



BRIEFING PAPER

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Adoption and Children (Coronavirus) (Amendment) Regulations 2020

By David Foster, Philip
Loft

1. Summary

[*The Adoption and Children \(Coronavirus\) \(Amendment\) Regulations 2020*](#) came into force on 24 April 2020. The regulations temporarily amend 10 sets of regulations relating to children's social care in England. The Department for Education (DfE) has said the changes are intended to help local authorities to "prioritise the needs of children, whilst relaxing some administrative and procedural obligations...but maintaining appropriate safeguards" during the coronavirus outbreak.¹

A [debate](#) was held in the House of Commons on Wednesday 10 June 2020. The Leader of the Opposition, Sir Keir Starmer, had tabled a prayer to annul the Negative Statutory Instrument as an early day motion (Number 445) on 4 May 2020.² Upon being put to a vote at the conclusion of the debate, the motion that a humble address praying the Statutory Instrument be annulled, was defeated.³

The regulations provide for the amendments to be in place until 25 September 2020. Following a [consultation](#), the Government confirmed its plans for the majority of amendments to lapse on 25 September.⁴ The Government said that "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".⁵

Following the [consultation](#), the DfE also said that it intends to amend 6 sets of regulations until 31 March 2021. These relate to medical reports in the adoption and foster care process, visits by social workers, Ofsted inspections and virtual visits. A new statutory instrument, [*The Adoption And Children \(Coronavirus\) \(Amendment\) \(No. 2\) Regulations 2020*](#), was [laid](#) before the UK Parliament on 28 August 2020, with accompanying [explanatory memorandum](#). The Regulations are made under negative procedure. The DfE stated it "has no plans to extend the[se] regulations beyond March 2021".⁶

The High Court considered a judicial review brought by the charity Article 39 against the Regulations in July 2020, [finding](#) that the DfE did not act unlawfully by introducing the

¹ [Explanatory Memorandum to *The Adoption and Children \(Coronavirus\) \(Amendment\) Regulations 2020*](#), para 2.1

² [EDM-422 of 2019-21 \(Children and Young Persons\)](#)

³ HC Deb, [Children and Young Persons](#), 10 June 2020, cc 355-7

⁴ DfE, [Children's social care: Government consultation response](#), August 2020, p5

⁵ [Ibid](#), p12

⁶ [Ibid](#), p5

changes.⁷ Article 39 was subsequently granted an expedited appeal to be heard on 4 September 2020.⁸

2. *The Adoption and Children (Coronavirus) (Amendment) Regulations 2020*

2.1 Laying and consultation

The regulations were laid before Parliament on 23 April 2020, and came into force on 24 April.⁹ The Government stated that it was not possible to adhere to the convention that negative statutory instruments should be laid in Parliament 21 days before they come into effect because “children’s social care resources are already stretched as a result of staffing shortages and an increased demand for services”.¹⁰

The Government has additionally said that a full public consultation on the regulations was not possible, but that it had consulted Ofsted, the Association of Directors of Children’s Services, the Local Government Association, Principal Social Workers and Practice Leaders in local authority children’s social care. The Children’s Commissioner was also informed.¹¹

The [Children’s Rights Assessment](#) sets out how the regulations may impact on children and young people.

2.2 Content

Section 7 of the [explanatory memorandum](#) to the regulations provides the following summary of what the regulations do, and why:

Ensuring that vulnerable children are properly safeguarded and have their welfare promoted remains a top priority for Government. At the same time, the challenging context of the outbreak means that local authorities and partners may struggle to meet the full range of statutory duties relating to child protection, safeguarding and care at present due to administrative and procedural requirements set out in legislation.

The Department [of Education] has consulted informally with a variety of local authority stakeholders, including their representative body The Association of Directors of Children’s Services, and with Ofsted as regulator, and have informed the Children’s Commissioner. These consultations have helped identify which changes would be most helpful to local authorities during the outbreak. Feedback has been set out against the amendments within this section of the memorandum to provide clarity.

It is therefore necessary to temporarily amend 10 sets of regulations, related to children’s social care, to provide additional flexibility in meeting statutory obligations, whilst maintaining appropriate safeguards. The changes will affect local authorities, children’s homes, fostering services, adoption agencies and Ofsted inspections. Most

⁷ [Removal of safeguards for children in care- judicial review given go ahead](#), Article 39, 26 June 2020; [High Court dismisses calls for children’s social care exemptions to be scrapped](#), Cypnow, 7 August 2020

⁸ [Article 39 granted appeal over children’s social care exemptions](#), Cypnow, 24 August 2020

⁹ [The Adoption and Children \(Coronavirus\) \(Amendment\) Regulations 2020](#)

¹⁰ [Explanatory Memorandum to The Adoption and Children \(Coronavirus\) \(Amendment\) Regulations 2020](#), para 3.1.

¹¹ [Explanatory Memorandum to The Adoption and Children \(Coronavirus\) \(Amendment\) Regulations 2020](#), paras 3.1, 10.1

changes are procedural; easing administrative burdens, allowing visits and contact to take place remotely and relaxing strict timescales where possible.¹²

The changes made by the regulations include [this is not an exhaustive list – section 7 of the explanatory memorandum provides more detail on the changes]:

- Relaxing the timescales under which representatives of the responsible local authority must visit a child in care and clarifying that such visits can take place by telephone or other electronic means.
- Relaxing timescales around the formalising of placement plans for looked after children and the deadlines for reviews of placements.
- Amending the standards that must be met by everyone providing residential care for looked after children – for example, requiring standards concerning delivery of care relating to health and development to be met “as far as is reasonably practicable”.
- Allowing local authorities to take more time to carry out reviews into complaints about the services they provide to children and young people.
- Revoking the minimum Ofsted inspection intervals. Ofsted continues to have powers to inspect with powers under the [Care Standards Act 2000](#).
- Extending the period within which a local authority must publish a written statement of action following an Ofsted inspection of its children’s services.
- Providing additional flexibility for local authorities and regional adoption agencies in the adoption process – for example, allowing DBS and medical checks on prospective adopters to be completed at a later stage of the process.
- Removing the requirement for adoption panels (which make recommendations to adoption agencies on whether potential adopters are suitable).
- Extending the permitted length of a single short break placement (where the local authority arranges for a child to stay with a foster carer but the parents remain responsible for their overall care) from 17 to 75 days.
- Making fostering panels optional rather than required. Fostering panels are set up to assess applications for potential foster carers and the ongoing suitability of existing foster carers, and to then make recommendations to the fostering service provide.

The regulations provide for the amendments to be in place until 25 September 2020 and for the Secretary of State for Education to keep them under continuous review.¹³ The explanatory memorandum states that the changes “are being made in the context of a public health emergency and there is no current evidence to suggest the amendments will be necessary for a longer period of time.”¹⁴ The Government confirmed in August 2020 that it would not be extending the majority of the changes beyond 25 September 2020.¹⁵

Use of the provisions

In a written statement on 14 July 2020, the Minister, Vicky Ford, said that, since their introduction, the regulations were “rarely used” and the most frequently used were those relating to medical reports in the adoption and fostering process and virtual engagements with children and young people:

¹² As above, paras 7.1-7.3.

¹³ This is the date by which the powers in the *Coronavirus Act 2020* are subject for parliamentary renewal. While the regulations are not made under powers in the Coronavirus Act, the Government has stated that they will mirror the renewal date.

¹⁴ [Explanatory Memorandum to *The Adoption and Children \(Coronavirus\) \(Amendment\) Regulations 2020*](#), para 6.4.

¹⁵ DfE, [Children’s social care: Government consultation response](#), August 2020, p5

4 Adoption and Children (Coronavirus) (Amendment) Regulations 2020

Our monitoring has shown that the majority of the regulatory flexibilities have been rarely used and only when needed in response to coronavirus.

[...]

Our monitoring data shows that the regulations are being used infrequently. Out of 128 local authorities we have spoken with in June and July, 87 have used at least one regulation, although many have only used them on a limited number of occasions and in a limited number of areas.

The most used related to the fostering and adoption regulations, notably allowing medical reports to be considered at a later stage in the adoption and fostering process though still prior to approval. This has minimised delays in approving adopters for children needing a new, forever, family. Similarly, relaxations around panels have allowed for the continued recruitment of foster carers and a continued functionality of processes.

Virtual engagement with children and families has often been used alongside face to face visits and, in some cases, this has resulted in greater levels of contact between children, young people, parents, and carers – and improved engagement from some young people.¹⁶

The Minister told the House in June 2020 that the Department had “been gathering information regularly on which of the regulations are being used and [...] are holding a monthly survey of local authorities”.¹⁷ A full statistical breakdown of the regulations used by the local authorities surveyed in June, July and August can be found in Annex B of the [Consultation response](#) published by the DfE.¹⁸

Expiration

Following a [consultation](#), the Government confirmed that the majority of the amendments made by these Regulations would expire at 25 September 2020.¹⁹

3. *The Adoption and Children (Coronavirus) (Amendment) (No. 2) Regulations 2020*

3.1 Consultation

In her [written statement](#) to the House on 14 July, the Minister said that the Government intended to consult on extending the regulations (described in Section 2) in relation to medical reports, virtual visits and Ofsted Inspections.

- **Medical reports for foster carers or adoptive parents from a GP**

The Minister said that after children increasingly return to school and restrictions are eased, there may be an increased need for foster carers and potential adopters, whilst pressures on NHS services remain. The DfE proposes to extend provisions to allow more time for GPs and other health professionals to provide information to support the process of approving fosters and adopters.

- **Virtual visits**

¹⁶ Written Statement, [HCWS368 Children’s social care update](#), 14 July 2020

¹⁷ HC Deb, [Children and Young people](#), 10 June 2020, c 353

¹⁸ DfE, [Children’s social care: Government consultation response](#), August 2020, pp16-18

¹⁹ DfE, [Children’s social care: Government consultation response](#), August 2020, p5

It is proposed that provisions enabling virtual visits to occur in situations such as local lockdowns or where an individual or household has been required to self-isolate, should be continued.

- **Ofsted Inspections**

The consultation proposes that the suspension of the frequency regulation that sets out the minimum number of Ofsted inspections required in various settings, be extended to 31 March 2021. The Minister said that although full grade inspections were not expected to recommence until March 2021, Ofsted would carry out risk-based assurance visits to children’s social care settings, based on the previous inspection judgement, the amount of time since the setting was last inspected and other relevant information held by Ofsted.²⁰

A [consultation](#) was held from 16 July 2020 to 5 August 2020 and received 189 responses. The Government said most respondents were in favour 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. However, “many consultees also raised concerns in the way the [original] regulations were introduced, and many felt the regulations should not be extended and should be revoked immediately”.²¹

A [Children’s Rights Assessment](#) and [Equalities Impact Assessment](#) were published alongside the [Government response](#).

3.2 Content

The Statutory Instrument temporarily amends 6 sets of regulations relating to children’s social care. The Government said this is to “help maintain delivery of children’s social care during the recovery stage of the outbreak and to support continued effective operation of children’s social care”.²² These relate to the provision of medical reports for potential adopters and foster carers; virtual visits, and the frequency of Ofsted inspections.

Section 7 of the [Explanatory memorandum](#) details the amendments made by the Regulations—below is a non-exhaustive list [a complete list of amendments and details of their implementation can be found in the Explanatory Memorandum]:

Virtual Visits of Looked after Children

7.6 The changes to regulations 28 and 48 allow social workers to conduct these visits “virtually” where appropriate. This could be via video conference, telephone, or any other electronic means.

7.7 The decision to allow the use of a virtual visit will have had to be carried out in accordance with any recommendations given by a nominated officer.

Stage at which Medical Checks are completed

7.11 The Adoption Regulations require the adoption agency to secure medical checks by the end of stage 1 of the assessment process. As a result of ongoing pressures on the NHS these checks may continue to take longer than usual to clear.

7.12 Therefore regulations 26 and 27 of the Adoption Regulations have been amended to allow the assessment process to progress to stage 2 without a medical report, as long as a medical check has been requested.

²⁰ Written Statement, [HCWS368 Children’s social care update](#), 14 July 2020; DfE, [Children’s Social Care: Government consultation](#), 16 July 2020, pp10-13

²¹ DfE, [Children’s social care: Government consultation response](#), August 2020, p4

²² [Explanatory Memorandum to The Adoption and Children \(Coronavirus\) \(Amendment\) \(No..2\) Regulations 2020](#), para 2.2

7.14 The Regulations continue to require a medical report to have been obtained (where necessary) and duly considered before a final decision is made.

Virtual Visits by the Registered Person

7.22 As part of the assessment of the services and facilities of a residential family centre, a registered person is required to conduct regular visits to provide assurance on the conduct on the centre, and to form an opinion on the standard of care provided including through interviews with residents and persons working at the residential family centre.

7.23 Regulation 25, which has been amended to allow such interviews to be held on a virtual basis, must only be used when face to face contact 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 is not reasonably practicable for a reason relating to the incidence or transmission of coronavirus. Guidance will further explain that the circumstances in which Government envisages this being relevant include in the event of lockdown, self-isolation, or Public Health England and Government social distancing advice due to coronavirus (COVID-19)

Contact with Children and Young People via Virtual Visits

7.26 Regulation 22 provides for a child or young person to be visited by family members and social workers.

7.27 Regulation 22 has been amended to allow such interviews to be held on a virtual basis must only be used when face to face visits 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 is not reasonably practicable for a reason relating to the incidence or transmission of coronavirus. Guidance will further explain that the circumstances in which Government envisages this being relevant include in the event of lockdown, self-isolation, or Public Health England and Government social distancing advice due to coronavirus (COVID-19)

Scheduling of Inspection and Visits

7.30 Under the 2015 Regulations Ofsted has to conduct inspections of the establishments and agencies in accordance with the frequencies as set out in regulation 27. 7.31 This instrument amends the *Adoption and Children (Coronavirus) (Amendment) Regulations 2020* to provide that the amendment to the 2015 Regulations expires on 31 March 2021 and not 25 September 2020. This means that the minimum frequency of inspections is suspended until 31 March 2021. In the interim, Ofsted will conduct assurance visits, inspections via a risk-based approach instead.

7.32 If there are concerns about a provider, Ofsted retains the ability to maintain oversight and to undertake any necessary regulatory action.²³

The Department said that allowing more time for health professionals to provide information to support the process of approving potential adopters and foster carers was a means of giving flexibility to NHS England.²⁴ Flexibility in allowing virtual visits, the Department said, 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”.²⁵

Ofsted is planning to carry out a phased return to routine inspections, which will include risk-based assurance visits to children’s social care settings from September 2020 to March 2021, based on the previous inspection judgement, the amount of time since a setting

²³ [Ibid](#), Section 7

²⁴ DfE, [Children’s Rights Impact Assessment: Amendments to children’s social care during the COVID-19 pandemic](#), August 2020, pp1-2

²⁵ DfE, [Children’s social care: Government consultation response](#), August 2020, p10

was last inspected and other information Ofsted hold about the setting. From March 2021, full graded inspections will recommence. The DfE says these amendments allowing the continued suspension of the regulation that sets out the minimum number of Ofsted inspections allows Ofsted to carry out visits “to as many settings as possible” based on the criteria cited above, and direct its resources towards providing assurance to settings that it is concerned about or have not been inspected for some time.²⁶ Ofsted has published guidance on its plans for [assurance visits](#).

The regulations provide for the amendments to be in place until 31 March 2020 and for the Secretary of State for Education to monitor the effectiveness of the amendments.²⁷ It is possible for the Government to make another statutory instrument extending the expiration date, but in the consultation response the Government said it “has no plans to extend the regulations beyond March 2021”.²⁸

4. Guidance for social care services

In May 2020 the Department for Education (DfE) published [guidance for children’s social care services](#), which provides more information on the changes made by the regulations. The guidance was updated on 28 August 2020.

The guidance sets out the following circumstances where a local authority, safeguarding partners and providers may want to make use of the flexibilities provided by the regulations:

- where staff shortages, due to sickness or other reasons, make it difficult or impossible to meet the original requirements
- where making use of flexibilities to take a different approach is the most sensible, risk-based response in light of other demands and pressures on services, this might involve focussing services on those most at risk
- where there is a consequential reason to make use of flexibilities, for example, due to limited capacity in other providers or partners making it difficult or impossible to comply with the original requirements

The guidance adds that decisions to use the flexibilities should be properly recorded, along with the reasons for doing so.²⁹

The updated guidance of 28 August 2020 says that the DfE “expect[s] that there should no longer be a need to use the vast majority of these flexibilities outside of those we have proposed to extend” (see section 3).³⁰

5. Reaction

While it has been suggested that providers of children’s social care will welcome the greater flexibility the regulations provide, several organisations have also raised concerns. These concerns include that the changes are unnecessary, that some of the changes have been proposed before and rejected, and that the Government may seek to make the changes permanent.

²⁶ DfE, [Children’s Rights Impact Assessment: Amendments to children’s social care during the COVID-19 pandemic](#), August 2020, p2

²⁷ [Explanatory Memorandum to The Adoption and Children \(Coronavirus\) \(Amendment\) \(No.2\) Regulations 2020](#), paras 6.4, 6.5

²⁸ DfE, [Children’s social care: Government consultation response](#), August 2020, p5

²⁹ DfE, [Coronavirus \(COVID-19\): guidance for children’s social care services](#), 28 August 2020.

³⁰ [Ibid](#)

5.1 Association of Directors of Children Services

The Principal Children and Families Social Worker (PCFSW) Network and Association of Directors of Children's Services (ADCS), both involved in the informal consultation, said in April 2020 that the greater flexibility provided by the regulations would be welcomed by providers of children's social care.

The ADCS President, Jenny Coles, recognised concerns had been raised but said that authorities would "continue working hard to ensure we can fulfil our statutory responsibilities". The Chair of the PCFSW network, Claudia Megele, said the measures should be time-limited, but during the pandemic they would help mitigate "the pressures experienced by practitioners during this time".³¹

In an ADCS Discussion paper in July, the ADCS said that some of the practices in the Regulations "could be usefully retained in the longer term" and cited the example of virtual visits and convening meetings of virtual panels as potentially "desirable going forward".³²

In response to the consultation on extending some amendments, the ADCS said that the "hybrid" model of face-to-face and virtual visits had meant local authorities had been "able to increase the frequency of visits/contact at a time when most children weren't being seen in school".³³

5.2 Children's Commissioner for England

The Children's Commissioner for England, Anne Longfield, published a [statement](#) on the changes affecting children's social care on 30 April 2020. Whilst acknowledging local authority children's services were "likely to be experiencing challenging working conditions", the Commissioner said:

I do not believe that the changes made in these regulations are necessary— except perhaps for some clarifications (in guidance) about contact with children taking place remotely during the lockdown.

The Commissioner re-iterated this call on 3 and 8 June 2020.³⁴ In her April statement, the Commissioner said she had received reports that staffing for social care was "holding up well" and so "bringing in these regulatory changes to ease excessive strain on a depleted workforce, and to do so without the opportunity for public scrutiny, is not justified".

Whilst calling for all the Regulations to be revoked, the Commissioner raised nine specific regulatory changes that "as urgent priority" she would like reversed. "As an absolute minimum", the Commissioner wished to "see guidance make clear that these changes will only ever be used as a last resort, and for as short a time as possible".

The nine raised specific concerns included: the relaxing of the timescales in which social workers must visit children in care; the relaxation of requirements to review plans for children in care within set timescales; and the removal of the requirement for independent

³¹ [Charity blasts legislation relaxing duties to children in care under Covid-19 as 'destroying safeguards'](#), Community Care, 24 April 2020

³² ADCS, [Building a country that works for children post COVID-19](#), July 2020, p10

³³ DfE, [Children's social care: Government consultation response](#), August 2020, p9

³⁴ Education Select Committee, [Oral evidence: The impact of COVID-19 on education and children's services. HC 254](#), 3 June 2020, Q395; [Children in care at risk from new lockdown demand for review of "unjustified" cuts](#), The Independent, 8 June 2020

visits to children’s homes to occur monthly, so long as “reasonable endeavours are made” to arrange such visits.³⁵

In response to the consultation announced in July 2020, the Commissioner said she was disappointed that the Regulations had not been revoked in full and judged them unnecessary:

I am disappointed that the government has not taken the opportunity to revoke these regulations as soon as possible, although I am pleased that the vast majority will be revoked in September.

I maintain my view that these changes are not necessary, particularly as some of the fears around staffing levels in children’s services have not materialised.

At this time, when the pandemic means that children are less visible to statutory services, it is more important than ever that children’s rights are protected.³⁶

5.3 Third sector commentary

As of 2 September 2020, 63 organisations had called upon the UK Government to withdraw the regulations as part of a petition organised by the charity Article 39.³⁷ The “Scrap SI 445” campaign steering group, which includes Article 39 and Just for Kids Law, reiterated its call in July 2020 in written evidence to the Education Select Committee for the original regulations to be revoked and for future legislation to be subject to parliamentary scrutiny.³⁸

Included below is commentary from a selection of third-sector organisations.

Adoption UK

In May 2020, Adoption UK, a charity for adopters, said that it welcomed the changes introduced specifically to mitigate delays in waiting times for children, such as removing the requirement for an adoption panel or allowing panels to meet virtually.³⁹ However, it opposed relaxing the requirement for adoption reviews where it was not reasonably practical to do so.⁴⁰

Article 39

Article 39, a charity campaigning for children in care, has called upon the UK Government to withdraw the regulations and provide assurances that any future regulations are subject to consultation.⁴¹

The charity has argued that many of the changes “have been proposed before” and has raised concerns that the changes will “be made permanent once the effect of the suspensions are known”.⁴²

Article 39 submitted written evidence to the House of Lords Secondary Legislation Scrutiny Committee in May 2020 and Education Select Committee in June 2020.⁴³ It applied to the

³⁵ Children’s Commissioner, [Statement on changes to regulations affecting children’s social care](#), 30 April 2020

³⁶ [DfE launches consultation on extension of statutory duty relaxations](#), Cypnow, 20 July 2020

³⁷ Article 39, [Scrap SI 445](#), accessed 25 August 2020

³⁸ [Written evidence submitted by the “Scrap SI 445” campaign steering group, CIE0386](#), July 2020, paras 16, 17

³⁹ [Adoption UK written evidence to the Education Select Committee](#), CIE0164, June 2020, paras 17, 18

⁴⁰ [Ibid](#), paras 29, 30

⁴¹ Article 39, [Article 39 threatens legal action over loss of protections for children in care](#), 7 May 2020

⁴² Article 39, [Ministers use COVID-19 to destroy children’s safeguards](#), 23 April 2020

⁴³ [Article 39 Statutory Instrument 445 Changes to legal protections for children: Briefing for Secondary Legislation Scrutiny Committee](#), May 2020; [Written evidence submitted by Article 39: The impact of Covid-19 on education and children’s services, CIE0290](#), June 2020

High Court for a judicial review of the regulations, which was considered in July 2020.⁴⁴ The [ruling](#) found that the DfE did not act unlawfully by introducing the changes.⁴⁵ Article 39 was subsequently granted an expedited appeal to be heard on 4 September 2020.⁴⁶

British Association of Social Workers (BASW) England

In April 2020, BASW England, a membership organisation for social workers, said that the regulations lack “a clear, documented and facilitated process for the rationale, structured introduction and delivering of the Regulations for local authorities”. It drew comparisons with the introduction of changes to the *Care Act* enabled under the *Coronavirus Act 2020*:

The changes (known as ‘Easements’) were preceded by ethical guidance, practical guidance on criteria for applying the Easements and finally the requirement of a formal written declaration by the Director that the Easements would be adopted by the local authority. In contrast, none of these over-arching safeguards and standards are in place for children.⁴⁷

In a statement issued on 1 May, BASW England called upon the Government to withdraw the regulations and published a [letter](#) sent to the Secretary of State for Education, Gavin Williamson.⁴⁸

Children’s Society

In submitted evidence to the Education Select Committee’s [Inquiry on the Impact of COVID-19 on education and children’s services](#) in May 2020, the Children’s Society raised concerns that “the relaxation of standards appear to be open to local authorities irrespective of how they are coping during the Covid-19 crisis”. It recommended that local authorities should only be allowed to implement the changes if “operational capacity falls beneath a certain level, and they can show such changes are necessary in order to respond”.⁴⁹

The Fostering Network

The Fostering Network, a charity and networking organisation, published a [briefing on the SI and related guidance](#) relating to foster care in May 2020. On foster care, the charity said it was “concerned” that the regulations would undermine safeguarding practices. It argued that the regulations should be seen as a “providing ‘options’ to be utilised as a last resort” and used only within an approach agreed by senior management, after a risk assessment, and in the “spirit” of the [principles](#) laid out by the Government on children’s services.⁵⁰

Just for Kids Law

Just for Kids Law, a charity working with children and young people, in May 2020 welcomed the “additional safeguards in the updated guidance to ensure that the new regulations on children’s social care are monitored by Ofsted and approved at the highest

⁴⁴ Article 39, [Legal action launched to protect children in care](#), 5 June 2020

⁴⁵ [Removal of safeguards for children in care- judicial review given go ahead](#), Article 39, 26 June 2020; [High Court dismisses calls for children’s social care exemptions to be scrapped](#), Cypnow Now, 7 August 2020

⁴⁶ [Article 39 granted appeal over children’s social care exemptions](#), Cypnow, 24 August 2020

⁴⁷ BASW, [Policy brief on The Adoption and Children \(Coronavirus\) \(Amendment\) Regulations 2020](#), 24 April 2020

⁴⁸ BASW, [BASW England urges Government to withdraw statutory instrument which “risks the welfare and rights of children”](#), 1 May 2020

⁴⁹ [Written Evidence submitted by the Children’s Society, CIE0168](#), May 2020, para 2.5

⁵⁰ The Fostering Network, [Briefing on The Adoption and Children’s \(Coronavirus\) \(Amendments\) Regulations 2020 and related guidance](#), 20 May 2020, p4; DfE, [Coronavirus \(COVID-19\); Guidance for children’s social care services](#), 6 May 2020.

level of local government". The charity said it was "still not convinced of the need to weaken vital legal protections."⁵¹

6. UK Parliamentary Proceedings

In addition to a [debate](#) in the House of Commons on Wednesday 10 June 2020 and the ongoing House of Commons Education Select Committee inquiry into [The impact of covid-19 on education and children's services](#), the following proceedings are relevant to the Instrument.

6.1 Committees scrutinising secondary legislation

The SI has been considered by the House of Lords Secondary Legislation Committee and the Joint Select Committee on Statutory Instruments.

The Joint Committee sought to draw "the special attention of both Houses to these Regulations on the grounds that they require elucidation in three respects and are defectively drafted in one respect."⁵² In response, the Department "proposes that as the amendments are only temporary, it will not correct the errors but liaise with Ofsted, which it expects 'to take a pragmatic approach'".⁵³

The House of Lords Committee expressed "regrets that the Children's Commissioner, amongst others, was not consulted and that guidance was not published earlier."⁵⁴ The Committee also said that the Explanatory Memorandum should have included greater detail and explanations of the changes.⁵⁵ It called:

on the Department to be open and transparent in its assessment of any longer-term impact and lessons that may be learned, and to involve the Children's Commissioner's and other relevant organisations in this process. The House may wish to press the Minister for an assurance that this will happen.⁵⁶

6.2 Questions on provisions becoming permanent

The House of Lords Secondary Legislation Scrutiny Committee said in April that it was "fundamentally concerned about the changes potentially being made permanent by the Secretary of State. These are issues that the House may wish to explore".⁵⁷

Appearing before the Education Select Committee on 22 April, the Minister, Vicky Ford, was asked by David Simmonds MP whether the DfE would seek to learn lessons from the suspension of certain statutory duties:

David Simmonds: [...] A review by the Department has found that some of statutory duties are leading to local authorities having to undertake activities that are not useful or purposeful, in particular, some of the reviews that are required under the statutory duties—help by foster carers, prospective adopters, the children in the care system—are found not to have improved their experience. Is the Department learning, and will it learn, from the suspension of any of those statutory duties, to see where it has exposed the fact that they were not leading to purposeful activity, with a view to

⁵¹ [Rights group threatens DfE \[Department for Education\] with legal action over relaxation of statutory duties](#), Children and Young People Now, 7 May 2020

⁵² Joint Committee on Statutory Instruments, [Twelfth Report of Session 2019-21](#), HC 75-xii/HL 64, 22 May 2020, para 3.1

⁵³ [Ibid](#), para 3.5

⁵⁴ House of Lords Secondary Legislation Scrutiny Committee, [Thirteenth Report of Session 2019-21](#), HL 57, 7 May 2020, introductory paragraph, para 35

⁵⁵ [Ibid](#), paras 18, 23

⁵⁶ [Ibid](#), paras 39

⁵⁷ [Ibid](#), para 40

dispensing with those statutory duties and freeing people up to do more useful things in future?

The Minister replied:

Vicky Ford: That is exactly the point, David, about why we are laying in place the statutory instrument in order to implement flexibility on certain statutory duties. We are focused on giving that flexibility on the lower risk areas in order to make sure that the experts on the ground can be focused on what they need to do now. It does need to be done in a risk assessed way [...]⁵⁸

In a DfE blog, posted on 1 May 2020, the Ms Ford had said that the changes “will remain in place only for so long as needed”.⁵⁹ In addition, the Secretary of State for Education told the House of Commons on 6 May 2020 that the regulations would not be continued once the outbreak is over:

This is a temporary measure that we have taken in response to concerns that people have raised about making sure they are able to provide the best care for the most vulnerable children. It is certainly not something that is going to be continued once we are through this crisis.⁶⁰

In her [written statement of 14 July](#), the Minister said that, subject to a short consultation, “the overwhelming majority of these regulations will expire as planned on 25 September”.

6.3 Debates on whether the regulations introduce measures previously abandoned

During a private notice question in the House of Lords, the Labour Peer Lord Howarth of Newport argued that the Government had “used the emergency coronavirus legislation to make a major and highly controversial policy change of a nature which was previously explicitly rejected by Parliament in 2017”.⁶¹

This echoed some commentary within the sector that the regulations are similar to provisions originally within the *Children and Social Work Bill*, which were subsequently withdrawn, and in a 2018 “myth busting guide” on children’s social care.⁶²

Clauses 29-33 of the original *Children and Social Work Bill* enabled local authorities to “test different ways of working with a view to achieving better outcomes under children’s social care legislation” and allowed the Secretary of State to “exempt a local authority in England from a requirement imposed by children’s social care regulation”.⁶³ These measures were considered in the House of Commons Public Bill Committee in January 2017 and withdrawn by the Government in March 2017.⁶⁴

⁵⁸ Education Select Committee, [Oral evidence: The impact of COVID-19 on education and children’s services](#), HC 254, 22 April 2020, Q24

⁵⁹ [Supporting vulnerable children](#), DfE Education in the Media Blog, 1 May 2020

⁶⁰ [HC Deb, 5 May 2020, c479](#)

⁶¹ [HL Deb, 30 April 2020, c 284](#)

⁶² [Changes to care responsibilities divide opinion among leaders](#), Children and Young People Now, 27 May 2020; [Williamson: Children’s Services leaders asked for changes to statutory duties](#), Children and Young People Now, 6 May 2020; Madeleine Whelan, [Adoption and Children \(Coronavirus\) Regulations 2020- A step too far](#), *Family Law Week*, 28 April 2020; Brid Featherstone and Anna Gupta, [Thinking about adoption in a pandemic: Why we need to be concerned about SI 445](#), British Association of Social Workers, 15 May 2020

⁶³ [Children and Social Work Bill \[HL Bill 57\]](#), Clause 29 (1) and (2)(a)

⁶⁴ [HC Deb Public Bill Committee, 10 January 2017, cc165-176](#); [Minister U-turn over “bonfire of children’s rights”](#), BBC News, 2 March 2017

The DfE's [Children's social care statutory guidance myth busting](#) was withdrawn in March 2019, following criticisms and a campaign by social worker organisations and academics who claimed it was conflict with existing laws.⁶⁵

In response to Lord Howarth, the Minister, Baroness Berridge, said "that this is a minimal change to the procedural requirements in relation to children's social care" and the legislation "is under review" and would fall on 25 September 2020 if not renewed by Parliament.⁶⁶

⁶⁵ [Government withdraws social care 'myth busting' guide after legal challenge](#), Community Care, 25 March 2019; [Together for children campaign](#), 2016-2019

⁶⁶ [HL Deb, 30 April 2020, c 284](#)

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