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**The Adoption and Children (Coronavirus) (Amendment) Regulations 2020: Regulations introduced during a global pandemic that will have implications for the most vulnerable children.**

**Professor Holt and Professor Kelly**

## **Introduction**

On Friday 24 April 2020, the Government passed a statutory instrument S1445, ushering in during a global pandemic, significant changes to the Care Planning, Placement and Case Review Regulations 2010, and the duties imposed on local authorities by those regulations. Furthermore, amendments to both the Adoption Agencies Regulations 2005, and the Fostering Services Regulations 2011, were also introduced.

The Adoption and Children (Coronavirus) (Amendment) Regulations 2020, which came into force on 24<sup>th</sup> April 2020, introduces secondary legislation in respect of the care and protection of children who are at risk and who may experience a complex range of vulnerabilities. Although the regulations are due to expire on 25<sup>th</sup> September 2020, this date can be revoked.

There is undoubtedly increased pressure on local authorities during what is an unprecedented public health emergency, to balance risk to the health of key workers in social care, and to ensure the protection of the most vulnerable children and their families.

The changes introduced on 24<sup>th</sup> April 2020, will have far reaching consequences for children and their families, long after the pandemic has passed, and these important changes were introduced without receiving full parliamentary scrutiny or oversight, during a time when professionals and families were focused upon dealing with new ways of working and living.

Notwithstanding the impact of Covid-19 on local authorities, who are tasked with introducing a range of remote ways of working with families during a national emergency, the protection of children must nevertheless remain a priority. This is especially important in a context of high levels of stress within families, and the invisibility of children during this time, who are not accessing universal services such as health and educational provision during this period.

It is imperative that children are not left holding the risk by the Government effectively *shoe horn*ing in changes to regulations that have historically been opposed both by parliamentarians and relevant stakeholders due to concern that they place children at increased risk.

The functions of local authorities in relation to children who are accommodated are set out in the Children Act 1989, and associated regulations and guidance. Specifically, the principle regulations are the Care Planning, Placement and Case Review Regulations 2010.

Section 22(3) of the Children Act 1989, establishes the general duty of the local authority looking after a child to safeguard and promote the welfare of the child. This duty underpins all activity by the local authority in relation to children who are accommodated. The Local Authority has a duty as a corporate parent, to work collectively with elected members, employees, and partner agencies, to provide a high level of care and safeguarding to children who are accommodated by the Local Authority.

Children who are accommodated by the Local Authority are amongst the most vulnerable in society. The regulations highlight the importance of providing a high level of support to children and young people who are accommodated by the Local Authority.

Children who are accommodated by the Local Authority require a standard of care which promotes good health and educational attainment, to a wide range of opportunities to develop their talents and skills in order to have an enjoyable childhood and successful adult life. Stable placements, good health and support during transition are all essential elements, but children will only achieve their potential through the ambition and high expectation of all those involved in their lives". The Children Act 1989 Guidance and Regulations. Volume 2: Care Planning, Placement and Case Review

The changes introduced by the Adoption and Children (Coronavirus) (Amendment) Regulations 2020, were initially introduced by the Government in 2016, when it attempted to grant local authorities the power to opt out of their duties for a period of up to six years, with a view to removing them completely. The proposals were opposed by a range of stakeholders, despite repeated attempts in both 2017, and 2018, to reintroduce the changes.

It is disingenuous to suggest these changes have been ushered in as a response to a global pandemic, when they have been firmly in the wings for at least four years. It appears the pandemic has been the trigger to the introduction of measures that will compromise the safety and protection of the most vulnerable children.

### **Background Precis**

The Care Planning, Placement and Case Review (England) Regulations 2010, s28(2) requires the responsible authority to ensure a representative visit within one week of the start of any placement, and thereafter, at intervals of not more than six weeks for the first year of any placement.

From 24<sup>th</sup> April 2020, this protection for children may be replaced with a phone call, or other electronic means, removing the duty to visit to “as soon as reasonably practicable”.

The Care Planning, Placement and Case Review (England) Regulations 2010, s33 state: (1) The responsible authority must first review the child’s case within 20 working days of the date on which the child becomes looked after and; (2) The second review must be carried out not more than three months after the first, and subsequent reviews must be carried out at intervals of not more than six-months. The duty to review is replaced with “where reasonably practicable”. The introduction of six-monthly reviews followed the death of Dennis O’ Neill in 1945, during the second world war. The death of Dennis whilst in foster care, received national publicity and the Local Authority asked the Home Secretary to establish a public inquiry into the death, and within six months, the inquiry had been completed and the report published.

As a result of this report the Curtis Committee (Care of Children Committee, 1946) was set up to examine the situation of children in public care in England and Wales and SI2083. The Children and Young Persons (Boarding out) Rules 1946 were issued to take account of Sir William Monckton’s recommendations.

Pivotal was Sir Monckton’s recommendation, to ensure that the duty of care is not “put aside, however great may be the pressure of other burdens” (p. 18).

This is a timely reminder that although the United Kingdom is experiencing a global pandemic, the protection of children who may have experienced a range of complex vulnerabilities must remain a priority.

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

There have been previous attempts by the Government in 2016 to usher in changes, to effectively relax the duties held by Local Authorities to visit and review children who are accommodated, but this was rejected by the House of Lords in November 2016.

A key principle of the 1989 Children Act is that that children are best looked after within their families, with their parents playing a full part in their lives, unless compulsory intervention in family life is necessary. As such, Section 22C(2) imposes a duty on the responsible authority to make arrangements for the child to live with a parent, a person who is not a parent but who has parental responsibility for the child, or a person who held a residence order in respect of the child prior to the making of the care order, unless this is not consistent with the child's welfare or would not be reasonably practicable 22C (4).

S 22C (5) Where a placement with the child's parent is not possible, the responsible authority should place the child in 'the most appropriate placement available', that is, the one that they consider will best promote and safeguard the child's welfare.

The 'placement' means:

- placement with a relative, friend or other person connected with the child and who is also a local authority foster carer;
- placement with a local authority foster carer (who is not a relative, friend or other person connected with the child);
- long-term foster placement;
- placement in a children's home; and
- placement 'in accordance with other arrangements made by the local authority' – this may include, for example, supporting young people to live

independently in rented accommodation, residential employment, or in supported lodgings/hostels.

In accordance with section 22C (7) the local authority must 'give preference to' a placement with a connected person i.e. a relative, friend or other person connected with the child, reflecting the principle that children should, wherever possible be brought up in their families and communities, if they cannot remain with their parents.

Furthermore, Sections 22 C (7)-(9), states the responsible authority must ensure that, as far as reasonably practicable, the placement:

- allows the child to live near his/her home;
- does not disrupt his/her education (particularly at Key Stage 4);
- enables the child and his/her sibling to live together, if the child has a sibling who is also looked after by the local authority;
- provides accommodation which is suitable to the child's needs if the child is disabled; and
- is within the local authority's area

S 24 (1) deals specifically with the temporary approval of a relative, friend or other person associated with the child.

Where the responsible authority is satisfied that—

- (a) the most appropriate placement for the child is with a connected person, notwithstanding that the connected person is not approved as a local authority foster parent, and;
- (b) it is necessary for the child to be placed with the connected person before the connected person's suitability to be a local authority foster parent has been assessed in accordance with the 2002 Regulations, they may approve that person as a local

authority foster parent for a temporary period not exceeding 16 weeks (“temporary approval”) provided that they first comply with the following requirements in paragraph 2.

Before making a placement under paragraph (1), the responsible authority must—

(2) (a) assess the suitability of the connected person to care for the child, including the suitability of—

(i) the proposed accommodation, and;

(ii) all other persons aged 18 and over who are members of the household in which it is proposed that the child will live, taking into account all the matters set out in Schedule 4;

(b) consider whether, in all the circumstances, and taking into account the services to be provided by the responsible authority, the proposed arrangements will safeguard and promote the child’s welfare and meet the child’s needs set out in the care plan, and;

(c) make immediate arrangements for the suitability of the connected person to be a local authority foster parent to be assessed in accordance with the 2002 Regulations, before the temporary approval expires.

The placement of children in care with relatives requires a thorough and detailed assessment and careful placement plans to ensure that arrangements that are being proposed are in the child’s best interest, and a placement plan including; contact, resources, and support is appropriately drafted and circulated for agreement with all the parties before approval is given. It is a concern that the Adoption and Children (Coronavirus) (Amendment) Regulations 2020, state that a placement plan shall no longer be necessary, and the emergency placement in kinship care that previously required an assessment to be undertaken within 10 working days, is now required “as soon as is reasonably practicable”.



Furthermore, the requirement that Local Authorities shall approve a child's relative, friend or other connected person as a foster carer for up to 16 weeks, has been extended to 24 weeks, and there is no requirement for the temporary foster carers to have an existing family or other connection to the child.

In respect of children who have additional complex needs and may have a range of complex vulnerabilities due to a disability, any short break lasting longer than 17 days or 75 days per annum, would involve careful planning with social work visits and an independent review. These requirements have been relaxed with the introduction of the new regulations and safeguards only apply when a child with a disability has had short breaks amounting to more than 75 days in a year, removing the need to review the single short break of more than 17 days.

Furthermore, children who are privately fostered, the duty placed upon a Local Authority to visit a child within seven days of being notified of the arrangement, is amended to seven working days "or as soon as is reasonably practicable".

Moreover, the Adoption Agencies Regulations 2005, are amended by S4 of the Adoption and Children (Coronavirus) (Amendment) Regulations 2020. Adoption panels may now be composed of one independent person, and there is no legal obligation to refer to the panel; the referral to the panel has become discretionary (reg. 4).

Significantly, the panel may proceed if information requested has not yet been obtained, including criminal record checks. Attempts to remove the duty to establish adoption and fostering panels was advocated by the Government during the passage of the Children and Social Work Act 2017, stating that Local Authorities

should be able to trial opting out of their duties to establish adoption and fostering panels.

Explanatory notes that accompany the Adoption and Children (Coronavirus) (Amendment) Regulations 2020, state that the placement of a child with foster carers who are also prospective adopters, is able to proceed swiftly, without the need for either a placement plan, or the placement to be approved by a nominated officer of the Local Authority, thus ensuring children are not waiting due to procedural delays. It is astonishing that during a period when many final hearings are being adjourned due to Covid-19, and parents may not have the opportunity to challenge the local authority, that adoptions are effectively being ratified without the necessary scrutiny.

There are a raft of changes proposed that relate to Children's Homes, including a children's home may become a place of detention if a child is infected with COVID-19 (at present a child can only be deprived of her liberty in certain circumstances, such as a Secure Accommodation Order, or an order from the High Court authorising a deprivation), OFSTED inspections, that are undertaken twice annually have been removed, and the requirement to meet the care quality standards for children's homes has changed to 'if reasonably practicable'.

## **Discussion**

The changes introduced on 24<sup>th</sup> April 2020, were initially presented by the Government in 2017, when the Children and Social Care Bill was progressing through parliament.

There was fierce opposition to these inclusions in the Bill that were felt to undermine a child's right to be protected. Opposition from the House of Lords and

professionals from a range of disciplines resulted in the Government withdrawing the proposed changes.

It is highly problematic that these important changes appear to have been ushered in during a global pandemic; when the country is in lockdown, the appropriate procedures for consultation and rigorous scrutiny have not been followed, with measures that have far reaching consequences for the lives of the most vulnerable children beyond the current pandemic.

Policy and practice that aim to resolve matters in a fair, equitable and timely manner is pivotal in ensuring the best outcomes for children are achieved (Parton, N. (2014). *The politics of child protection: Contemporary developments and future directions*. Basingstoke: Palgrave Macmillan).

The paramount consideration of the court or adoption agency must be the child's welfare throughout his life (s 1(2) Adoption and Children Act 2002).

The European Convention on the Adoption of Children (Revised) 2008, Article 4(1)(2) highlights the 'importance of adoption providing the child with a stable and harmonious home'.

Furthermore, Article 21 of the UNCRC provides that the best interests of the child shall be the 'paramount' consideration in an adoption process. Whilst this sounds laudable it is our contention that recent developments with the introduction of a statutory instrument without the appropriate level of consultation and scrutiny reflect an instrumental approach to child welfare (Featherstone, B., Morris, K., & White, S. (2013). *A marriage made in hell: Early intervention meets child protection*. *British Journal of Social Work*, 1735–1749.

The Court of Appeal in *Re B-S* [2013] made a clear statement that where a court suspects that a local authority's position may be motivated by resource issues, rigorous exploration and probing must take place (para. 29). Whilst this approach can be viewed as keeping the child at the heart of the process, it is perhaps unhelpful that when the Adoption and Children (Coronavirus) (Amendment) Regulations 2020 were introduced on 24<sup>th</sup> April 2020, both the Ministry of Justice and Local Authorities are simultaneously engaged in remote working practices, with limited resources to support family justice (Holt, K. E., Kelly, N., Doherty, P., & Broadhurst, K. (2013). Access to Justice for families? Legal advocacy for parents where children are on the 'edge of care': An English case study. *Journal of Social Welfare and Family Law*, 35, 163–177).

In a climate of unprecedented uncertainty for all agencies engaged in the family justice system, installing what Newman, Glendinning, and Hughes (2008) describes as transactional processes is persuasive. Processes have a central government steer that provides the regulation of standards and systems for decision making and assessment and involve rewards for compliance or performance. Furthermore, the relationship between central government and local services generates policy guidelines, standards, regulation and centrally determined assessment frameworks – all processes that produce compliant behaviour and focus on the efficient delivery of outputs (Newman, J., Glendinning, C., & Hughes, M. (2008). Beyond modernisation? Social care and the transformation of welfare governance. *Journal of Social Policy*, 37, 531–557. doi:10.1017/S0047279408002201).

The Government must revoke S1445 and reintroduce any measures that are necessary following consultation and full parliamentary scrutiny.

