



FIGHTING FOR
CHILDREN'S RIGHTS
IN INSTITUTIONAL SETTINGS

Children's rights & the #ScrapSI445 campaign

Carolyne Willow
Article 39 Director

Outline

- What happened
- The risks
- Where we are now

STATUTORY INSTRUMENTS

2020 No. 445

CHILDREN AND YOUNG PERSONS, ENGLAND

The Adoption and Children (Coronavirus) (Amendment) Regulations 2020

Made

21st April 2020

Laid before Parliament

23rd April 2020

Coming into force

24th April 2020

The Secretary of State for Education, in exercise of the powers conferred by sections 22C(6)(d) and (11), 24D(1A), 26(1), (2) and (4A), 59(4)(a), 67(2), 104(4) of and paragraphs 12A and 12F of Schedule 2 to the Children Act 1989⁽¹⁾, sections 22(1), (1A), (2)(a) to (d), (2)(f) to (h), (2)(j), (5)(a) to (c), (7)(a) to (j), (8)(b), 25(1), 31(7), 34(1), 35(1) and 118(5) to (7) of the Care Standards Act 2000⁽²⁾, sections 9(1)(a), 140(7) and (8) and 142(5) of the Adoption and Children Act 2002⁽³⁾, sections 20(8)(d) and 66(1) of the Children Act 2004⁽⁴⁾ and sections 137(4) and 181(1) of the Education and Inspections Act 2006⁽⁵⁾ makes the following Regulations.

In accordance with section 22(9) of the Care Standards Act 2000 the Secretary of State has consulted such persons as were considered appropriate.

Statutory Instrument 445 – what happened

- Around 100 changes to 10 sets of children's social care regulations
- 65 safeguards affected – deleted or diluted
- No time given for Parliamentary debate (usually 21 days)
- No public consultation
- No public announcement
- Private and confidential 'exchanges', February to April 2020

Statutory Instrument 445 – the risks

- Children, young people and families
- Policy-making process
- Rule of law
- Democracy

When will protections be restored?

Explanatory Memorandum, 23 April 2020

The amendments will be in place until the 25 September 2020 which is the date by which the powers in the Coronavirus Act 2020 are subject for Parliamentary renewal. Whilst these amendments are not being made under powers in that Act, they will mirror the renewal date of the Coronavirus Act as the date the amendments will cease to have effect **unless extended**. The legislative changes are being made in the context of a public health emergency and there is **no current evidence** to suggest the amendments will be necessary for a longer period of time.

When will protections be restored?

Child Rights Impact Assessment, 15 April 2020

These amendments will be under continuous review and in place until the Coronavirus Act renewal date on 25 September 2020. The Regulations will contain an obligation for the Secretary of State to keep the regulations under continuous review. The period the amendments are in force will only be extended should the public health emergency or its impact last longer.

When will protections be restored?

Education Select Committee, 22 April 2020

David Simmonds: Minister, coming back to this point about statutory duties, a review by the Department has found that some of [the] statutory duties are leading to local authorities having to undertake activities that are not useful or purposeful, in particular, some of the reviews that are required under the statutory duties— help by foster carers, prospective adopters, the children in the care system—are found not to have improved their experience. Is the Department learning, and will it learn, from the suspension of any of those statutory duties, to see where it has exposed the fact that they were not leading to purposeful activity, with a view to dispensing with those statutory duties and freeing people up to do more useful things in future?

Vicky Ford: That is exactly the point, David, about why we are laying in place the statutory instrument in order to implement flexibility on certain statutory duties. We are focused on giving that flexibility on the lower risk areas in order to make sure that the experts on the ground can be focused on what they need to do now.

Statutory Instrument 445 – where we are now

14 July: Children’s Minister, Vicky Ford MP, tells Parliament that she intends “to update guidance immediately to make it clear that there should no longer be a need to use most of these flexibilities and will be writing to local authorities and providers accordingly”

7 August: High Court confirmed loss of vital safeguards

4 September: expedited Court of Appeal hearing

25 September: vast majority of safeguards restored

In the High Court...

Mrs Justice Lieven:

I fully accept the Claimant's submission that the children subject to these Regulations are particularly vulnerable. Many local authorities in the field do not manage to provide a good enough level of service and this leaves already very vulnerable children highly exposed to risk. When things do go wrong it can be catastrophic for the children involved. In those circumstances, the importance of having regular visits; senior officer oversight by nominated officers; some independence through independent reviewing officers and independent adoption panels cannot be overstated. These are not administrative burdens, or minor matters, they are fundamental parts of a scheme protecting vulnerable children. Each has been introduced over time precisely because of the risks that [looked after children] face and the need for safeguards to be in place. [76]

7 August 2020

In the High Court...

Mrs Justice Lieven:

... I agree with the Claimant that these are not bureaucratic provisions that are a “burden” and as such can be set aside relatively lightly. Regular visits to children, oversight by more senior officers over decision making and provision for independent scrutiny are critical safeguards to protect deeply vulnerable children in a field where errors happen with sad frequency and the consequences can be devastating. [48]

7 August 2020

<https://www.bailii.org/ew/cases/EWHC/Admin/2020/2184.html>

There's a pattern



DEFEND CHILDREN'S RIGHTS IN CARE

SCRAP
S.I. 445

Vast majority of safeguards restored on 25 September

63 organisations publicly opposed

Several hundred care experienced people, social workers, academics, lawyers, foster carers, teachers, nurses and others

18,110 signed 38 Degrees petition

315 pledges financially supporting litigation

#ScrapSI445

Article 39

PROMOTING AND PROTECTING
CHILDREN'S RIGHTS IN
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carolyne.willow@article39.org.uk

www.article39.org.uk

www.rights4children.org.uk



@article_39