



Children and Young People's
Centre for Justice

Consultation response

[Extending temporary justice measures
Coronavirus \(Scotland\) Act 2022](#)

May 2024

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Overview

The [Children and Young People's Centre for Justice \(CYCJ\)](#) works towards ensuring that Scotland's approach to children and young people in conflict with the law is rights-respecting; contributing to better outcomes for our children, young people and communities.

Through our participatory work with children and young people, the research evidence we have generated and our policy and practice knowledge, we understand and recognise the strong impact of poverty and inequality on the likelihood of a child or young person coming into conflict with the law, and the impacts this can have on their ability to transition away from harmful behaviours.

The Scottish Government are currently reviewing the [temporary justice provisions in the Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022](#). The measures are due to expire on 30 November this year, but they can be extended until November 2025 if Parliament agrees. In May 2024, CYCJ was asked to provide views on how Parts 1-5 of the provisions were working and what would happen if they were not renewed.

Key Summary

CYCJ very much welcomes this review of the temporary justice measures in the Coronavirus (Recovery and Reform) (Scotland) Act 2022. Although much has changed since the pandemic, key issues of social and economic inequality highlighted in 2020 continue to shape access to justice for children and young people.

Whilst we recognise the benefits of virtual attendance, equal access to justice requires significant support and capacity to be provided to overcome digital barriers and ensure all children and young people can participate meaningfully.

CYCJ strongly believes fiscal fines should not be applied to children and young people with alternatives such as early intervention and diversion far more likely to deliver positive outcomes. We also note that in practice children and young people in poverty were disproportionately hit with fixed penalty notices in 2020.

Delays in the justice system can have extremely significant impacts on children and young people, coinciding with very important periods for development and socialisation. Further extension of these temporary measures raises significant rights issues, in particular the deprivation of liberty only as a last resort and for the shortest appropriate time ([Article 37, UNCRC](#)), as well as the right to recovery for child victims ([Article 39, UNCRC](#)).

Consultation questions and CYCJ response

Part 1: Courts and tribunals – conduct of business by electronic means

- a) What impact are these provisions having?
- b) What would the impact be if the provisions expired on 30 November 2024?
- c) Please share any other feedback on how these provisions are operating.

CYCJ response

The Children and Young People's Centre for Justice (CYCJ) works towards ensuring that Scotland's approach to children and young people in conflict with the law is rights-respecting; contributing to better outcomes for our children, young people and communities.

Through our participatory work with children and young people, the research evidence we have generated and our policy and practice knowledge, we understand and recognise the strong impact of poverty and inequality on the likelihood of a child or young person coming into conflict with the law, and the impacts this can have on their ability to transition away from harmful behaviours.

We also note the increased chances of reoffending and continuing harmful behaviour for children and young people who come into conflict with the law and pass through the court and prison system, rather than through the Children's Hearings System or through diversionary approaches where they would receive better trauma-informed support.

Research from [Fiona Dyer, Claire Lightowler & Nina Vaswani \(2023\)](#), *Exacerbating, illuminating and hiding rights issues: COVID-19 and children in conflict with the law*, examined the realisation of three UNCRC articles – responding to all children as children (1), non-discrimination (2), and deprivation of liberty as a last resort (37) - during the Covid pandemic in Scotland. Their key conclusion was that “while the COVID-19 pandemic has precipitated an erosion of children's rights for those in conflict with the law, the response to the pandemic has primarily compounded and illuminated pre-existing rights issues.”

Although much has changed since Scotland was in the grip of the pandemic, issues noted by this research, such as digital exclusion and digital poverty, continue to impact the ability to access justice processes when virtual methods are used as a means of delivering justice – through courts and hearings – and of providing support.

CYCJ does recognise the potential benefits of virtual attendance at court for children and young people. A wealth of information is available on how challenging court processes are for children and young people, be these as victims, witnesses or the accused, and the resulting implications for their outcomes, rights and ability to access justice. A key hindrance to realising a child-friendly justice system is the length of the court process – which was extended of course in the temporary justice measures - and virtual methods have the potential to create a more efficient system. Delays are

often more harmful to children than adults given their significant ongoing developmental changes and importance of accessing education and employment opportunities. Virtual access also reduces the need for children having to travel lengthy distances for court appearances.

However, to achieve this the child or young person must have the appropriate technology freely available, be able to participate virtually free from intimidation and interference, and be provided with tailored, individual support specific to their case and needs. The child must be able to participate as fully as possible in proceedings given the significant implications of court decisions and to ensure access to fair justice. If technology is not available or does not work, the child could be subject to further delays in their case which is unlikely to be in the child's, or indeed others involved in the case, best interests.

CYCJ therefore believes that any continuance of the temporary justice provision part 1 must be accompanied with significant resource and capacity support to overcome digital barriers and ensure all children and young people are properly supported through any justice process. All set within the wider context of adhering to the soon to be implemented [UNCRC \(Incorporation\) \(Scotland\) Act 2024](#) and the [Children \(Care and Justice\) \(Scotland\) Bill](#), which is currently awaiting royal assent.

Part 2: Fiscal Fines

- a) What impact are these provisions having?
- b) What would the impact be if the provisions expired on 30 November 2024?
- c) Please share any other feedback on how these provisions are operating.

CYCJ response

When the Fixed Penalty Notices (FPN) were originally introduced in Scotland in 2020 they made no distinction for 16 and 17 year olds, regarding them in the same way as adults and in contravention of the UNCRC. We welcomed the reversal of this policy and continue to advocate for the use of more age-appropriate responses, such as Early and Effective Intervention or referral to the Scottish Children's Reporters Association, in place of a fiscal fine.

Children and young people living in poverty, and/ or with care experience, are significantly over-represented in the numbers of those who come into conflict with the law in Scotland. Analysis from [Susan McVie \(2021\)](#), *Data Report on Police Use of Fixed Penalty Notices under the Coronavirus Regulations in Scotland*, found that FPNs were disproportionately used on children and young people, with one fifth issued to under 21s. The study, which covered from 27 March, 2020 when the regulations came into effect until the end of that calendar year, found that those living in the most deprived communities were 12 times as likely to be fined as those living in the least deprived.

Although thankfully a rare occurrence, there still exists the provision for children as young as 12 to receive a fiscal fine. Given all the evidence as to the effectiveness of early intervention and diversion to deliver positive outcomes for young people

involved in low level offending behaviour, combined with the clear social and economic inequality of FPNs in practice, CYCJ believes very strongly that punitive measures such as fiscal fines should not be applied to any child or young person.

Part 4: National jurisdiction for callings from custody etc.

- a) What impact are these provisions having?
- b) What would the impact be if the provisions expired on 30 November 2024?
- c) Please share any other feedback on how these provisions are operating.

CYCJ response

This provision can assist with the management of custody court business. For children, police custody can be the most traumatic part of their journey through the criminal justice system and recent Police Scotland data highlights the sizeable number of younger and older children being held in police custody overnight and for more than 24 hours. This is an area of national and local focus and therefore if these measures can help to “minimise the length of time a person is held in custody prior to their first court appearance” as detailed in the previous consultation, this is beneficial. As mentioned previously, delays can be significantly harmful to children and young people given the impact it can have on their ongoing development and ability to access education or employment.

Part 5, Chapter 1: Criminal procedure time limits

- a) What impact are these provisions having?
- b) What would the impact be if the provisions expired on 30 November 2024?
- c) Please share any other feedback on how these provisions are operating

CYCJ response

Delays in the justice system can have significant impacts on children and young people. These measures appear instead to be based on the perceived needs of the system and processes and not on the rights of children and young people.

A timeous response to deliver a clear outcome is necessary to prevent past offending behaviour from significantly overshadowing childhood during key stages of development and socialisation, and allowing for societal inclusion as far as possible. Longer waiting times impact transitions out of secure care and custody settings and, combined with stress created over uncertainty, will have clear ramifications for a child’s wellbeing. The impact of extensions on children and young people have been well documented, such as in the [Independent Care Review](#) and the original independent [Child Rights Impact Assessment \(CRIA\)](#).

There is also the ongoing risk that, due to the extension of time allowed for proceedings to commence, an individual could be tried through the criminal court system for an offence committed whilst they were still a child. The recently passed

Children (Care and Justice) (Scotland) Bill will reduce this outcome substantially when it comes into force. But this remains an issue for individuals recently turned 18 who committed an offence at a younger age and could therefore receive a harsher penalty, be deprived of their liberty in a Young Offenders Institution (YOI), and face greater disclosure requirements in the future.

There is existing evidence about the detrimental impact of lengthy court processes and delays for the child accused, their parents and practitioners. This is particularly challenging where children are subject to stringent conditions whilst awaiting the progression of court proceedings; resulting in significant sacrifices for children who often lack the maturity level required to understand the consequences of non-compliance. Evidence shows the motivation and ability to comply can decrease over a lengthy period, which in turn can lead to further charges being accrued and greater entrenchment of children within the justice system.

Longer timescales can also be even more significant for children given that it represents a longer period of that child's total life and they are in a rapid phase of development. Children can often mature significantly in the period between the offence and their eventual court date. This can influence that child's treatment at court and eventual outcome.

It is difficult to underestimate the negative and potentially catastrophic short and long-term implications of remand for children and young people, including particular risk factors associated with self-harm and suicide and fewer opportunities for purposeful activity and service access, as summarised here. The number of children and young people on remand represents a higher proportion of the total population than for adults. Most children who are remanded are currently held in YOIs, in spite of the conclusions of the [Independent Care Review](#) that "Young Offenders Institutions are not appropriate places for children and only serve to perpetuate the pain that many of them have experienced" (p.91).

Under [Article 37 of the UNCRC](#), the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. It is difficult to see how continuing to permit children to be deprived of their liberty on remand for longer periods is compliant with this. Any continued extension to periods of remand for children are highly detrimental and therefore should not be continued.

The implications for victims who in offences committed by children are often other children can be significant, with the impact of delays already well established. This also has implications for children's rights including to recovery ([UNCRC, Art. 39](#)).

Contact

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