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Agenda Item 6(g)

DERBYSHIRE COUNTY COUNCIL

CABINET

10 December 2020

Report of the Executive Director of Children's Services

Review of The Adoption and Children (Coronavirus) (Amendment) Regulations 2020 and subsequent The Adoption and Children (Coronavirus) (Amendment) (No2) Regulations 2020

1. Purpose of the Report

The purpose of this report is to inform Cabinet of the urgent decision made by the Executive Director on 9th June which was subsequent to changes in national guidance made that related to a decision of the council, in accordance with the Council's Constitution, regarding the application of the legislative amendments.

And to further update with reference to The Adoption and Children (Coronavirus) (Amendment) (No2) Regulations 2020.

2. Information and Analysis

On 23rd April the Adoption and Children (Coronavirus) (Amendment) Regulations 2020 were enacted on 24th April; to end 25th September 2020. Under the 'savings provisions', certain amendments will still apply after 25th September.

The Department of Education have undertaken consultation from 16th July to 5th August which Derbyshire responded to.

The regulations make temporary variations to provide additional flexibility for local authorities, fostering providers and related services in England to meet statutory duties while maintaining a clear focus on safeguards and promoting the welfare of children.

Derbyshire did not adopt changes to all the sets of regulations allowed, only to those that were considered to be necessary. The broad intention was not to change general practice around children without a strong rationale and need to do so, some processes have been adopted which enabled case work to be responded to within statutory expectations and within a timely manner so reducing any potential for delays in child’s plans in light of the impact of the pandemic circumstances.

It is important to note that in line with the national guidance, there is an expectation that there will be full statutory compliance.

Further to the consultation, on the 28th August the Government introduced a new statutory instrument - The Adoption and Children (Coronavirus) (Amendment) (No2) Regulations 2020 which will enter force on 24 September, thus meeting Government’s commitment to provide Parliament with the customary opportunity for scrutiny. They will remain in force until 31 March 2021 and there is accompanying provisional guidance.

The new statutory instrument has been introduced to recognise that some services may continue to face specific and exceptional challenges into the autumn. And as more children are seen by schools, and social distancing eases further and hitherto hidden harms come to light, the Government recognised the requirement to be prepared for the potential additional demands that may still be placed on services.

The temporary regulations are intended to be used:

- Where the flexibilities are still needed to provide effective support for children involved with children’s social care services during the pandemic.
- Only due to lockdown, self-isolation or social distancing due to coronavirus (COVID-19).

Summary of officer decision review record for decision subject to ongoing review

Officer Decision re:	Reason why decision for continued subject to review
The Adoption and Children (Coronavirus) (Amendment) (No2) Regulations 2020	
Social work visits & Children in Care visits	To respond to potential local lockdown measures and previous messages from the Government. Whilst virtual means of engagement have proved invaluable, as the

	<p>lockdown has eased the level of face to face work is increasing where it is necessary to do so.</p> <p>To ensure visibility of children is maintained during these times albeit virtually. This method of practice is fundamental to offering a level of assurance around child welfare when face to face visiting is compromised due to safety issues for families and workers.</p> <p>This will continue with the new regulations supporting flexibility in visiting practice, in response to Covid restrictions and messages from the Government. This approach is consistent with the expectations that any visit must be carried out in accordance with any recommendations given by the relevant senior manager (nominated officer).</p>
<p>Fostering assessments - allowing for self-reporting of health information by the applicant in the first stage of the assessment.</p>	<p>In recognition by the government that the demands on health professionals to prioritise their capacity for other matters may impact on the timely receipt of medical information and therefore cause delay in making safe care arrangements for children.</p> <p>This flexibility has enabled fostering assessments to be progressed but in Derbyshire the following safeguards have been followed:</p> <ul style="list-style-type: none"> • Writing to the GP to explain the intention to assess the applicant as a foster carer and asking them to advise the local authority if they have information to the contrary, within 14 days.

	<ul style="list-style-type: none"> • Seeking the medical advisor's view if there are concerns. • Planning to obtain a fuller medical report as soon as possible. <p>This has been working well with good co-operation from GPs, no foster carers have been approved without the necessary health report. The fostering service have also reviewed the content of personal references to strengthen the assessment with reference to health.</p> <p>The temporary regulations do not remove the need for medical reports as they still must be obtained before the fostering agency can consider the suitability assessment of the prospective foster carer and their household.</p> <p>A final decision cannot be made without a medical report being obtained and considered as part of the suitability assessment.</p>
Children's Homes – Reg 44 Visits	<p>As a result of the lockdown measures and concerns around infection, it was agreed that monthly visits by independent people to report on how children's homes are being run would be undertaken on a virtual basis.</p> <p>This flexibility has not been extended and visits have already resumed to children's homes; the consequence of the amendment not being extended is that face-to-face visits need to resume to the disability homes, with a consequent increased risk of infection. Comprehensive risk assessment had been undertaken to minimise the risk of infection however it cannot be eliminated.</p>

	<p>However, in the light of increasing Covid 19 infection levels and Public Health guidance in late September, the intention is to revert to undertaking the monthly visit virtually to report on how a home is being run, unless there are home specific reasons which warrant it being done in person.</p>
<p>Care Planning, Placement and Case Review and Fostering Service</p> <p>PART 7 Care Planning and Independent Reviewing Officer (IRO) service</p>	<p>The timescales for Initial Child In Care Reviews is within 20 days of initial placement and there are no changes to this requirement however the role of the IRO has been amended to enable them to adjourn the review meeting for not more than 20 working days, without the need to satisfy the condition that there is insufficient information to consider.</p> <p>Child in Care Reviews should usually be held at intervals of not more than six months and the timing of reviews under Reg 33(2) is relaxed, meaning that where a review within six months is not possible, they must now take place 'where reasonably practicable thereafter'.</p> <p>Derbyshire's Independent Reviewing Officer Service has not adopted these flexibilities since the introduction of the revised regulations and there are no plans to adopt them at any time moving forward.</p> <p>Performance in relation to the level of IRO oversight during the COVID period has continued to be strong with increased levels of the IRO footprint being demonstrable in casework. The IRO Service has continued to be sufficiently</p>

	<p>resourced to deliver scrutiny of care plans, adding value to the experiences and outcomes for children in our care.</p> <p>Reviews are currently being conducted virtually through a number of social media means, with IROs prioritising separate conversations and video calls with children and young people where they are of an age where this is appropriate.</p> <p>Individual assessments are being made in relation to face to face visits, whilst adhering to the child's risk assessment and government guidance. It remains a priority to the service to increase face to face engagement when this is possible and policy guidance is being regularly reviewed.</p>
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Summary of officer decision review record for decisions that are no longer subject to review

Officer decision re: The Adoption and Children (Coronavirus) (Amendment) (No2) Regulations 2020	Reasons why decision no longer subject to review
Emergency placement with existing foster carers	Flexibility is not extended though emergency placements under regulation 23 of the Care Planning, Placement and Case Review Regulations 2010 that were made before 25 September 2020 can continue to last for up to 24 weeks in accordance with the amendments made by the Adoption and Children (Coronavirus) (Amendment) Regulations 2020. Placements made after this date must comply with

	<p>regulation 23 of the 2010 Regulations and must not last for longer than 6 working days.</p> <p>Compliance is achieved with the original statutory regulations though this could potentially limit flexibility and thus possibly impact on placement sufficiency.</p>
<p>Placements with Connected Persons</p>	<p>Flexibility is not extended though where assessment of a person as a temporary foster carer under regulation 24 has started, or a person under regulation 24 has been approved, before 25 September 2020, the assessment and approval process can continue in accordance with the amendments made by the Adoption and Children (Coronavirus) (Amendment) Regulations 2020.</p> <p>Such placements can continue for 24 weeks.</p> <p>Assessments under regulation 24 started after 25 September must comply with the original regulations and as such can only allow the temporary approval of a connected person for a maximum of 16 weeks while an assessment of suitability is completed.</p> <p>Compliance is achieved with the original statutory regulations though this does limit flexibility and thus could potentially impact on placement sufficiency. There is also the risk that decisions on approval may be deferred or based on limited information which may result in non-approval and thus unregulated placements, or changes in care planning which are not in the best interests of the child.</p>

<p>Duration of short break placements</p>	<p>This provision has not been extended.</p> <p>The usual requirement is that short; break placements last no more than 17 consecutive days (75 days in total in a 12-month period). Under these amendments, a child can now remain in the same short break placement for up to 75 days. To date it has not been necessary to use this amendment in Derbyshire.</p> <p>Compliance is achieved with the original statutory regulations though may limit flexibility and thus possibly impact on placement sufficiency.</p>
<p>Foster Care Panels</p>	<p>This has not been extended.</p> <p>Compliance is achieved with the original statutory regulations.</p> <p>At the time the Government first announced the lockdown on 23rd March and subsequently the communication from Ofsted on 09th April, Derbyshire set up systems to enable the fostering panel to meet virtually so that it can continue to meet and fulfil its function as usual, though virtually.</p> <p>To date this has not been required and Derbyshire's fostering panel has continued with the normal size and functions; but the availability of this option could enable greater agility to meet new demands in a timely manner or less complex matters to be addressed swiftly were the ongoing Coronavirus situation to worsen and impact on operational capacity</p>

<p>Enforcing self-isolation – deprivation of liberty</p>	<p>This has not been extended.</p> <p>This instrument enabled children’s homes to enforce a temporary deprivation of a child’s liberty in respect of a young person who is infectious or suspected of being infectious with coronavirus (COVID-19), to prevent the virus from spreading.</p> <p>To date Derbyshire have had no need to enforce any deprivation of liberty powers for any child in the care of the local authority.</p>
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3. Finance

The amendments do not overall incur additional costs, as they relate to temporary changes to practice, which can be met through existing resources and some changes will enable savings, such as mileage costs.

The imperative remains to adhere to statutory duties, maximise the sufficiency, availability and utilisation of DCC foster care over more costly placement types and these amendments, albeit greatly restricted from 25th September, support that objective.

4. Human Resources Considerations:

As part of the urgent officer decision-making process, regard has been had to human resources implications and these are detailed where appropriate on the original Officer Decisions

5. Legal Consideration

As detailed above, on the 28th August the Government introduced a new statutory instrument - The Adoption and Children (Coronavirus) (Amendment) (No2) Regulations 2020 which will enter force on 24th September and will remain in force until 31 March 2021.

Since the amendments were first enacted there has been national debate and some legal challenge by the voluntary sector e.g. by Article 39 who unsuccessfully applied to the High Court for a judicial review of the amendments.

It is not possible to predict the on-going impact of Coronavirus on practice and related operational challenges though in Derbyshire it is expected that the national picture will apply locally, i.e. some services may continue to face specific and exceptional challenges into the autumn and as hitherto hidden harms come to light, pressures on safeguarding services and children in care provision will grow.

Thus the intention is to maintain the approach detailed in the report agreed on 9th June i.e. not to change general practice around children without strong rationale; but to adapt some processes which will ease some complexity in light of current circumstances and reduce potential for delay in progressing/delivering on children's plans.

This will continue with reference to the reduced The Adoption and Children (Coronavirus) (Amendment) (No2) Regulations 2020; recognising that there will be full statutory compliance unless/until either that the LA is no longer in a position to do so or the existing statutory processes prevents the LA from discharging its responsibilities towards children effective in the current context.

Future planning will consider any legislative changes. This is a proportionate and appropriate response to the situation.

6. Equality Implications

The general principles and proposals within the original report were agreed through discussion with colleagues in Legal services and Finance.

An Equalities Impact Analysis was completed which remains current.

The Foster Care Council have discussed practice during the pandemic to identify both positives and challenges.

Additionally, the Participation and Children's Rights team undertook consultation with young people about how they felt about speaking to their social worker virtually and this was shared with the relevant managers to inform practice, some of the information is included above. Further consultation with children and young people was carried out during the Big Conversation in October.

7. Other Considerations

In preparing this report the relevance of the following factors has been considered: Social Value, Human Rights, equality of opportunity, health, environmental, transport, property, social value and crime and disorder considerations.

8. Background Papers

Officer Decision Recorded considered by Cabinet on 09th July

9. Key Decisions

As indicated in report

10. Call-in:

Is it required that the Call-in period be waived in respect of the decisions being proposed within this report?

No

11. Officer's Recommendations

1. Note how The Adoption and Children (Coronavirus) (Amendment) Regulations 2020 and amendments to practice and procedure have been applied to date.
2. Note how The Adoption and Children (Coronavirus) (Amendment) (No2) Regulations 2020 which will enter force on 24 September and will remain in force until 31 March 2021 will be applied, as approved by the Executive Director for Children's Services on 11th November 2020.
3. Agree that any further revisions of practice and procedure (falling within that permitted by The Adoption and Children (Coronavirus) (Amendment) (No2) Regulations 2020 including any subsequent extension can be made utilising the delegated powers of the Executive Director in consultation with the Lead Member for Children's Services.

Jane Parfremment
Executive Director for Children's Services

**DERBYSHIRE COUNTY COUNCIL
OFFICER DECISION AND DECISION REVIEW RECORD**

Officer: Jane Parfremment <i>*For emergency powers, this would be the Executive Director</i>		Service: Children's Services
Delegated Power Being Exercised: <i>*The delegation detailed in the Constitution to the specified officer or emergency powers</i>		
Executive Director - delegated Power under the emergency powers contained in the constitution		
Subject of Decision: (i.e. services affected)	<p>Cabinet on 9th July 2020, a number of the 10 amendments made to the regulations under the children act legislation. The Adoption and Children (Coronavirus) (Amendment) Regulations 2020, provided for flexibilities to be applied to the regulations during the Covid 19 period until the 25th September, which have now lapsed.</p> <p>Due to the strength of the children's social care workforce not all the amendments were deemed necessary to be applied in Derbyshire and delegated powers were also approved to the Executive Director for Children's Services in the specific areas as listed below and greater details is provided in the attached report intended for Cabinet.</p> <p>Below is an outline of those amendments that are deemed necessary to continue and those that are not.</p>	
Is this a review of a decision? If so, what was the date of the original decision?	Yes 9 th July 2020	
Key decision? If so have Democratic Services been notified?	Yes	
Decision Taken (specify precise details, including the period over which the decision will be in place and when it will be (further) reviewed):	<ul style="list-style-type: none"> • Continue to respond appropriately to any further potential of lockdown, social work and children in care visits; where direct visits are not possible due to potential risk to health, virtual visits to continue. • Continue to apply with additional safeguards, the flexibility of self-reporting of health information by the person making an application to foster. • Fostering Panels to continue to meet through virtual means. 	

	<ul style="list-style-type: none"> • Continue to assess the way independent visits to children’s homes are conducted to ensure the correct protective measures are put in place. • The flexibility for emergency placement with existing foster carers is not extended. • Assessment and temporary placement of a child with people not connected to the child is not extended. • Modifications the care planning for children and access short break placements with the same foster carer is not extended. • Enforcing self-isolation has not been extended
<p>Reasons for the Decision (specify all reasons for taking the decisions including where necessary reference to Council policy and anticipated impact of the decision) Where the decision is subject to statutory guidance please state how this has been taken into consideration.</p>	<p>Details in attached report – overarching theme is to maintain best practice wherever possible and only apply these amendments where there is a strong rationale to do so.</p> <p>Related Council policy objectives include;</p> <ul style="list-style-type: none"> • Keeping children safe • Achieving timely adoption • Improving the Sufficiency of placements for Children in care
<p>Alternative Options Considered (if appropriate) and reasons for rejection of other options</p>	<p>Full adoption of amendments – but the intention is to maintain robust practice wherever possible and only apply these permissive powers where there is a strong rationale to do so.</p>
<p>Has a risk assessment been conducted ?- if so what are the potential adverse impacts identified and how will these be mitigated?</p>	<p>Yes – as detailed in the EIA submitted with the report in July 2020. Main points:</p> <ul style="list-style-type: none"> • Where virtual visits risk missing the necessary scrutiny – other sources of information will be used to check the well-being of children.
<p>Would the decision normally have been the subject of consultation with service users and the public? If so, explain why this is not practicable and the steps that have</p>	<p>No</p>

or will be taken to communicate the decision	
Has any adverse impact on groups with protected characteristics been identified and if so, how will these be mitigated?	As detailed in EIA submitted in July 2020
Background/Reports/Information considered and attached (including Legal, HR, Financial, Equality and other considerations as required))	<p>Report attached with HR, legal and financial implications. Background papers available:</p> <ul style="list-style-type: none"> • The Adoption and Children (Coronavirus) (Amendment) Regulations 2020 • The Adoption and Children (Coronavirus)(Amendment) (No.2)Regulations 2020 • Review of The Adoption and Children (Coronavirus) (Amendment) Regulations 2020 and subsequent The Adoption and Children (Coronavirus) (Amendment) (No2) Regulations 2020 - Report to Cabinet 10th December 2020 <p>The purpose of The Adoption and Children (Coronavirus) (Amendment) Regulations 2020 is the instrument temporarily amended 10 sets of Regulations relating to children’s social care to support services manage the coronavirus (COVID-19) outbreak. The changes prioritise the needs of children, whilst relaxing some administrative and procedural obligations to support delivery of children’s services but maintaining appropriate safeguards in such extraordinary circumstances. Of the 10 amendments DCC will continue adopting four to support services to manage the increased pressure on children’s social care and staff. The amendments will continue to be in force until 31st March 2021. The proposals detailed in the report are therefore a proportionate response to the current COVID-19 situation.</p>
Consultation with relevant Cabinet Member (s) – please note this is obligatory.	Yes with Cllr Dale
Approval of Chair of appropriate Improvement and Scrutiny Committee where call in is intended to be waived – please	Yes with Gary Musson – previous report in July 2020

note this is obligatory in those circumstances

Decision:

1. To approve the amendments to practice and procedure as detailed above until 31st March 2021 or such earlier review of the The Adoption and Children (Coronavirus) (Amendment) Regulations 2020.
2. Continue to utilise delegated powers of the Executive Director in consultation with the Lead Member for Children's Services to agree that any further revisions of practice and procedure falling within that permitted by the The Adoption and Children (Coronavirus) (Amendment) Regulations 2020.

Signature and Date:



JANE PARFREMENT
11th November 2020