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## Independent Children's Rights Impact Assessment on the Reponse to COVID-19 in Scotland

### Citation for published version:

Tisdall, EKM, Powell, MA & Reid, K 2020, *Independent Children's Rights Impact Assessment on the Reponse to COVID-19 in Scotland*. Commissioner for Children and Young People Scotland, Edinburgh.

### Link:

[Link to publication record in Edinburgh Research Explorer](#)

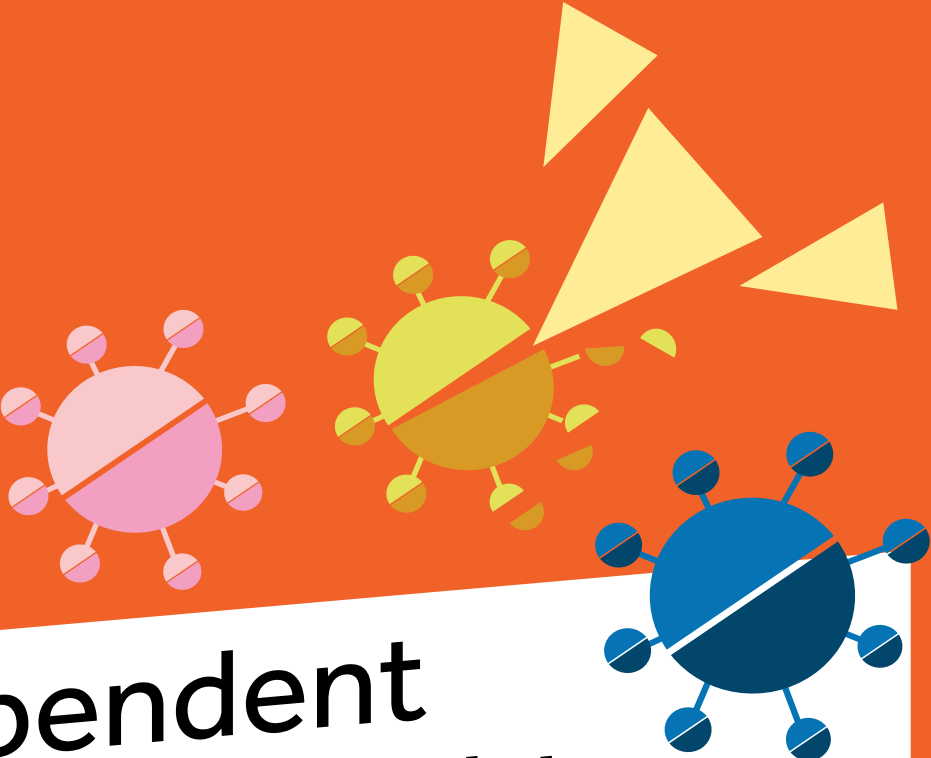
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# Independent Children's Rights Impact Assessment on the Response to Covid-19 in Scotland



# Independent Children's Rights Impact Assessment

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# Introduction from the Children and Young People's Commissioner



The COVID-19 pandemic has impacted on every aspect of children's lives in Scotland and across the world. The measures taken to protect life and health in the early stages of the pandemic were necessary and proportionate, and the significant sacrifices that children, young people and adults made to support public health should be properly recognised.

However, this Independent Children's Rights Impact Assessment identifies significant concerns around decision making and scrutiny and highlights the impact on children and young people of the responses to COVID-19 in Scotland. Human rights do not go away in a time of crisis, and it is during the hardest times that it is most important they are respected, protected and fulfilled.

In March 2020, we began raising serious concerns about the effect of the pandemic on children and the State response to it. We called for the Government to put in place measures to mitigate the impact on those children whose rights were most at risk, including those living in, and at risk of, poverty, those with care experience, disabled children and those with additional support needs.

On 8th April 2020, the UN Committee on the Rights of the Child (CRC) warned of the "grave physical, emotional and psychological effect of the COVID-19 pandemic on children". The CRC called on States to focus on 11 key areas which have formed the centre of our work in this CRIA. Decisions made now will have a life-long impact on a generation of children. The pandemic has highlighted and further entrenched existing inequalities and tackling this will require long-term plans, not short-term reactions. The United Nations Convention on the Rights of the Child (UNCRC) requires that the State undertakes all appropriate legislative and administrative measures for the implementation of all the rights recognised in the UNCRC. The UNCRC also requires the use of all available resources to the maximum extent possible in meeting children's economic, social and cultural rights.

The Scottish and UK Governments responded to the pandemic by enacting emergency legislation intended to protect public health, but which also impacted significantly on a wide range of children's human rights. Some of these measures temporarily overturned and/or bypassed human rights protections for children that had been long established in Scots law. International law requires that any interference with human rights be lawful, necessary and proportionate – that requires the Scottish Government to ensure its

decisions are grounded in a rights-based approach. Undertaking Children's Rights Impact Assessments (CRIAs) can guide that decision-making process by identifying the rights affected and any mitigation necessary. Undertaking a CRIA is a duty on the State, however the Scottish Government has not assessed the impact of law and policy responses to Covid-19 in all areas relevant to children.

It is at times of crisis that hard-won human rights protections are most vital, and most at risk. It was concerning therefore that much of the emergency legislation was passed by the Scottish and UK Parliaments at speed and without the opportunity for robust or detailed scrutiny. Parliaments play critical roles as human rights guarantors and as such need the time, capacity and evidence to hold governments to account. CRIAs are a key part of that accountability model and give parliamentarians the information they need in order to question and challenge the exercise of executive power.

In the absence of a comprehensive approach to ensuring human rights compliance by the Scottish Government, we commissioned an independent assessment of what the legal and policy response to the coronavirus pandemic meant for children's human rights in Scotland. This is the biggest children's rights impact assessment conducted on COVID-19 and it assembles an extraordinary amount of evidence and expert analysis. It is a powerful tool for critically reviewing decisions made so far and providing a framework to help navigate Scotland's long road out of lockdown and towards a rights-respecting post-Covid society.

We have drawn out a number of key high level recommendations in response to the issues raised in the CRIA, but there is a great deal of other valuable information and detailed evidence for decision makers, parliamentarians, civil society and human rights defenders to engage with.

Some of those recommendations will be unsurprising. One of the most important ways of ensuring children's human rights are protected is through the incorporation of the UNCRC itself into domestic law, which the Scottish Government has committed to doing by early 2021. Article 4 of the UNCRC requires governments

'... to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the UNCRC ...'

It is more vital than ever that this timetable does not slip, as the need for an overarching legal framework has been made clearly apparent.

There are other important measures that are required to ensure children's rights are properly implemented. The gaps in data and evidence identified by this independent assessment mean that it is hard for the Government to be confident that its decisions are delivering on human rights obligations, and the limited use of tools such as CRIA restricts the ability of parliamentarians or wider society to understand and scrutinise those decisions effectively.

Most strikingly, despite the need to ensure that the best interests of children are a primary consideration in all actions concerning them (art 3 (1) and the UNCRC's recognition that participation in decision making (art 12) is an enabling right, children have been largely absent from the decisions that have so profoundly impacted their lives. One of the greatest failings during the pandemic response has been the lack of recognition of children as rights holders rather than as passive objects of care or charity . The structures within which we make decisions need to be fundamentally rethought in order to enable children to take an active role in their own lives and communities.

Realising the human rights of children and young people is not just something for Scotland to aspire to. This is not just about vision and values, or policy goals. Human rights are legal obligations. They are the minimum standards which all Scotland's children and young people have been promised. They are the things that we have agreed are essential for children to grow and develop. We need to use this period to design human rights-based structures and supports that will last into the future.



Bruce Adamson  
Children and Young People's Commissioner



### Monitoring and Scrutiny

During the pandemic, it was concerning that much of the emergency legislation was passed by the Scottish and UK Parliaments at speed and without the opportunity for robust or detailed scrutiny. The Parliaments play critical roles as human rights guarantors, and should build upon the work done by the Scottish Parliament's Equalities and Human Rights Committee and the UK Parliament's Joint Committee on Human Rights to increase the ability of MSPs and MPs to hold the governments to account against their human rights obligations. This should include regular human rights training for MSPs, MPs, and parliamentary staff and consideration of how children and young people can directly contribute to scrutiny.

Scottish and UK Parliaments should challenge both the Scottish and UK Governments to evidence the ongoing need for emergency powers in terms of their necessity and proportionality. It should demand detailed evidence to support that scrutiny including more frequent and relevant Children's Rights Impact Assessments in all legislation and guidance affecting children's lives.

### Data

The CRIA process revealed significant and concerning gaps in data that have made it challenging to assess the impact of the pandemic and the state response to it. For example there is a lack of clear data on total number of children living in poverty or who have been digitally excluded; the number accommodated in Scotland and deprived of their liberty in various settings; the number of children receiving mental health support services; or who have received additional support for learning throughout the pandemic. Access to accurate and relevant data is an essential pre-requisite to sound decision making and although the public sector is subject to data reporting duties these have been developed in an ad hoc manner over many years and lack coherence and consistency. A comprehensive review is required to ensure that the Scottish Government is equipped with the data necessary to make decisions which fulfil its obligations to respect, protect and fulfil children's human rights.

The CRC has made clear in General Comment No. 5 that data collection needs to extend over the whole period of childhood, up to the age of 18 years. It also needs to be coordinated throughout the jurisdiction, ensuring nationally applicable indicators. It is essential not merely to establish effective systems for data collection, but to ensure that the data collected is evaluated and used to assess progress

in implementation, to identify problems and to inform all policy development for children. Evaluation requires the development of indicators related to all rights guaranteed by the international legal framework.

Scottish Government should further develop the National Performance Framework to create a nationally consistent system of data collection and evaluation based on agreed indicators related to all rights guaranteed to children. These should be developed with the active involvement of children and young people.

## Law and Policy Reform

The Scottish Government has committed to full and direct incorporation of the UNCRC to the maximum extent possible in Scots law within this session of Parliament. The pandemic has demonstrated how important incorporation is, and how far there is still to go before Scotland can accurately describe itself as a country that fully respects children's human rights.

**Scottish Government should introduce a bill to achieve full and direct incorporation at the earliest opportunity and the Scottish Parliament should work to ensure that it offers the highest levels of protection for children's human rights and that it passes the law within the current parliamentary term. Incorporation is essential to provide a legal structure and framework to protect all children's human rights in any future pandemic or crisis.**

## Recommendations linked to the UN Committee's 11 issues

### ► 1. Refocus resources on Prevention/Early Intervention

During the pandemic, state responses to children whose rights are at risk have shifted from early intervention towards crisis management. This is due to decisions about use of available resources, challenges around direct access to families and an increase in demand for support. More families have been pushed into situations where they require state support but this has not always been provided consistently or early enough.

The state is required to use all available resources to the maximum extent possible to fulfil children's economic, social and cultural rights (Article 4 UNCRC). Fulfilling children's rights, such as the right to have their parents supported (Article 18 UNCRC);



to be protected from violence (Article 19 UNCRC); to the highest attainable standard of health (Article 24 UNCRC); to benefit from social security (Article 26 UNCRC); and to an adequate standard of living (Article 27 UNCRC) require support to be provided at as early a stage as possible.

Moving out of lockdown there is a need to acknowledge the escalation of disadvantage experienced by many children and families and take steps to rectify it. It will not be sufficient to go back to normal.

**Scottish Government must provide additional resources for early intervention and family support approaches to mitigate against more children being drawn into state care as a result of failure to address needs relating to poverty and pandemic related issues.**

## ► **2. Maximise all opportunities for children to enjoy their rights to rest, leisure, recreation and cultural and artistic activities and address structural inequalities that constrain these rights**

The rights to play, recreation, rest, leisure and cultural life protected by Article 31 of UNCRC are not optional extras, they are necessary to protect the unique and evolving nature of childhood. They serve to enrich the lives of children and realisation of these rights is fundamental to optimum development, the promotion of resilience and to the realisation of other rights of the child. They contribute to a child's health, well-being and development.

Children have experienced significant constraints on their rights as a result of the lockdown. Although parents and carers have done their best, opportunities to play, to socialise with friends, and to express creativity and imagination have all been limited. Children who live in poverty, in inadequate housing, with little access to physical space or to online community have been particularly affected.

The right to education (Articles 28 and 29 UNCRC) must be understood as being about the development of a child's unique personality, talents and abilities. It goes beyond formal education to embrace the broad range of life experiences and learning processes.

The return to education must take account of this and balance concerns over loss of time engaging with the formal curriculum with the need to provide opportunities for children to play and rebuild relationships, exploring options such as outdoor and play-based learning. This will be especially important for younger children.

**Scottish Government and local authorities, must ensure funding and support is available so that as many children as possible are able to benefit from play-based and outdoor learning.**

### ▶ 3. Target resources on reduction of inequalities in education

Education is a multiplier right, with the potential to achieve transformative change within society. Education must be available, accessible, adaptable and acceptable. However, the pandemic has exacerbated and widened existing inequalities within Scottish society, with the worst impacts being felt by the most vulnerable. The closure of schools and the move to online learning had a disproportionate impact on some children, which is likely to create long-term disadvantage. Although welcome, major funding to support access to online learning was not announced until almost two months into the crisis and is still not fully delivered.

There is a pressing need to consider additional support for families over the summer. The State's duty to make maximum use of the available resources contains within it an inherent obligation to prioritise those whose rights are most at risk. That means prioritising children and young people as a group when taking budgetary decisions, but also ensuring that disabled children, those who are care experienced, and those living in poverty, are in receipt of additional support to correct for the educational disadvantage they continue to experience.

On 23 June we [published a human rights briefing](#) for the Scottish Government Education Recovery Group and other decision makers setting out the key considerations for effective decision making.

**Scottish Government and local authorities must put in place robust systems to monitor and assess impact of investment at a local and national level. The risk of not doing so is to further embed economic, social and structural disadvantage within the education system.**

**Scottish Government must focus on inequality and disadvantage in education and must accelerate its response to address digital exclusion in learning as a matter of urgency.**

**Scottish Government and local authorities must ensure that existing planning and assessment mechanisms including Children's Services Planning, 'GIRFEC' community planning partnerships and Additional Support Needs assessments are fully utilised to ensure resources reach those who need them most.**

#### ► 4. Legislate for the right to food/protection' from hunger

Before the pandemic, poverty was the single biggest human rights issue facing children in Scotland. More children have been pushed into poverty as a result of the pandemic, and food insecurity has increased. The state response was inadequate and inconsistent, relying too heavily on the third sector to deliver on state obligations, and with too little direction given to local authorities which resulted in many children entitled to support not receiving it due to inconsistent approaches which did not always recognise and respect the human dignity of those receiving support. A national approach which focused on cash payments, alongside additional direct food support would have delivered better results.

**Scottish Government should recognise the urgency of food insecurity and the need to support ongoing work around the wider human rights framework by moving swiftly to place the right to food on a statutory footing.**

#### ► 5. Guarantee provision of mental health services on a universal basis

Reports and research have revealed the extent of the mental health impacts of the pandemic on children and young people. This requires us to acknowledge that many more children will require support with their mental health for some time to come after the end of lockdown. While the Government announced investment prior to the pandemic, circumstances have changed and it is likely that the current model of mental health provision – which was already under significant pressure and subject to wide ranging criticism – will not be able to deliver on children's rights to the best possible standard of health. There is a need to recognise that mental health support is a universal need and must be based on that. Children and young people have consistently called on making support available more quickly and directly.

**Scottish Government must recognise that mental health support is a universal need and provision must be based on that. It should consider the recommendations of the Children and Young People's Mental Health Task Force and support this group to reconvene and formulate further recommendations based on the impacts of the pandemic.**

► **6. Realign law, practice and policy around the need for evidence-based risk and needs assessments and provide children with robust legal protection from harm**

Along with a focus on early intervention, and prevention, there is a need to ensure that the operation of statutory mechanisms designed to give effect to the state's obligations to protect all children under 18 from harm are operating in a way that is consistent with human rights. Emergency measures and changes to practice have interfered with human rights safeguards for children in the care and protection systems. These temporary changes must not become embedded in law, policy or practice and must be continually assessed for necessity and proportionality as long as they are in force. Every decision involving state intervention must be justified by up to date evidence based assessments on a case by case basis. The legal thresholds must be met in every case.

**Scottish Government should urgently review the use of the emergency powers in the Children's Hearings System over the course of the pandemic to ensure that all decision making has been lawful. Scottish Government should ensure that children and families have access to legal representation, advocacy and other necessary supports.**

**Scottish Government should take urgent steps to enable those children who may have experienced rights breaches in the care and protection systems during the pandemic to have access to state funded legal aid and be supported to challenge decisions even if timescales have otherwise expired.**

► **7. Prioritise those children whose rights are most at risk**

The CRIA revealed that several groups of children were disproportionately impacted by the pandemic and by state responses which did not always recognise them as children or as rights holders. Not all of the emergency legislation was subject to children's rights impact assessment, and those that were conducted failed to consider the rights of all children under 18 and were of variable quality. At national and local level there was little evidence of policy decisions having been made based on human rights considerations, particularly in relation to criminal justice, education and the care system.

**Scottish Government must ensure that all relevant decisions in law, policy and guidance are made based on sufficient evidence and assessment of the impacts on children's human rights. This will require significant training on human rights**

and the use of impact assessments to take place across Scottish Government and public bodies. This will identify those who have been most impacted by the pandemic and enable mitigation of the negative impacts they have experienced.

► **8. Reduce the number of children deprived of their liberty in all settings and ensure no children are detained in the prison estate**

Throughout the crisis, a range of international experts warned of the risks to children in detention and institutions during a pandemic. Despite this, no specific consideration was given to children's rights when decisions were made on issues including the detention of children under emergency legislation, or the rules for early release of prisoners. No individualised assessments for children in detention were undertaken to ensure the correct balance between rights and public safety, and no consideration at all was given to releasing children detained on remand.

For those children deprived of their liberty or living in institutions, during the pandemic, their rights to maintain connection with their families were significantly interfered with, as no face-to-face contact took place for many months. Despite Scottish Government commitments (since June 2019) to provide access to mobile phones for children and young people in Young Offenders Institutions, this was only realised three months into lockdown. The result is that existing serious concerns about the mental health of already vulnerable child prisoners have been exacerbated.

**Scottish Government should immediately end the detention of children in Young Offenders Institutions. Where children do need to be deprived of their liberty as a measure of last resort, and are detained in secure accommodation, the Scottish Government should ensure they have their rights to fair process, to family life and to health respected through ongoing assessment and access to legal representation.**

► **9. Treat all children as children in law**

The impact of the inconsistent definition of 'a child' in Scots law was exposed during the pandemic. Although the Scottish Parliament passed an amendment proposed by our office, and supported by Police Scotland, to exempt 16 and 17 year olds from the scope of Fixed Penalty Notices for breaching lockdown restrictions, children remain liable for prosecution in the adult justice system for breaches of the Scottish and UK emergency laws. The Scottish Government should take steps to ensure that Scots law consistently defines a child as under 18 as required by Article 1 of the UNCRC.

Scottish Government should comply with the UN Committee on the Rights of the Child's General Comment No. 24 by embedding a human rights-based approach throughout the youth justice system, and by implementing the recommendations in the CYCJ Report, [Rights Respecting? Scotland's approach to children in conflict with the law](#).

**Scottish Government should take steps to ensure all children who are the subject of state intervention for whatever reason in the adult justice system and the Children's Hearings System have access to state-funded legal advice and representation.**

### ▶ 10. Communicate to children on all issues affecting them and in a way they understand

The CRIA identified some good examples of information being provided to children, including occasions where the First Minister spoke directly to children and young people. However, there were other examples (most obviously around decisions to cancel exams) where communication clearly did not prioritise children as an audience or even recognise them as rights-holders.

**Scottish Government should ensure that "all matters affecting the child" is understood broadly, and that children and young people are recognised as full and valued members of society. Children and young people should be involved in the design and delivery of all communications directed towards them, and the widest possible range of communications routes should be offered to account for the specific needs of those with disabilities.**

### ▶ 11. Redesign decision making processes to include children's rights to participate at a structural level

The right to respect for the views of children requires a shift in the perception and treatments of children from that of passive objects in need of adult protection to active participants in decision making processes affecting them at all levels of society. Children's participation can also lead to better, more relevant and more informed decision making.

Despite the commitment to a strategic approach to mainstreaming the participation of children and young people in the Scottish Government's Action Plan, the experience of the pandemic is that decision-making processes have struggled to

meaningfully respect children's rights to be active participants in decisions made about them, particularly where those decisions need to be made at speed. Although the Scottish Government made some use of survey data conducted by third sector partners to guide decisions, it has been striking how little children's voices were heard or sought on key issues – even in relation to their own education, or care and protection - and how few children and young people were present around the tables where those decisions were made.

There is a positive obligation on the state to provide children with the opportunity to become active agents in their own lives rather than just passive recipients of services.

**Scottish Government, Scottish Parliament and public bodies must review the way they make decisions and find ways to involve children in decisions at an individual and system level. This will involve challenging and changing traditional decision making processes.**

The Independent CRIA has been undertaken by the Observatory of Children's Human Rights Scotland for the Children and Young People's Commissioner Scotland.



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The project was greatly enhanced by the contributions from a wide group of experts. These generously contributed evidence and comments to different project stages.





## Appendix 1. Health

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## Appendix 2. Mental Health

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## Appendix 3. Education

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## Appendix 4. Poverty, Food and Digital Access

Prof Morag Treanor, Professor of Child and Family Inequalities, I-SPHERE, Heriot-Watt University [www.i-sphere.hw.ac.uk/professor-morag-treanor/](http://www.i-sphere.hw.ac.uk/professor-morag-treanor/)

## Appendix 5. Rest and Leisure

Theresa Casey, Independent consultant and writer, Past President of the International Play Association (2008-17), [www.theresacaseyconsultancy.co.uk](http://www.theresacaseyconsultancy.co.uk)

## Appendix 6. Child Protection, Children's Hearings and Care

Fiona Mitchell, Head of Evidence and Innovation, Centre of Excellence for Children's Care and Protection (CELCIS)

## **Appendix 7. Domestic Abuse**

Dr Claire Houghton, Lecturer in Social Policy and Qualitative Research, Research Training Centre and Social Policy, SSPS University of Edinburgh

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## **Appendix 8. Children with Additional Support Needs (ASN) and Disabilities**

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## **Appendix 9. Children in Conflict with the Law and Children in Secure Care**

Lightowler, C., and Nolan, D. Centre for Youth and Criminal Justice (CYCJ)

## Section 1: Introduction to Overview Report



A raft of legislation and policies has been introduced by Scottish Government and UK Government to address the COVID-19 pandemic. These legislative decisions have been primarily concerned with protecting the right to life, and with mitigating the impact of these decisions. Fundamentally, this protected children's, young people's and their families' rights to survival and development. While Government's response has been necessarily swift, the impacts of those measures on children and young people's human rights, and the reasonableness of the limitations these measures placed on their full range of rights, are not yet clear.

Scottish Government has conducted Children's Rights and Wellbeing Impact Assessments (CRWIAs) on some, but not all, emergency measures. This report presents an independent "alternative" Children's Rights Impact Assessment (CRIA) across the key measures, developed to meet the following aims:

1. Observe and document children and young people's human rights issues in relation to legislation and policy during the pandemic response, as they apply to children and young people in Scotland.
2. Anticipate issues and identify opportunities to embed children and young people's human rights in ongoing developments in regard to developing law and policy.
3. Learn from the above, in terms of negative and positive implications for children and young people's human rights during crisis situations.

The alternative CRIA has been developed by the [Observatory of Children's Human Rights Scotland](#), in collaboration with experts across a range of subject areas.

Subject CRIAs were conducted by the experts, analysing the impact of measures across thematic areas. These subject CRIAs are included as **Appendices 1–9** to this report. The methodology used is included as **Appendix 10**. This overview provides an integration of key issues across the subject CRIAs.

Following Article 1 of the UN Convention on the Rights of the Child (UNCRC), the alternative CRIA broadly covers children and young people up to the age of 18. It also addresses young people up to the age of 21 who are in care or who are care experienced, following the remit of the Children and Young People's Commissioner Scotland. At times, available evidence covers a different age range, and this is noted in the text when salient. While children are entitled to rights protection under the UNCRC up to the age of 18, many older children prefer the term "young people". "Children and young people" is generally used within this report, except when the

issue affects a particular age group such as younger children (children) or older children (young people).

This overview starts with outlining the framing and context for the alternative CRIA. It considers the predicted impacts of the COVID-19 measures on children and young people's human rights. The overview then looks ahead to issues as Scotland comes out of the crisis, lessons learned, and conclusions for responding to the challenges and ensuring that children and young people's human rights are respected, protected and fulfilled.

## Section 2: The Independent Children's Rights Impact Assessment framework



The alternative Children's Rights Impact Assessment (CRIA) is framed by the 11 recommendations made by the United Nations Committee on the Rights of the Child. The UN Committee published a statement on 8 April 2020 warning of the grave physical, emotional and psychological effects of the COVID-19 pandemic on children, particularly those in situations of vulnerability. Calling on States Parties to respect and protect the rights of children, the UN Committee made 11 key recommendations (headlines of these listed in Table 1 below).

UN Committee recommendations	
1	Consider the health, social, educational, economic and recreational impacts of the pandemic on the rights of the child.
2	Explore alternative and creative solutions for children to enjoy their rights to rest, leisure, recreation and cultural and artistic activities.
3	Ensure that online learning does not exacerbate existing inequalities or replace student-teacher interaction.
4	Activate immediate measures to ensure that children are fed nutritious food.
5	Maintain the provision of basic services for children including healthcare, water, and sanitation and birth registration.
6	Define core child protection services as essential and ensure that they remain functioning and available, including home visits when necessary, and provide professional mental health services for children living in lockdown.
7	Protect children whose vulnerability is further increased by the exceptional circumstances caused by the pandemic.
8	Release children in all forms of detention, whenever possible, and provide children who cannot be released with the means to maintain regular contact with their families.
9	Prevent the arrest or detention of children for violating State guidance and directives relating to COVID-19.
10	Disseminate accurate information about COVID-19 and how to prevent infection in languages and formats that are child-friendly and accessible to all children.
11	Provide opportunities for children's views to be heard and taken into account in decision-making processes on the pandemic.

**Table 1: UN Committee recommendations to States Parties to respect and protect the rights of children**

Scottish Government has responded to these recommendations, recognising the need to embed children and young people's human rights in measures introduced to address the COVID-19 pandemic, and has expressed the commitment to do so. Two

reports have been published on the steps Scottish Government is taking to promote, protect and respect children's human rights during the current pandemic, on 5 May 2020 (Scottish Government, 2020v) and 19 May 2020 (Scottish Government, 2020w). These include providing additional funding and setting up new support schemes, alongside legislative and policy measures. Together (Scottish Alliance for Children's Rights) has provided a comprehensive analysis of Scottish Government's response to the UN Committee's recommendations (Together, 2020).

The alternative CRIA, framed in accordance with the 11 UN Committee recommendations, considers the legislative and policy aspects of UK and Scottish Governments' responses as they apply to children and young people in Scotland. International human rights instruments provide a lens through which the measures are scrutinised. The key instrument is the United Nations Convention on the Rights of the Child (UNCRC), which is of particular relevance given the commitment of Scottish Government to incorporate the UNCRC into domestic law by the end of the current parliamentary term. In this overview, we have privileged citing the most relevant UNCRC Articles to the issues, while recognising that there are further UNCRC Articles that could apply, as well as the UN General Comments and other human rights legislation and jurisprudence (including the European Convention on Human Rights; the UN Convention on Rights of Persons with Disabilities; the Council of Europe Convention on preventing and combating violence against women and domestic violence [the Istanbul Convention]; the International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights). Reference is made to these treaties in the thematic analyses in **Appendices 1–9**.

Alongside the human rights lens, evidence generated both inside and outwith Scotland is used. Evidence is emerging within Scotland and the UK (as well as globally) as Government and third sector agencies implement research studies and initiatives to generate knowledge about the impacts of COVID-19. The evidence collected includes online surveys, journal articles, official Government statistics, Parliamentary inquiry responses, Government briefings, secondary analyses of service usage, third sector reports, and insights and observations from those delivering services. The alternative CRIA has drawn on the relevant evidence as it becomes available. Some evidence is more indicative than others, and this is referred to when including it within the analysis.

This report is a starting point. The policy and evidence are rapidly evolving. Consequently, elements reported will be out of date quickly and further issues will need to be identified and considered, particularly for groups of children and young people whose rights are at risk. The Observatory of Children's Human Rights Scotland is committed to continuing this task over the coming months, with children, young people and organisations, to support children and young people's human rights.

## Section 3: Where are we currently? Rights issues by the UN Committee's 11 recommendations



### ► 1. Consider the health, social, educational, economic and recreational impacts of the pandemic on the rights of the child.

The health imperatives for restricting movement outdoors, and physical distancing, are clear. As a consequence of these imperatives, measures have followed to close businesses and restrict certain economic activities; to reduce and redirect service delivery for children, young people and their families; and people have been directed to stay in their households. The measures have helped support children and young people's rights to health, life, survival and development (UNCRC Articles 6 and 24), and potentially the care of their parents and carers (UNCRC Articles 5, 18 and 20), who may also have been at risk of becoming ill from COVID-19 (**see Appendix 6**).

These measures have had significant impacts on children and young people's rights:

#### **In relation to health:**

- While basic health services have been maintained, significant concerns have been raised about the short-, medium- and long-term implications for children and young people's physical health (UNCRC Articles 6 and 24).
- Limited access to outdoor space and services closures are likely to have reduced children and young people's physical activity. Given that over one in ten children were at risk of obesity before the restrictions (Connolly et al, 2019), this reduction in physical activity could have increased medium- and long-term implications for children and young people's physical health (UNCRC Articles 6, 24 and 31).
- Scottish Government recognises the need to address mental health needs. Funds have been available generally for mental health online and telephone support, and for young people through Young Scot's webpage. However, there are relatively few measures specifically to mitigate the restrictions' likely impacts on children and young people's mental health (UNCRC Articles 6, 23 and 24).
- Children, young people and parents/carers have raised concerns about children and young people's mental health. Online surveys provide indicative evidence: 39% of 11–24-year-olds surveyed through the Scottish Youth Parliament, Young Scot and YouthLink Scotland (2020a) were concerned about their own mental wellbeing; 83% of children agreed that the crisis had made their existing mental health problems worse (UK-wide research, Young Minds, 2020) (UNCRC Articles 6, 23 and 24).

- Concerns have been raised about the impact of pressure on health services for the physical and mental health of particular groups of children: for example refugees, asylum seekers and unaccompanied children (The Children's Society, 2020), and LGBTQI+ children and young people (LGBT Youth Scotland, 2020) (UNCRC Articles 2, 6, 23 and 24).
- Air pollution and road traffic have reduced during lockdown, which has positive implications for children and young people's rights to health and (outdoor) safety (Ricardo Energy and Environment, 2020) (UNCRC Articles 6 and 24).

**See Appendices 1 and 2, and UN Committee Recommendations 2, 5 and 6, for further discussion.**

### **In relation to education:**

Early years provision, schools, further education colleges and universities have been largely closed since 20 March 2020.

- Whilst most schools are closed, Scottish Government and Local Authorities (LAs) are obliged to support education and learning of pupils, in accordance with local arrangements. Scottish Government guidance allows LAs and independent providers discretionary decision-making on how to fulfil children's right to education during this time. Whilst this protects children and young people's rights to education to some extent, concerns have been raised about the inconsistent application of processes and resources to support remote learning and teaching (UNCRC Articles 28 and 29).
- Inequalities in learning (the "attainment gap") are likely to be widened because of disparities between schools in terms of readiness for online learning at the time schools closed and subsequent provision (Cullinane and Montacute, 2020) (UNCRC Articles 2, 28 and 29).
- Early years and school hubs are available for the children of key workers and "vulnerable" children. Take-up of hubs by children and their families has been less than expected, with indicative evidence suggesting concerns about transport to and from hubs, the potential stigma of attending and fears of COVID-19 transmission (Scottish Government, 2020u). Further, Scottish Government has not adequately specified the definition of "vulnerability", allowing for LAs to adapt to local needs. However, this means inequity of provision across LAs for some "vulnerable" children (UNCRC Articles 2, 6, 19, 23, 28 and 29).
- Young people have raised concerns about the cancellation of national examinations by the Scottish Qualifications Authority (SQA) consistently across a range of research and consultations (Scottish Youth Parliament et al, 2020a). The cancellations were made without consultation with young people



(UNCRC Article 12). Certain groups of young people may be particularly disadvantaged who might have done better in the final examinations than their earlier performances and the determinations within and across schools. LAs and the SQA have refused to allow individual young people to participate in the alternative assessment and grading processes and to take their views and best interests into account (UNCRC Articles 2, 3, 28 and 29).

- LA statutory duties to children with additional support needs (ASN) or disabilities must, in the main, be complied with throughout the emergency. However, these duties may be disregarded if a failure to comply with the duty is attributable to a Scottish Government direction regarding the planning and preparation for the safe return to schools.
- Despite the continuation of statutory and human rights duties, indicative evidence suggests that many children and young people with ASN have been unable to access adequate additional support for learning or teaching either in school or remotely (Inclusion Scotland, 2020) (UNCRC Articles 2, 23, 24, 28 and 29).
- Children who are seeking asylum and who are unaccompanied are less likely to have access to statutory provision of education (UNCRC Articles 2, 28 and 29).

**See all Appendices, and UN Committee Recommendations 2–11, for further discussion.**

### **In relation to social security and an adequate standard of living:**

The immediate and subsequent economic consequences of COVID-19 measures will have considerable and largely negative implications for children and young people's standard of living (UNCRC Article 27). More children, young people and their families will face economic pressures, and more are likely to experience poverty in the future. It is likely that such pressures and poverty will be differentially experienced, as certain groups of children and young people will be more affected by their parents' job insecurity (e.g. more households who are lone parents, particularly those headed by women, and/or from Black, Asian and Minority Ethnic groups) or more limited access to available government support (e.g. families who are refugees or who are from Gypsy/Traveller communities) (UNCRC Article 2).

A number of UK Government initiatives have sought to ameliorate these consequences, such as the Job Retention Scheme and changes in social security (e.g. increasing the weekly amount of Universal Credit). The Scottish Child Payment, which was to address child poverty, has been delayed, however. Scottish Government has also delayed publishing the Child Poverty Annual Report outlining progress on Scottish Government's commitments towards a range of targets designed to reduce child poverty (UNCRC Articles 26 and 27).

Economic poverty has substantial negative implications, not only for children and young people having an adequate standard of living, but also well-researched negative implications for other rights ranging from health to education to protection.

**See especially Appendix 4, but also other Appendices and UN Committee Recommendations.**

**Additional issues of note are:**

Children and young people in transition may be detrimentally affected (UNCRC Articles 20, 28, 39 and 40). For example, concerns have been raised for children and young people's transitions from secure care or Young Offender Institutions (YOIs) back to their communities, and to and from educational settings **(see Appendices 3, 8 and 9)**.

Changes and delays in assessments, reviews and other processes may detrimentally impact on children and young people's health, education and other rights (UNCRC Articles 5, 9, 19, 21, 23, 24, 25 and 40). For example:

- Decisions and appeals on school placement requests may mean that children will not have decisions before the August school start date. Along with uncertainty, children may also not have access to the related therapies and support services that would have been associated with the school placement **(see Appendices 1, 2 and 8)**.
- Only time-critical tribunal, court and children's hearings will go ahead, with minimal involvement by children and young people, limiting their rights to participation and procedural justice **(see Appendices 6, 8 and 9)**.
- All decision-making in administrative, civil and criminal proceedings faces significant delays and extensions of time limits, with resulting lack of access to justice in relation to issues such as child contact, domestic abuse, child abuse and rights to protection, family care and support services **(see Appendices 6, 7 and 8)**.
- Children and young people can be detained and deprived of their liberty for longer (and, at times, indefinite) periods of time under criminal procedure, mental health legislation and children's hearings **(see Appendices 2 and 9)**.
- Young carers, and young people with disabilities transitioning into adult services, may not be adequately assessed for their support and involved in those assessments **(see UN Committee Recommendation 6, Appendices 1 and 4)**.

The UN Committee (2020) recommends that responses to COVID-19 must reflect the best interests of the child, including restrictions and decisions in allocating resources. Both UK and Scottish Government are allocating funds to deal directly

and indirectly with COVID-19, but it is not always clear that these are reflecting the best interests principle, rather than (for example) supporting parents' return to employment or service demands.

Other related issues are addressed in **UN Committee Recommendations 2–11** below.

## ► **2. Explore alternative and creative solutions to enjoy their rights to rest, leisure, recreation and cultural and artistic activities.**

Scottish Government has recognised the importance of UNCRC Article 31 and related rights for children and young people. Along with continued support of Creative Scotland and its associated strategy, it has worked with supporting organisations to develop and publicise digital resources: e.g. to parents, through Parent Club website; for young carers, through Young Scot; and through YouthLink Scotland, particularly in relation to youth work. Other artistic and cultural venues have increased their online offerings, such as BBC Scotland and theatres. Such resources help support children and young people's rights in relation to UNCRC Article 31, as well as Articles 13, 14 and 17.

In terms of restricted movement in lockdown, households were initially permitted to exercise outside their household once a day, and by 11 May 2020 this was extended to unlimited exercise outside the household. From 28 May 2020 there are further allowances for meeting with people from another household outside, as long as physical distancing is maintained between households. However, physical distancing is still required for non-household members, which can be difficult to maintain for some children and young people.

Playgrounds, museums and other public spaces have been closed, as have early childhood services and schools (with the exception of hubs for children of key workers and "vulnerable" children), limiting the options for peer interaction and a range of leisure and cultural activities.

As such, these restrictions and closures have had significant negative implications for children and young people's access to rest, leisure, recreation and cultural and artistic activities (UNCRC Article 31) and freedom of association and peaceful assembly (UNCRC Article 15).

These restrictions have been differentially experienced. For example:

- Children and young people living in some households and areas have had restricted opportunities for accessing outdoor and green spaces.
- Children who are younger or with certain disabilities may find it difficult to adhere to the restriction requirements. Helpfully, restrictions can be relaxed for those with a specific health condition, with specific mention of people with learning difficulties or autism (Scottish Government, 2020v).

- Some young carers or families affected by disability may have increased family and care responsibilities, finding themselves with little or no time to exercise or go outdoors.

Restrictions of movement, closures and suspending activities have led to significant and sudden changes for children and young people, from the public realm to their households. This has implications:

- Indicative evidence suggests that for some children and young people academic pressure had reduced, and they report more time for other activities such as rest, leisure, recreational and artistic activities.
- Negatively, over a quarter of children and young people report feeling lonely (23% of boys and 31% of girls in May 2020 in the Children's Parliament survey, 2020f), including those who are care experienced (Who Cares? Scotland, 2020).
- Children and young people are being encouraged to engage digitally, likely resulting in more "screen time". This has the advantage of enabling access to a range of resources, activities and potential interactions with others (UNCRC Articles 13 and 17). Such interactions may alleviate loneliness. However, the reliance on digital access potentially furthers the implications of digital exclusion (**see UN Committee Recommendation 3**), and could be associated with a lack of sufficient physical exercise (**see UN Committee Recommendation 1**) and increased risk of online bullying.
- Certain settings have less opportunity for these activities, due to such factors as multiple family occupancy (e.g. refuges for children and women), the reduction of external visits and activities at YOIs, and limited space or resources within households.

See especially Appendix 5, as well as Appendices 4, 7, 8 and 9.

### ▶ 3. Ensure that online learning does not exacerbate existing inequalities or replace student-teacher interaction.

Given the negative implications of COVID-19 measures on a range of children and young people's rights, access to online learning (and more widely to online resources and communication) helps mitigate these negative implications. Further, this expansion provides increased opportunities for children and young people's participation rights online (e.g. UNCRC Articles 12, 13 and 17).

The move to online learning — as well as virtual services, resources and information (online or by telephone) — has been the predominant Scottish Government mitigation for COVID-19-related restrictions and closures.

As a result, digital exclusion has been recognised as a significant risk for children, young people and their families, with accompanying problems in accessing and participating in online learning as well as other online activities (**see UN Committee Recommendation 2**). Scottish Government has provided or reallocated funding to target support for particular groups of children, young people and their families to have access to equipment and to bandwidth and data (Scottish Government 2020u, 2020w).

Evidence is not available regarding whether these supports are now meeting access needs. What is suggested from quantitative and qualitative evidence is that children, young people and parents report considerable problems in accessing and participating in online learning. These problems are exacerbated for some families, such as those on low incomes and households with a lone parent, with women disproportionately and differently impacted than men. The problems include:

- Families on low incomes are more likely to have internet access only through mobile phones.
- Families on low incomes can struggle with the additional costs of online learning and home schooling more generally, such as printer materials, fuel and electricity.
- Families may have limited devices or poor connectivity, leading to either competition between family members for scarce resources, or poor-quality access.
- Many parents/carers are working from home and can find it hard to support their children's home schooling.
- Nearly a third of children report being worried about learning from home (Children's Parliament, 2020d).

As well as potential exclusion due to family income or working, certain groups of children and young people may be at risk of digital exclusion, lack of access to online learning and/or lack of support for home schooling:

- Children and young people with particular learning and communication needs may not have access to the specialist equipment and support they had available in schools. Examples provided for the alternative CRIA include children and young people using British Sign Language and those with particular computer equipment.
- There are likely to be differential impacts on young carers, children in temporary accommodation or refuges, refugee children and Gypsy/Traveller children.
- Households where parents and carers have lower levels of education, have a disabled family member, are lone parents or for whom English is an additional language.

Education Scotland resources recognise that in-home learning can take many forms, and advice is available to parents and carers through the Parent Club website. Particular advice is available for children and young people with additional support needs.

Indicative evidence suggests a concentration on literacy and numeracy, with less emphasis on other curricular areas such as arts and culture and difficulties in ensuring practice-based subjects are available (Children's Parliament, 2020d). Vocational opportunities such as work experience have been cancelled, with implications for young people's future employability (**see also UN Committee Recommendation 1 in regard to transitions**).

**See especially Appendices 3, 4 and 8.**

#### ► **4. Activate immediate measures to ensure that children are fed nutritious food.**

Scottish Government has recognised that children, young people and their families may face food insecurity and scarcity. This has particular implications for children and young people's rights under UNCRC Articles 6, 24 and 27.

Food insecurity has only increased since COVID-19 policies have been in place. A UK-wide survey (Loopstra, 2020) estimated 16% of people were facing food insecurity. Of those people, 21% did not have enough money to buy adequate food supplies, 50% were unable to get the food they needed from shops due to shortages, and 25% were unable to leave their homes and had no other way to get food they needed. Equivalent data are not available for children and young people. Indicative information suggests some groups of children and young people are more likely to be affected: for example, those living in families affected by disabilities, with a family member who is shielding, who lack transport, or who experienced poverty pre-COVID-19.

An estimated 124,000 children living in Scotland were eligible for free school meals<sup>1</sup> in 2019 on the basis of low income (Treanor, 2020a). The number of children living in low income is likely to have substantially increased due to COVID-19 and related restrictions (**see UN Committee Recommendation 1**). LAs can provide free school meals to children who would not normally be eligible but whose families are experiencing financial hardship due to COVID-19.

Scottish Government has instituted emergency measures to ensure children have food, through the £70 million "Food Fund", with £15 million allocated to LAs to support free school meals. Scottish Government (2020u) report that over 168,000 meals are being provided on a daily basis, largely through vouchers and direct payments. The

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1. All children in P1 to P3 are eligible for free school meals, as a universal entitlement. In addition, children on a low income are eligible for free school meals (see <https://www.mygov.scot/school-meals/>).

figure is not broken down by area nor provision method, making it difficult to know whether the needs of “vulnerable” children are being equitably met across Scotland. Indicative evidence suggests that parents are more likely to take up free school meals if they are supported by cash payments rather than by vouchers or prepared meals (Child Poverty Action Group and Child North East, 2020). The Food Fund allows LAs to decide how to distribute to meet local needs. However, as of 12 May 2020, only 10 of 32 LAs have provided cash (Treanor, 2020a), raising concerns as to whether children and young people are having their rights to food met.

**See Appendix 4.**

## ► **5. Maintain the provision of basic services for children including healthcare, water, sanitation and birth registration.**

Basic services of healthcare, water and sanitation are being maintained. This addresses children and young people’s rights under UNCRC Articles 6 and 27, as well as health-related Articles such as 23 and 24.

Especially given the hygiene demands to prevent COVID-19 transmission, questions are raised about the availability of water and soap supplies for those in temporary accommodation, Gypsy/ Travellers and for those living in poverty (**see Appendix 1 and UN Committee Recommendation 7**). Hot water was lacking in some sites used by Gypsy/ Travellers before COVID-19 (Cadger, 2018), raising concerns whether this has improved. COVID-19 specific guidance to support Gypsy/ Traveller communities has been issued by Scottish Government and COSLA (2020), but it is not known how well this has been implemented.

Maternity, Health Visiting Services, Family Nurse Partnerships, GP and A&E services have been maintained. Data show that staffing in paediatric hospital services across Scotland has not greatly decreased, but there has been a significant reduction in paediatric hospital services during lockdown (**see Appendix 1**).

Concerns about children and young people’s access to and provision of physical healthcare during lockdown include:

- Children and young people may not be receiving their routine immunisations.
- Children and young people may not be accessing sexual health services.
- Children and young people’s health (including dental health) conditions may not be identified, or pre-existing ones may not be receiving the services needed.
- Children and young people may not be accessing sustaining and enhancing therapies as a result of early years and school closures.
- Parents may be concerned that their disabled or seriously ill children will not receive life-sustaining or saving treatment, due to resource constrictions.

During the CRIA process, a specific concern was raised with the Commissioner's Office regarding the Royal College of Paediatrics and Child Health (RCPCH) Ethics Framework for use in acute paediatric settings during COVID-19. The concern raised was with regard to best interests' decisions in the context of limited/severely limited resources. In response, the Commissioner's Office has written to the RCPCH and Chief Medical Officer raising this concern and calling for the guidelines to be changed (**see Appendix 1**).

- Available data suggest substantial decreases in accessing urgent care and emergency admissions and planned admissions for paediatric services. However, data also show a decrease in unexpected deaths and non-accidental deaths for children over the same time period (see Scottish Government, 2020u).
- Refugee and asylum-seeking children may not be accessing health services due to existing barriers that have been further compounded by the crisis.
- Young people deprived of their liberty in YOIs are currently being treated as adults where the Prison Rules have been amended. This results in some young people being unable to access showers or health support, and particularly mental health services.

**See Appendices 1 and 9.**

Birth registration (UNCRC Article 7) was suspended due to the closure of registration offices. Its importance is recognised by Scottish Government (2020w) with promised announcements for it to be resumed, presumably in Phase 2 as a high-priority task (Scottish Government, 2020a).

► **6. Define core child protection services as essential and ensure that they remain functioning and available, including home visits when necessary, and provide professional mental health services for children living in lockdown.**

Scottish Government has consistently acknowledged that restrictions on movement expose children and young people potentially to increased risk at home, of child abuse and domestic abuse, as well as increased risk online. Children, young people and their families have less access to informal and formal supports, and safe spaces outside of households; stress in families is likely to increase with less relational supports, alongside challenges of dealing with economic pressures. International evidence shows that violence against women and children tends to increase in pandemics (Fraser, 2020). Particular groups of children were more at risk of abuse before COVID-19, such as disabled children (Stalker and McArthur, 2012) and LGBTQI+ children and young people (D'Agueili et al, 2005; LGBT Youth Scotland, 2020), and may be even more at risk with restricted movement. Thus, children and young people's rights to protection are significantly at risk (UNCRC Articles 6, 19 and 34).



Scottish Government has emphasised that core child protection services must be provided, with clarity that a child must be seen, directly, in person if there were a concern that the child is at risk of harm or abuse. Nearly all children (94%) with a child protection plan were physically seen in the first weeks of May 2020 (Scottish Government, 2020u), for example, although this raises questions about the six percent of children who were not. Multi-agency working continues. Extra social workers were recruited for the workforce. Funding has been provided to helpline services, available digitally and by telephone, and to third sector organisations to provide further information and services. Full data are not available on the number of children, young people and families reached due to this additional funding.

Children and young people's rights to protection are at considerable risk. This is exemplified by the rise in helpline use by children, young people and adults, but not child wellbeing- or protection-related referrals to the police or to the children's hearing system (although very recently referrals may be returning to pre-COVID-19 levels: Scottish Government, 2020u).

Emergency powers were put in place to allow children's hearings to be adjusted significantly, in order to be held virtually. Scottish Government stated that by making these adjustments, children and young people's rights to protection, justice and review (UNCRC Articles 19, 25 and 40) were being recognised. However, decisions were not always made with the necessary and up-to-date information from professional assessments of risk and needs, nor with the involvement of children, young people, their parents or their carers. The emergency legislation does not permit derogation of the statutory duties on the state to protect and fulfil children's human rights and to procedural justice in the Children's Hearings System. Online participation is difficult for many children and young people, with issues of digital exclusion, lack of privacy and safety at home (if still living with a perpetrator of violence). Concerns are raised about children and young people's rights of privacy and family life, including direct contact if they are accommodated in alternative care settings and away from their parents and families. Careful and transparent monitoring of these provisions is required.

Assessments and placements for looked after children have been affected, with positive, neutral and negative impacts on children and young people's rights. Indicative evidence suggests that older young people may have stayed longer with their carers than before, which may be in crowded conditions but may provide more stability. Concerns have been expressed about the pressures and instabilities of children and young people living in alternative care, including kinship or foster care, due to concerns about virus transmission and carers' own needs. Children and young people's rights to ongoing relationships with their siblings and parents, when there is minimal risk of neglect and abuse, have been formally clarified for children of separated parents, to allow children to travel and live between more than one

household if it is safe for them to do so. However, for looked after children Scottish Government guidance is more restrictive, and concerns have been raised about failures by LAs to implement the guidance, legal orders, or statutory duties in practice (UNCRC Article 9). While delays can be anticipated, evidence is not available regarding the consequences for permanency planning and adoption (UNCRC Articles 20 and 21). Timescales have been extended for courts and children's hearings and for children detained under Child Protection Orders, Child Assessment Orders, in YOIs on remand, and in secure care accommodation, which may impinge on the ability to challenge the legality of the deprivation of liberty and the extent of this deprivation. This is a significant concern given the potential impact on children and young people, with serious implications for rights to a family environment and to regular reviews (UNCRC Articles 5, 9, 20 and 25).

Requirements to self-isolate in residential care, secure care, YOIs and other placements are potentially alarming and problematic for children and young people (UNCRC Articles 3 and 37), as well as for other children and young people in those settings. While most rights can be limited in the interests of protecting public health, UNCRC Article 37(a) and (c) cannot be limited for this reason. Further, even if the intention is to protect children and young people from the spread of COVID-19, particular care should be paid to the cumulative impact of self-isolation and any other restrictions, including the duration of the self-isolation, amount of access to outdoor space for exercise, and limitations on external communication through phone and internet access (Scottish Human Rights Commission, 2020).

Early year and school hubs are discussed under **UN Committee Recommendation 1**.

The rights of young carers may be at particular risk, with reduced services and other support for themselves and their disabled family member. Young carers are not included in additional financial support measures set out in the Coronavirus (Scotland) (No. 2) Act 2020, which give an uplift to those in receipt of Carers Allowance. The changes in social care assessments lessen legal requirements to meet young carers' identified needs (**see Appendices 1, 2 and 8**). Young carers report not being able to access some of the supports for carers more generally, such as protected supermarket hours or online grocery deliveries (Carers Trust, 2020a).

Children and young people are potentially at more risk, due to increased use of digital services, of online bullying or abuse (UNCRC Articles 17, 19, 34 and 36).

Restrictions to movement can be problematic for children and young people's rights to ongoing contact with their parents (UNCRC Articles 5, 8 and 9), when the contact is in their best interests. The Lord President (2020) has published guidance on courts orders relating to parental responsibilities and rights, clarifying that children can move between households to assist in maintaining pre-COVID-19 arrangements, as well as varying contact and/or virtual contact. The guidance however does not mention a

child's best interests nor a child's participation rights. Contact arrangements can put children, young people (and the non-abusing parent) at risk, should there be contexts of coercive control and domestic abuse. This is a substantial concern expressed by domestic abuse and children's services (**see Appendix 7**).

Criminal and civil courts have had limited functioning during the restrictions. Children, young people and their families thus have delays in decisions in relation to criminal proceedings for domestic abuse or child abuse or to recourse to civil courts for parental responsibilities (**see Appendices 6-8**).

Scottish Government has maintained its responsibility for providing services for children and young people experiencing mental ill health either in or out of hospitals, thus assisting in meeting UNCRC Articles 6, 20, 23 and 24.

Procedural changes for children and young people's detention on the grounds of mental health have implications for their rights (UNCRC Articles 3 and 23–25). For example, checks are not currently required that emergency detention is in the best interests of the child. Statutory reviews are not required to respond to a child or young person's changing circumstances, and children and young people can stay in compulsory detention for longer. Both these could be detrimental to children and young people's rights. Generally, children's rights to independent advocacy are not specifically addressed in the current Government measures (UNCRC Article 12). However, children may be able to more easily nominate their named person, as this can be done without witnesses, which enhances their participation rights and potentially their mental health (UNCRC Articles 6, 12 and 24) (**see Appendix 2**).

Children and young people are likely to be negatively affected by the closure of face-to-face services outside of hospital as of 26 March 2020. In indicative research, around a quarter of children with existing mental health problems report no longer being able to access mental health support (UK survey, Young Minds, 2020) and children who are disabled or seriously ill report reduced availability of services (UK survey, Family Fund, 2020). Along with digital exclusion or communication difficulties with online or telephone services, children and young people may not feel safe or able to discuss their mental health in their households.

**See Appendices 2, 6 and 7, and UN Committee Recommendation 1, for further discussion.**

## ► **7. Protect children whose vulnerability is further increased by the exceptional circumstances caused by the pandemic.**

Attending to the diversity of children and young people, and the accompanying differential impacts on their rights, has been one of the most challenging aspects of

the emergency measures. This relates to UNCRC Article 2, as well as Articles 10, 14, 20–23 and 30.

**Asylum Seeking, Migrant and Refugee children.** Children and young people may be at risk if their families have a status subject to no recourse to public funds (NRPF). Although evidence is limited, children and young people from families with NRPF are likely to be affected severely by the measures and restrictions in place, as their current package of LA support is unlikely to meet their basic needs as a result of restrictions in place. Families may be at risk due to: insecure accommodation, financial hardship or reliance on cash, which is less widely accepted; food insecurity and poverty; reliance on community-based services, which have new or increased demands from the wider community; or being unable to access health services due to communication barriers. Previously self-sufficient families with NRPF who are experiencing new hardships may not be known to LAs and therefore may struggle to access support.

Child refugees and their families have recourse to public funds and therefore the same access to services as the wider community. However, it is likely that many require additional support to access housing and benefits.

Under the emergency measures, LAs can act more quickly to provide emergency financial support or accommodation to all individuals in their area — regardless of immigration status — to support an effective public health response to COVID-19. Legislation has relaxed duties on LAs to conduct needs assessments under the Social Work (Scotland) Act 1968, thus leaving implementation to LAs' discretion (see Scottish Government and COSLA, 2020b). Whilst this means that LAs may still consider undertaking assessments in order to support vulnerable children and their families, it raises concerns that approaches may vary across Scotland, putting vulnerable children and families at greater risk.

Children who are EU nationals and need to apply for “settled status” by June 2021 are at risk of becoming undocumented if they do not apply in time.

**Black, Asian and Minority Ethnic (BAME) children and young people.** Emerging evidence suggests that the risk of COVID-19 viral infection and mortality disproportionately affects BAME adults (Platt and Warwick, 2020), and this may have significant implications for children and young people who are cared for by parents or carers who fall into this high-risk group.

BAME children, young people and their families face additional challenges during COVID-19, with evidence suggesting greater risks of poverty and financial insecurity, food insecurity and overcrowding. As outlined previously, families with NRPF continue to experience significant hardships. Between 17 April and 22 May 2020, BEMIS's<sup>2</sup>

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2. BEMIS is the national umbrella body supporting the development of the Ethnic Minorities Voluntary Sector in Scotland.

emergency sustenance fund allocated £32,170 to BAME communities, and children and young people in particular, at high risk of destitution and poverty across 17 Scottish LAs (BEMIS, personal communication, 29 May 2020). Of the 243 successful referrals across Scotland, this included 415 children and young people whose parents had no recourse to public funds. Without this support, these children and young people would have no access to income or any form of formal state support.

For children, young people and parents/carers for whom English is an additional language, there may be additional communication and language barriers which impact upon children's learning at home, as well as parents and carers' ability to access and understand information, guidance and what support is available (BEMIS, personal communication, 29 May 2020).

Children may be at risk of experiencing domestic abuse whilst at home, as evidence highlights an increase in domestic abuse challenges amongst BAME communities (BEMIS, personal communication, 29 May 2020).

**Children and young people from Gypsy/Traveller communities** face additional risks during the COVID-19 crisis, as their accommodation may make it difficult to limit virus spread and comply with guidelines, as recognised by Scottish Government. In addition, Gypsy/Travellers are more likely to have pre-existing health conditions and be at increased risk of poverty, fuel poverty, food insecurity and have difficulty accessing wider support and community services during lockdown. Those in sites are likely to experience overcrowding in and between trailers; sharing of toilets, washing and kitchen facilities; and have limited self-isolation space. For those living roadside, there is likely to be reliance on toilet and washing facilities (for example) in leisure centres and retail parks, some of which will now be closed. Limited digital access and literacy issues amongst parents and carers may result in children and young people's greater exclusion from educational services and support, and difficulties accessing healthcare support. Financially, Gypsy/Traveller communities are more likely to rely on cash payments, which some shops are moving away from. Evidence suggests that Gypsy/Travellers may not know how to access support and benefits, including Universal Credit, the Scottish Welfare Fund and other services which identify and assist vulnerable groups (see Scottish Government and COSLA, 2020).

Overall, there is an increased chance of prejudice and discrimination directed towards East Asian communities and those identified (primarily via social media) as not following social distancing measures, such as those from Roma communities. Hostile attitudes and discrimination from settled communities towards Gypsy/Travellers may cause people to move from place to place, despite the emergency measures.

Other groups whose rights are at particular risk due to the emergency measures include those who are young carers, in conflict with the law, living in temporary

accommodation, living in poverty, disabled, at risk of mental health problems and who are LGBTQI+. Specific issues in regard to their rights are included in other **UN Committee Recommendations**.

▶ **8. Release children in all forms of detention, wherever possible, and provide children who cannot be released with the means to maintain regular contact with their families.**

Children and young people's rights to family contact and to minimise detention relate to UNCRC Articles 9, 18, 25, 37 and 40.

Despite the UN Committee's recommendation, in Scotland children have not been prioritised for release from any setting where children are deprived of their liberty. No child who is being deprived of their liberty has been assessed (in terms of their best interests), as recommended by the UN Committee, for the safe move to a setting where the risks of contagion are lower than in institutional and group settings. In addition, Scottish Government's emergency early release regulations only permit limited early release for those who have been sentenced to certain short-term periods and are restricted to certain offences, but emergency early release is not available for those on remand, and the regulations do not specifically consider the rights and needs of children under the age of 18. In Scotland, as of 22 May 2020, there were 15 children in prison or a YOI; seven were untried, one was convicted but awaiting sentence and seven were sentenced (Scottish Prison Service, 2020b).

The Prison Service and secure care centres have stopped external visits and reduced activities especially in YOIs, which has significantly restricted young people's ability to exercise their rights. Digital connectivity is not always facilitated in practice, which further impacts young people's rights to education, information and family contact (**see Appendix 9**). Such restrictions have a direct impact on rights to family life and contact; they are also likely to have substantial impact on mental health in a population already significantly at risk of mental health problems (Nolan, 2020b). (Note that such restrictions will also negatively impact on children of prisoners having contact with their parent/s in prison.) All children and young people who are deprived of their liberty, and especially those in YOIs, have had their rights restricted to access essential support services of social work, play, leisure and recreation, as well as education and mental health.

**See Appendix 9, and UN Committee Recommendations 1 and 6, in relation to mental health and secure care.**

## ► 9. Prevent the arrest or detention of children for violating State guidance and directives relating to COVID-19.

Children and young people who fail to adhere to COVID-19 related restrictions could be penalised and/or criminalised for doing so. This would have negative implications for UNCRC Article 3.

Analysis in the Appendices shows further risks to children and young people's rights, such as:

- Potentially greater risk for children and young people with communication needs, who display distressed behaviours, who are already "visible" to the police and children and young people in residential care, whose behaviour is disproportionately reported to the police (UNCRC Articles 2 and 23).
- Children could receive criminal records for such offences. The age of criminal responsibility is currently 8 years, although referrals on offence grounds have stopped for those under the age of 12 in anticipation of the Age of Criminal Responsibility (Scotland) Act 2019 being implemented (UNCRC Article 40).
- Delays in courts proceedings could lead to children being dealt with as adults (UNCRC Article 40).
- Resources and services have been reduced for prevention and diversion (UNCRC Articles 18 and 40).

Certain of the emergency measures have exacerbated pre-COVID-19 problems, with young people aged 16 and 17 being insufficiently recognised as children under UNCRC Article 1 (which is up to the age of 18). The Coronavirus Act 2020, the Coronavirus (Scotland) Act 2020 and the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations contain provisions that define a child as a person under the age of 16, in Scotland. Initially, young people aged 16–17 could receive Fixed Penalty Notices for non-compliance with COVID-19 related restrictions. While this was changed by subsequent legislation, young people may have already received a notice. Young parents under 18 could be penalised under the emergency measures, in relation to their children not following restrictions on movement. Young people aged 16–17 can be charged for non-compliance with testing powers. Penalties are not distinguished between children and adults. These provisions have serious implications for young people's escalation in the criminal justice system, to the detriment of their best interests, as well as missing out on safeguards in such areas as mental health and child protection and children's services (UNCRC Articles 3 and 40).

**See Appendix 9.**

► **10. Disseminate accurate information about COVID-19 and how to prevent infection in languages and formats that are child-friendly and accessible to all children including children with disabilities, migrant children and children with limited access to the internet.**

Scottish Government has provided funding to ensure information is provided to children and young people, through organisations such as Children in Scotland, the Children's Parliament, Scottish Youth Parliament, Young Scot and others. Such information will support children's information and participation rights, such as UNCRC Articles 12 and 13, and particularly Article 17.

Information for parents is provided through the Parent Club website, which will support a range of children and young people's rights.

Indicative evidence from children and young people suggests they wish to access information that is useful to them. For example, 40% of 11- to 24-year-olds were not confident in accessing information about support for mental health and wellbeing (report published 23 April 2020, Scottish Youth Parliament et al, 2020a). A group of young experts on domestic abuse, Yello!, has put out messages for children and young people on domestic abuse, as much of the public messaging has emphasised women as victims rather than children as co-victims (**see Appendix 7**).

Due to the crisis, children and young people have had limited involvement in identifying their information needs with services and assisting in developing such information. This may mean some information is not meeting their information rights. With much information provided digitally, children and young people who are digitally excluded will have difficulty accessing information under lockdown conditions. Certain children and young people will be more disadvantaged than others, such as those less fluent in English or who use British Sign Language. Children and young people may not have the privacy within their households to access or share information (UNCRC Article 16), which has been highlighted as a potentially serious issue for children and young people's protection from child abuse, domestic abuse, and for their access to sexual health services.

Information needs to be accessible and to reach the diversity of children and young people. Funding, for example, is being directed towards information for young carers and care experienced children. Further consideration needs to be given — in consultation with other groups such as Gypsy/Traveller children and young people, those from migrant backgrounds, and those from BAME groups — of the best ways to support their information and participation rights.



## ► 11. Provide opportunities for children's views to be heard and taken into account in decision-making processes on the pandemic

The speed of policymaking during COVID-19 has not provided substantial opportunities for children and young people to be involved in decision-making. This has implications for children and young people's participation rights, and particularly UNCRC Articles 12 and 13.

For collective decision-making, Scottish Government has constituted several stakeholder groups, which have indirectly put forward the experiences and views of children and young people (and their families) with whom they have contact (Scottish Government, 2020u). A proposal has been made (4 June 2020) that the perspectives of children, young people, families and carers be brought into the work of Scottish Government's COVID-19 Children and Families Leadership Group.

A number of third sector organisations have undertaken surveys or consultations with children and young people, and their families, on issues related to children's rights. These are used within this CRIA and are referenced in Scottish Government documents. There are particular gaps in evidence, such as quantitative data, from a statistically representative sample in Scotland, on children and young people's experiences, including the views and experiences of children, young people and families who are digitally excluded (**see Section 5**).

Children and young people themselves have called for greater consultation and involvement of them in policy decision-making, in the above surveys and consultations. A notable example is young people's disquiet at the decision to cancel national examinations (Scottish Youth Parliament, 2020).

Certain measures potentially enhance children and young people's participation in decisions that affect them individually, such as the ability of a child to nominate a Named Person under mental health legislation (**see Appendix 2**). Other measures have potentially curtailed children's participation, such as the lack of consideration of children's views in changes allowed for child contact (**see Appendix 7**).

## Section 4: Looking ahead to Phases 1 to 4 - coming out of lockdown



Scottish Government has proposed a phased relaxation of restrictions and closures (Scottish Government, 2020a). From what is publicly available at the time of writing, further implications and opportunities arise for children and young people's human rights. These are organised below according to the UN Committee's 11 recommendations.

### ► 1. Consider the health, social, educational, economic and recreational impacts of the pandemic on the rights of the child.

Greater equity is required across LAs. While flexibility according to local needs can be beneficial, two areas require more clarity, and potentially different action, across Scotland: which "vulnerable" children can, and which actually do, access the early years and school hubs; and the availability of free school meals as cash payments, rather than vouchers or deliveries.

Key preventive services should be prioritised for children and young people, both universal and community services, that will assist with dealing with the unintended consequences of the COVID-19 restrictions. For example:

- To continue the investment in early years provision, in both quantity and quality. Scottish Government has suspended the legal obligation on LAs to provide the 1140 hours of funded childcare for children aged three to five years old, from August 2020. As much as possible, ongoing planning for recruitment, development and provision should be continued and the suspension lifted.
- To identify key community services that support children and young people's mental health and wellbeing, and prioritise their opening and availability earlier in the Phases.
- To prioritise children and young people's routine dental and optometry check-ups earlier than Phase 3 (e.g. to schedule for Phase 2).
- To prioritise Early and Effective Intervention and diversion schemes, for children in conflict with the law or at risk of being so (**see Appendix 9**).

Planning and investment are needed to address identified gaps for children and young people's rights and to anticipate future changes. For example:

- To manage the potential increase in demand from Phase 1 onwards, through

the availability of more services and staff, in regard to child abuse, domestic abuse, mental health, and unaccompanied and refugee children. New approaches that respond effectively to children and young people's rights in these circumstances may be required, given the potential scale of need and the fiscal pressures; such new approaches need to ensure children and young people's best interests and their participation.

- To identify how to provide, reach and inform children and young people of services that are currently under-utilised under lockdown, such as places of safety and sexual health support.
- To plan for and encourage children and young people's take up of health services, such as childhood immunisations and hospital paediatric services.
- To ensure children and young people have an adequate standard of living, urgent action will be required.
- In considering data and planning for policy and services, to take account of children and young people's absolute poverty as well as relative poverty. Households' median incomes are likely to fall due to the economic repercussions of the COVID-19 measures.
- To review and act on the likely results of care leavers' isolation, such as their access to housing, employment and income.
- To plan for non-contact opportunities for young people for vocational training and/or apprenticeships, and for these and other opportunities to be central to economic revival plans. Such opportunities need to consider what employment is likely to be available in the short and longer term following COVID-19.

## ► 2. Explore alternative and creative solutions to enjoy their rights to rest, leisure, recreation and cultural and artistic activities.

Children and young people's rights to rest, leisure, recreation and cultural and artistic activities will be particularly important to support over the summer holidays, with less regular online learning available, limited summer clubs and parents/carers needing to work from home. A coordinated approach should be developed across public, third and private sectors across communities. This should maximise the opportunities of using green and other outdoor spaces and facilities, outdoor learning and non-contact sporting opportunities. Such provision provides positive potential to increase children and young people's physical activity, support friendships, improve children and young people's physical and mental health, and to assist with children and young people's transitions to and from schools. It can capitalise on the availability of student teachers who missed their final school placements and potentially provide vocational opportunities and employment for young people.

Such opportunities will continue to be important once schools return in August 2020, should children and young people attend schools part-time. Creative measures to increase family support and encourage family-together activities can be explored, such as employers using a four-day week, reduced work hours for families with children and provision of online activities by governments/charities.

As children and young people become more visible out of their households, the public discourse needs to recognise their shared rights to these external spaces, whether they be outdoors, retail or food outlets. This may be particularly needed for young people, who risk being perceived negatively in some spaces (see UN Committee, 2016a, para 22). Public and police need to take into account that children and young people may respond to these changes, and express their distress, in ways that can be perceived as problematic by others; these need to be addressed for the underlying reasons rather than being punitive.

### ► 3. Ensure that online learning does not exacerbate existing inequalities or replace student-teacher interaction.

Scottish Government has proposed to reopen all local authority early years provision and schools in August 2020, with blended learning. This suggests inequalities caused by relying on home learning will continue for some time. This is acknowledged by Scottish Government, with additional funding to the [Connecting Scotland project](#) (supporting the most vulnerable people to get online), and the proposal for LAs to continue to use Attainment Scotland Funding to help address such disadvantages.

However, given the seriousness of digital exclusion and digital access, research should be undertaken to establish the extent to which provision is reaching children, young people and their families and the effectiveness of this provision. A rapid response review would be useful in the first instance, to ascertain what provision is currently in place and tackle gaps straight away. Consultation should be undertaken with particular groups of children, young people and their families who are at most risk of digital exclusion, to identify the best ways to address digital exclusion and access.

Indicative evidence suggests that some children and young people may be apprehensive to return to school (Pearcey et al, 2020). Children, young people and parents need to be supported before August and during August to return to school, with due account of the practical and mental health implications. Schools should be expected to provide a certain standard of pastoral support, such as minimum contact required with every child, and ways to monitor children's wellbeing, for example phoning home if a child does not attend online. The likely use of face coverings will be problematic for some children and young people, such as those who lip-read as part of their communication methods.

Evidence from parents/carers (e.g. Waite et al, 2020) suggests the benefits of Government clarity on reasonable expectations from employers, should parents/carers have caring obligations and are needing to support home schooling. Schools need to consider the abilities of parents/carers to support children and young people, which will vary in terms of resources, time and expertise (**see Appendices 3 and 4 for more evidence and discussion**).

▶ **4. Activate immediate measures to ensure that children are fed nutritious food.**

Food insecurity and scarcity are likely to continue. Further, there are possibilities of changes in availability and affordability, due to the national and global disruption of food production and supply chains, which need to be monitored and anticipated.

▶ **5. Maintain the provision of basic services for children including healthcare, water, sanitation and birth registration.**

See **UN Committee Recommendation 1** for healthcare, including immunisations.

A rapid review should be undertaken of water and sanitation for those in temporary accommodation or otherwise at risk of not having these basic utilities, to ensure that children and young people's rights are being met in accessing these basic services (**see Appendix 1**).

Birth registration should be recognised as an urgent service, to be prioritised for registration offices, and new parents made aware of its availability by explicit and accessible information.

▶ **6. Define core child protection services as essential and ensure that they remain functioning and available, including home visits when necessary, and provide professional mental health services for children living in lockdown.**

Referrals in relation to child and domestic abuse are likely to rise after restrictions are lifted. Services will need to be poised to provide family support and respond to children and young people's rights to protection.

The reopening of mental health services is part of Phase 1 out of lockdown. While there are ongoing and increased issues on supply meeting demand, this positively recognises children and young people's rights to mental health support. Community services without a mental health-specific focus, however, will remain closed even though they may provide considerable support for children and young people's mental health. Serious consideration should be given that such services are made

available sooner in the phases. Given the mental health needs of young people in YOIs, changes are likely needed to ensure that counselling is accessible to them e.g. ensuring privacy if a virtual call **(see Appendix 2)**.

Key protections for children and young people's rights should be reinstated, such as:

- Provisions for children who are detained under mental health legislation **(see Appendix 2)**.
- Children's access to civil proceedings in relation to child contact **(see Appendix 7)**.
- Provisions for young carers for social care assessments **(see Appendices 1, 2 and 8)**.

See UN Committee Recommendation 1.

## ► 7. Protect children whose vulnerability is further increased by the exceptional circumstances caused by the pandemic.

A rapid review is required to assess how BAME children and young people can best be supported, as their households may have been particularly impacted by COVID-19 in terms of becoming ill, increase in racism incidents and other inequalities **(see Section 3)**.

Asylum seeking and refugee children and young people face increased risks across a range of areas, including mental health and education, with poor housing, limited access to leisure opportunities and reports of an increase in racism. Particular outreach from currently available services should be planned, and reopening services that will best meet their rights should be prioritised. European Union migrant children face insecurity over their status post-Brexit, with risk of becoming undocumented if an application for settled status is not made in time (end of June 2021 if there is a Brexit deal; end of December 2020 if there is a "no deal" exit). At a minimum, an outreach plan is required to support their families in applying.

As health services reopen, services for trans young people need to be recognised as a priority, with appointments rescheduled for Gender Identity Clinics (LGBT Scotland, 2020).

Children and young people with additional support needs have had their rights to additional education support suspended by the emergency measures. A plan is needed to reactivate these rights with clear accountability lines established **(see Appendix 8)**.

Some children and young people will be in households that are shielding, and will not be able to take advantage of such outdoor opportunities or the return to schools in person. Planning for their rights, and ensuring support is in place, will need to continue to be addressed.

▶ **8. Release children in all forms of detention, wherever possible, and provide children who cannot be released with the means to maintain regular contact with their families.**

Policy should be changed to prioritise the safe release of young people from YOIs.

Physical distancing is likely to continue for some time. Specific attention to supporting children and young people's contact with siblings and other family members is needed for children and young people in detention or placements (e.g. YOIs, secure care, and other care placements) to ensure regular, quality virtual contact is available. This needs to consider issues such as a suitable level of privacy for children and young people and practical accessibility such as sufficient mobile data and devices (see Appendices 6 and 9).

▶ **9. Prevent the arrest or detention of children for violating State guidance and directives relating to COVID-19.**

Scottish Government should set out the principle of not criminalising children and young people for violating guidance and directives relating to COVID-19, with applications for the police and the criminal justice, children's hearing and care systems. Following from this principle, the implications would be: not allowing fixed term notices to be given to 16- and 17-year-olds; avoiding fining children and young people, which they may have difficulty paying; and avoiding criminalising children and young people in residential care (see Appendix 9).

▶ **10. Disseminate accurate information about COVID-19 and how to prevent infection in languages and formats that are child-friendly and accessible to all children including children with disabilities, migrant children and children with limited access to the internet.**

Children, young people and parents/carers' needs for information will continue during the phases. Time can be invested now to ask children, young people and parents/carers what forms and modes of information are most helpful and accessible to them and to plan (ideally with groups of children, young people and parents/carers) on the basis of these.

Particular consideration is needed in relation to the groups of children, young people and parents/carers who are at risk of not having accessible information currently, such as those at risk of digital exclusion, whose first language is not English, and/or who have learning difficulties.

Reflection and learning can be undertaken of where information has not reached or been useful for children, young people and parents/carers. For example, attention can be given to how to manage and encourage children and young people's access to routine, urgent and tertiary health care. Information on domestic abuse needs to recognise children and young people as co-victims, enabling them to access the information that they need.

Information may be particularly needed for those groups who risk being most detrimentally affected by the consequences of COVID-19 but might be less likely to take up opportunities in Phases 1 to 4. For example, children, young people and parents/carers with disabilities may particularly benefit from information encouraging children and young people's take-up of schooling and training opportunities and health services, with due support to understand the respective transmission and illness risks.

► **11. Provide opportunities for children's views to be heard and taken into account in decision-making processes on the pandemic.**

Current surveys and regularised contacts with children and young people should continue to be supported. The opportunity of reaching such a range of participants should be maximised, using the resources of research and statisticians so that the evidence and analysis are as robust as possible.

Particular consideration and methods are needed to facilitate the inclusion of children and young people who currently are not easily accessible by digital means. The rights of these children and young people may be at most risk as a result of the COVID-19 measures, and thus their views are most needed to mitigate and remove such risks.

Children and young people's rights to participation should not be suspended because of emergency and crisis contexts. Policy, whether legislative or guidance, made nationally or locally, needs to continue to ensure children and young people have the right to have their views considered and taken account of in decisions that affect them collectively and individually — whether that be social care assessments, assessments for transitioning into adult services, children's hearings or child contact. This right needs to be both recognised and explicitly stated, and efforts made to support it.



## Section 5: Learning so far - respecting, fulfilling and protecting children and young people's human rights in times of crisis



Arguments for supporting human rights apply as much in times of crisis as they do in times that are not. This may be particularly true for children and young people, where adult concerns about their best interests can trump other considerations (Ruiz-Casares et al, 2017). Supporting children and young people's human rights may be more complex to achieve in emergency situations such as COVID-19, but to do so is important nonetheless. Not paying attention to children and young people's full range of rights is to the detriment not only of children and young people themselves, but also to the wellbeing and recovery of their families and communities in the short and longer term.

Scottish Government has published three Children's Rights and Wellbeing Impact Assessments to date in regard to the emergency measures. Such assessments have the potential to raise attention to children and young people's human rights across Government — and ensure that policy is developed and implemented with these rights as their foundation, as effectively as possible.

In publishing its plans for moving out of restrictions, Scottish Government has set out a principled approach with frequent reference to human rights. The framework document published on 21 May 2020 (Scottish Government, 2020a) makes specific and frequent reference to children and young people, which underlines that their human rights must be considered alongside others': this is particularly important given the potential of children and young people's rights to be side-lined, as discussed above.

A rights-based approach helps recognise that particular groups of children and young people risk being disadvantaged by COVID-19 and its consequences:

- Children and young people who were already at risk of rights violations, due to such reasons as poverty, being care experienced and/or in contact with the law, from a migrant background and having disabilities or additional support needs. These risks are likely to be amplified.
- Children and young people who risk digital exclusion because of lack of access to devices, data, reliable internet connections, or limited digital literacy.
- The rights of some groups have at least been recognised to some extent (such as young carers), but others less so, such as children and young people in Gypsy/Traveller communities, in island or rural communities, from BAME

communities, who are from a migrant background, who are in temporary or poor accommodation, live rurally, who are LGBTQI+ or young mothers.

For all such groups, attention must be paid to obligations to positively respect, fulfil and protect children and young people's human rights, which points to the need for a targeted uplift in efforts to address systemic discrimination.

In light of this:

- Rapid reviews should be undertaken to reconsider those children and young people who may continue to be excluded/not benefiting from COVID-19 responses.
- These reviews should include the involvement of children, young people and their parents/carers.

In turn, in response to these reviews, planning and adaptations to the legislation and guidance should be considered carefully. This will be needed to ensure **all** children and young people's rights are respected, fulfilled and promoted.

Some consequences of the COVID-19 measures are potentially positive, providing opportunities for learning and change once restrictions are lifted. Indicative evidence suggests that some:

- Children can appreciate the increased time with family members (Children's Parliament 2020b-e).
- Children and young people are relieved from the academic pressures of school and problematic interactions with others — e.g. bullying (Hilppö et al, 2020).
- Families involved with the child protection system appreciate having fewer helpers to deal with (Scottish Government 2020u).

These positive experiences should be actively taken into consideration in the planning of service delivery into the future. Preparations should also be made if restrictions need to be reinstated locally or across Scotland.

Data have been regularly collated for analysis across Scotland in this pandemic, including the compilation of weekly vulnerable children reports. This is welcome and should be continued.

However, the crisis has also amplified what is not known in terms of data and evidence, which would be key to a rights-based approach. For example, statistics are not routinely available on:

- The numbers of children eligible for and receiving free school meals due to income.
- The relationships and pathways within and between the child protection and children's hearing systems, from a child's and family's perspective.

- The numbers of children with a multi-agency child's plan under Getting it right for every child (GIRFEC) (Scottish Government, 2020t).

Statistics are not collected at a granular level about the particular groups of children and young people being disadvantaged by COVID-19 and its consequences, to know who may not be benefiting from the broad range of measures in place. Without this information, it is difficult to plan for emergency policies and difficult to monitor and evaluate changes due to COVID-19 and its consequences. The crisis provides an opportunity to develop children and young people's rights indicators and to undertake rights-based allocations of resources.

The crisis has shown the responsiveness of key stakeholders in the public and third sectors to marshal their expertise and resources, to work together with Scottish Government to develop policies during this time of crisis. It has also shown that an infrastructure for children and young people's participation is nascent, with the Children's Parliament, Scottish Youth Parliament, Young Scot and YouthLink Scotland reaching out through surveys to children and young people, and other third sector intelligence. Children and young people have not felt adequately involved in decision-making, particularly on some decisions, and they have wanted to be so **(see Section 3)**.



In the face of the public health emergency caused by COVID-19, legislative decisions have been primarily concerned with protecting the right to life, and with mitigating the impact of these decisions. Fundamentally, this protected children's, young people's and their families' rights to survival and development. Acknowledging the critical importance of the measures, this CRIA provides the opportunity to reflect on the impacts across all of children and young people's human rights — and to look at where such rights may have been limited unreasonably, and how such rights can be best addressed currently and into the future.

The COVID-19 pandemic is impacting on the rights of all children and young people in Scotland, affecting almost every aspect of their daily lives. For all children and young people, these impacts are likely to be significant. For many, they will be highly detrimental and potentially lifechanging. Conclusions have been drawn throughout the CRIA as to what specific steps should be taken by duty bearers across a range of public services, to ensure children and young people's human rights are upheld. Across these conclusions, three systemic issues are evident, that if addressed by duty bearers would ensure children and young people's human rights are better respected, protected and fulfilled as the transition is made to the "new normal".

### **Law reform**

First, COVID-19 has starkly highlighted areas of existing Scots law that are not compliant with the UNCRC. For example, inconsistencies in defining the age of the child across existing Scots law resulted in emergency legislation which is incompatible with the UNCRC. Indeed, legislation was put in place that defined 16- and 17-year-olds as adults in a number of areas, which is in conflict with the UNCRC definition of a child as being under the age of 18. This has a negative impact on a range of children's rights, such as the potential for young people to be criminalised, prosecuted and detained for breaching COVID-19 regulations, or if they are "potentially infectious", and young people deprived of their liberty being treated as adults in YOIs, hospitals and detention centres. Young people under the age of 18 can miss the special safeguards in regard to mental health care and protection and child protection and safeguarding that they have the right to under international human rights law.

### **Data and resources**

Second, there are ongoing data gaps on key indicators for children and young people's rights. This CRIA underlines the value of Scottish Government's collation of

relevant data and stakeholders' information, through the "vulnerable children" reports (Scottish Government 2020t, 2020u). At the same time, the reports illuminate problematic data gaps. For example, disaggregated data is needed to analyse how the response to COVID-19 is impacting on children and young people in different circumstances: for example children and young people from Gypsy/Traveller communities; asylum seeking, refugee and migrant children and young people; and those living in families affected by disability. The absence of this information makes it impossible to monitor which children and young people are most likely to be experiencing the greatest negative impact on their rights, and (as a response) to prioritise the allocation of resources appropriately.

Resources need to be allocated to ensure the best possible outcomes for every child and young person, paying special attention to children and young people in vulnerable situations. To date, it is not clear what work has been conducted — or is being planned — to assess how the allocation of resources to respond to COVID-19 has affected different groups of children and young people.

### **Improving Children's Rights Impact Assessments**

Third, improvements can be made to Children's Rights Impact Assessments (CRIAs) in Scotland. This applies to Government as well as to those outwith Government who wish to support children and young people's human rights, such as the Observatory of Children's Human Rights Scotland.

The Children's Rights and Wellbeing Impact Assessments (CRWIAs) published by Scottish Government show an important commitment to embedding a children's rights approach in the response to COVID-19. This alternative CRIA demonstrates the value of monitoring and regularly reviewing such Government assessments on an ongoing basis, to inform and adapt policy responses accordingly.

For example, this CRIA finds that more attention should be directed towards a child's best interests (UNCRC Article 3), non-discrimination (UNCRC Article 2) and participation (UNCRC Article 12) — even in times of emergency measures and the need for quick solutions. With such attention, the CRIA highlights areas where children's best interests could and should be a primary consideration, but this principle is missing from the emergency measure or guidance. The CRIA underlines that certain groups of children and young people are more adversely affected by measures than others, and these adverse impacts are not always recognised nor mitigated for. Children and young people's views and experiences are not taken into account routinely in key decisions that affect them.

Considering the full range of prevention, protection, provision and participation rights, as articulated in the UNCRC and other human rights treaties, provides an integrated — and testing — framework from which to consider policy responses to COVID-19.



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## UK Legislation

Coronavirus Act 2020

## Scotland Legislation

Coronavirus (Scotland) Act 2020

Coronavirus (Scotland) (No.2) Act 2020

Children and Young People (Scotland) Act 2014 (Modification) (No.2) Revocation Order 2020

Criminal Justice (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020

Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020

Education (Deemed Decisions) (Coronavirus) (Scotland) Amendment Regulations 2020 / 149

Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020

Prisons and Young Offenders Institutions (Scotland) Amendment Regulations 2020

Release of Prisoners (Coronavirus) (Scotland) Regulations 2020

## Statutory Guidance

Coronavirus (COVID 19): Guidance on Changes to Social Care Assessments

## Scottish Government Guidance

Scottish Government (2020a) Coronavirus (COVID-19): Framework for Decision-Making – Scotland's Route Map Through and out of the Crisis

Scottish Government (2020b) Coronavirus (COVID 19): Framework for Decision-Making

Scottish Government (2020c) Coronavirus (COVID 19): Framework for Decision-Making: Further Information

Scottish Government (2020d) Coronavirus (COVID 19): Framework for Decision-Making – Supporting Evidence

Scottish Government (2020e) Excellence and Equity during the COVID-19 Pandemic – A Strategic Framework for Reopening Schools, Early Learning and Childcare Provision in Scotland

Scottish Government (2020f) Educational Continuity Direction

Scottish Government (2020g) Coronavirus (COVID 19): Residential Childcare

Scottish Government (2020h) Coronavirus (COVID 19): Supplementary National Child Protection Guidance

Scottish Government (2020e) Coronavirus (COVID 19): Guidance on Domestic Abuse

Scottish Government (2020j) Coronavirus (COVID-19) Supplementary National Violence Against Women Guidance

Scottish Government (2020k) Coronavirus (COVID 19): Supporting Pupils, Parents and Teachers – Learning During Term 4

Scottish Government (2020l) Coronavirus Scotland Act 2020 – Guidance on Looked After Children and Children’s Hearings Provisions

Scottish Government (2020m) Coronavirus (COVID 19): School and Early Learning Closures – Guidance about Key Workers and Vulnerable Children

Scottish Government (2020n) Coronavirus (COVID-19): Childcare Closures and Emergency Provision

Scottish Government (2020o) Coronavirus (COVID 19): Physical Distancing in Education and Childcare Settings

Scottish Government (2020p) Coronavirus (COVID 19): Food Fund Guidance for Local Authorities

Scottish Government (2020x) Coronavirus (COVID-19): Scientific Evidence on Schools and ELC Settings.

## **Others**

SCRA and CHS: Children’s Hearings System Update

Coronavirus Crisis: Guidance on Compliance with Court Orders Relating to Parental Responsibilities and Rights

Scottish Government (2020z) Consultation on Coronavirus (COVID-19): Framework for Decision-Making – Scotland’s Route Map through and out of the crisis

## **CRWIAs**

Scottish Government (2020q) Coronavirus (Scotland) Bill: CRWIA

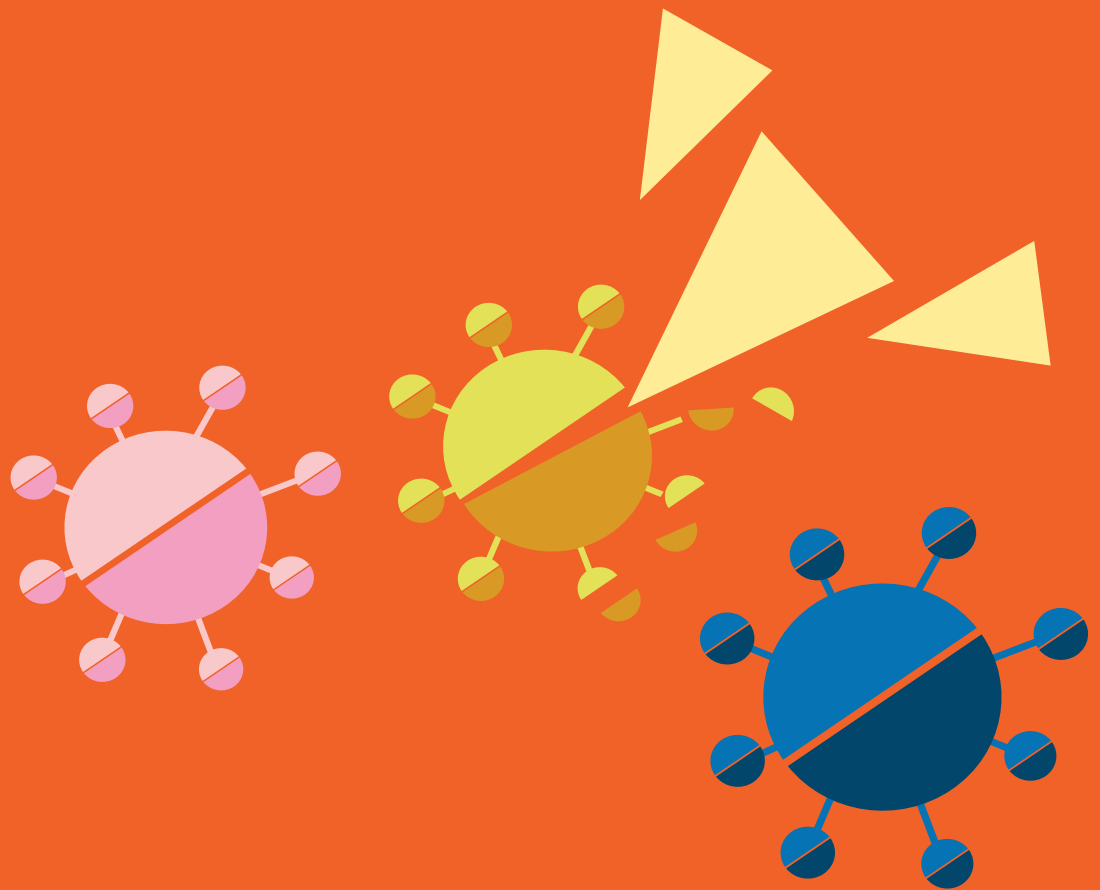
Scottish Government (2020r) Coronavirus (Scotland) (No.2) Bill: CRWIA

Scottish Government (2020s) Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020: CRWIA

## **EQIA**

Initial Impact Assessment on the Strategic Framework for Reopening Schools and Early Learning and Childcare Settings in Scotland





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