

## Written evidence from the University of Liverpool, European Children's Rights Unit (ECRU)

### **THE IMPACT OF COVID-19 ON EDUCATION AND CHILDREN'S SERVICES**

#### **Response to DfE consultation June 15<sup>th</sup> 2020**

1. The European Children's Rights Unit (ECRU) is a research unit based in the University of Liverpool's School of Law and Social Justice. ECRU has specific interest in applying a children's rights based approach to research, and in building capacities among practitioners and policy makers – through training, consultancy and strategic litigation - to enable them to bring children's rights to bear on practice and decision-making.
2. Our response to this consultation focuses on the broader, potential threat that the Covid-19 measures pose to the protection of children's rights in the UK. We are concerned that COVID-19 emergency measures risk disproportionately impacting children (as compared to adults), and that their effects have not been appropriately categorised as a children's rights issue. The emergency measures currently in place affect a much greater proportion of a child's life than an adult. In addition to this, the burden of C-19's social, economic, legal and policy effects will be borne by children for years to come.
3. We are particularly concerned that the impacts of COVID-19 on children have been minimised if not obscured by claims regarding children's apparent resilience to COVID-19 infection and symptoms. Furthermore, it is **the most at risk children who will feel the effects of reduced public services and regulatory shortcuts**. We see this is in relation to access to education, special educational needs measures, child protection, and children in care. It is children living in poverty, with disabilities, with uncertain immigration statuses and those who are at risk of violence who will be most impacted.

#### **Suspension of Children's Rights and Welfare Obligations**

4. Whilst the measures introduced by Coronavirus Act 2020 are presented as a necessary response to this crisis – to save time and money, or to accommodate public health measures – this misunderstands the nature of children's rights. The UK Government and

all public authorities are bound by their international obligation to uphold children's rights, most notably those contained in the [UN Convention on the Rights of the Child](#) and the [European Convention on Human Rights](#) (incorporated into UK law by virtue of the Human Rights Act 1998). Many of the rights in these documents exist not as aspirational standards when times are good, but as minimum levels of protection and welfare that must be guaranteed at all times. The very essence of such rights is to ensure that even in the face of competing demands, the most vulnerable and at risk are cared for. Crucially, any decision which rolls back these rights **should be carefully justified and must be proportionate**.

5. **In spite of this, the core principles of our child law framework and children's rights obligations are absent from these emergency measures.** Notably, the [Coronavirus Act 2020 allows for](#) emergency changes to suspension of children's social care provision, their access to justice and their educational rights and yet **contains no reference to the paramountcy of their welfare, to the primacy of their best interests or, indeed, to their right to have a say in decisions that affect them.** These are fundamental principles of our child law framework and operate to ensure that the imperative to safeguard children and to protect their rights remain a key consideration, not just in times of personal and family crisis, but in this period of global crisis. In short, this is not a time to dispense with children's rights; it is a time when children's rights should be at the forefront of decision-making.
  
6. One example relates to the temporary modification of mental health legislation which essentially weakens the protections afforded to those forcibly detained under the Mental Health Act (MHA) 1983. Prior to the 2020 Coronavirus Act, an individual could only be detained under the MHA on the application of a mental health professional, supported by two medical professionals if it was deemed necessary to protect the safety and health of the child, or others. The Coronavirus Act changes this requirement, allowing detention on the recommendation of only one medical practitioner.<sup>1</sup> It is recognised that the provisions are intended to 'protect' children and that a lack of access to treatment for the majority of children can often be more problematic than forced detention for the minority. Yet the weakening of the procedural protections should not be ignored, since the safeguards under MHA were introduced in response to the failure of previous legislation<sup>2</sup> to uphold

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<sup>1</sup> Sec 10, Schedule 8, Part 2 of the Coronavirus Act. Sch 8 applies to legislation in England and Wales, whereas Schedules 9-11 apply to legislative provision in Scotland and Northern Ireland.

the rights of individuals detained against their will, many of whom should not have been detained and who went on to become [institutionalised](#).

### **A failure to engage in any assessment of the impact of Covid-19 emergency measures on children**

7. The [Coronavirus Act 2020](#) Act was **passed with limited Parliamentary scrutiny**, no assessment of the impact of its measures on children, and no consideration of how the emergency nature of the changes implemented should be balanced, now and for the foreseeable future, against the need to uphold children's rights. The tools to achieve this are already in place and are fit for purpose. For instance, [the Scottish Government](#) has put in place a children's rights impact assessment procedure to inform its Covid-19 measures; and the [Rights of Children and Young Persons \(Wales\) Measure 2011](#) imposes a duty on Welsh Ministers to have due regard to children's rights as set out in the UN Convention on the Rights of the Child in all (including Covid 19-related) law and policy-making. The [DfE](#) has developed and applied a children's rights impact assessment procedure but there is no evidence that this has been followed to inform Covid-19 planning at central level.
  
8. The suspension of normal services by public authorities in response to COVID-19 has ushered in a range of practices which have the potential to disproportionately impact on children's rights and welfare. A rigorous impact assessment would have picked up on the deleterious effects of this for children and assisted more effective planning. Notably, the **Adoption and Children (Coronavirus) (Amendment) Regulations 2020** amends 10 sets of regulations in order to "assist the children's social care sector" until at least September 2020 (but this is likely to be extended for longer). These include:
  - removing the obligation for social workers to visit children in care every 6 weeks (or for the first week after a new placement); enabling less frequent visits to occur remotely (eg by phone or video call);
  - removing the obligation to review looked after children's care every 6 months;
  - removing the requirement that Ofsted inspect children's homes twice a year;
  - extending emergency foster care placements from 16 to 24 weeks;
  - relaxing processes for examining the suitability of foster carers, including the requirements to perform full health information and criminal records checks

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<sup>2</sup> The Madhouses Act 1832, The Lunacy Act 1890, The Mental Deficiency Act 1913, The Mental Treatment Act 1930 and The Mental Health Act 1959

9. Withdrawal and suspension of this provision without explicit regard to how children's rights and welfare will be monitored in the meantime presents serious risks to our most vulnerable children. Many of those are already multiply disadvantaged, for example by virtue of their immigration status, will be particularly impacted by these measures. Specifically, the scaling back of support poses particular risks to the health and welfare of **unaccompanied asylum-seeking** children in local authority care, and particularly those living in alternative, independent accommodation; coupled with extended uncertainty over their immigration status, even temporary retractions in support make them especially vulnerable to exploitation and abuse both during and in the aftermath of C-19 lockdown.
10. The United Nations Committee on the Rights of the Child (CRC), the body responsible for monitoring implementation of the UN Convention on the Rights of the Child, has issued a [statement and a series of recommendations](#) drawing attention to the 'grave physical, emotional and psychological effect of the COVID-19 pandemic on children' and calling on states to ensure that children's rights are not undermined by efforts to tackle this pandemic. With that in mind, we recommend the following:

- 1) **Transparent and rigorous child rights impact assessment of further legislative and policy changes:** The emergency nature of this pandemic reinforces rather than obviates the need to undertake this.
- 2) An **express commitment** to upholding children's welfare/best interests and participatory rights in any ensuing legislative or policy measures so that **such rights retain their legislative foothold.**
- 3) Where statutory services have been suspended, reduced or moved to remote/online platforms, clearer guidance on how children's best interests/welfare should be assessed needs to be formulated.
- 4) A clear statement and guidance on achieving **proportionality in decisions concerning children.** Specifically, for areas in which children's best interests remain a primary consideration and their welfare a paramount consideration, clear guidance is needed on how such interests will be weighed (and protected) against growing public health and economic factors.

11. There is incontrovertible evidence that strong investment in children's rights, by way of investment in children's services and support, places children on a stronger life trajectory and mitigates the need for remedial measures (and spending) further down the line.

Investment in children not only reaps benefits for children; it benefits societies and offers the most secure means of building economic and social stability. Children depend on strong legislative, policy and procedural mechanisms to underpin these commitments and to hold adults to account.

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