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People Services  
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& Children's Social Care

## **Implications and proposed process for implementation of the Children's Social Care flexibilities.**

### **Purpose**

- 1.1 The report provides
- A summary of the regulatory flexibilities announced by Department for Education (DfE) regarding the Adoption and Children (Coronavirus) (Amendment) Regulations 2020 ("Amendment Regulations"), which temporarily amend 10 sets of regulations relating to Children's Social Care from 24 April 2020 until 25 September 2020.
  - A proposed process for their implementation (if required)
  - The implications of using the flexibilities for the City Council, Service Users, and Children's Social Care in Derby.

### **Recommendation(s)**

- 2.1 To agree to implement the flexibilities as set out in this report and subject to recommendation 2.2.
- 2.2 To delegate authority to the Strategic Director for Peoples Service, to make decisions when appropriate to implement the flexibilities if required as set out in appendix 1.

### **Reason(s)**

- 3.1 There is a clear decision-making process for using the flexibilities is agreed in advance of it being required. The rationale for implementation is to ensure services can be maintained and delivered by Early Help & Children's Social Care for citizens of Derby. Where it becomes necessary to utilise any of these flexibilities, it is important that this is properly recorded, along with the reasons for doing so.

### **Supporting information**

- 4.1 The amendments are there to assist the Children's social care sector to respond during the coronavirus pandemic and provide extra flexibility in some circumstances. They will cease to have legal effect on the 25 September 2020.

The duties to our most vulnerable children that are set out in primary legislation (such as in section 22(3) of the Children Act 1989 and section 1 of the Adoption and Children Act 2002) remain in place.

The following regulations have been relaxed and/or have requirements imposed under them amended:

- Under the Adoption Agencies Regulations (2005) which set out the process for assessing the suitability of people to adopt a child and the suitability of children to be adopted, a) it removes the duty on adoption agencies to refer cases to the adoption panel, b) it makes some amendments to the adopter approval process, to enable information that currently has to be collected during stage 1 of the approval process to be collected during stage 2, and c) relaxes some timescales within which adoption agencies must take steps.
- Amends the Care Planning, Placement and Case Review (England) Regulations 2010 which set out the requirements of the care planning process, to make it possible for any person to be approved as a local authority foster carer for a temporary period (not just a person who is a relative, friend or person connected to the child) and extend the length of that period from 16 to 24 weeks.
- It also increases the length of time a foster carer can be approved as an emergency foster carer to 24 weeks. A number of timescales within which local authorities must take steps are also relaxed.
- Amends the Fostering Services (England) Regulations 2011 which set out the process for approvals as local authority foster parents. They relax some timescales within which fostering agencies must take steps and remove the duty on fostering service providers to refer cases to the fostering panel.
- Amends the Children's Homes (England) Regulations 2015 to ensure that they don't prohibit a child being deprived of their liberty in a children's home in accordance with an exercise of powers under Schedule 21 to the Coronavirus Act 2020. A number of timescales are also relaxed.
- Amends the Residential Family Centres Regulations 2002 to relax some timescales and to make it clear that interviews need not be conducted face-to-face.
- Amends Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc) Regulations 2015 to omit regulation 27 which sets out the frequency by which premises must be inspected.
- Amends the Children (Private Arrangements for Fostering) Regulations 2005, the Children Act 1989 Representations Procedure (England) Regulations 2006, the Education and Inspections Act 2006 (Inspection of Local Authorities) Regulations 2007 and the Children Act 2004 (Joint Area Reviews) Regulations 2015 to relax timescales within which local authorities must take steps.
- The Regulations also include a number of savings provisions to ensure that some amendments made by these Regulations continue to apply in certain circumstances after the expiry of the amendments on 25th September 2020.

The Secretary of State must review the effectiveness of the amendments made by these Regulations during the period in which the amendments have effect.

- 4.2 They should only be used:
- Where staff shortages, due to sickness or other reasons, make it difficult or impossible to meet the original requirements.
  - Where making use of flexibilities to take a different approach is the most sensible, risk-based response in light of other demands and pressures on services; this might involve focussing services on those most at risk.
  - Where there is a consequential reason to make use of flexibilities, for example due to limited capacity in other providers or partners making it difficult or impossible to comply with the original requirements.
- 4.3 The importance of clear decision making and record keeping of decisions and evidence cannot be overstated as:
- Ofsted will take note of any use of these flexibilities, so providers should be ready to explain why their use was necessary.
  - This should be available to share with Ofsted, and others such as Independent Reviewing Officers, as appropriate.
  - The records may be used for Ofsted's annual engagement meetings as well as subsequent inspection activity.
  - Ofsted will review the relevant records if they receive any complaints or concerns or whistleblowing.
- 4.4 Any local decisions that need to be taken during this period should bear in mind the following principles. Decisions should be:
- Child-centred – promoting children's best interests: nothing is more important than children's welfare; children who need help and protection deserve high quality and effective support as soon as help is identified.
  - Risk-based – prioritising support and resources for children at greatest risk.
  - Family focussed – 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.
- 4.5 The proposed process for using the amendments for Derby City Council:
- It is important that a clear decision-making process for using the flexibilities is agreed in advance of it being required.
  - The national guidance makes clear that the overarching approach to making use of the flexibilities should be approved at chief officer level in local authorities, and top tier management level in other services and providers.
  - Where it becomes necessary to utilise any of these flexibilities, it is important that this is properly recorded, along with the reasons for doing so.
  - Local Authorities should set out the local circumstances that have given rise to the need to use the flexibilities.
  - In a City Council governance context, these decisions are difficult and will have an impact on Derby citizens, especially our children, and the services we are able to provide.

- They are operational decisions, based on professional expertise and judgement of the Director of Children's Services, and informed by discussions with the Portfolio Holder and Director of Early Help & Children's Social Care about local circumstances around changing service demand, and the most effective workforce deployment in response to the ongoing COVID 19 crisis.
- Early Help and Children's Social Care has clear processes in place for managing service risk and escalation. Through its Senior Leadership Team, the service will keep under review its workforce, staff attendance, capacity & risk.
- These provide a robust set of triggers for requesting use of the amendments, with a clear audit trail.
- If any of the triggers begin to encroach, Early Help & Children's Social Care Senior Leadership Team can escalate in a timely manner for consideration. Therefore, it will be clear when use of the amendments may need to be considered.

4.6 Within the Constitution under the general scheme of delegation the exercise of the responsibilities set out below are delegated by the City Council to the Chief Executive, all Strategic Directors and the Director of Public Health:

- *To administer all functions within their remit, including the exercise of all relevant duties and powers under any legislation or at Common Law. This includes the power to do anything which is calculated to facilitate, or is conducive or incidental to the discharge of those functions.*

It is therefore recommended that the Strategic Director People will decide in consultation with the Director Early Help and Children's Social Care to implement the amendments, and this discussion will also involve the Cabinet Member for Children's Services. In an emergency, the involvement of the Portfolio Holder will be through briefing at the earliest opportunity, but the principle is that the Portfolio Holder will be consulted prior to the amendments being used. The Leader of the Council will be informed at the earliest opportunity. A record will be made of any amendments with a clear rationale, risk and mitigations, decision and review timelines. This will be available for Ofsted to inspect. The flexibilities currently being applied are set out at Appendix 1.

## **Public/stakeholder engagement**

5.1 There is no requirement for public or stakeholder engagement prior to the Strategic Director People agreeing temporary flexibilities to ensure that vulnerable children and young people who are at risk of harm are appropriately safeguarded and able to be placed in suitable care placements.

## **Other options**

6.1 No other options have been considered.

## Financial and value for money issues

- 7.1 Whilst limited financial consequences of any decision to invoke the flexibilities would ensue, these would not be material to the overall financial position of the Council, as the flexibilities would be temporary in nature.

## Legal implications

- 8.1 Adoption and Children (Coronavirus) (Amendment) Regulations 2020 (“Amendment Regulations”), which temporarily amend 10 sets of regulations relating to Children’s Social Care. The Amendment Regulations came into force on 24 April 2020 and remain in force until the Coronavirus Act renewal date on 25 September 2020, though they will remain under review.
- 8.2 The Amendment Regulations are intended to provide greater flexibility for local authorities and providers during the coronavirus (Covid-19) outbreak, representing a relaxation of existing legislative requirements; however, the DfE has made clear that these should only be used when absolutely necessary, with senior management oversight, and must be consistent with the overarching safeguarding and welfare duties that remain in place.

## Other significant implications

- 9.1 N/A

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Emily Feenan	
Finance		
Service Director(s)	Suanne Lim	
Report sponsor	Andy Smith	
Other(s)		

## **Appendix 1: Early Help & Children Social Care Flexibilities Grid**

Flexibility	In Use (✓) / Not in Use (X)	Kept Under Review	Notes
Adoption Agencies Regulations (2005) - Removal of the duty on adoption agencies to refer cases to the adoption panel, changes to adopter process and timescales.	X	✓	The virtual D2N2 RAA agreed we were not going to bi-pass panels but would do virtual panels and operate with slightly fewer staff if necessary.
Relaxing of Fostering Panel regulations May 2020	✓ Limited	✓	DCC fostering service have agreed to a virtual panel to hear mainstream fostering applications and cases where there have been concerns about the practice of an approved carer. Limited change is that extensions of connected person's will go straight to the Agency Decision Maker (ADM) for decisions.
Changes to the Care Planning, Placement and Case Review (England) Regulations 2010 - Freedom to make new foster carers on a connected person basis even if not connected.	X	✓	This freedom is helpful if lots of people become unwell, but we are not in that situation so still observing best practice.
First reviews for foster carers going to ADM, not panel and ADM	X	✓	
Changes to the Fostering Services (England) Regulations 2011 which set out the process for approvals as local authority foster parents.	✓	✓	To prevent delay in the approval of new foster carer applications DCC have introduced the Coram Baaf health self-declaration form. Assessments can be carried out virtually also. Change of approvals now have 24 weeks to take to ADM for any changes.
Changes to Children's Homes (England) Regulations 2015 to ensure that they don't prohibit a child being deprived of their liberty in a children's home in accordance with an exercise of powers under Schedule 21 to the Coronavirus Act 2020	X	✓	
Changes to <i>Children (Private</i>			We are not setting out to work to different timescales but if

<p><i>Arrangements for Fostering Regulations 2005, the Children Act 1989 Representations Procedure (England) Regulations 2006, the Education and Inspections Act 2006 (Inspection of Local Authorities) Regulations 2007 and the Children Act 2004 (Joint Area Reviews) Regulations 2015, to relax timescales within which local authorities must take steps.</i></p>	X	✓	<p>due to Covid-19 ill health visits are frustrated or delayed, the timescale is relaxed by this change. We have maintained a commitment to BAU wherever practicable.</p>
<p>Changes to Residential Family Centres Regulations 2002 to relax some timescales and to make it clear that interviews need not be conducted face-to-face.</p>	X	X	<p>None in City.</p>
<p>Amends Her Majesty's Chief Inspector of Education, Children's Services and Skills Regulations 2015 to omit regulation 27 which sets out the frequency by which premises must be inspected.</p>	NA	NA	<p>Ofsted apply and are working to a new regime to prioritise where inspections occur.</p>