

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

July 21, 2020

Version 12

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. It also includes some of the [findings](#) from work we have undertaken 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. It should be read in conjunction with the [Independent Children's Rights Impact Assessment \(CRIA\) on the Response to COVID--19 in Scotland](#), particularly [Appendix 9](#) on children in conflict with the law and in secure care. We are currently in [Phase 3](#) of Scotland's Route Map out and through the crisis and we are updating 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 many local authorities (and [third sector organisations](#)) have accessed 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](#), [Young Scot](#) and [CELCIS](#)). There may also be some young people for whom technological restrictions are part of risk management plans; this will need to be considered. 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. We have also heard about the importance of technology for learning and development; maintaining social and family connections; accessing financial support; and health and wellbeing advice.

The Act means that children and their families may no longer attend Hearings in person. Since [July 14](#), face-to-face hearings have gradually been reintroduced with Hearing centres in four areas having reopened. Information on what to expect at face-to-face hearings has been published by [SCRA](#). [Our Hearings Our Voices](#) have published the findings from their consultation with Board Members and Advisors on the resumption of face-to-face hearings, as have [SCRA](#) on external feedback on virtual hearings and responded to feedback from [children and young people](#). Virtual hearings are also continuing and will do so for the foreseeable future.

In these cases, 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](#). This is important given that children, young people and practitioners all cited the impact of changes to the operation of the youth justice system, including delays to Children's Hearings in our work.

Hearings are being arranged when:

- delay would be likely to cause significant detriment to the welfare of the child or young person
- when it is necessary to meet a legal timescale
- when it is necessary to prevent an existing order from expiring

Other Hearings are being arranged when it is practicable to do so. Where necessary, Hearings have been rescheduled and will take place at the earliest date possible.

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 previous 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](#). [CHIP](#) have published information on the use of measures under the Act.

Early and Effective Intervention (EEI)

The importance of EEI and diversion from prosecution in responding to offending by children and young people during COVID-19 has been clearly highlighted and reiterated in the CRIA.

A [joint statement](#) from Police Scotland, Social Work Scotland and the Scottish Government on EEI in the pandemic has been made. EEI decision making should:

- apply the principle of minimum intervention;
- be prompt and proportionate;
- actively seek and include the child's views;
- involve a holistic understanding of the child's needs and circumstances;

- include the views of parents or carers of children under 16, and those aged 16 and 17 years subject to compulsory measures of supervision through the Children’s Hearing System;
- be co-ordinated, when multi-agency assessment and response is indicated.

Where a child has a ‘lead professional’ they must be consulted regarding the initial decision making and where any intervention is identified. During COVID-19 restrictions initial gathering of information may be primarily by phone, or through the use of technology, when this is appropriate and secure.

Local protocols will determine local processes. Current guidance states that EEI referrals should, where possible, be progressed within 15 working days, and children and their families should be notified within five working days of the decision. However, if it is not possible for all the necessary information to be sourced within 15 working days, then reasons for this will be recorded, and decisions taken as soon as reasonably practicable. Effective communication between Police Scotland concern hubs and the EEI coordinator is essential.

EEI referrals may be dealt with by a range of disposals. Where an offer of intervention and support has been identified, opportunities to deliver this or the format may be limited during this phase of the pandemic. Local authorities will have contingency plans to maintain essential service provision. The option to give formal warnings should be maximised by Police Scotland in local areas, as appropriate. If there is a delay in implementation of a disposal that requires face-to-face contact, then the reasons for the delay must be recorded. The situation should be reviewed on a three weekly basis. Meaningful communication with the child, family and/or carer should ensure a shared understanding of: the reasons for decisions; allow for updates if there is any delay in intervention; and ensure a collaborative purpose and approach.

Diversion from Prosecution

Social Work Scotland and COPFS have produced updated [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 in 28 days wherever possible but no later than within 6-8 weeks 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.

Partners should be aware of and apply the temporary timescales but adhere to the process outlined in the updated [National Guidelines on Diversion from Prosecution in Scotland](#). If local partners are able to adhere to the timescales in the guidance (as some have indicated) this should be encouraged, but if this is not possible the extended timescales outlined above will remain in place until otherwise advised.

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. The time limits in all cases were amended by the Scottish Government in the Coronavirus (Scotland) Act 2020 [Schedule 4, part 4](#), with further changes made in the [Coronavirus \(Scotland\) \(No.2\) Act](#). For solemn custody cases (that includes the 110 days to first diet or preliminary hearing and the 140 days to trial) the six-month suspension period which started on April 7, or whenever the case is commenced if after April 7, is not counted as part of that

time limit. In summary custody cases there is a three month suspension period which operates in the same way. This may cause delays in court proceedings, which could have a range of detrimental impacts including 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 on remand for longer. 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 was expected, with the restarting of normal justice processes intended in Phase 3.

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](#)). [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, with the [guidance to resolve cases at the earliest opportunity](#) by facilitating pleas of guilty remaining. [Video criminal custody hearings](#) have been introduced through direct links to police stations, with the aim remaining wherever possible to carry out hearings remotely or through application in writing (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. The restarting solemn trials working group led by Lord Justice Clerk, Lady Dorrian, has [announced](#) that High Court jury trials will restart in Glasgow and Edinburgh in July. The Working Group will continue to assess and develop ways to allow more solemn trials to take place in both the High Court and Sheriff Courts. SCTS have [updated](#) that with the exception of custody courts, which will remain at the 15 Hub courts, all business has moved back to local courts. Custody trials will remain a priority and where practicable, non-custody trial courts will also be programmed to allow the acceleration of cases administratively adjourned during lockdown. All undertakings will attend local courts. Intermediate diets will be dealt with at all courts and will proceed administratively on the basis of written records, provided electronically by the Crown and defence. The accused will not be required to attend, unless the court directs otherwise. Trials following on from these diets will call on the previously assigned date. Where a trial cannot proceed on the original date, a new date will be fixed and intimated. Virtual Summary Trials have been held in two areas and will be [rolled out](#), as outlined in Lord Carloway's [practice note on the reintroduction of summary criminal business](#). Lord Carloway has also issued a [statement on the impact of the coronavirus situation upon Scotland's courts and tribunals](#), with information provided to the Scottish Parliament's [Justice Committee](#). Guidance for those attending court is available from COPFS and SCTS.

Our work to capture the views of children and young people who are currently in contact with youth justice services or with previous experience of the youth justice system on COVID-19 and of practitioners working within the youth justice system has highlighted the challenges of COVID-19 and compliance with the related restrictions. While children and young people have overall complied well with these restrictions, the challenges of lockdown; isolation; boredom; and sticking to the rules, as well as this becoming more difficult as time goes on, has been noted. The resulting impacts on children and young people's health and wellbeing, distressed behaviour that can be displayed as challenging behaviour, and increased difficulties in relationships and conflict within the family home with the associated risks for children are clear. In recognition of this, [Coronavirus \(COVID-19\): supplementary national child protection guidance](#) has been published. In terms of fixed penalty notices for non-compliance with COVID-19 related restrictions, although these were initially permitted for 16 and 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. Where children commit a COVID-19 related offence, full consideration must be given to alternative courses of action and as a last resort, where 16 and 17 year olds are charged with such an offence, the most appropriate disposal should be a Recorded Police Warning. Where a 16 or 17 year old, and indeed any other child, is found in circumstances which amount to a breach of the COVID-19 related restrictions, and where there are concerns for their safety or wellbeing, then a Police Concern Form must be submitted to ensure full consideration is given to the circumstances. Child protection concerns should be progressed as usual, applying local protocols.

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. The Care Inspectorate have also developed a new key question, "[How good is our care and support during the COVID-19 pandemic?](#)", to sit alongside quality frameworks for residential child care to help answer how the setting is managing the COVID-19 environment. Moreover, John Scott QC is chairing an Independent Advisory [group](#) to review Police Scotland's use of new emergency powers to respond to the pandemic, who are keen to hear your [views](#). A regularly updated [breakdown](#) of the use of police powers is available, with the [first report](#) of the Independent Advisory Group now 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 have also been published. Lists of [FAQs](#) and [enforcement and response data](#) are available on Police Scotland's [website](#).

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. An [update](#) has been provided to the Scottish Parliament's Justice Committee by Social Work Scotland and CJVSF on the impact of COVID-19 on justice social work and services. In addition, updated guidance on priorities and expectations has been [published](#), as has the SWS Justice Social Work Recovery Strategy Group [COVID-19 Routemap](#) which provides a comprehensive overview of the justice social work tasks affected by COVID-19 and what the different phases of the Scottish Government's routemap mean for justice social work.

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 (CYPCS) and the Scottish Human Rights Commission (SHRC) have [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 and current conditions in custody (for example in respect of solitary confinement, access to education and other activity, family contact, hygiene, accessing social work support and mental health). The CYPCS 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. This has been reiterated in the CRIA which calls for the release children in all forms of detention, wherever possible; reduce the number of children deprived of their liberty in all settings; ensure no child is detained in the prison estate; and provide children who cannot be released with the means to maintain regular contact with their families. The Cabinet Secretary has [responded](#) to the concerns raised by CYPCS and SHRC.

To reduce the number of people in custody, early release arrangements were enabled under [The Release of Prisoners \(Coronavirus\) \(Scotland\) Regulations 2020](#) with certain exclusions. In addition, Home Detention Curfew guidance has been [amended](#) to remove references to the presumption of refusal for certain individuals. In recognition that release from custody is often [traumatic](#), and that a range of support is important, 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](#) and has made [funding for supports](#) available. 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. SPS [data](#) on early release indicates across the three phases, 445 people were considered for early release. A total of 348 people were released early under the regulations, 63 were uses of the Governor veto and 34 people released for other reasons. Within these figures, one child was released and 31 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 pandemic. 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](#)). At present there are no plans to extend early release arrangements but this will remain under review.

For all children and young people in custody, maintaining contact with families and supports is crucial but has been an area of difficulty. [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 HMP YOI Polmont call 01324 722350 during 8.30am - 11.30am and 1.30pm - 4pm; email polmontagentsvisits@sps.pnn.gov.uk). Email a Prisoner appears to be getting used more frequently and [prison voicemail](#) has been introduced. Virtual visits are now available in all establishments. Restricted mobile phones have been introduced in Polmont and Cornton Vale, with further roll out planned. The SPS website has information for [families and friends](#) and for [partner organisations](#) (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, [the SPS COVID-19 Routemap](#) and on the [SPS website](#). [Families Outside](#) also have a range of information and resources available, including [Keeping Connected: Family Contact Booklet](#).

The Prisons and Young Offenders' Institutions (Scotland) Rules 2011 have been amended through the [Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2020](#) and [The Prisons and Young Offenders Institutions \(Coronavirus\) \(Scotland\) Amendment Rules 2020](#). [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 and to ensure they provide a safe and nurturing environment for all the young people in their care despite the ongoing challenges. Staff are working closely with young people to ease their concerns and ensure they are able to stay safe.. All the centres have managed the COVID-19 response well and no young person in secure care has tested positive for the

virus. Centres are regularly reviewing their own route maps/contingency plans as Scotland moves through the recovery phases and new advice/guidance 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. All secure centres have been able to commence socially distanced family visits, essential professional visits and transition visits to future placements. Some centres have started mobility, home visits and where appropriate overnight stays with family.

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.

Research and good practice

As stated, CYCJ has published work that captures the views of children and young people who are in/had previous contact with youth justice services on COVID-19, as well as practitioners which includes a number of practice case study examples. A range of factors have been identified as having worked to support children and young people during the pandemic including keeping in touch through creative methods; ensuring they have access to things to keep them occupied, practical resources and to technology; working with partners; and the dedication of staff. Children and young people have advised that things others could do to help them would include supporting contact with family and friends; keeping in touch; having activities and ways to stay busy; easing restrictions; and supporting particular young people such as those in custody. In addition, the Scottish Government's three [Evidence and Intelligence Reports](#) on Supporting Vulnerable Children and Young People 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, as have [Scottish Transitions Forum](#) on children with additional support needs. CELCIS has compiled a bank of [information and resources](#) to support children's care and protection and examples of [frontline practice](#). The Committee on the Rights of the Child has issued a statement and recommendations to Government's to respect children's rights when responding to the pandemic, noting that lockdown measures can have grave physical, emotional and psychological effects on children. The Scottish Government has produced [documents](#) setting out its actions in relation to each of the Committee's 11 recommendations, which [Together Scotland](#) is monitoring and has published a response to, as well as being part of a [joint letter](#) to the UK Government Equalities and Human Rights Committee. All of the recommendations are relevant for children in conflict with the law, particularly recommendation eight to release children in detention whenever possible, and provide children who cannot be released with the means to maintain regular contact with their families; and recommendation nine to prevent the arrest or detention of children for violating State guidance and directives relating to COVID-19. These recommendations also provide the structure for the CRIA detailed above.

CYCJ are keen to continue to collate case study/practice examples - if you have information to share, please get in touch.

Closing comments

This Act has a sunset clause, meaning that provisions will expire on September 30, 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, with the [first](#) report published.

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.

The team at CYCJ are continuing to work via online mechanisms to support practice and policy, and to continue 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.