

Written evidence from the Children and Young People’s Commissioner – Scotland (COV0088)

The Covid-19 pandemic has created unprecedented challenges for public services and for society as a whole. We commend the enormous efforts being made by public services and civil society organisations across the United Kingdom. However, the pandemic and the restrictions put in place to combat it have a disproportionate impact on those children already most at risk. Yet we have seen very little evidence of the use of Children’s Rights Impact Assessments or human rights-based budgeting.

We are particularly concerned about children living with the impacts of poverty, including food insecurity; those at risk of physical abuse and neglect; and those who have experienced domestic abuse. These children and their families now have more limited access to support services

We acknowledge the necessity of introducing emergency legislation at both UK and devolved level. Some of these measures have introduced important safeguards, for example protecting children and their families from eviction. However, this legislation also bypasses and/or overturns some existing human rights protections in both UK and Scots law.

International human rights frameworks recognise States’ need for flexibility in a time of national emergency, as acknowledged in Article 15 of the ECHR¹ and Article 4 of the ICCPR,² but these powers must be **lawful, necessary, proportionate and time limited**.

Human rights treaties emphasise the importance of ensuring the rights of the most vulnerable members of society, including children and disabled people, continue to be respected, protected and fulfilled during national emergencies. International human rights bodies have issued a significant amount of guidance to States specifically in relation to the current pandemic.³ The United Nations Committee on the Rights of the Child warns of the grave physical, emotional and psychological effect of the COVID-19 pandemic on children and calls on States to protect the rights of children.⁴ The European Network of Ombudspersons for Children has issued a statement to European governments and Intergovernmental organisations highlighting key concerns.⁵ National children’s rights institutions such as the UK’s Children’s Commissioners have an important role to play in monitoring the impact of these measures and constructively challenging governments.

We briefed members of the Scottish Parliament ahead of the Legislative Consent Motion on the Coronavirus Act 2020 (the UK Act)⁶ and when they considered the Coronavirus (Scotland) Act 2020 (the Scottish Act).⁷ We raised concerns about the necessity and proportionality of measures which would potentially impact on children and young people. The introduction of these emergency provisions and the

¹ European Convention on Human Rights

² International Covenant of Civil and Political Rights

³ <https://cypcs.org.uk/coronavirus/international-statements/>

⁴ https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/1_Global/INT_CRC_STA_9095_E.pdf

⁵ <https://cypcs.org.uk/wpcontent/uploads/2020/04/ENOC-Bureau-statement-on-CR-in-the-context-of-the-COVID-19-outbreak-FV.pdf>

⁶ <https://cypcs.org.uk/wpcontent/uploads/2020/03/Coronavirus-Bill-Legislative-Consent-Memorandum-Briefing-March-2020.pdf>

⁷ <https://cypcs.org.uk/wpcontent/uploads/2020/03/Coronavirus-Scotland-Bill-MSP-Briefing.pdf>

accompanying restrictions has resulted in a potential impact on children's human rights in a number of ways.

Definition of a child

We are extremely disappointed that the UK Act defines a child as a person under 16 in Scotland, rather than the UNCRC compliant definition of under 18 as in the rest of the UK. This means those aged 16 and 17 in Scotland are at significantly greater risk of police attention and criminalisation, with the associated impact on their criminal records, than children elsewhere in the UK.⁸

Detention of people deemed 'potentially infectious'

Schedule 21 of the UK Act provides for new offences and powers to detain children for the purpose of testing if deemed 'potentially infectious'. Breaches of the provisions in Scotland may result in being sentenced to a period of imprisonment. Children and young people in Scotland are therefore at greater risk of being deprived of their liberty than those in the other UK countries.⁹

Police powers and offences under health protection regulations

Children and young people have the same rights as adults to leave the home, including for exercise and to make essential journeys to purchase food or medication. We are concerned that young people, those with learning disabilities or neuro-diverse conditions, ethnic minorities may be disproportionately impacted by these measures. We call on UK and devolved governments to ensure that disaggregated data is collected on the use of police powers and particularly issuing of fixed penalty notices. The Commissioner has joined the Independent Advisory Group established by Police Scotland to monitor the use of these temporary powers.¹⁰

Assessments of need

The UK Act provides a power to suspend legal duties on local authorities to assess the needs of children with disabilities, care experienced children and young carers (Part 7 of the Act). These assessments are an essential protection of the rights of these particularly vulnerable children and we do not see how services can be appropriately delivered or prioritised in their absence.¹¹

⁸ See also [UNCRC Article 1](#)

⁹ UNCTteRC [Point 9](#)

¹⁰ UNCTteRC [point 6](#)

¹¹ UNCTteRC [Point 7](#)

Children deprived of their liberty

Given that children deprived of their liberty or otherwise detained are at an increased risk of significant harm from Coronavirus, we believe that children must be expressly considered for managed and supported release as part of any early release programme.¹²

Children's Hearings

The Scottish Act introduced changes to the Children's Hearings System.¹³ The changes to the administration of justice and extensions of timeframes for orders relating to justice, care and protection are a disproportionate response to the pandemic and risk breaching the right to a fair hearing under ECHR and the associated right to participation.¹⁴

School education

It was neither proportionate nor necessary for the UK Act to provide a power to suspend the duties contained with the Education (Scotland) Act 1980 on provision of education and free school meals.¹⁵

Digital exclusion poses a significant risk to children's right to education. Schools in Scotland are providing children with education in a variety of ways, but the majority of education, social time and family support is being provided in virtual environments; we need to make sure these are accessible to all. Children are being excluded from digital education platforms due to poverty, poor internet access (particularly in rural and island communities) and due to not having sufficient access to a device. Scottish Government and local authorities should ensure that online learning does not exacerbate existing inequalities. A national scheme to ensure access is necessary to ensure children's right to education.

Poverty

Poverty was already the biggest human rights issue in Scotland and the 240,000 children directly affected by poverty are being disproportionately impacted by the pandemic. Many families in Scotland living with food insecurity rely on free school meals, breakfast and after school clubs and these supports are no longer available. Insecure housing and fuel poverty are placing additional pressures on families during the current restrictions. We have called for the introduction of a national system of direct payments to families, alongside flexible local options to ensure an adequate standard of living.

Participation Rights

Public bodies are making use of technology to continue to deliver services during this period. We have seen evidence of human rights breaches arising from the use of digital platforms in other areas including access to justice and children's participation in decision making.

¹² UNCTteeRC [Point 8](#)

¹³ "The Children's Hearings System is Scotland's unique care and justice system for children and young people" - <http://www.chscotland.gov.uk/the-childrens-hearings-system/>

¹⁴ UNCTteeRC [Points 7, 8, and 9](#)

¹⁵ Schedule 16 Part 2 s9 of the UK Act

Child protection and Safeguarding

We are concerned that Part 13 of the UK Act allows for the relaxation of child protection and safeguarding legislation, which would enable an individual barred from undertaking regulated work with children to do so.¹⁶ Many of the protective factors that keep children safe are not available or under significant pressure due to the lockdown.

Schools don't just provide education; they are safe places for children. Schools are community hubs, places where children play and socialise, and where families access support and assistance from universal services.

Children and young people who are victims of domestic violence, abuse and neglect are at particular risk being confined within an unsafe household, with more limited access to support services and to those who might be able to identify and respond to that risk.

Health and wellbeing

We know that children are affected by parental mental health, and parents are under increased pressure; through isolation, worry about paying bills, being able to access food, and trying to care for children and support their learning. As universal services and support from extended family and friends are restricted families will need extra help, particularly those who were already receiving informal support.

Children and young people are also struggling to access support for their own mental health, while many are being asked to take on additional responsibilities as carers for siblings or their parents.

Disability

There are nearly 200,000 children in Scotland who receive support in school due to a disability or other support need. Many families contacting our office are concerned at the lack of proper planning and support for children with complex needs and are feeling cut off as a result of the school closures.

The practical, emotional and psychological impacts on children of this period will be immense and are likely to last far beyond the end of the lockdown period. The more support provided now, the better prepared we will be to deal with the aftermath.

Incorporation

The Scottish Government has reiterated its commitment to incorporate the UNCRC into domestic law within the next year. This commitment must be honoured. It is the most important thing we can do to ensure that children's rights are respected, protected and fulfilled.

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¹⁶ UNCTteRC [Point 6](#)