

Briefing for debate on Adoption and Children (Coronavirus) (Amendment) Regulations 2020 – House of Commons, Wednesday 10 June 2020

About us

Become is the national charity for children in care and young care leavers. We provide help, support and advice to make sure care-experienced young people can unleash their potential and take control of their lives. We help make the care system work better by ensuring that young people's voices and perspectives shape policy and service provision.

Background

On 23 April 2020, Statutory Instrument No. 445 –(SI445) was laid before Parliament and came into force the very next day.¹ This diluted and removed important legal protections built up over many years for children in care in England, including removing the requirement for:

- social workers to visit children in care at least once every six weeks. These important visits can now be done by phone or video call “as soon as is reasonably practicable”;
- review meetings to be held with children in care once every six months. These reviews provide the opportunity for children's views to inform their own care planning and ensure emerging issues are addressed before they escalate;
- additional senior-level approval in decisions to place a child outside of their local area with local authority foster carers. Young people often tell us they feel disconnected from their social and family networks and the professionals supporting them when they are placed outside of their local area; and
- an independent person to visit and report monthly on children's homes. Children's homes providers must now “use reasonable endeavours” to ensure this happens. These visits provide vital independent and regular assessments of children's homes to help ensure the safety and wellbeing of children living there.

Our key concerns

- 1. There was no justification or evidence for removing these particular safeguards.** The Explanatory Memorandum to the SI445 suggested the Department had “*consulted informally with the sector who have asked for these changes to be in force as a matter of urgency*”, and said the requirement for the instrument to be laid before Parliament for at least 21 days prior to coming into force was not possible as children's social care was “*already stretched as a result of staffing shortages and an increased demand for services*”.² No evidence for these claims has been provided. Other home nation governments have not taken actions to reduce statutory safeguards for children in its care at this time.
- 2. The emergency amendments were introduced just one day before they came into force without appropriate consultation or parliamentary scrutiny.** The Children's Commissioner for England was informed of the regulatory changes only after they had been determined, and has since called on them to be revoked.³
- 3. The emergency amendments lack clear guidance or parameters about how and when they should be used.** Guidance finally published by the DfE on 6 May 2020 set out that the “*flexibilities*” should “*only*

¹ <http://www.legislation.gov.uk/uksi/2020/445/contents/made>

² <http://www.legislation.gov.uk/uksi/2020/445/memorandum/contents>

³ <https://www.childrenscommissioner.gov.uk/2020/04/30/statement-on-changes-to-regulations-affecting-childrens-social-care/>

be used when absolutely necessary, with senior management oversight".⁴ However, the current guidance leaves too much room for interpretation. "As soon as is reasonably practicable" – used commonly throughout the instrument – is ambiguous. Existing regional variations in practice are likely to be exacerbated by differences in how frequently or under what circumstances local authorities and other agencies opt to use the new powers.

- 4. Current guidance does not provide sufficient detail on how the use and impact of the new powers will be centrally collated and monitored by government or Ofsted.** Proper monitoring is required to provide strong transparency and accountability, but more importantly, to ensure that timely learning around current pressures on the system and solutions reaches social care providers and others caring for and supporting children in care. No information has been offered on the circumstances in which the emergency regulations may be extended beyond the current expiry date of 25 September 2020.

What children and young people are telling us

The COVID-19 outbreak has significantly impacted on the lives of the children in care and young care leavers we support. Our Care Advice Line received more than double the number of calls from young people in the month following lockdown compared to the same period last year. Last week, our helpline received the most calls it's ever received in a single week.

Care-experienced young people are concerned about having enough money to feed themselves and accessing their entitlements, homelessness and risk of homelessness, safety and health risks (e.g. for those in high-risk categories), and isolation and loneliness exacerbating existing mental health conditions such as anxiety, depression, eating disorders and suicidal ideation.

Now is not the time for professionals to be withdrawing support from vulnerable young people who need their social workers and others in the care system more than ever. Young people have recently told us things like "I'm afraid of my mental health deteriorating due to isolation" and "mentally I am so stressed about the virus that my brain is refusing to cope with reality".

Our team has recently supported a number of young people who have faced extreme challenges because of the COVID-19 outbreak and the impact the crisis has had on other processes within the children's social care system. Although these experiences are not as a result of the changed regulations, they illustrate why we cannot afford to dilute children in care's rights and safeguards any further.

Recent examples from our Care Advice Line have included:

- a 17-year-old who was due to be moved out of supported lodgings in the coming weeks as they turned 18, despite government guidance that no child should have to leave care at this time. We were informed this was due to the cost of the placement. The young person was happy where they were and worried about having to move into shared accommodation in the midst of the COVID-19 outbreak. We supported the child's Independent Reviewing Officer to challenge this decision to ensure they could remain where they were for longer, giving them the stability they needed.
- a young care leaver who had just moved into a new council flat alone without carpets or white goods, including a washing machine. They had previously been washing their clothes at a friend's house, but because of lockdown restrictions, they were unable to continue doing so. The young person's personal adviser had said no funding was available to buy a washing machine as they had already used their allowance for appliances. The local authority's service for supporting care leavers to obtain used furniture was not operational due to COVID-19. We spoke to the young person's personal adviser about our concerns who agreed to raise the issue immediately with the service manager.

⁴ <https://www.gov.uk/government/publications/coronavirus-covid-19-guidance-for-childrens-social-care-services/coronavirus-covid-19-guidance-for-local-authorities-on-childrens-social-care>

Our recommendations

We recommend that SI445 should be immediately withdrawn. This is the best option to safeguard children and young people in care and ensure local authorities continue to meet their statutory obligations.

At the absolute minimum, the government should commit to centrally collecting, monitoring and publishing information about the use of new emergency regulations. This would provide stronger oversight to identify and take action on any emerging variations in use between local authorities with similar local profiles. It would aid in continually monitoring and assessing risk, and provide helpful understanding about the nature of circumstances which have led to use of the flexibilities.

Monitoring options could include:

- a requirement for local authorities to inform Ofsted (similar to existing children's social care notifications⁵); and/or
- a requirement for local authorities to inform the Department for Education (either through the newly-formed Regional Education and Care Teams structures, or through a similar approach to reporting a serious child safeguarding incident⁶).

Any use should be shared with the Corporate Parenting Board in the local authority. The information collected should be published to promote full transparency and accountability around use of the regulations. This would need careful consideration around the extent of information shared so as to balance concerns around confidentiality and to avoid unwarranted criticism of local authority practice without context.

Suggested debate questions

1. Does the Minister plan to collect and publish data on the use of the flexibilities afforded to local authorities by the Adoption and Children (Coronavirus) (Amendment) Regulations 2020?
2. What evidence can the Minister share with the House on how the flexibilities are currently being used by local authorities and other providers?
3. Will the Minister outline plans for monitoring the use and impact of the new emergency regulations on children and young people in care, and the role of the newly-formed Regional Education and Children's Teams (REACTs) in this?
4. Will the Minister confirm that the emergency regulations will expire on 25 September 2020? If not, can she outline the circumstances in which she believes it will be necessary to extend them and how this decision will be made?
5. Will the Minister publish her Department's Children's Rights Impact Assessment undertaken ahead of the new regulations coming into force?

Contact

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⁵ <https://www.gov.uk/guidance/tell-ofsted-about-an-incident-childrens-social-care-notification>

⁶ <https://www.gov.uk/guidance/report-a-serious-child-safeguarding-incident>