## **Placing children in an emergency**

### ***Placing children outside a foster carer's terms of approval***

Under Reg 23, children can be placed with foster carers outside their terms of approval. These amendments change the length of time such a placement can continue from 'no longer than 6 working days' to 'no longer than 24 weeks'.

### ***Placing children with people who are not already approved foster carers (by agreeing temporary approval)***

Under Reg 24, people who are not approved foster carers can be assessed and temporarily approved as foster carers. These amendments to Reg 24 mean that people assessed and temporarily approved do not have to have a connection with the child to be placed – rather any person can be approved under this regulation.

The Department for Education, in their guidance, continue to expect fostering services to prioritise placing a child with someone whom they already know first, if possible. Regardless of whether the person being considered for temporary approval is 'connected' or not, the following conditions continue to apply:

- the responsible authority must be satisfied that the most appropriate placement for the child is with this person
- it is necessary to place the child with that person before their suitability to be a foster carer has been assessed under the fostering regulations
- the suitability of the person to care for the child (including suitability of the proposed accommodation and all other adults who are members of the household) has been assessed taking into account all the matters set out in Schedule 4 (which includes looking at medical history, family history, particulars of any criminal offences and the nature of their neighbourhood and resources in the community (amongst other requirements), and
- the responsible authority must consider whether, in all the circumstances and taking into account the service to be provided by the responsible authority, the proposed arrangements will safeguard and promote the child's welfare and meet their needs as set out in the care plan.

This temporary approval is for a period not exceeding 24 weeks (changed from the current 16 weeks).

### ***Extension of the initial period of temporary approval***

Reg 25 is unchanged, and the period of temporary approval can still be extended for a further 8 weeks in certain circumstances, taking the total period of temporary approval to 32 weeks. Where services continue to convene fostering panels, the views of the fostering panel should be sought.

### ***Visits to children living with temporarily approved foster carers***

Prior to these amendments, the minimum frequency of visits to children living with temporarily approved carers is higher than for children placed with foster carers who have been fully prepared, assessed and approved under the fostering regulations. When applying the amendments regarding frequency of visits to children, this should be reflected in the service's risk assessment and decision-making.

### ***Further assessment following temporary approval***

The requirement [Reg 24(2)(c)] for the fostering service to make immediate arrangements for the suitability of the person to be a foster carer to be assessed before the temporary approval expires has not been removed. However, the intention is to create additional emergency foster placements on a temporary basis to assist capacity to meet demand during this period. It is therefore likely that some people coming forward (such as staff members, retired foster carers or other childcare professionals) will wish to be approved for this temporary period only. In such situations, a decision may need to be taken regarding the priority given to these assessments based on the principles outlined by the Department for Education and the guidance from Ofsted in relation to risk-assessment and recording of decisions. When assessing staff members as emergency foster carers, consideration should be given regarding the risk and management of potential conflicts of interest.

### ***Independent fostering agencies***

The power to temporarily approve people as foster carers rests with the responsible authority for the child, so it is not possible for independent fostering agencies to temporarily approve people as foster carers under Reg 24. However, where a child is placed with an independent fostering agency carer and there is a need for them to move placement (for example due to their foster carer becoming ill with coronavirus), the local authority may consider temporarily approving someone from within the foster carer's support network or someone known to the fostering agency, subject to the considerations above. This would allow the child to be placed with them, thus enabling some continuity of support.

### **Placing children 'out of area' or 'at a distance'**

When a carer lives outside the area of the responsible authority, a decision to place a child with them requires approval by the nominated officer (out of area) or Director of Children's Services (at a distance) [Reg 11(1) as amended 2013], unless the carer is:

- a connected person with whom a placement is made under Reg 24, or
- approved as a foster carer by the responsible authority

Reg 11(4) has been amended to enable children to be placed without such approval when the carer is:

- a person with whom a placement is made under regulation 24, or
- approved as a foster carer by the responsible authority

These amendments allow a child to be placed with a person temporarily approved under Reg 24 who has no prior connection to the child and who lives outside the responsible authority area without the additional scrutiny provided by the nominated person or Director of Children's Services. Guidance suggests that to maintain this scrutiny would introduce 'further delays' when it is in children's best interests to be placed as soon as possible. It also deems such approval of the decision to place as unnecessary based on the observation that such carers will be 'thoroughly assessed'.

It therefore follows that local authorities should ensure any Reg 24 assessments of non-connected persons are robust and 'thorough'.

## **Duration of short break placements**

Reg 48 provides for modifications to the care planning regulations for children who live with their parent or someone with parental responsibility and access short break placements with the same foster carer. Under these amendments, a child can now remain in the same short break placement for up to 75 days rather than the previous requirement that each short break placement would last for up to 17 days (75 days in total in a 12-month period). This is to support the continuity and stability of these placements. The overarching principles of making children centred decisions that are in children's best interests remain.

The amended regulations in relation to short break placements state that:

- 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
- Visits can be conducted by telephone, video-link or other electronic means

## Part 4: Private Fostering

### (amendments to The Children (Private Arrangements for Fostering) Regulations 2005)

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.

It is therefore noted here that these amendments alter the statutory timeframe to allow for visits to be carried out within the statutory timeframe or 'as soon as is reasonably practicable'. The usual 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.

This gives local authorities more flexibility regarding when visits are carried out, and the frequency of visits where it is not 'reasonably practicable' to meet the usual statutory timeframe.

### General guidance on maintaining contact with children and families

Social workers and their managers are best placed to make professional judgements of risks and protective factors in place and to decide what form of contact they need to maintain with children and families. Where face to face work is deemed necessary, an initial risk assessment should take place by phone, where possible, to ascertain whether any member of the household is suffering from symptoms of COVID 19. Practitioners should always take account of Public Health England advice on social distancing and minimising the spread of infection. Guidance on use of personal protective equipment (PPE) is dependent on the outcome of the risk assessment regarding presence of symptoms in the household see the [guidance](#) for further information on use of PPE.

### Steps taken to support to social work staffing

- Social workers and other social care workers are designated as critical workers in [government guidance](#) for maintaining education provision meaning that their children are eligible for an education or childcare place, despite settings being closed to most children
- Temporary arrangements for free of charge standard and enhanced DBS checks when recruiting:
  - people to the children's social care workforce in England and Wales in connection with the provision of care and treatment of coronavirus or
  - people to backfill roles because of the impact of the pandemic
  - read the full guidance [here](#).

## **Foster carers' access to PPE and COVID 19 tests**

The updated [guidance](#) clarifies that:

- foster carers are able to request PPE from their fostering service provider, if needed.
- Symptomatic foster carers are entitled to [testing for coronavirus \(COVID 19\)](#)

## **Contact at the Department for Education**

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