

CHILD'S RIGHTS IMPACT ASSESSMENT AMENDMENTS TO CHILDREN'S SOCIAL CARE REGULATIONS DURING COVID-19 OUTBREAK

Stage 1 – Screening

1. What is the policy/legislation?

Changes are being made to ten sets of regulations to ensure children's social care providers and local authorities have sufficient flexibility to respond to COVID-19 while still maintaining safe and effective care. These are low risk changes and will provide more flexibility to focus on core safeguarding responsibilities. These amendments will be kept under review and in place until the Coronavirus Act renewal date on 25 September 2020.

2. Will aspects of the policy/legislation affect children up to the age of 18 either directly or indirectly?

Yes – these changes will apply to children in social care settings.

3. Are there particular groups of children and young people who are more likely to be affected than others?

Yes – children receiving support from children's social care including those who are in care and affected by COVID-19, for example, those suffering from coronavirus and those social distancing from others because they have been in contact with others suffering from coronavirus.

Stage 2 – Assessing impact

4. Set out briefly below how your policy/legislation might impact on children and young people.

The changes focus on administrative processes and timescales, and on visits and contact for children in care and those who may enter care as result of COVID-19 should, for example, their parents or carers become unable to look after them. No changes are being made to the substance of the services being provided to these children. Examples of the possible impact on children are:

- children in residential care may find they are more frequently speaking remotely to family or advocates, rather than face-to-face;
- children in residential care may be deprived of their liberty where they have, or are suspected of having, coronavirus;
- children in private foster care arrangements may have to wait longer for their local authority to visit their placement;
- children in temporary foster care maybe in that arrangement for longer than usual;
- children who have complained about the services they have received from their local authority may have to wait longer than usual for a response from their local authority.

Changes which impact on statutory timescales do not, in the main, remove the timescales, rather caveat, where appropriate, with a requirement for local authorities to do things as

soon as reasonably practicable where statutory timescales cannot be met due to COVID-19 related pressures. It is still the expectation that local authorities and providers should meet the current timescales where they can which will be emphasised in guidance.

These changes introduce greater operational flexibility for local authorities, but they do not reduce or remove any responsibility that local authorities have towards children. Local authorities are still expected to provide children's services and to identify, support and protect vulnerable children. The changes are intended to give local authorities flexibility to help them deliver these services whilst resources are limited due to the COVID-19 pandemic.

5. Which UNCRC Articles are relevant to the policy/legislation?

The guiding principles which underpin the UNCRC as a whole are articles 2, 3, 6 and 12.

Article 2 (non-discrimination) states that the Convention applies to every child without discrimination, whatever their ethnicity, sex, religion, language, abilities or any other status, whatever they think or say, whatever their family background.

We are confident that these changes will not lead to a discriminatory application of the Convention. The temporary changes to processes and timescales will not fundamentally change the existing provisions of support and protection for children in care.

Article 3 (best interests of the child) states that the best interests of the child must be a top priority in all decisions and actions that affect children.

These changes are being made to empower frontline operations during the COVID-19 pandemic. But safeguarding and acting to ensure that decisions are made in the best interest of the child is integral to the operational guidance we have issued (*Coronavirus (COVID-19): guidance for local authorities on children's social care*) and is the first principle we set out in the guidance.

The intention is very much to ease the burden in order that local authorities can continue to deliver children's services without being unnecessarily hindered by process in these extraordinary circumstances. We believe that this will allow local authorities to operate with flexibility to ensure that children in care continue to get the services and support they require. A good example of this is the change we are making to the Adoption Agency Regulations 2005 so that adoption panels can sit with a reduced minimum number of members (3 rather than the usual 5) in order that adoptions can continue to be progressed at pace. Similar changes are being made in relation to fostering panels and other aspects of the fostering process to help maintain the availability of fostering placements.

Article 6 (life, survival and development) states that every child has the right to life. Governments must do all they can to ensure that children survive and develop to their full potential.

Safeguarding and acting to ensure that decisions are made in the best interest of the child is integral to our response to COVID-19. Included in these changes are measures to protect children from the spread of coronavirus, for example through increased use of remote

contact. Of course for more vulnerable children, who might be at greater risk, it might be that a visit that is done over a video-call isn't enough – that would be for the LA to risk assess on an individual basis. In some instances, this will also mean protecting children from each other, where this will help to minimise the chances of the virus spreading. This may involve depriving some children in residential care of their liberty, on the basis that they have, or are likely to have, coronavirus. We believe that these new temporary powers can make an important contribution to the rights under this article by helping to minimise the spread of coronavirus amongst children in residential care.

Article 12 (respect for the views of the child) states that every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously. This right applies at all times, for example during immigration proceedings, housing decisions or the child's day-to-day home life.

We are confident that none of these changes remove any mechanism that currently gives a voice to children in care. We acknowledge that some of the changes will impact the way in which children can make their voices heard e.g. speaking to advocates will not happen face-to-face, local authority responses to complaints may be slower. However, we think the changes strike the right balance between introducing a degree of flexibility into the system and continuing to make sure the voice of the child can still be heard.

As this is emergency legislation with a very quick turnaround time, we have not had the opportunity to consult children on the changes. However, as set out at 8 below, we have engaged with a range of frontline stakeholders.

6. Have you made any modifications to the policy/legislation to address any negative impacts (whether on children generally or on specific groups of children)? If no modifications have been made, what barriers exist to doing so?

These are relatively small scale and temporary changes being made in response to extraordinary and unprecedented circumstances which demand an immediate response. No modifications have been made. However, Government is very clear that these changes must not be at the expense of the rights and protection of children in care.

Government wants local authorities and local safeguarding partners to feel empowered to support families and protect children to the best of their abilities given the challenging context. Operational guidance has been issued (*Coronavirus (COVID-19): guidance for local authorities on children's social care*) and this includes a series of principles, broadly endorsed by the sector, to assist local authority decision making:

- Child-centred - promoting children's best interests.
- Risk-based - prioritising support and resources for children at greatest risk.
- Family focused - 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.

7. Are there any alternative options to the proposal being considered? What would their projected impacts on children's rights be?

These are relatively small scale and temporary changes being made in response to extraordinary and unprecedented circumstances which demand an immediate response. No alternative options have been considered.

8. Has there been any public or stakeholder consultation on the policy/legislation? If yes, how have the public/stakeholders responded? Please provide evidence.

The Government has engaged with stakeholders on the proposals in confidence, including Ofsted, Association of Directors of Children's Services, the Local Government Association, Principal Social Workers and Practice Leaders. Issues raised by stakeholders which do not require legislative change have been addressed through the accompanying operational guidance.

Stage 3 – monitoring

9. How will the policy's/legislation's impact be monitored?

These amendments will be under continuous review and in place until the Coronavirus Act renewal date on 25 September 2020. The Regulations will contain an obligation for the Secretary of State to keep the regulations under continuous review. The period the amendments are in force will only be extended should the public health emergency or its impact last longer.