

Practice implications of Coronavirus for Children in Conflict with the Law: An ongoing review

April 8, 2020

Background

The [Coronavirus \(Scotland\) Act](#) received Royal Assent on April 6, 2020, bringing wide-ranging provisions across a broad range of policy areas, with several implications for children in conflict with the law. This report documents CYCJ's analysis of the issues and collates concerns and experiences shared with us by practitioners and managers working under unprecedented and challenging circumstances to support children and maintain their care, safety, health and wellbeing. We will update this report on an ongoing basis to ensure practitioners and managers have the most up to date information available in one place.

Children's Hearings System

While we have already heard that some local authorities are accessing phones, iPads etc to ensure that children, young people and families can stay connected via virtual mechanisms, the provisions in the Act in respect of using technology for holding Children's Hearings and attendance at court makes this access to digital communication even more crucial. This is essential if children's rights to participation are to be upheld and if we are to ensure that digital poverty and exclusion does not further disadvantage children who cannot access suitable devices. This is extremely important when children are appearing on offence-based grounds, given that proven or established matters have the same material affect as convictions, with disclosure implications accompanying this. The Act means that children and their families will no longer attend Hearings in person, but rather use virtual means to do so, if indeed they are required to do so. Clarification on how this will take place is perhaps lacking (we understand further guidance is due next week), with there being a significant risk that children's right to participation may not be upheld due to a lack of device or access to the internet. There may also be some young people for whom technological restrictions are part of risk management plans; this will need to be considered (and arguably extends beyond this to the wider current uses of technology such as for learning and development; maintaining social and family connections; accessing financial support; and health and wellbeing advice). Fundamentally, there may be Hearings taking place without the participation of the young person in question; a significant departure from previous practice. Further guidance on this has been issued by [SCRA](#) and [Children's Hearing Scotland](#).

Significant changes have been made to the legal mechanisms of a Hearing, and orders made at this forum. In addition to holding Hearings online, the Principal Reporter now has the power to hold Hearings consisting of as little as one person, and with gender balance no longer being required. However, this only ought to happen in exceptional circumstances.

Compulsory Supervision Orders - which ordinarily expire one year after they were made - can now be extended by a further six months by the Principal Reporter, if it has proven impossible or unpractical to hold a review within the normal timescales. The Act obliges the Principal Reporter to convene a review as soon as practically possible after the original expiry date. In instances where an Interim Compulsory Supervision Order (ICSO) is made, this can now remain in place for up to 44 days, rather than the normal 22, or - in the case of ICSOs imposed by a Sheriff - for any period of time they may specify. In practice, this may mean that children are subject to legal orders, along with the conditions attached to such orders, and the support being provided by virtue of them, for longer periods without the external and independent scrutiny of the Children's Hearings System.

For children in secure care, this Act extends the maximum period during which a child may be kept in secure accommodation without the authority of the children's hearing or the sheriff from an aggregate of 72 hours to 96 hours (whether or not consecutive) in any period of 28 consecutive days. Similar extensions are made to the holding of Children's Hearings for children placed in secure accommodation subject to Compulsory Supervision Orders, or a relevant order, which do not include a secure accommodation authorisation, providing the Principal Reporter will have a further period of 24 hours from the end of the previous period of 72 hours to arrange a hearing in a similar manner to the process [outlined here](#). In practice, this will have similar implications to those detailed above and will render the discussions between the CSWO and head of unit in agreeing such decisions even more important.

A broad range of other alterations have been made to the functioning and processes associated with the Children's Hearing System, including Child Protection Orders and are outlined [here](#).

Court

The new Act sets out provisions that will see court proceedings taking place through digital means. For staff, ensuring they can access technology to enable participation in courts, as well as Children's Hearings, will be crucial too. While video conferences are being utilised in some situations, this can still mean staff need to travel to designated video conferencing suites, for these to be open, and to have the technical know-how, so ensuring as easy as possible access to technology that works across agencies will be important. There are also changes to timescales for courts. This may cause delays in court proceedings, which could result in children who committed offences when aged under 18 being tried as over 18s when the case gets to court, resulting in (amongst other things) a loss of protections of halving disclosure period and children being held in custody for longer.

In terms of [fixed penalty notices](#) and potential criminalisation of 16/17 year olds, in practice as good corporate parents and carers to our children, and in light of the fact that under the Management of Offenders (Scotland) Act 2019 fines still carry a disclosure period (six months if aged under 18 at the date of conviction), we want to prevent children facing such measures. We are aware that doing so in practice can however be challenging. It will be important that efforts to do so do not constitute deprivation of that child's liberty. In addition, there are further risks that children who do not comply with the restrictions placed on them, and/or in the face of the current anxiety provoking circumstances, display distressed behaviour in the form of challenging behaviour.

Inappropriate responses from family, carers, police and others could potentially bring significant risks of further criminalisation of children, an increase in the use of restrictive practice (such as restraint or isolation), children (particularly older children) being asked to leave their care placements and increased demands to place children in secure care. It is vital, therefore, that those supporting children adopt a measured, rational position when responding to children who are struggling with the emotional and practical challenges of governmental imposed restrictions of liberty. Developing clear plans for responses and contingency plans in conjunction with children, families, and team around the child, so that there are agreed responses with everyone clear about their roles and responsibilities within, including the child, is important.

All practitioners working with children should also understand the legislative basis for [admission to secure care](#) and that deprivation of a child's liberty should be the [last resort](#). National guidance being available to frontline staff will also be important in promoting consistency of approaches, as will opportunities to share practice, develop clear messages and supporting children to understand their rights, and the rationale behind, the current restrictions. We understand discussions with Police Scotland and a range of partners are taking place.

For those who are subject to a Community Payback Order (CPO), the Act automatically extends the period within which unpaid work or other activities must be completed by 12 months, and that any newly made orders have a minimum period of 12 months within which to undertake the allotted hours. Furthermore, it authorises local

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authorities to “pause” a CPO. In doing so, it will be important that cognisance is taken of the fact that CPOs are usually an alternative to custody and recognising the supports children need to [successfully complete orders](#), meaning children should be given specific consideration in utilising these powers.

Prison

Release from custody is often [traumatic](#), particularly given that in these circumstances there may be limited time for children and young people to prepare for release. The Act does not mandate release of prisoners; discussion regarding this continues between the Scottish Government and partners. The Government may, however, introduce regulations which sees prisoners released prior to the routine liberation date, although several categories of prisoner are exempt, namely those serving a life sentence, convicted of sexual offences, subject to a Supervised Release Order or serving an extended sentence, and untried. This final point therefore means that those held on remand cannot be released pending trial. Prison Governors shall maintain the power to veto any early release should there be an immediate risk to an identified person. Community based partners play a crucial role in supporting children to prepare for and in their return to community, therefore early communication regarding consideration and the involvement of community-based partners is essential. Housing providers will be key in this with [SHORE AND COVID-19 – Interim Guidance](#) published for all people due to be released from custody.

For all children and young people in custody, maintaining contact with families and supports will be important. [All visits to Scottish prisons have been suspended](#), (with the exception of critical agent visits which will continue to be facilitated) and Email a Prisoner appears to be being used more frequently. The Scottish Prison Service [website](#) has a list of FAQs, information on the family support helpline and ways of sending money to family and friends.

The Prisons and Young Offenders Institutions ([Scotland](#)) Rules 2011 have been amended through the [Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2020](#).

Secure care

All five secure centres are working to maintain a normal service and keep to the daily routine wherever possible, including continuing with reduced education and support programmes. They are working with young people to ease their concerns and ensure they are able to stay safe and in contact with their families.

All of the secure services have robust service continuity and contingency plans in place. These are actively reviewed and updated as new information and guidance becomes available. All five centres have staff absent due to self-isolation. This is an ongoing issue, but the centres are currently able to manage this.

Staff have access to PPE and are able to care for the young people in isolation. All five centres are in daily contact with Scottish Government officials. There is a weekly tele-conference with Heads of secure care services, Scottish Government, the Care Inspectorate, Education Scotland and Scotland Excel. This is an opportunity to raise concerns, share ideas and suggestions, discuss new guidance and hear how other services are managing.

The Cabinet Secretary has also [written](#) to the Convenor of the Scottish Parliament's Justice Committee, which contains information in respect of secure care.

Closing comments

This Act has a sunset clause meaning that provisions will expire after six months, but could be extended for two further periods of six months subject to the approval of the Scottish Parliament. Further provisions include requiring Scottish Ministers to report to Parliament on the impact of the Act every two months.

The Scottish Government have produced [this guide](#) which summarises many other areas of the Act, whilst the [Children's Hearing Improvement Partnership](#) has produced guidance in relation to implications for children involved in the Children's Hearing System. CELCIS have compiled a bank of [information and resources](#) to support children's care and protection.

The team at CYCJ are continuing to work via online mechanisms to support practice and policy, and to continue with our participation work with children and young people. If you have ideas about what we can be doing to provide support at this challenging time please let us know. Get in touch at cycj@strath.ac.uk.