

Proposals to extend modifications to children's social care legislation - CONSULTATION REPORT 2021

SUMMARY AND ANALYSIS OF RESPONSES

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CHAPTER 1: INTRODUCTION

- 1.1 The Department of Health made Regulations on 6 May 2020 which modified, for a period of 6 months, various sets of children's social care legislation. The aim of modifying the statutory framework for a limited time was to enable HSC Trusts to support and protect children and their families effectively during a prolonged period of immense challenges within children's social care services during the coronavirus (COVID-19) pandemic.
- 1.2 The modifications set out in the Regulations were due to expire on 7 November 2020. However, the Department subsequently made a further set of amending Regulations to enable the modifications to continue to apply for a further 6 months. As a result, the modifications are due to expire on 7 May 2021.
- 1.3 Following consideration of monitoring information showing the use of the modifications over the last 12 months, the Department proposed that a reduced number of modifications may need to be retained for a further 6 months and have specifically sought views on this proposal.
- 1.4 Specifically, the Department proposed to retain modifications which:
 - i. permit virtual visits by social workers to looked after children;
 - ii. enable registered providers to undertake virtual monthly visits to children's homes;
 - iii. extend the timeframe of an emergency placement with foster carers;
 - iv. extend the timeframe for an immediate placement with kinship foster carers prior to approval;
 - v. extend the timeframe to complete reviews of foster carers prior to approval.

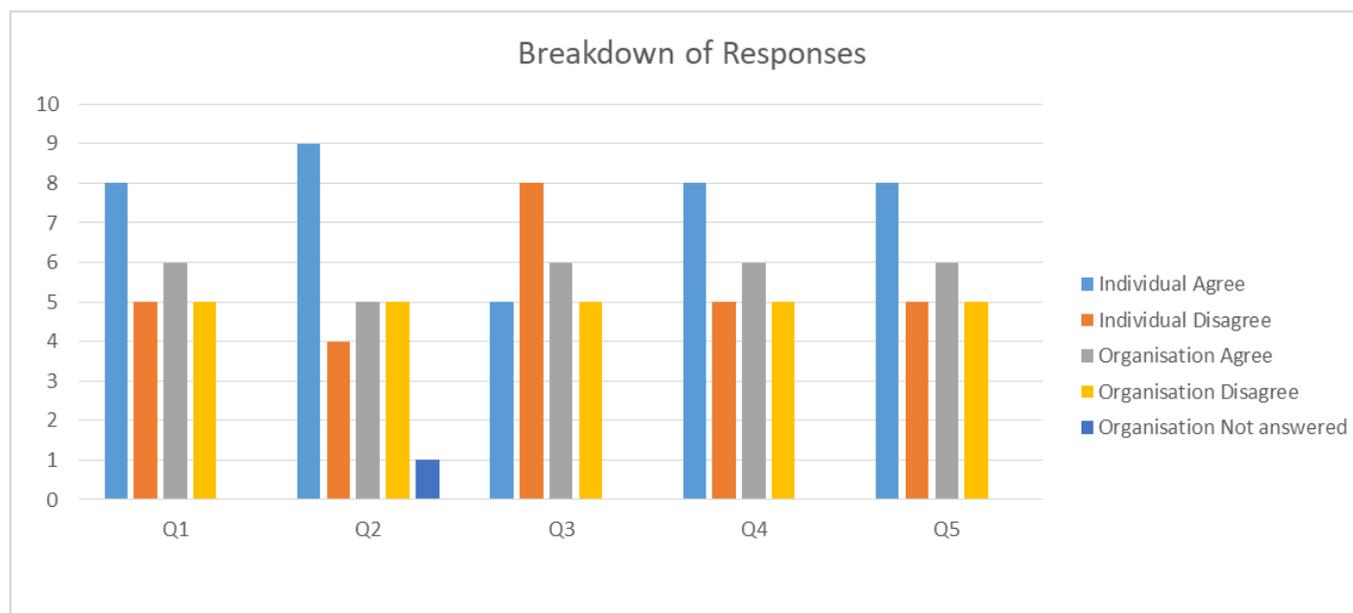
CHAPTER 2: OVERVIEW OF CONSULTATION

- 2.1 The Department conducted a public consultation on the proposals to extend modifications to children's social care regulations for a further period from 8 April to 22 April 2021. There was some criticism about only having two weeks in which to respond to the consultation. However, the Department wanted to leave it as long as possible to review the latest monitoring data in order to make an informed decision as to whether to propose extending any of the modifications.
- 2.2 During the consultation period, the Department attended a consultation workshop with children and young people with lived experience of care during the COVID-19 pandemic which was facilitated by VOYPIC (Voice of Children

and Young People in Care). The Department would like to thank them for sharing their experience with us. In addition, Fostering Network held a discussion with foster carers to inform its response to the proposals and again we thank them for participating and sharing their views about the impact of COVID-19 on them and the children in their care.

2.3 A total of 24 consultation responses were received. The respondents are listed at **Annex A**. In analysing the responses received, the Department also took account of feedback received during the workshop with children and young people. It should also be noted that not all respondents answered every consultation question. The Department would like to thank everyone who participated in our consultation for their comments and feedback.

2.4 The graph below depicts the breakdown in responses from individuals and organisations. For the purpose of this graph, the feedback from children and young people and Fostering Network on behalf of carers were counted as one organisation each, although it is recognised that the views of children and young people within a group can be diverse, depending on their individual experiences. Likewise, the views of foster carers can vary greatly and will depend to a large extent on their personal fostering experience.



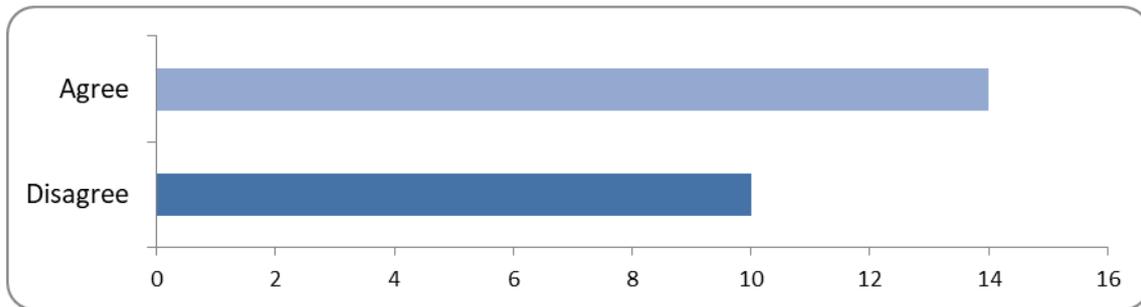
CHAPTER 3: ANALYSIS OF CONSULTATION RESPONSES

3.1 *Extending modifications for a further six months*

- 3.1.1 Paragraph 13 of the consultation document sought views on proposals to retain five modifications for a further period of up to six months to 7 November 2021.
- 3.1.2 Concerns were expressed about a further extension of the Regulations. Consultees such as NIHRC, NICCY and Children’s Law Centre – while expressing concerns about the proposals in general – considered if they had to be introduced it should be for a three month period. It was noted that a full extension would mean, modifications had been in place for up to 18 months.
- 3.1.3 Other consultees, such as VOYPIC, Sinn Féin and the NSPCC emphasised that if modifications are to continue it must be demonstrated that it is in the best interests of the children and protective of their welfare.
- 3.1.4 Following careful consideration of all the responses, the Department has decided not to proceed with any of the modifications. Therefore, the existing Regulations will fall away on 7 May 2021.
- 3.1.5 Having analysed the consultation responses, the Department considered that it would be necessary to introduce additional safeguards to address the reservations and objections raised in consultation. These included limiting the extension period to three months, in place of six and introducing an independent monitoring mechanism, capable of capturing the views of children and young people and foster carers during the extension period. On balance the Department has concluded that the burden of introducing additional safeguards to ensure that the best interests of children and young people are being served, outweighs the benefit of retaining the modifications. In reaching a determination, significant weight was given to the views of children and young people.

3.2 *Visits by Social Workers*

- 3.2.1 We sought views on whether to extend the existing temporary modifications to allow virtual contact/‘visits’ by social workers where a face to face visit is not possible, for up to a further six months, until 7 November 2021.
- 3.2.2 There were 24 responses to this part of the question.



Option	Total	Percent
Agree	14	58.33%
Disagree	10	41.67%
Not Answered	0	0.00%

3.2.3 The majority of respondents were of the view that this modification should be extended. However, a significant minority also considered that it should be discontinued and a move should be made to reinstate face to face visits in line with public health guidance on social distancing and use of Personal Protection Equipment [PPE].

3.2.4 Those in favour of continuing with the modification considered it to be reasonable in current circumstances. It is noteworthy that foster carers, in particular were fully supportive of extending this modification. It is clear that high levels of anxiety continue to be experienced by foster carers, who look after the vast majority of children in care. This is despite foster carers being among the first cohorts to be vaccinated. However, foster carers also acknowledged that face-to-face visits were key to relationship development with the social worker and suggested that in future, a hybrid approach could be taken to visits with some conducted remotely with everyone's agreement. The HSC Board emphasised that the primary aim should be to revert to face-to-face visits, with remote contact/'visits' by exception, for example, in cases where the child has expressed a preference for this. Other individuals and some foster carers also agreed that remote contact/'visits' should be by exception.

3.2.5 A number of respondents, including children and young people and child advocate organisations, were not supportive of continuing with this modification. Children and young people relayed a mixed experience of regular contact with their social worker with a varied range of communication methods used, including telephone calls, zoom calls and texts. They relayed difficulties with hearing participants, not feeling as if they could talk openly about any concerns or anxieties they may have had, review meetings rushed and decisions made late.

Some respondents with mental ill health felt they had needed more contact which hadn't been forthcoming. Some related positive experiences, with social workers and personal advisers maintaining contact. However, on the whole, children and young people wanted to resume face-to-face visits as soon as possible.

3.2.6 Other individuals and advocate organisations such as VOYPIC, NICCY, the NIHRC, Children's Law Centre and NSPCC, were of the view that face-to-face visits better protect the children and give them privacy to chat and protect their right to family life. It was considered that any risks to social workers from visits are now minimal. The availability, access and quality of technology was also raised as a key issue by Sinn Féin, the Children's Law Centre and VOYPIC as an issue which is inconsistent across HSC Trusts and which compromises the child's ability to communicate freely. NICCY advised that the views of children and young people should be prioritised.

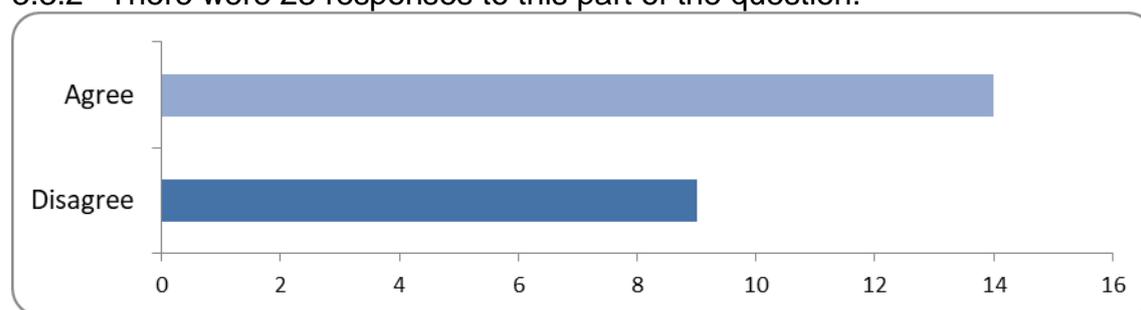
3.2.6 Departmental Response

The Department has decided not to extend this modification. In particular, we have listened to the views of children and young people with lived experience of care during COVID-19 and, based on their powerful testimonies, have decided that, taking into account current infection rates, the reopening of schools and non-essential commercial premises, face-to-face visits by social workers should resume in line with the requirements of the original Regulations. It is noted there will be occasions where a risk assessment may deem this not appropriate on all occasions eg. If it is the child's preference for a remote contact/'visit' on a particular occasion, if the child or their carer is ill, if there is an infection outbreak in a children's home or a member of the child's household is self-isolating or has COVID-19. But as a face-to-face visit does not need to take place within the child's home, then even on some of these occasions an alternative can be found by meeting the child outdoors or at an agreed venue. The HSCB will be advised to make changes to the Regional Action Card to also make it clear that there should be a presumption of a face-to-face visit in all cases. It is also noted from the latest monitoring information available for March 2021 that the HSC Trusts' use of this modification has reduced from 58% to 43%.

3.3 Visits by Registered Providers

3.3.1 *We sought views on whether to extend the existing temporary modifications to allow virtual contact/visits by registered providers where a face to face visit is not possible, for up to a further six months, until 7 November 2021.*

3.3.2 There were 23 responses to this part of the question.



Option	Total	Percent
Agree	14	58.33%
Disagree	9	37.50%
Not Answered	1	4.17%

3.3.3 The majority of respondents were of the view that the modification should be extended. However, again a significant minority considered that face to face visits by registered providers to children’s homes should be re-instated as the default position.

3.3.4 Those in favour of continuing with the modification considered that while it is a pragmatic approach to allow this flexibility for a further period of time, virtual contact/‘visits’ by registered providers should be a last resort when the options for face-to-face visits has been exhausted or it contravenes public health advice in place at that time. It has been suggested that where it is assessed that a face-to-face visit is not appropriate on a particular occasion, this should be documented with the particular reasons specified.

3.3.5 A number of respondents, including Sinn Féin, some individuals and the NIHRC, were not supportive of continuing with this modification. It was considered that remote ‘visits’ by registered providers are not an effective substitute for face-to-face visits and compromise the ability of children and young people to participate freely in the process. Concerns were also expressed about children’s homes where inspections had found issues with the quality of care and how these could be more vulnerable due to remote ‘visits’ taking place.

3.3.6 **Departmental Response**

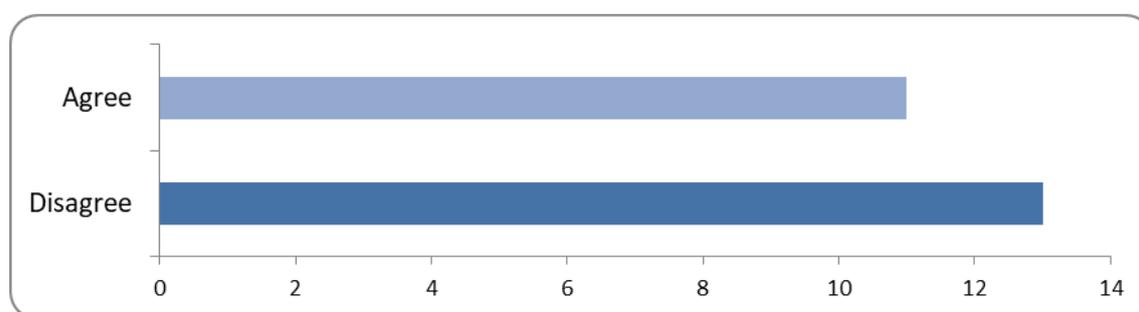
The Department has considered all the responses and agrees that the welfare of the child remains paramount in making these decisions. The Department has decided not to retain this modification. The overriding aim of this modification is to reduce the footfall into children’s homes, particularly at times of high public health risk. As infections rates fall and vaccination rates rise at pace, the Department considers that in-person monitoring visits should

resume in line with the original Regulations. It is also noted from the latest monitoring information available for March 2021 that the HSC Trusts' use of this modification has reduced from 86% to 80%, although it is considered that it has become the default to monitor remotely and that this is no longer supported by public health advice and the data relating to rates of infection in particular.

3.4 Review of a foster carer

3.4.1 *We sought views as to whether to extend the existing temporary modifications to allow the time taken to undertake a review of a foster carer to be extended from 12 months to a maximum of 15 months, for up to a further six months, until 7 November 2021.*

3.4.2 There were 24 responses to this part of the question.



Option	Total	Percent
Agree	11	45.83%
Disagree	13	54.17%
Not Answered	0	0.00%

3.4.3 The majority of respondents disagreed with the extension of this modification and many of those who agreed were of the view that it should only be used as an exception rather than routine. Some respondents had concerns about this modification continuing to cover service gaps rather than COVID-19 pressures only.

3.4.4 The majority of foster carers who provided views to Fostering Network agreed that the modification should continue at present but that the reviews should be undertaken within 12 months where possible. VOYPIC, the HSC Board and the Royal College of Psychiatrists also agreed with this position. However, foster carers did raise a number of concerns about the backlogs in reviews and the need to bring these into line as soon as possible. These included: the potential to have knock-on effects on other foster carer-related cyclical events such as training and security checks; the importance of being able to give feedback to their fostering agency and raise concerns; the risk that

delays in the reviews could prevent some children (who may have moved on by the time the review takes place) contributing to the review.

3.4.5 Foster carers also reported a sense of anxiety as the COVID-19 pandemic became more prolonged and contact with teachers, doctors, counsellors, community support and social workers becomes more stressful during restrictions. They considered that this was compounded by higher levels of social worker absence from work. Foster carers did report that virtual fostering panels reviews had worked well. Other issues, which were not directly related to the proposed modification were raised and these will be considered separately.

3.4.6 A number of respondents, including NICCY, the Children's Law Centre, Sinn Féin, NSPCC and some individuals, were not supportive of continuing with this modification. It was considered that there was insufficient evidence to support the continuation of temporary modifications and a concern that the use of modifications may reflect pressures already in children's services and not pressures solely attributable to COVID-19. NICCY also considered that the views of children and young people as to how these modifications were impacting on their experience of being in care should be prioritised.

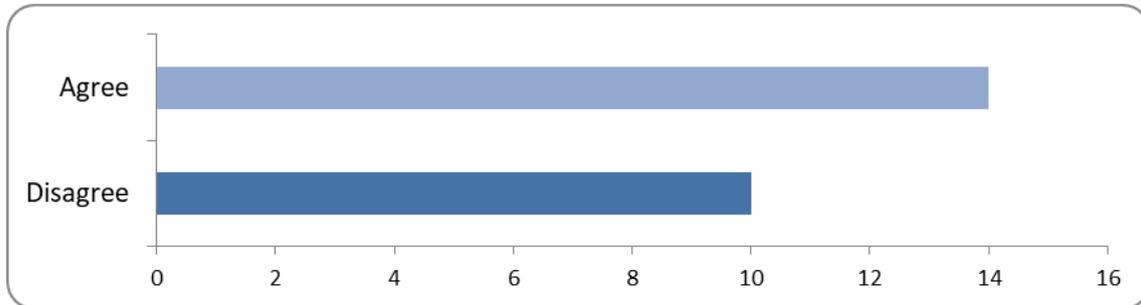
3.4.7 *Departmental Response*

The Department has decided not to retain this modification. The Department acknowledges that this has been a difficult and challenging year for foster carers and the children in their care. This has been acknowledged by way of additional financial support and through other measures, including prioritisation within the vaccination programme. Staff absence rates due to COVID-19 related illnesses or self-isolation have reduced significantly, therefore it is important that action is taken to reduce the current backlog and that priority is given to the review of foster carers in certain circumstances, for example, foster carers who are caring for children who are due to move on. It is also important that HSC Trusts make every effort to bring reviews back into alignment as quickly as possible and that the original target dates for related cyclical processes, like training and security checks, are maintained. These and other wider issues not directly related to the proposal to extend the modification will be raised with the HSC Board as part of the HSC rebuilding/recovery programme. It is also noted from the latest monitoring information available for March 2021 that the HSC Trusts' use of this modification has reduced from 234 to 157 reviews more than three months overdue, and that a number of Trusts have reported that they are making robust efforts to reduce the backlog and return to normal review timescales.

3.5 Emergency placement of a child with an approved foster carer

3.5.1 We sought views as to whether to extend the existing temporary modifications to allow for an emergency placement of a child with an approved foster carer to be extended from 24 hours to 10 days, for up to a further six months, until 7 November 2021.

3.5.2 There were 24 responses to this part of the question.



Option	Total	Percent
Agree	14	58.33%
Disagree	10	41.67%
Not Answered	0	0.00%

3.5.3 The majority of respondents were of the view that this modification should continue at present. Again, the view was expressed that the modification should be used by exception and in COVID-19 related circumstances only. While other respondents felt that there was insufficient evidence to suggest that the modification needed to continue.

3.5.4 Children and young people who participated in the consultation felt the modification was understandable at present and noted the reduction to 10 days (from the current modification of 14 days) and that this was linked to the change in self-isolation period. The point was raised that new children entering a foster home should be isolated or tested for COVID-19 before being introduced to existing children in that foster home. Foster carers who participated in the Fostering Network workshop thought it was a reasonable adjustment and that with increased testing, it was likely that the modification could be removed sooner, rather than later. Other respondents such as the NIHRC, VOYPIC and the Royal College of Psychiatrists were encouraged by the reduction in timescale but that, in the best interests of the child, the modification should only remain in place for as long as necessary.

3.5.5 A number of respondents, including NICCY, the Children’s Law Centre, Sinn Féin, NSPCC and some individuals were not supportive of continuing with this modification as it was considered there was

insufficient evidence to support the continuation of temporary modifications and a concern that the use of modifications may reflect pressures already in children’s services and not pressures solely attributable to COVID-19. NICCY also considered that the views of children and young people as to how these modifications were impacting on their experience of being in care should be prioritised.

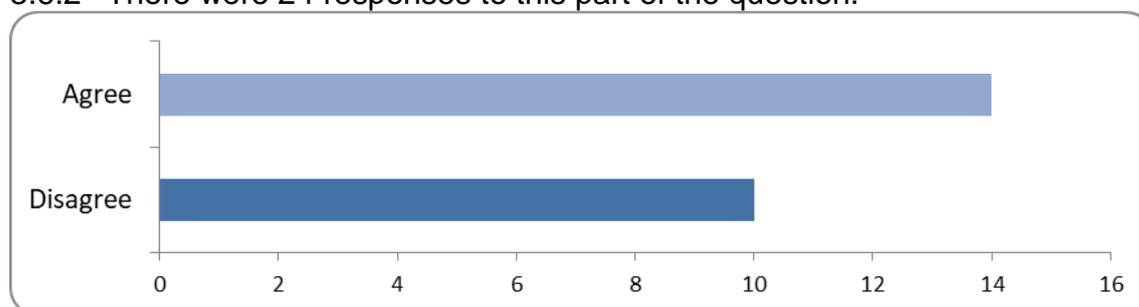
3.5.6 **Departmental Response**

The Department has decided not to this modification. While the latest monitoring information available for March 2021 show that the HSC Trusts’ use of this modification has increased slightly from 19 to 21, staff absence rates due to COVID-19 related illnesses or self-isolation have reduced significantly, and robust efforts are being made to reduce backlogs and to adhere to normal (pre-COVID-19) timescales.

3.6 **Immediate placement of a child with a foster carer**

3.6.1 We sought views as to whether to extend the existing temporary modifications to allow for an immediate placement of a child with a foster carer without approval by foster panel to be extended from 12 weeks to 16 weeks, for up to a further six months, until 7 November 2021.

3.6.2 There were 24 responses to this part of the question.



Option	Total	Percent
Agree	14	58.33%
Disagree	10	41.67%
Not Answered	0	0.00%

3.6.3 The majority of respondents were of the view that this modification should continue at present but that it should be used by exception and in COVID-19 related circumstances only. While other respondents felt that there was insufficient evidence to suggest that the modification needed to continue.

3.6.4 Children and young people who participated in the consultation felt the modification should continue at present and noted the reduction to 16 weeks (from the current modification of 20 weeks). Foster carers who participated in the Fostering Network workshop did not raise any particular issues with this proposal but Fostering Network made the point that HSC Trusts should inform them as soon as a new kinship foster carer commences caring so that they can be appropriately covered by insurance until such times as they are approved by fostering panel. Other respondents such as the NIHRC, VOYPIC and Royal College of Psychiatrists were encouraged by the reduction in timescale but, in the best interests of the child, the modification should only remain in place for as long as necessary.

3.6.5 A number of respondents, including NICCY, the Children's Law Centre, Sinn Féin, NSPCC and some individuals were not supportive of continuing with this modification as it was considered there was insufficient evidence to support the continuation of temporary modifications and a concern that the use of modifications may reflect pressures already in children's services and not pressures solely attributable to COVID-19. NICCY also considered that the views of children and young people as to how these modifications were impacting on their experience of being in care should be prioritised.

3.6.6 *Departmental Response*

The Department has decided not to extend this modification. While the latest monitoring information available for March 2021 show that the HSC Trusts' use of this modification has increased slightly from 37 to 39, staff absence rates due to COVID-19 related illnesses or self-isolation have reduced significantly, and robust efforts are being made to reduce backlogs and to adhere to normal (pre-COVID-19) timescales.

CHAPTER 4: NEXT STEPS

- 4.1 The existing modifications contained within the Children's Social Care (Coronavirus) (Temporary Modifications) Regulations (NI) 2020 and accompanying Guidance will cease to have effect from 7 May 2021.
- 4.2 Thereafter, the usual statutory duties will apply across social care children's services.
- 4.3 Once again we would like to thank all those who contributed to this consultation exercise. The views shared have been extremely useful and have helped to inform the final decision not to extend modifications at present.

Annex A: List of Organisations which responded

- a group of children and young people with lived experience of being in care during the COVID-19 pandemic
- 13 individuals (4 of whom are foster carers)
- Children's Law Centre
- Foster Care Associates
- Fostering Network NI
- Health and Social Care Board (HSCB)
- National Society for the Prevention of Cruelty to Children (NSPCC)
- Northern Ireland Commissioner for Children and Young People (NICCY)
- Northern Ireland Human Rights Commission (NIHRC)
- Royal College of Psychiatrists Northern Ireland
- Sinn Féin
- Voice of Young People in Care (VOYPIC)