

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

June 3, 2020

Version 9

### 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. The [Coronavirus \(Scotland\) \(No.2\) Act](#) was passed by the Scottish Parliament on May 20, 2020 and makes further changes. 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 (and [third sector organisations](#)) 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 or the internet (see for example findings from [Includem](#) and [Young Scot](#)). 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). 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. At present, all [Hearings](#) are taking place remotely and only those Hearings required for the urgent and immediate protection of a child/young person are taking place or where required to protect an expiring order (see below). All non-essential Hearings have been rescheduled and will take place at the earliest date possible. Children, young people, relevant persons and professionals will receive information about attending a virtual Hearing and on expressing their [views](#) and their [rights](#). Where a child, young person or relevant person cannot join a hearing virtually, they can express their views by emailing the local team mailbox or via an advocate or a lawyer. Further guidance on this has been issued by [SCRA](#) and [Children's Hearing Scotland](#). [Practice guidance](#) for Panel Members on the conduct of virtual Hearings has been published, which will also be of interest and useful to anybody attending a virtual Children's Hearing, as has a list of [FAQs](#). Arrangements for reopening Children's Hearings centres are included in Phase 1 of the Scottish Government's [Framework for Decision-Making Scotland's Route map through and out of the crisis](#). The [Children's Hearings Improvement Partnership](#) (CHIP) have advised preparatory work is underway, recognising no physical Hearings will be possible for a number of weeks after the point that it is agreed it is safe to hold them. CHIP expect remote Hearings to continue to be the default for some weeks to come and a blend between virtual and physical Hearings will persist for the foreseeable future.

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 legislation contains the power to hold Hearings consisting of less than three panel members, and with gender balance no longer being required. However, this only ought to happen in exceptional circumstances, with Children's Hearings Scotland putting contingency measures in place to avoid this as far as possible.

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. Children's Hearings Scotland and SCRA have published a [joint statement](#) which includes information on the scheduling of Hearings.

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 Chief Social Work Officer 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; these are outlined [here](#).

### **Diversion from Prosecution**

Social Work Scotland and COPFS have produced [joint guidance](#) in relation to diversion from prosecution to ensure consistency during the period of the COVID-19 pandemic. The statutory time bar contained in the Criminal Procedure (Scotland) 1995 Act places a six month time limit on the commencement of summary proceedings for certain statutory offences. This has been extended to 12 months. This includes cases which have already been reported to COPFS and which are in the Diversion system.

Based on the emergency legislation, COPFS have reassessed timescales:

- Assessment should be completed wherever possible within three months of the request being sent by COPFS
- Interventions should be completed within six months of the return of the assessment to COPFS

If the assessment has already been undertaken and the Diversion is ongoing then an additional six months should be added to the target completion date of the intervention.

### **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. There are also changes to timescales for courts, with further changes made in the [Coronavirus \(Scotland\) \(No.2\) Act](#). 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. Currently, criminal court business is limited to essential and urgent business which includes custody hearings, urgent bail hearing or applications to extend custody time limits, as well as some non-custody cases involving domestic abuse, sexual offending and violence being prioritised (see [priorities for the investigation and prosecution](#) of crime and [information for court users](#)). No trials are proceeding, other than summary custody trials, and [Sheriff Courts](#) can proceed to hear and dispose of cases where it has been agreed by parties that this can be resolved without the

need for a trial. [Video criminal custody hearings](#) have been introduced through direct links to police stations, with the further use of phone and video links being utilised (see [SCTS](#); [COPFS](#); and update to the Justice Committee). The Scottish Government has published a discussion paper on [Coronavirus \(COVID-19\): options for progressing the most serious criminal cases](#), with a series of roundtable discussions having taken place. A working group led by Lord Justice Clerk, Lady Dorrian, has been established to consider the practicalities of recommencing trials by jury as and when public health guidelines permit such a move. Lady Dorrian has [announced](#) that planning is under way for an initial number of High Court jury trials to take place in July in Glasgow and Edinburgh. The Working Group will continue with the activity needed to make this a reality and assess and develop ways to allow more jury trials to take place in both the High Court and Sheriff Courts. Under the Scottish Government's [Framework for Decision-Making - Scotland's Route map through and out of the crisis](#) in Phase 1, the re-opening of [court buildings](#) with limited business and public access is expected. The restarting of normal justice processes is intended in Phase 3 of this approach. The Scottish Courts and Tribunals Service has [updated](#) that progress will be incremental and from June 3 a further five hub Sheriff Courts will be introduced in addition to the [ten](#) already in operation. Evidence and updates has also been provided to the Scottish Parliament's Justice Committee on this matter (see [May 19](#) and [May 29](#)).

We understand that for children and young people in particular, compliance with COVID-19 related restrictions is particularly difficult and that distressed behaviour can be displayed in the form of challenging behaviour. In terms of fixed penalty notices for non-compliance with COVID-19 related restrictions, although these were initially permitted for 16/17 year olds, this was amended in the [Coronavirus \(Scotland\) \(No.2\) Act](#). These can no longer be issued to anyone aged under 18 for non-compliance with COVID-19 related restrictions. In responding to behaviours, 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), placement disruption, 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 those who are struggling with the emotional and practical challenges of governmental imposed restrictions. 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 in agreement 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 support children to understand their rights, and the rationale behind, the current restrictions. [Scottish Government](#) guidance in respect of residential childcare and secure care has been published, as well as [guidance](#) with Police Scotland and Social Work Scotland on children and young people who go missing from care during the COVID-19 pandemic. Moreover, [Police Scotland](#) have announced that John Scott QC has been commissioned to chair a [group](#) to review Police Scotland's use of new emergency powers to respond to the Coronavirus outbreak and provide independent scrutiny of how officers and staff are applying new legislation. A regularly updated [breakdown](#) of the use of Police powers is being made available, with the [first report](#) of the Independent Advisory Group having been published. Police Scotland have also launched a [survey](#) to track public confidence levels and experience of approaches to policing during the COVID-19 pandemic, which will inform operations and information campaigns, from which initial findings have been [published](#). [Findings](#) of recent independent polling commissioned by the SPA of public attitudes has also been published. Lists of [FAQs](#) and [enforcement and response data](#) are available on Police Scotland's [website](#), as is information about changes in [recorded crimes](#) during the outbreak.

Guidance for justice social work services has been published, which includes information on the [prioritisation](#) of cases informed by proportionate assessment of risk and the provision of [Criminal Justice Social Work](#) reports, often being conducted by telephone where appropriate, with an eight week deferment having been [agreed](#) for community-based reports and where necessary, a two week deferment if the individual is remanded in custody

(although these reports will be prioritised to be completed by their deadline). 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 ensures that any newly made orders have a minimum period of 12 months within which to undertake the allotted hours. Furthermore, it authorises local 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 when utilising these powers. [Guidance](#) has also been issued in respect of reviews and breaches of CPOs and Drug Treatment and Testing Orders, with the courts only dealing with reviews and breaches if there is an identified risk of harm or other compelling reason to do so.

### Prison

There have been various [calls](#) to immediately reduce the number of people deprived of their liberty, particularly [children](#). The Children and Young People’s Commissioner Scotland has [written](#) to the Justice Committee highlighting the particular concerns regarding rights of children and young people who are deprived of their liberty in respect of early release ( as well as: solitary confinement, access to education and other activity, family contact, hygiene, accessing social work support and mental health). The Commissioner has called on the Scottish Government to ensure that all children detained in YOIs are individually assessed for release using a human rights based approach and that children in secure care centres should have their situation reviewed, allowing a rights-based assessment of whether detention continues to be in their best interests.

While the Act does not mandate the release of people from custody, this has been enabled by [The Release of Prisoners \(Coronavirus\) \(Scotland\) Regulations 2020](#). The [Cabinet Secretary for Justice](#) announced that from [May 4](#), the release of a small number of people serving sentences of 18 months or less, who are on May 4 within three months of their scheduled release date at the halfway stage of their sentence, began. Certain exceptions will apply as detailed in the Act, namely those serving a life sentence, convicted of sexual offences, subject to a Supervised Release Order or serving an extended sentence, and untried; and accompanying Regulations, including those serving sentences for domestic abuse offences or aggravations, with non-harassment orders or convicted of certain COVID-19-related offences. Prison Governors shall maintain the power to veto any early release should there be an immediate risk to an identified individual and amendments have been made to the [Victim Notification Scheme](#) to ensure victims who are registered with the scheme can receive information.

Moreover, in light of the current circumstances and work undertaken previously to introduce a more sophisticated and robust system of risk assessment, Home Detention Curfew guidance is being [amended](#) to remove references to the presumption of refusal for certain individuals. It is important to recognise that 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, and a range of support is important. 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 has been essential. Housing providers have been key in this with [SHORE AND COVID-19 - Interim Guidance](#) published for all people due to be released from custody. [Scottish Government](#) worked with COSLA, Social Work Scotland and others in developing [early release proposals](#), is in contact with partners including social work and police regarding release arrangements, and has made [funding](#) for [supports](#) available. The SPS is publishing [data](#) on early release. In the first two phases, 272 people have been released from prison, including one child and 22 young people aged 18-22. The [Scottish Government](#) has issued updated information to partners on early release and the Scottish Parliament Information Centre (SPICe) has produced a [briefing looking at the impact on prisoner numbers of measures taken in response to the Coronavirus](#). The Cabinet Secretary provided evidence to the Scottish Parliament’s COVID-19 committee regarding early release on May 21, 2020 (see [meeting papers](#) and [report](#)).

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 many appointments are being facilitated via telephone which can be arranged via agents visits (for

HMV&YOI Polmont call 01324 722350 during 8.30am - 11.30am and 1.30pm - 4pm; email [polmontagentsvisits@sps.pnn.gov.uk](mailto:polmontagentsvisits@sps.pnn.gov.uk)). SPS staff are undertaking housing and DWP interviews and Short Term Case Management are supporting plans for liberations, including where possible facilitating links to external organisations. Email a Prisoner appears to be getting used more frequently, [prison voicemail](#) has been [introduced](#) and work to introduce [mobile phones](#) is also being prioritised, with other options such as virtual visits being explored. The SPS [website](#) has a list of FAQs, information for [families and friends](#) (including on the family support helpline and ways of sending money to family and friends) and for [partners](#) (including regarding DWP, GP registration and Scottish Welfare Fund). Information is also [published](#) daily on the number of people self-isolating across institutions and weekly on changes in the [population](#). Further information, including in respect of regime changes, progression, and steps to maintain the care and safety of people in custody and staff is included in the [letter](#) from the Interim Chief Executive of SPS to the Justice Committee and on the [SPS website](#). [Families Outside](#) also have a range of information available.

The Prisons and Young Offenders' Institutions ([Scotland](#)) Rules 2011 have been amended through the [Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2020](#), with the Cabinet Secretary having written to the Justice Committee regarding these changes. [Her Majesty's Chief Inspector of Prisons for Scotland](#) is implementing a remote monitoring framework.

### Secure care

Secure care centres are working hard to keep to the normal daily routine wherever possible including continuation of education and support programmes. Staff are working closely with young people to ease their concerns and ensure they are able to stay safe and in regular contact with their families. All secure services have robust service continuity and contingency plans in place which are reviewed as new guidance and advice becomes available.

Secure services are accepting new referrals and have put in place an admission risk assessment process to ensure the safety of staff and young people in their care.

The Scottish Government chair a weekly meeting of a Secure Care Group which supports contingency planning for the five secure services in Scotland. All five secure services, Education Scotland, Scotland Excel and the Care Inspectorate take part in the call. All secure care centres are in daily contact with Scottish Government officials to raise and discuss concerns as they arise.

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

### Good practice

We have heard about lots of good practice examples where creative methods are being utilised to maintain contact with children, young people and families during this period. In addition to phone contact, various technological platforms are being utilised (such as Google Duo; Twitter; Microsoft Teams; Skype; Zoom; WhatsApp; and FaceTime), including to run activities, competitions and projects on photography, art, scavenger hunts, dance, and exercise. Contactless drop-offs of food and supplies; doorstep or garden visits; and walks maintaining social distancing are being utilised to support face-to-face contact. Sending personalised parcels including vouchers for supermarkets, phone top ups, or Amazon; magazines and colouring books; and worksheets, including for early and effective intervention and diversion from prosecution work which can be completed with workers via virtual platforms, have also proved effective in people staying connected, addressing social isolation and ensuring children and young people continue to feel cared for. Working with partners and teams around the child remains crucial, with youth work partners and education proactively reaching out to young people to offer support and local police promoting and supporting the use of restorative approaches highlighted in some areas. In addition, the Scottish Government's [Data Intelligence Report](#) on Supporting Vulnerable Children and Young People, [Vulnerable Children Report](#), and [Social Work Scotland](#) provide further information and practice examples. [Staf](#) and [Who Cares? Scotland](#)

have also published information on the impact of COVID-19 on looked after children and care leavers, and practice examples.

CYCJ are keen to collate case study examples - if you have information to share, please get in touch. We have also undertaken work to capture the views of children and young people who are in contact with youth justice services or with previous experience of the youth justice system on COVID-19, as well as practitioners, which will be published shortly.

### **Closing comments**

This Act has a sunset clause, meaning that provisions will expire on 30 September 2020, 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 their impact every two months.

The Scottish Government has produced [this guide](#) which summarises many other areas of the first 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 has 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](mailto:cycj@strath.ac.uk).