



NIROMP View on The Adoption and Children (Coronavirus) (Amendment) Regulations 2020

Background to the changes

On Friday 24 April 2020, the Government passed a statutory instrument, the Adoption and Children (Coronavirus) (Amendment) Regulations 2020, making potentially significant changes to the Care Planning, Placement and Case Review Regulations 2010.

These regulations make significant temporary changes to the rights and entitlements of children and young people living in care. They apply to England only.

The amendments include significant, potentially far reaching changes to statutory reviews for our looked after children. Other major amendments are the relaxation of statutory visits, the removal of the obligation to refer cases to adoption or fostering panels, the removal of the definition of connected persons from the temporary approval of foster carers, and the extension of emergency placements of children with foster carers outside of their terms of approval from six days to 24 weeks.

These are far reaching changes to the Care Planning Regs 2010 introduced and passed within 48 hours, (22nd – 24th April), with no public consultation and without Parliamentary scrutiny or oversight.

Oral evidence to the Education Select Committee remarks on a “review” and suspension to Regulation potentially allowing for exposure of any activities that may not be “purposeful”, with a view to dispensing with these¹. We are not aware of a review and or of any plans to lay in place this statutory instrument as a potential test of the purposefulness of certain activities.

Summary of the main changes

- The regulations provide for visits, interviews, reviews, and meetings to be conducted by telephone, video-link or other electronic means, in relation to a number of areas, including looked after child reviews and visits to children.
- Adoption panels may now be made up of one independent person, and there is no legal obligation to refer to the panel; the referral has become discretionary (reg. 4). The panel may proceed if information requested has not yet been obtained, including criminal record checks.
- The requirement to take action within 7 days following notification of a private fostering arrangement has been replaced by a requirement to take action as soon as is reasonably practicable (reg. 5).

Significant changes are to the Care Planning Regs 2010:

- **Connected person** - the definition of and the term connected person have been removed. No longer does a 'placement' have to be with a "connected" person.
- **Assessment** can be done 'as soon as reasonably practicable'.
- **Emergency or temporary placement with a foster parent** where the terms of that approval are not consistent with the placement, can be for no more than 24 weeks rather than 6 days.
- **Temporary approval of a person as a foster carer** is now for 24 weeks, instead of 16 weeks as it was previously.
- **Visits to children** can be carried out by telephone or video. Timescales for visits, previously governed by Reg. 28 of the 2010 regs, are removed, and visits can take place as soon as is reasonably practicable.
- **Reviews of looked after children's care** need to take place at 20 days, three months thereafter and after that, need only take place when reasonably practicable.
- **Changes to the constitution of fostering panels** with these no longer mandatory.

- **Deprivation of liberty** - changes to the Children's Homes (England) Regs 2015, allows for detention of a child on public health grounds either by court order or in accordance with an exercise of powers under sch. 21 to the Coronavirus Act 2020

Sharon Martin, NIROMP chair, said:

The breadth of changes in 'the Regulations' involve some ten other pieces of legislation, 'connected' law and statutory guidance. It exemplifies the challenges we're all facing in responding to changing Government guidance and legislation, and the tremendous amount of work this creates as we endeavour to translate and apply this locally as well as nationally.

I am in frequent contact with our regional leads and I know many of you are benefitting from more frequent contact with your regional network. The strength of our networks have really come into their own during this pandemic, providing helpful spaces to consider any concerns arising from new edicts so that, where necessary, these can be challenged and escalated by regional leads to the national group.

We are very troubled by the Adoption and Children (Coronavirus) (Amendment) Regulations 2020. We believe these changes to children's rights are not justified and have been introduced in haste, without parliamentary or public scrutiny and consultation. We feel that the changes that have been made serve to offer less protection and safety to children and young people at a time when we should be seeking to strengthen the safety networks around our children and young people.

We welcome the call from Anne Longfield, Children's Commissioner for England for all the regulations to be revoked.

If the Government refuses to revoke these Regulations, we wish to be fully involved in producing guidance. We believe that guidance should make clear that these changes will only ever be used as a last resort, for a minimum time and subject to review. We would want to see protections introduced for children as those set out for adults when changes to the Care Act were introduced by the Coronavirus Act. This would mean that Local Authorities should only relax their

adherence to duties, in relation to the timescales for reviews, if they can show their workforce has been significantly depleted. This decision must involve the IRO and the Principal Social Worker and be evidenced and recorded. In addition, guidance would have to be clear that all the 'best endeavours' to meet timescales should be recorded and evidenced if the decision was taken to relax adherence to duties. The Department for Education and Ofsted should be notified by any Local Authority that decides to do so and we would also want to see this reported to regional leads for monitoring by NIROMP at the national level.

IROs' important safeguarding role arises because they build relationships over time with children living in care; often they are the most consistent person in a child's life. Establishing a trusting relationship is important to enabling a child to feel safe and able to disclose any worries as part of their review process. We are very worried that, if the requirements to review plans for children in care are relaxed, children will no longer feel confident that they will have this opportunity.

The reports I'm getting are of a system under very considerable pressure but not excessively depleted. IROs and staff across children's services have stepped up amazingly well. Their response has been truly incredible.

Our expectation is that locally IRO Managers should work closely together with the local authority to consider all issues impacting on children living in care and identify mitigation measures, do what's necessary and appropriate, and use best endeavours to ensure that children and young people continue to receive good quality care and support throughout the crisis.

We'll continue to champion the rights and entitlements of children living in care including their right to advocacy, legal support and redress through complaints and challenges if necessary. Where required, IROs should seek independent legal support to address the 'best endeavours' legal test on behalf of any child. We encourage any IRO or IRO Manager to contact their regional lead if they experience any problems accessing the appropriate legal advice.

We are all taking risks and making brave decisions that in 'normal times' we may never have considered. It is right that we do this while doing everything possible to safeguard children's important relationships, making sure they remain visible with their rights and entitlements preserved.

I am receiving reports of local authorities remaining absolutely committed to achieving the best interests of children living in care.

Our IROs are working tirelessly. They've found new, innovative ways of supporting children, young people and families and they've done so at pace. This has happened across the country.

Thank you IROs for continuing to make a real difference!

In summary

- There has been an absence of clear, documented rationale, ethical and practical guidance and support on the criteria for applying any of the changes set out in the amended regulations.
- We do not believe the changes to the regulations are justified. We wish to see them revoked. If the Government refuses to revoke these Regulations, we wish to be fully involved in producing necessary guidance.
- We are very troubled by the lack of consultation about these changes. We would wish to know why people with lived experience and IROs were not consulted. We believe we should be involved in any decisions about changes to rights and services for children living in care.
- If the decision is not to revoke the Regulations, then we would expect to see a full consultation ahead of review in September. We strongly believe that the 'care experienced' family and key stakeholders should be fully consulted.
- IROs continue to fulfil a crucial role in making sure that the voices of children and their families drive care planning and decision making. We will continue to make sure that the voices, wishes and feelings of our children are listened to, that care planning remains as robust as it can be and that their needs are fully understood and prioritised in the current circumstances.

RESPONSE TO THE ADOPTION AND CHILDREN (CORONAVIRUS) (AMENDMENT) REGULATIONS 2020

- Children should be able to expect no change to their rights and entitlements, especially during this pandemic. It is already exposing great inequalities and our children living in care need protection from further disadvantage.
- We will continue to champion the importance of relationships, of reaching out and checking in with our children and supporting the work of colleagues – there will be no change to this.

More information about the National IRO Managers Partnership can be found online at: <https://niromp.org/>