



# Coronavirus (Scotland) Bill

## Implications for children's human rights

### Briefing for MSPs

COVID-19 poses an unprecedented challenge for Scotland, the UK and the wider world. Together acknowledges that UK and Scottish Government must take steps to protect the right to life and right to health, and recognises the need for governments to be able to respond quickly and flexibly. We commend the work of the Scottish Government and public bodies and support the introduction of necessary and proportionate measures to protect and respect the right to health and the right to life in this challenging time.

The exercise of emergency powers invariably impacts a wide range of rights and it is essential that UK and Scottish Government continue to fulfil their obligations under the UN Convention on the Rights of the Child (UNCRC), other human rights treaties and domestic law. Measures that restrict human rights must be set out in law, be necessary, proportionate and time limited.

We note today's debate on the Coronavirus (Scotland) Bill. In the absence of being able to prepare a full briefing on the Bill for MSPs, we are sharing this response which focuses more broadly on the implications of the Scottish and UK Government response to COVID-19 on children's human rights.

It sets out the following issues that we urge the Scottish and UK Government to prioritise as a matter of urgency:

1. Take a child-rights approach to respond to the crisis, underpinned by robust child rights impact assessments, budgeting, monitoring and review.
2. Ensure that the definition of a child in Scotland includes all those under the age of 18 years-old in line with the UNCRC.
3. Mitigate against the rights of particularly vulnerable groups of children being disproportionately impacted by the crisis.

We welcome and endorse the Coronavirus (Scotland) Bill MSP Briefing published by the Children and Young People's Commissioner Scotland and echo the importance of the key messages it puts forward to MSPs.

It is important to note that this briefing does not necessarily represent in all respects or detail the views of every member of Together. Views expressed separately by Together's members should also be taken into account.

## **1. Take a child-rights approach to respond to the crisis**

Governments have a duty to respect, protect and fulfil children's human rights. The UN Committee on the Rights of the Child has recognised the particular challenges posed by emergency situations and is clear that governments have an individual and joint responsibility to coordinate responses which prioritise children's health, including through ensuring uninterrupted access to health services, physical support (e.g. food) and psychosocial care to address children's fears and traumas.<sup>1</sup> In emergency situations, emphasis should be placed on duties to respect (refrain from interfering) and protect children's human rights.

### *Child rights impact assessments (CRIA)*

Child rights impact assessments (CRIA) play a key role in ensuring children's rights are adequately reflected in the development of policy and legislation and prevent future violations from arising. CRIA should be used on all legislation and policy that impacts children (directly or indirectly) and must be used as early as possible in the decision-making process. It is essential that both Scottish and UK Government conduct CRIA in relation to *all* proposed measures in response to the crisis, acknowledging the impact that broader measures affecting parents, carers and family members can have on children. Whilst we welcome that the Scottish Government has conducted an initial child rights and wellbeing impact assessment (CRWIA) on the Coronavirus (Scotland) Bill,<sup>2</sup> it does not adequately assess the human rights implications of the Bill's provisions.

**Scottish Government should conduct ongoing CRWIA on all proposed measures to respond to the crisis and draw strongly from the expertise and experience of civil society in doing so.**

### *Child rights-based budgeting*

The UN Committee is clear that the allocation of resources must respect, protect and fulfil children's human rights.<sup>3</sup> Governments must refrain from budgetary decisions which have a discriminatory impact on certain groups of children, ensure that allocations are not undermined by third party interests (e.g. businesses), and take measures to enable and assist children to experience their rights.<sup>4</sup>

**Scottish Government should use child rights-based budgeting to ensure that emergency powers prioritise the human rights of children and pay particular attention to the most vulnerable.**

### *Monitoring, reporting and review*

Emergency powers must be subject to proper democratic oversight by the Scottish Parliament to ensure they are human rights compliant. We welcome that the Coronavirus (Scotland) Bill provides for automatic expiry after six months, with the possibility of extension to 18 months.<sup>5</sup> Robust monitoring, reporting and review mechanisms must be developed and implemented – particularly given the limited opportunity for scrutiny at the legislative stage.

**Scottish Government should ensure monitoring, reporting and review mechanisms draw from the experience of civil society and children and young people to ensure children's lived experience of crisis is heard and understood.**

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<sup>1</sup> [CRC/C/GC/15](#): Paras: 59, 88.

<sup>2</sup> <https://www.gov.scot/publications/coronavirus-scotland-bill-child-rights-welfare-impact-assessment/>

<sup>3</sup> [CRC/C/GC/19](#).

<sup>4</sup> [CRC/C/GC/19](#): Para: 27.

<sup>5</sup> Section 11 (as at 31.01.20), [Coronavirus \(Scotland\) Bill](#).

## 2. Ensure all those under 18 years-old are protected as children

Article 1 UNCRC defines a child as being anyone under the age of 18. The range of measures introduced by the UK and Scottish Government perpetuate existing discrepancies in Scots law and leave 16-17-year-olds without adequate protection of their rights as enshrined in the UNCRC, and with lesser protections than their peers across the rest of the UK.

For example, the Coronavirus Act 2020 (“(UK) 2020 Act”) introduces new powers for police, immigration officers and public health officials to detain and test potentially infectious persons, including children, without their consent. The limited safeguards which apply for children are only available to those aged under 16 in Scotland, in contrast to under 18s in England, Wales and Northern Ireland.<sup>6</sup> The (UK) 2020 Act does not specify whether 16-17-year-old children subject to Compulsory Supervision Orders (CSO) in Scotland are to be treated as children or adults. Similarly, the provisions relating to children in the Health Protection regulations for Scotland<sup>7</sup> do not apply to children aged 16 and 17. This means that 16-17-year-olds are at a significantly greater risk of being fined or criminalised than those elsewhere in the UK. As well as being at odds with definition of a child under the UNCRC, this raises further questions around the right to be free from discrimination (Article 2 UNCRC), the right to liberty (Article 5 ECHR), privacy (Article 16 UNCRC, Article 8 ECHR), and right to be free from cruel or degrading treatment (Article 37 UNCRC, Article 3 ECHR). While restrictions on the right to liberty and privacy are permitted where proportionate to protect public health, the right to be free from cruel or degrading treatment is absolute.

**Scottish Government should urgently put in place robust safeguards to ensure the rights of *all* children (under 18) in Scotland are protected in line with the UNCRC.**

## 3. Mitigate against the rights of particularly vulnerable groups of children being disproportionately affected by the crisis

Measures taken to respond to the crisis have a significant impact on all children but are likely to disproportionately affect those belonging to certain groups. The following section outlines some of the children at particular risk, recognising that many children will belong to more than one group:

### *Children living in poverty*

Children living in poverty will be particularly affected by school closures. While schools are supporting remote learning, children living in poverty may not have the same access to technology or Wi-Fi as their wealthier peers, nor might they have the same access to educational resources or space at home for studying. This has a clear impact on their right to education under Article 28 UNCRC.

The additional cost of providing children’s lunches may be unmanageable for some households eligible for free school meals. This raises concerns around children’s right to an adequate standard of living under Article 24 UNCRC, noting also the shortages some foodbanks are facing as a result of stockpiling. Many of Together’s members have welcomed Scottish Government’s announcement that a Food Fund will support these families and have called for this support to be provided as a cash payment.<sup>8</sup> Child Poverty Action Group states that delivery through the Child Benefit payment is the preferred option.<sup>9</sup>

While changes to statutory sick pay, conditions for some benefits and announcing support for employees and self-employed is welcome, many families will still struggle. The economic downturn caused by the

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<sup>6</sup> Schedule 21, Paragraphs 18 and 40, [Coronavirus Act 2020](#).

<sup>7</sup> Section 7, Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020  
<http://www.legislation.gov.uk/ssi/2020/103/regulation/7/made>

<sup>8</sup> CPAG (2020). [Open letter on the impact of Covid-19 school closures](#).

<sup>9</sup> CPAG (2020). [Supporting families during the Covid-19 pandemic](#)

crisis will see many more become unemployed. Already large numbers have applied for universal credit. Many families turning to universal credit will be affected by the delayed first payment and delivery problems.<sup>10</sup> Children living in lone parent families will be particularly affected. Ninety percent of lone parents are mothers, who are more likely to depend on social security benefit.<sup>11</sup> Lone parents are also disproportionately affected by purchase limits in shops (as only have one adult's 'quota' available).

**Scottish and UK Government should ensure emergency financial support for families is made available, as well as the removal of existing barriers such as the benefit cap and two-child limit.<sup>12 13</sup>**

#### *Children experiencing domestic violence*

Scottish Women's Aid reports that children experiencing domestic violence often feel that school or nursery feels like the safest place to be. The closure of these spaces will have a particular impact on their right to be free from all forms of violence (Article 19 UNCRC). Lockdown measures may also lead to an increase in domestic violence as people are forced to remain at home with abusive partners. We welcome the additional support pledged by Scottish Government to support Scottish Women's Aid and Rape Crisis Scotland throughout the crisis.

**Scottish Government should ensure that robust safeguards are in place to ensure that parents/carers fleeing domestic violence with their children are not penalised for infringing lockdown provisions.**

#### *Children with disabilities and/or other additional support needs*

Children with disabilities and/or other additional support needs (ASN) have a right to additional support for learning<sup>14</sup> but school closures mean this will not be provided or will be provided in a different way. Children may be particularly affected by the loss of specialist support as a result of closures and the Children and Young People's Commissioner Scotland (CYPCS) reports that some residential care placements for children with complex needs have been abruptly withdrawn.<sup>15</sup> While many resources are emerging to support parents and carers with their child's learning, Scottish Government must coordinate an approach that ensures parents are fully supported and the right to education of children with ASN is not compromised.

Our members are particularly concerned by the (UK) 2020 Act's removal of certain social care duties including the duty to assess the needs of disabled children where this is not "practical" or would cause "unnecessary delay" in providing services.<sup>16</sup> Children with disabilities and/or other additional support needs must continue to receive high-quality support – needs assessments are essential in ensuring that the support provided meets the child's needs.

**Scottish Government should ensure high quality support and the provision of accessible and child friendly information, acknowledging that the impact of Covid-19 can be particularly unsettling for children with health issues and additional support needs (ASN)**

#### *Young carers*

As mentioned above, the (UK) 2020 Act allows for the suspension of certain local authority duties to assess children's needs. This includes power to modify the Carers (Scotland) Act 2016 to remove the duty to prepare a young carer statement, replacing this with only a power to prepare one. CYPCS and Carers

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<sup>10</sup> CPAG (2020). [Supporting families during the Covid-19 pandemic](#)

<sup>11</sup> Engender (2020). Engender Briefing: Women and Covid-19.

<sup>12</sup> CPAG (2020). [Supporting families during the Covid-19 pandemic](#)

<sup>13</sup> Engender (2020). Engender Briefing: Women and Covid-19.

<sup>14</sup> [Additional Support for Learning framework](#)

<sup>15</sup> Children and Young People's Commissioner Scotland (2020). Coronavirus Bill Legislative Consent Memorandum. Briefing for MSPs.

<sup>16</sup> Section 16. Coronavirus Act 2020.

Trust have raised concerns that removing these duties is likely to put the rights of these children at even greater risk.<sup>17 18</sup>

**Scottish Government should ensure that needs assessment and support for young carers is protected more than ever, recognising that they are likely to be taking on even more responsibility for providing care during lockdown.**

#### *Care-experienced children*

Lockdown and isolation from peers are likely to have significant mental health impacts on all children. Official guidance calls on people to rely on family and wider support networks in order to stay healthy and safe during lockdown. Who Cares? Scotland recognises that many care experienced young people may not have this support network so may be more strongly affected by the effects of lockdown – both emotionally and financially.<sup>19</sup> The organisation has received reports including the disruption of contact arrangements for young people to see their parents, brothers and sisters (impacting their rights under Article 9 UNCRC), and of children living in residential homes who have all been forced to self-isolate in their rooms for 14 days when a single young person shows symptoms. Concerns have been raised that children in kinship care may be particularly isolated with carers who are older, more likely to have health needs and may likely to be self-isolating. Other members have raised concerns about the reliance on social media to stay in contact with family and friends during lockdown, noting that not all care experienced children will have access to smartphones, sufficient data plans or private spaces to be able to talk.

**Scottish Government should ensure that care experienced children have the support they need during the crisis and facilitate remote contact with family and friends.**

#### *Children deprived of their liberty*

Lockdown could result in children in secure care or young offenders' institutions spending long periods of time in isolation with limited or no family contact. This will be extremely detrimental to them and their mental health. The suspension of all but essential court business also means that some children will remain in custody for longer and carries a further potential risk that children who were aged under 18 at the relevant time will be tried as over 18s when the case is eventually heard in court.

Scottish Government should take a number of steps to ensure that children's human rights are upheld in places of detention, including: efforts to reduce the number of children detained in order to mitigate risks associated with close confinement,<sup>20</sup> increasing efforts to ensure children are not arrested or detained unless absolutely necessary, efforts to ensure equivalence of care (including healthcare, education, services and activities), measures to facilitate contact with families and other professionals including helping with associated costs<sup>21</sup> and access to video-call facilities, and agreements on safe staffing levels at a time of increased absences.

**Scottish Government should pay particular attention to ensuring children's human rights are upheld in places of detention.**

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<sup>17</sup> Children and Young People's Commissioner Scotland (2020). Coronavirus Bill Legislative Consent Memorandum. Briefing for MSPs.

<sup>18</sup> With thanks to Carers Trust Scotland for their comments and assistance.

<sup>19</sup> Who Cares? Scotland. [Response to Covid-19: Impact of Covid-19 on the Care Experienced Community](#)

<sup>20</sup> Children's Commissioner (England). [Calling on the Lord Chancellor and Secretary of State for Justice to ensure the rights of children in custody are upheld during the coronavirus outbreak.](#)

<sup>21</sup> For discussion on costs (predating current situation) see CYCJ (2018). [Family contact and the cost of phone calls from prison.](#)

### *Children with mental health issues*

The current crisis is having a significant impact on children and young people's mental health. A recent poll by YoungMinds found that more than 80% of children and young people (aged 13-25) with a history of mental health issues reported their condition worsening since the beginning of the crisis.<sup>22</sup>

**Scottish Government should ensure that child-friendly support and information is made widely available and accessible to support children's mental health throughout the crisis.**

### *Children affected by parental imprisonment*

Prison visits have been suspended in response to the COVID-19 pandemic. While necessary to contain the spread of the virus, this creates a barrier to children staying in contact with their imprisoned parent. Research has highlighted the inconsistency of video-link facilities in Scottish prisons, raising concerns around whether adequate alternative provision is available and accessible to families.<sup>23</sup> There are additional concerns surrounding the cost of phone calls both to and from prisons.

**Scottish Government should ensure that children are given the support they need to stay in touch and maintain a relationship with their imprisoned parents throughout the crisis.**

### *Child protection measures*

The (UK) 2020 Act permits a relaxation of child protection legislation. It gives powers to UK and Scottish Government to suspend the offence provisions applying to organisational employers if they appoint a barred individual to do regulated work.<sup>24</sup> While the aim of this measure is to avoid inadvertently criminalising health and social care employers if there was insufficient time to obtain a PVG check in advance, our members are concerned that this raises particular risks for vulnerable children with disabilities and/or other additional support needs in that it exposes them to heightened risk of abuse.

**Scottish Government should set out the steps that will be taken to ensure children's right to protection from abuse and harm is adequately protected throughout the crisis.**

For further information, please contact Maria Doyle, Legal & Policy Manager

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### **About Together (Scottish Alliance for Children's Rights)**

Together (Scottish Alliance for Children's Rights) is an alliance that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) and other international human rights treaties across Scotland. We have over 400 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs and interested professionals. Our activities include collating an annual State of Children's Rights report to set out the progress made to implement the UNCRC in Scotland. The views expressed in this submission are based on wide consultation with our members but may not necessarily reflect the specific views of every one of our member organisations.

<sup>22</sup> Young Minds (2020). [Coronavirus: Impact on young people with mental health needs.](#)

<sup>23</sup> Together (2020). [State of Children's Rights in Scotland Report 2019](#), page 85.

<sup>24</sup> Sections 34-35. Coronavirus Act 2020.