

## Written evidence submitted by Article 39

### **Education Select Committee Inquiry: The impact of Covid-19 on education and children's services**

#### **Submission from Article 39, June 2020**

#### **Summary**

1. Article 39 fights for the rights of children living in state and privately-run institutions (children's homes, boarding and residential schools, mental health inpatient units, prisons and immigration detention). We take our name from Article 39 of the UN Convention on the Rights of the Child (UNCRC), which entitles children who have suffered rights violations to recover in environments where their health, self-respect and dignity are nurtured.
2. Our Children and Young People's Advocates Network (CYPAN) seeks to uphold the rights of children and young people in England through promoting and supporting excellent independent children's rights advocacy. CYPAN has over 160 members working to empower children and young people to ensure their rights are upheld and their views and wishes are heard and taken seriously. Since the introduction of restrictive measures in light of Covid-19 we have been hosting regular virtual discussion sessions with members of CYPAN from which we have an insight into the response of frontline advocacy practitioners to Covid-19.
3. Of the areas outlined in the inquiry's terms of reference, this response will focus on the capacity of children's services to support vulnerable children and young people and the effect of Covid-19 on disadvantaged groups, particularly children in care and care leavers. This submission highlights the following key concerns:
  - Access to high quality, independent advocacy is a vital part of ensuring children are heard, informed, respected and able to participate in decisions which affect them. While many advocates have gone above and beyond to ensure that children and young people continue to receive the support they need, this period has further highlighted gaps in the provision of advocacy to children and young people.
  - The suspension of complaints enquiries of councils and care providers by the Local Government and Social Care Ombudsman in response to Covid-19, and confused central government messaging, has led to some very poor practice in the handling of complaints under the Children Act 1989 complaints procedure.
  - The safeguards that usually exist for children in the criminal justice system, including on-site advocacy services, are no longer available, with most children being placed in prolonged solitary confinement and under severely restricted regimes.
  - The Adoption and Children (Coronavirus) (Amendment) Regulations 2020 substantially weaken legal protections for children in care and were introduced without clear rationale; without proper consultation; and without parliamentary scrutiny.
4. **In light of the evidence in this submission, Article 39 recommends that:**

- **Further work should be done to consolidate the patchwork of statutory entitlement and to improve awareness of advocacy among professionals and children and young people.**
- **Local authorities should be required to set out a clear strategy for a local offer for all children and young people (up to age 25) who need advocacy, ensuring effective assistance is provided across different services and systems as well as signposting to specialist support where necessary.**
- **Decisions should not be made to suspend or reduce the availability and accessibility of advocacy services as a result of reduced demand or adaptations made during this unprecedented health crisis.**
- **The Local Government and Social Care Ombudsman should introduce a triage-based system, where at least the most serious cases are considered for investigation, to help ensure a safeguard remains for the most vulnerable children. It should also produce information about its role and investigations especially for children and young people.**
- **Changes to the statutory timeframes for the complaints process under the Children Act 1989 introduced by the Adoption and Children (Coronavirus) (Amendment) Regulations must be revoked (see below for wider recommendation on these regulations)**
- **Unless and until arrangements are made to ensure children are guaranteed safe and humane conditions in custody, they should not be detained, either on remand or under sentence.**
- **At this unprecedented time, everything possible should be done to safeguard vulnerable children's rights and ensure they receive the care they need while also ensuring the lives and health of carers and staff are properly protected. The government must revoke the Adoption and Children (Coronavirus) (Amendment) Regulations 2020.**
- **Any future proposed changes to the law affecting children genuinely connected to Covid-19 must be transparent about the reasons why they have been introduced and subject to open consultation and parliamentary scrutiny. Timescales for these democratic processes may have to be tighter than usual during the current health crisis.**

### **Challenges faced by advocates supporting vulnerable children and young people**

5. Article 12 of the UNCRC entitles children to express their views freely in all matters affecting them, and to have these views given due weight in accordance with the child's age and maturity. Giving due consideration to children's wishes and feelings is also a statutory requirement under the Children Act 1989. Access to high quality, independent advocacy is a vital part of ensuring children are heard, informed, respected and able to participate in decisions which affect them.
6. The new Covid-19 regime has created a number of challenges to the provision of advocacy, the most prominent of which is working with children remotely, and how this impacts on their ability to engage with advocates and to share information freely and confidentially. First contact and establishing new relationships can prove especially difficult. Even where initial contact is made

successfully, offering support remotely and helping children and young people to understand their rights and entitlements this way can be challenging.

7. Social distancing measures and restrictions on movement have a particularly negative impact on privacy rights within institutional settings. Some advocates have expressed concerns about children's ability to speak freely, privately and confidentially to their advocate and there is a higher likelihood of children being controlled and prompted during their phone/video calls. In some cases, foster carers have complained about questions asked by advocates, including those that related to the child's experience of the foster placement and what contact they wanted with their family, and failed to facilitate children having private and confidential discussions where they have space to voice their wishes and feelings. In two cases, one of which concerned a children's home and another a foster placement, an advocate has had to raise the issue formally with the local authority.
8. For some children, engagement via digital tools is simply not an option. This could be due to communication needs, cognitive impairments or personal experiences and preferences, combined with privacy and confidentiality concerns. Some children are unable to access telephone and digital technology for safeguarding reasons. For these groups, where the need for advocacy is likely, on average, to be higher than other groups, access to advocacy poses significant challenges.
9. There is also significant concern about children and young people who do not currently have an advocate and whose vulnerable situation might be exacerbated by social distancing measures and travel restrictions. This includes homeless teenagers and children experiencing domestic violence and abuse and children who will become more isolated and may need an advocate but will be 'under the radar' of advocacy services.
10. In the face of these challenges, the advocates we support have worked hard to adapt their working practices to ensure children receive the help they need. Digital forms of communication are proving very helpful and creative engagement tools, such as games, arts and crafts and use of 'emotion cards', can also be used remotely to build trust between children and advocates. Where 'digital contact' is inappropriate or insufficient, services are developing new approaches to offer reassurance and make first contact more comfortable. This includes developing advocates' profiles, and even introductory videos, which can be sent to children and young people to introduce workers before first contact.
11. Many advocacy services are proactively reaching out to all children in care and care leavers to check if they have food, medication and other essentials. One advocate shared that their service is sending activities to children and young people's homes to help them cope with isolation. Others are dropping cards at children and young people's homes letting them know there is someone outside their family they can contact. It is hoped that these methods will prove helpful where there are particular concerns about the well-being of a child or young person because, for example, they have moved to a new home/placement only very recently.

12. Effective provision of independent advocacy to certain groups of highly vulnerable children and young people poses particular challenges under the Covid-19 regime. For example, the provision of non-instructed advocacy (NIA) to children who are unable to issue instructions, due to complex health needs and disabilities or young age, is hindered under social distancing measures because NIA relies heavily on observation and direct contact that is not currently possible. Where instruction cannot be provided and it is impossible to ascertain the child's wishes, advocates focus on upholding children's rights through 'rights-based advocacy'. This entails building an understanding of the child's wider circumstances based on available information and advocating for their rights and entitlements to be addressed.
13. In addition to the challenges faced in establishing the infrastructure and institutional cooperation to provide support digitally, advocates have also reported challenges in engaging young people in these new forms of online support. A number of services have reported a drop in numbers compared to their pre-lockdown face to face drop-in service. Others have seen a rise in demand but struggled to meet that demand in the same way as they did prior to lockdown. Some services are being asked to provide more support but without an increase in funding. Others are going beyond the scope of their commissioned service to ensure that children and young people do not fall through any gaps, including, for example, proactively contacting all the young people they work with.
14. Advocacy for children in secure mental health settings has also been difficult to deliver. A face-to-face presence on the units is important for engagement, especially initial engagement but visits have not been possible. Many young people have been reluctant to engage via video calls and many advocates have been reliant on medical staff to facilitate contact with children and young people. Children can struggle if they wish to appeal their detention but do not have support from an advocate to complete forms and cannot meet with them and their solicitor. Drop-in mental health advocacy sessions are of vital importance for children and young people not formally detained under the Mental Health Act and therefore not automatically entitled to advocacy, but many of these have not been possible due to Covid-19. The drop-in nature of such services means that contact cannot be made proactively by advocates and progress to move to 'virtual' provision has been slow.
15. The response to Covid-19 has served to illustrate the extremely varied practice in terms of advocacy provision. The 'postcode lottery' for children and young people that has been consistently highlighted by the Children's Commissioner for England remains a significant problem.
16. **Recommendation: The Covid-19 response has further highlighted gaps in children and young people's entitlement to, understanding of, and access to advocacy. Further work is needed to consolidate the patchwork of statutory entitlement and to improve awareness of advocacy among professionals and children and young people.**
17. **Recommendation: Local authorities should be required to set out a clear strategy for a local offer for all children and young people (up to age 25) who need advocacy, ensuring effective**

assistance is provided across different services and systems as well as signposting to specialist support where necessary.

18. **Recommendation: Decisions should not be made to suspend or reduce the availability and accessibility of advocacy services as a result of reduced demand or adaptations made during this unprecedented health crisis.**

## Complaints

19. On 27 March, the Local Government and Social Care Ombudsman (LGO) announced it was suspending complaints enquiries of councils and care providers in light of the coronavirus outbreak. It stopped all casework activity that demands information from, or action by, local authorities and care providers to “protect” their capacity to deliver vital frontline services during the pandemic and cases then in progress were “frozen”.<sup>1</sup> While there is of course a real need to alleviate pressure on local authorities at this unprecedented time, the potential impact of this decision on children and young people in the care system has been of great concern. Last year, the LGO made decisions in 1,732 complaints about education and children’s services and 66% of these were upheld.<sup>2</sup> These decisions can make a huge difference both to individuals and to those affected by the issues investigated who did not complain themselves. On social media, the LGO outlined that it would “be closely observing what happens and if we sense significant levels of injustice arising, we can and will re-engage at any point”.<sup>3</sup>
20. Between 27 March and 23 April, no changes had actually been made to the legal framework for the Children Act 1989 statutory complaints procedure. Yet, advocates saw some local authorities redrafting their complaints processes and switching to a ‘prioritisation mode’. This confusion about statutory duties was not helped by Department for Education guidance issued at the time that incorrectly suggested local authorities could simply not comply with their statutory duties, providing they recorded the reasons for doing so.<sup>4</sup> Article 39 co-drafted an open letter to the Children’s Minister calling for the guidance to be clarified, which it subsequently was, but it is important to note the significant confusion amongst those working in children’s social care regarding changes to law and regulations.
21. The Adoption and Children (Coronavirus) (Amendment) Regulations 2020 subsequently changed the law to ‘relax’ the statutory timeframes in The Children Act 1989 Representations Procedure (England) Regulations 2006. Adults and children who make a formal complaint about children’s social care have the legal right to request that it be investigated by a review panel. Now, instead of the regulations stating that the review panel must meet within 30 working days of a complainant’s request for a review panel, the requirement is 30 working days “or as soon as is reasonably practicable”. In a similar vein, the requirement for the panel to send a report to the

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<sup>1</sup> Local Government and Social Care Ombudsman, Coronavirus Update, at <https://www.lgo.org.uk/coronavirus>

<sup>2</sup> Local Government and Social Care Ombudsman, Local government complaint reviews 2018/19 at <https://www.lgo.org.uk/information-centre/reports/annual-review-reports/local-government-complaint-reviews>

<sup>3</sup> See LGO twitter account at <https://twitter.com/LGOmbudsman/status/1243561197963816961>

<sup>4</sup> Community Care, Covid-19: children’s social care guidance criticised for ‘unlawfulness’ and approach to PPE, April 7 2020, at <https://www.communitycare.co.uk/2020/04/07/coronavirus-guidance-childrens-social-work-draws-criticism-ppe-statutory-duties/>

complainant and the local authority within 5 days of its meeting has been changed to 5 working days “or as soon as is reasonably practicable”. This dilutes important procedural safeguards around the independent investigation of complaints. It has the potential to delay critical decision-making for children: two of the most common complaints from children in care relate to placements (being forced to move, or not allowed to move) and contact with their brothers and sisters.

22. At Article 39 we have heard concerns about local changes to complaints mechanisms and procedures and received reports of great variation in practice, with some authorities accepting and investigating complaints as normal and others being reluctant to take on any new ones. Advocates have shared examples of authorities wrongly informing children and young people at Stage 1 that if they are unhappy about the outcome of their complaint that they need to make a complaint to the LGO – even though this has not exhausted the social care statutory procedure and referrals to the LGO are not currently possible. Children and young people’s complaints are being handled under the corporate complaints procedure rather than the statutory social care procedure and there is a lack of impartiality in the statutory social care procedure itself.
23. Concerns have been raised about time-critical complaints and the impact of delays on children and young people’s current as well as future circumstances - examples included a time-sensitive complaint relating to access to education in September 2020 and complaints regarding the age assessment of unaccompanied children in the asylum system where access to appropriate support is entirely dependent on the resolution of the age dispute. Timeframes are being missed without clear reasons being provided or an extension requested and there is a danger that Covid-19 is being used as a blanket excuse.
24. The Children Act 1989 complaints procedure should be seen as an opportunity to learn and improve the process, but systems currently suffer from a lack of oversight and quality assurance. If young people’s concerns are not followed up, not even acknowledged in some cases, this can exacerbate existing feelings of worthlessness. It is also important to remember that the Children Act 1989 complaints procedure can prevent further damage being done by, for instance, ensuring that a decision to move a child in care is frozen whilst the complaint is being investigated.
25. In June the LGO announced that it was now “restarting some *existing* investigations with councils who have indicated they have capacity to work with us”, but will “only take on new complaints once we are confident that both we and those we investigate have the resources to handle them”. It has also reopened its helpline (daily, 9am-12pm) for general advice about the complaints process although still anticipates that local authorities will “respond appropriately to any complaints they receive during this time” and so expects urgent problems to be directed to them.<sup>5</sup>
26. **Recommendation: Article 39 is pleased to see that the LGO has reopened its advice line for general inquiries but would urge it to go further than this. The LGO should introduce a triage-**

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<sup>5</sup> <https://www.lgo.org.uk/contact-us>

based system, where at least the most serious cases are considered for investigation, to help ensure a safeguard remains for the most vulnerable children. It should also produce information about its role and investigations especially for children and young people.

27. **Recommendation: Changes to the statutory timeframes for the complaints process under the Children Act 1989 introduced by the Adoption and Children (Coronavirus) (Amendment) Regulations must be revoked (see below for wider recommendation on these regulations)**

### Children in the criminal justice system

28. As the Howard League has highlighted, in response to Covid-19 “the regime in prisons has been severely restricted, with most children being placed in prolonged solitary confinement. There are no face-to-face visits, no face-to-face education in the majority of establishments and no therapy...The usual safeguards that exist, including on-site advocacy services, are no longer present”.<sup>6</sup>
29. Government policy makes clear that in order to facilitate social distancing, prisoners can no longer take part in recreational activities<sup>7</sup> and the cancellation of all visits from external visitors means families, social workers, youth offending team workers, lawyers and doctors cannot have face-to-face visits with children. In April 2020, an HM Inspectorate of Prisons (HMIP) report noted with concern that some services, including the advocacy service provided by Barnardo’s and intensive one-to-one programmes, had been removed.<sup>8</sup> The lack of external visitors not only affects children’s access to services and support; it also reduces the opportunities for external scrutiny and therefore diminishes safeguarding.
30. IT systems in prison are generally restricted to court video-links. While children in prison have been given additional phone credit, this is typically their only contact with the outside world. The HMIP report noted that all three sites visited had been slow to implement video calling, although the government has stated that family video calls will be introduced at prisons and young offender institutions across England and Wales.<sup>9</sup> Difficulties in contacting families and professionals make planning for release especially problematic.
31. Whilst lockdown is being eased for the general public, the Ministry of Justice has made it clear that restrictions will need to continue in prison for the remainder of this financial year if the virus is to be contained and safely managed.<sup>10</sup> A continuation for up to a year of the severely

<sup>6</sup> Children in prison during the Covid-19 pandemic: A briefing from the Howard League for Penal Reform, at <https://howardleague.org/wp-content/uploads/2020/05/Children-in-prison-during-covid-19.pdf>

<sup>7</sup> Ministry of Justice and HMPPS, Guidance: Coronavirus (COVID-19) and prisons, 9 April 2020, <https://www.gov.uk/guidance/coronavirus-covid-19-and-prisons#changes-to-regimes>

<sup>8</sup> HM Chief Inspector of Prisons, Report on short scrutiny visits to Young offender institutions holding children, 21 April 2020 at <https://www.justiceinspectors.gov.uk/hmiprison/inspections/young-offender-institutions/>

<sup>9</sup> <https://www.gov.uk/government/news/secure-video-calls-to-help-prisoners-maintain-family-ties>

<sup>10</sup> Dr. Éamonn O’Moore, National Lead for Health & Justice, PHE and Director UK Collaborating Centre, WHO Health in Prisons Programme (European Region), Briefing paper- interim assessment of impact of various population management strategies in prisons in response to COVID-19 pandemic in England, April 24, 2020 (Commissioned by: Jo Farrar, CEO, HM Prisons & Probation Service) at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/882622/covid-19-population-management-strategy-prisons.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/882622/covid-19-population-management-strategy-prisons.pdf)

restricted regimes that have been in place in child prisons since the end of March seriously contravenes children’s rights under the UNCRC and places children at substantial risk of significant harm. This is a child protection scandal which falls squarely within the remit of the Department for Education.

32. **Recommendation: Unless and until arrangements are made to ensure children are guaranteed safe and humane conditions in custody, they should not be detained, either on remand or under sentence.**

### Weakening of legal protections for children

33. On Thursday 23 April, the government laid the Adoption and Children (Coronavirus) (Amendment) Regulations 2020 (‘Statutory Instrument 445’),<sup>11</sup> which amended ten sets of regulations in order to “assist the children’s social care sector” during the Covid-19 crisis by “relaxing[ing] requirements imposed under them”. They came into force the following day. Article 39 understands the tremendous pressures which local authorities and public services are under, and fully supports changes which help to protect lives and safeguard health. However, these regulations substantially weaken legal protections for children in care and were introduced without clear rationale; without proper consultation; and without parliamentary scrutiny. It is notable that no extra protections were afforded to children through these regulations, including to the 6,000+ children in care placed in unregulated accommodation often many miles from home. BBC Newsnight has investigated and reported some appalling practices in this area. Article 39 convenes the ‘Scrap S.I. 445’ campaign calling for the withdrawal of Statutory Instrument 445.<sup>12</sup> We have also issued judicial review proceedings seeking a court order quashing the Regulations.
34. The changes introduced by Statutory Instrument 445 echo attempts, made during the passage of the Children and Social Work Act 2017, to grant local authorities the power to opt out of their children’s social care duties for up to six years as a trial for removing the duties altogether. Key changes to children’s social care regulations made in April would have been covered by the Bill’s ‘exemption clauses’ which Ministers were unable to get through Parliament in 2016/17, including relaxing duties around the independent review of children’s care; relaxing duties around every child in care having a social worker; removal of safeguards from children in short breaks; and removing the duty to have adoption and fostering panels. The move was widely and strongly opposed then,<sup>13</sup> as were subsequent attempts to diminish legal protections in 2018 and 2019.<sup>14</sup>

<sup>11</sup> <http://www.legislation.gov.uk/uksi/2020/445/made>

<sup>12</sup> <https://article39.org.uk/scrapsi445/>

<sup>13</sup> BBC News, Ministers’ U-turn over ‘bonfire of children’s rights’, 2 March 2017, at <https://www.bbc.co.uk/news/education-39143396>

<sup>14</sup> The Guardian, Government backs down over ‘myth-busting’ guide on child protection, 24 March 2019, at <https://www.theguardian.com/society/2019/mar/24/government-backs-down-over-myth-busting-guide-on-child-protection>

35. As well as changes to the complaints system addressed at paragraph 18, key changes introduced by Statutory Instrument 445 include:

- Social workers no longer have a duty to visit children in care at six-week intervals (or the first week after a new placement). The law now allows visits to be made “as soon as is reasonably practicable”, despite the fact that ‘visits’ can now also take place by phone or video call.
- Six-monthly reviews of looked-after children’s care are no longer mandatory – they now must take place “where reasonably practicable”.
- Standards governing children’s homes have been significantly relaxed as stipulations that care is delivered by appropriately skilled, experienced and supervised staff now need only be followed “where reasonably practicable”. Requirements that homes graded ‘inadequate’ or ‘requires improvement’ are inspected twice-yearly by Ofsted have been removed. In addition, providers must now only “use reasonable endeavours” to ensure monthly independent ‘regulation 44’ visits take place.
- Fostering and adoption panels are no longer required (they have been made optional) and children can be placed in ‘fostering for adoption’ placements without senior officer approval.
- Children’s homes can now be directed by external agencies to deprive children of their liberty under Coronavirus Act 2020 powers if suspected to have Covid-19 (previously such detention was only permissible through a court order).
- The maximum length of emergency placements with local authority foster carers has been extended from 6 days to 24 weeks.
- Temporary foster carers no longer need to have a connection with the child, and senior officer approval is no longer required for placements with foster carers outside the child’s home area.
- Local authority action in relation to children who are privately fostered is loosely required “as soon as is reasonably practicable” rather than within 7 working days.

36. The Explanatory Memorandum to the Regulations<sup>15</sup> states that it was not possible to comply with the rule which requires relevant instruments to be laid before Parliament for at least 21 days prior to coming into force because “children’s social care resources are already stretched as a result of staffing shortages and an increased demand for services”. The Department for Education claimed to have “consulted informally with the sector who have asked for these changes to be in force as a matter of urgency”. However, there was no public consultation on any of the ten sets of regulations and correspondence disclosed as part of Article 39’s legal challenge show that it was the government which decided to review all relevant children’s social care legislation regulations and only after this did it chose a select group of organisations to ‘consult’ privately.<sup>16</sup> Organisations said to have been consulted have since publicly refuted this on social media – among them the Local Government Association, the Association of Directors of Children’s Services and the Principal Social Workers Network. The Children’s Commissioner for England, who was informed but not consulted, has called for the regulations to be revoked as

<sup>15</sup> [http://www.legislation.gov.uk/ukxi/2020/445/pdfs/ukxiem\\_20200445\\_en.pdf](http://www.legislation.gov.uk/ukxi/2020/445/pdfs/ukxiem_20200445_en.pdf)

<sup>16</sup> <https://article39.org.uk/2020/06/11/safeguards-for-children-in-care-house-of-commons/>

she does “not believe that there is sufficient justification to introduce them”.<sup>17</sup> The parliamentary debate on the 10 June provided an opportunity for the Children’s Minister to give precise information about why the Department for Education felt that Covid-19 warranted a behind-closed-doors review of all children’s social care legislation, and why each of the safeguards had to be deleted or weakened but no such explanation was provided.

37. The changes are due to expire on 25 September 2020 – though this expiry date can be revoked and has been tied to the review process of the Coronavirus Act 2020. When questioned by the Education Select Committee on 22 April, the Children’s Minister implied that the plan was for the suspension of these statutory duties to be made permanent.<sup>18</sup> Before Parliament on the 10 June, the Minister asserted that “there is no plan to extend” the regulations and that “if there is a need for further flexibility, it will be on a case-by-case basis after discussion with stakeholders and subject to full parliamentary process”.<sup>19</sup> However, Ofsted has stated that “Ofsted and the DfE *will* be engaging in continuing discussions to develop suitable regulations to succeed these” (emphasis added).<sup>20</sup> This whole process is characterised by a lack of transparent, open policy-making. It is in children’s interests that government operates openly and inclusively.
38. The House of Lords Secondary Legislation Committee has called on the Department for Education “to be open and transparent in its assessment of any longer-term impact and lessons that may be learned, and to involve the Children’s Commissioner’s and other relevant organisations in this process”.<sup>21</sup>
39. The Explanatory Memorandum’s section on Impact makes no reference to the actual impact on children and outlines that a proper Impact Assessment has not been prepared because “the changes are temporary”. A statement has not been made about the compatibility of Statutory Instrument 445 with the UK’s human rights obligations, because it is subject to the negative resolution procedure. The DfE’s Child Rights Impact Assessment (CRIA)<sup>22</sup> sets out the government’s broad policy intentions without analysing or exploring them in any depth, and cites no evidence (quantitative or qualitative, including the detail of what was learned through the informal stakeholder consultation) to support or challenge the conclusions it presents. Key UNCRC provisions are absent from the analysis, including articles 19, 20, 25 and 39.
40. The government has outlined in its non-statutory guidance that “it is for local authorities to decide whether it is appropriate to make use of these flexibilities”, that they should only be used when “absolutely necessary” and that decisions to do so must be “agreed at senior manager

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<sup>17</sup> Children’s Commissioner, Statement on changes to regulations affecting children’s social care, 30 April 2020, at <https://www.childrenscommissioner.gov.uk/2020/04/30/statement-on-changes-to-regulations-affecting-childrens-social-care/>

<sup>18</sup> Oral evidence: The impact of COVID-19 on Education and Children’s Services, HC 254, 22 April at <https://committees.parliament.uk/oralevidence/299/pdf/>

<sup>19</sup> <https://hansard.parliament.uk/Commons/2020-06-10/debates/5964F78B-8FEA-441B-A146-889607FBFA21/ChildrenAndYoungPersons>

<sup>20</sup> <https://article39.org.uk/2020/06/11/safeguards-for-children-in-care-house-of-commons/>

<sup>21</sup> House of Lords Secondary Legislation Scrutiny Committee 13th Report of Session 2019–21, May 2020 at <https://committees.parliament.uk/publications/986/documents/7689/default/>

<sup>22</sup> Available at [http://qna.files.parliament.uk/qna-attachments/1198272/original/52285\\_Child's\\_Rights\\_Impact\\_Assessment.pdf](http://qna.files.parliament.uk/qna-attachments/1198272/original/52285_Child's_Rights_Impact_Assessment.pdf)

level and recorded.”<sup>23</sup> The government has claimed that the regulatory changes “will be kept under continuous review”<sup>24</sup> but there is no clear public strategy for monitoring their use other than assertions that the Department is “working with the sector”. The implication is that local authorities are expected to report to central government whenever their actions and decision-making has caused harm to individual vulnerable children. This lacks credibility. Furthermore, as of April 24<sup>th</sup> *the law has changed* and regardless of whether local authorities declare their practice, children now have fewer protections and more limited legal recourse if they do not receive the support they need. Central government monitoring is no substitute for reinstating safeguards carefully put in place over many decades.

41. The Children’s Commissioner has highlighted that the lack of regular monitoring of children’s welfare “means they are at greater risk of grooming or exploitation, especially older children in semi-independent accommodation”<sup>25</sup> and charities working with trafficked and unaccompanied children have seen “a notable increase in the number of young people who have gone missing or experienced homelessness as a result of the lack of contact they have had with statutory services”.<sup>26</sup> The question is not just how we ensure the resilience of *the sector* during this time, and in the case of any future emergency, but how we ensure that the best interests of children are at the forefront of decision making. There is a significant risk that many more children will suffer, hidden from view, unless children’s legal safeguards are reinstated.
42. **Recommendation: At this unprecedented time it is vital that we do everything we can to safeguard vulnerable children’s rights and ensure they receive the care they need while also ensuring the lives and health of carers and staff are properly protected. The government must revoke the Adoption and Children (Coronavirus) (Amendment) Regulations 2020.**
43. **Recommendation: Any future proposed changes to the law affecting children genuinely connected to Covid-19 must be transparent about the reasons why they have been introduced and subject to open consultation and parliamentary scrutiny. Timescales for these democratic processes may have to be tighter than usual during the current health crisis.**

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<sup>23</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-05-13/46754/>

<sup>24</sup> <https://www.theyworkforyou.com/wrans/?id=2020-05-01.42223.h&s=%27children%27s+rights%27#g42223.r0>

<sup>25</sup> ‘Children in care at risk from new lockdown rules with demand for review of ‘unjustified’ cuts’, The Independent, 7 June 2020, <https://www.independent.co.uk/news/uk/politics/children-care-coronavirus-sexual-abuse-anne-longfield-a9551596.html>

<sup>26</sup> Number of missing vulnerable children soars as safeguarding is cut during pandemic, 6 June 2020, <https://www.theguardian.com/society/2020/jun/06/alarmed-rise-in-cases-of-missing-children-following-safeguarding-cuts>