

Written evidence submitted by 'the 'Scrap S.I.445' campaign steering group'

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

**Submission from the 'Scrap S.I.445' campaign group, July 2020**

1. The 'Scrap S.I.445' campaign steering group includes representatives from the National Centre for Excellence in Residential Child Care (NCERCC), National Youth Advocacy Service (NYAS), Article 39, Centre for Outcomes of Care, Just for Kids Law, Children England, Nagalro - the Professional Association for Children's Guardians, Family Court Advisers and Independent Social Workers, UNISON and a number of independent experts, including people who were in care as children. The campaign is calling for the withdrawal of The Adoption and Children (Coronavirus) (Amendment) Regulations 2020 ('Statutory Instrument 445') and for any future proposed changes to the law affecting children connected to COVID-19 to be transparent, with clear reasons why they must be introduced, and subject to meaningful open and public consultation and parliamentary scrutiny. Over 50 organisations and several hundred care experienced people, social workers and others within the children's social care sector support the campaign and have pressed for the Regulations to be revoked and children's rights to be immediately reinstated,<sup>1</sup> as has the Children's Commissioner for England. Of the areas outlined in the inquiry's terms of reference, this submission looks at the effect of COVID-19 on children in care, with a focus on Statutory Instrument 445.
2. On Thursday 23 April, the government laid Statutory Instrument 445,<sup>2</sup> amending 10 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 next day, having had no time for debate in parliament. These regulations substantially weaken or remove 65 legal protections for children in care and were introduced without clear rationale; without proper consultation; and without parliamentary scrutiny. They mirror previous failed government attempts to remove nationwide protections for children developed over decades as responses to child tragedies. Most notable of these was the Children and Social Work Bill in 2016/17, through which the government sought to grant local authorities the power to opt out of children's social care duties as trials for removing the legal protections altogether.
3. Government figures show there were 78,150 children looked after children in England at 31 March 2019.<sup>3</sup> Three-quarters of these children were the subject of a care order, where the local authority has parental responsibility for the child. For 63% of these children, abuse and neglect was recorded as the primary category of need. 39% of looked after children who completed a questionnaire to assess their emotional and behavioral health were

---

<sup>1</sup> <https://article39.org.uk/scrapsi445/>

<sup>2</sup> <http://www.legislation.gov.uk/ukxi/2020/445/made>

<sup>3</sup> Department for Education, Children looked after in England including adoption: 2018 to 2019, at <https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption-2018-to-2019>

considered a “cause for concern”. These are vulnerable children and the body of legal safeguards built up since the 1940s to protect them have been significantly diluted by Statutory Instrument 445. Key changes introduced 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, video call or other electronic means.
- **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 this 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.
- **The independent investigation of children’s social care complaints timeframe has been diluted.**

### Deregulation without consultation or scrutiny

4. Statutory Instrument 445’s Explanatory Memorandum<sup>4</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 DfE claimed that it “consulted informally with the sector who have asked for these changes to be in force as a matter of urgency”. However, these were closed discussions

---

<sup>4</sup> [http://www.legislation.gov.uk/uksi/2020/445/pdfs/uksiem\\_20200445\\_en.pdf](http://www.legislation.gov.uk/uksi/2020/445/pdfs/uksiem_20200445_en.pdf)

with a DfE invited group, exclusive of any critique, and did not represent consensus, as the resulting concerns and significant campaign shows. There was no public consultation on any of the 10 sets of regulations and organisations said to have been consulted have since publicly denied this on social media – including the Local Government Association,<sup>5</sup> Association of Directors of Children’s Services<sup>6</sup> and Principal Children and Families Social Workers Network.<sup>7</sup>

5. The Memorandum’s section on Impact makes no reference to the actual impact on children. A proper Impact Assessment was not prepared because “the changes are temporary”. The Child Rights Impact Assessment (CRIA)<sup>8</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
6. Over 50 organisations and over 450 individuals who consider themselves to be part of the children’s social care sector have stated they were not consulted about any of these changes and have joined the campaign to scrap Statutory Instrument 445.<sup>9</sup> Nearly 18,000 people have signed a petition calling on the Education Secretary to defend children’s rights in care and withdraw the Regulations.<sup>10</sup> No similar changes were introduced in Wales, with the Welsh Government committing to preserving safeguarding and protecting children’s rights at this critical time.<sup>11</sup>
7. The Children’s Commissioner for England has a statutory duty, established under the Children Act 2004 and strengthened by the Children and Families Act 2014, to promote and protect children’s rights with particular regard to children in care (and other vulnerable children). She was not consulted about Statutory Instrument 445 and called for “all the regulations [to be] revoked” in April.<sup>12</sup> In June, before the Education Select Committee, she reiterated that they were “completely misjudged, not necessary, and could not be justified” and should be revoked,<sup>13</sup> a view she repeated on July 15, “particularly as some of the fears around staffing levels in children’s services have not materialised”.<sup>14</sup>
8. No care-experienced people were consulted directly prior to the changes being introduced, and no child-friendly description of changes to their rights and entitlements has ever been produced by the government.

## Permanent weakening of children’s protections

<sup>5</sup> <https://twitter.com/LGACChildren/status/1257227150299664384>

<sup>6</sup> <https://twitter.com/ADCStweets/status/1255752498087895041>

<sup>7</sup> <https://twitter.com/claudiamegele/status/1257055400890896385>

<sup>8</sup> [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)

<sup>9</sup> <https://article39.org.uk/scrap445/>

<sup>10</sup> <https://you.38degrees.org.uk/petitions/defend-children-s-rights-in-care-withdraw-statutory-instrument-445-2>

<sup>11</sup> <https://record.assembly.wales/Committee/6094#A57752>

<sup>12</sup> The Children’s Commissioner for England, 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>13</sup> Education Select Committee, Oral evidence: The impact of Covid-19 on education and children’s services, HC 254, at <https://committees.parliament.uk/oralevidence/441/pdf/>

<sup>14</sup> <https://twitter.com/ChildrensComm/status/1283323614054547456>

9. The radical deregulation forced through in April mirrors 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 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 duties relating to: the independent review of children’s care; social workers supervising children’s welfare; adoption and fostering panels; and short break safeguards. The exemption clauses were widely and strongly opposed then,<sup>15</sup> as were subsequent attempts to diminish legal protections in 2018 and 2019.<sup>16</sup> The Scrap S.I.445 campaign group has repeatedly raised concerns that COVID-19 is being used as another opportunity to introduce deregulation that is harmful to children.
10. After nearly three months of pressure, the Children’s Minister announced on 14 July that “the overwhelming majority of these regulations will expire as planned on 25 September”.<sup>17</sup> However, several provisions will continue beyond this date irrespective of the actions of Ministers – for example, an assessment of the suitability of prospective foster carers which began after 24 April must continue as if the revised Regulations were still in force.<sup>18</sup> Moreover, decisions made under the amended law for individual children, particularly around adoption, have the potential to be life-changing and permanent.
11. The Minister also stated that she is “minded, subject to consultation, to extend a very small number of temporary changes for a further period.”<sup>19</sup> A consultation has now been launched<sup>20</sup> but we would argue that that extreme caution should be exercised around the use of any ‘evidence’ collected during a pandemic to justify further changes.
12. To date there has been a significant lack of transparency, prompting the House of Lords Secondary Legislation Committee to call 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 and other relevant organisations in this process”.<sup>21</sup>

### Ongoing harm to children from loss of safeguards

13. The government outlined that it was for local authorities to decide whether it is appropriate to make use of these flexibilities,<sup>22</sup> that they should only be used when

<sup>15</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>16</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>

<sup>17</sup> Children’s Social Care Update: Written statement - HCWS368, 14 July 2020 at <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-07-14/HCWS368/>

<sup>18</sup> Article 39, 65 safeguards removed or diluted overnight, 3 June 2020 at <https://article39.org.uk/2020/06/03/65-safeguards-removed-or-diluted-overnight/>

<sup>19</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-07-14/HCWS368/>

<sup>20</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/691383/Consultation\\_Principles\\_1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles_1.pdf)

<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/>

“absolutely necessary” and that decisions to do so must be agreed at senior manager level and recorded.<sup>23</sup> In the Children’s Minister’s statement to Parliament before recess, she stated that the DfE’s monitoring was “based on a triangulation of information we are gathering from a range of delivery partners” but also outlined that 15% of local authorities (24 of 152) had not provided *any* monitoring information since the regulations were introduced.<sup>24</sup>

14. Aside from concerns about monitoring, it is important to note that on April 24 Statutory Instrument 445 *changed the law* and irrespective of whether local authorities declare a change in their practice, from that point on children have had fewer legal protections and more limited legal recourse if they do not receive the support they need. The lack of regular monitoring of children’s welfare and lack of contact with statutory services has left them at greater risk of grooming or exploitation<sup>25</sup> and of going missing.<sup>26</sup>
15. Following her statement to Parliament stating that the majority of the changes will expire in September, the Children’s Minister pledged to “immediately” amend non-statutory guidance urging local authorities not to implement the majority of the regulatory changes introduced through Statutory Instrument 445.<sup>27</sup> No justification was given in that statement for keeping those regulations in place over the Summer and while Statutory Instrument 445 remains in place it is impossible to properly hold local authorities to account for failing to meet legal duties which existed before 24 April. As the Children’s Commissioner highlighted in response to the Minister’s statement, “when the pandemic means that children are less visible to statutory services, it is more important than ever that children’s rights are protected.”<sup>28</sup> There is no substitute for reinstating safeguards carefully put in place over many decades.
16. **Recommendation: The government must revoke the Adoption and Children (Coronavirus) (Amendment) Regulations 2020 as a matter of urgency.**
17. **Recommendation: Any future proposed changes to the law affecting children genuinely connected to COVID-19 must be transparent, with clear reasons why they must be introduced, and subject to meaningful, open consultation and parliamentary scrutiny.**

---

<sup>22</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-05-13/46754/>

<sup>23</sup> Department for Education, Coronavirus (COVID-19): guidance for children’s social care services, 2020 at <https://www.gov.uk/government/publications/coronavirus-covid-19-guidance-for-childrens-social-care-services/coronavirus-covid-19-guidance-for-local-authorities-on-childrens-social-care>

<sup>24</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-07-14/HCWS368/>

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

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

<sup>27</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-07-14/HCWS368/>

<sup>28</sup> <https://twitter.com/ChildrensComm/status/1283323615631609856>

July 2020