

Submission to United Nations Office of the High Commissioner for Human Rights March 2021

The Children and Young People's Commissioner Scotland (CYPCS) welcomes the opportunity to report on the promotion and protection of human rights and fundamental freedoms in responding to pandemics and other health emergencies. This submission is primarily informed by our [Independent Child Rights Impact Assessment on the response to Covid-19 in Scotland](#), commissioned in May 2020 through the Observatory of Children's Human Rights Scotland.

In Scotland, the Covid-19 pandemic has affected children's wellbeing, their rights under the UN Convention on the Rights of the Child and other international human rights treaties, and the implementation of the 2030 Agenda for Sustainable Development in Scotland. It continues to have short-, medium- and long-term impacts on children's rights to education, health, survival and development, adequate standard of living, play, freedom of association, food, protection from violence, abuse, and neglect, and culture. It has exacerbated existing inequalities, such as child poverty, food insecurity, educational inequalities, and mental health.

In March 2020, the United Kingdom implemented an emergency response to contain the Covid-19 pandemic, including lockdown measures, allowing no movement outside the home except in limited circumstances. While these exceptions relaxed somewhat, the lockdown continued for several months. Subsequent measures have occurred at devolved level, where the Scottish government imposed shorter, differentiated restrictions from September 2020 to control the virus. Scotland re-entered lockdown on December 26, 2020 and remains in lockdown at time of submission. The response to the pandemic has required the urgent introduction of emergency legislation at United Kingdom and Scottish government level including: the [Coronavirus Act 2020](#); the [Coronavirus \(Scotland\) Act 2020](#), the [Coronavirus \(Scotland\) \(No 2\) Act 2020](#), and [Health Protection \(Coronavirus\) \(Restrictions and Requirements\) \(Local Levels\) \(Scotland\) Regulations 2020](#).

Human rights challenges in responding to the COVID-19 pandemic, including in relation to the measures taken as part of the health response:

Several human rights challenges for children and young people persist resulting from the pandemic-related restrictions. While some decisions taken on public health grounds seem necessary and proportionate, based on the information available, the exercise of some of these powers has negatively affected children's human rights.

Equality and non-discrimination

The pandemic has widened and further entrenched inequalities, particularly for children in vulnerable situations. During the pandemic, state responses have shifted from early intervention towards crisis management. This is due to decisions about use of available resources, challenges around direct access to families, and an increase in demand for support. This disproportionately affects children living in poverty, those who live with one parent, children in secure care, disabled children, Gypsy/Traveller children, and young carers, among others. These children are often at increased risk of poverty and food insecurity, and have limited or no access to necessary services and support systems.

In particular, disabled children experienced significant reductions in access to education, health, and social care services, including access to additional learning support and reasonable adjustments. While schools and early years centres and services were closed, individualised teaching and therapeutic support were not provided. Return to school has not been experienced equally by all children. Some disabled children have been expected [to shield at home](#), limiting their enjoyment of multiple rights and severely affecting their development and well-being. In the

absence of a vaccine for children, this continues to limit their ability to enjoy their human rights and may pose a long-term challenge to their development and well-being.

Local authorities were advised to ensure that hub schools were available for vulnerable children and children of key workers during lockdown. Very low numbers attended school hubs during the first lockdown.

Gypsy/Traveller children face additional risks, as their accommodation makes it difficult to limit virus spread, comply with physical distancing, and self-isolate, and public toilet and washing facilities closed during lockdown and may not have re-opened.

Education

Access to quality, inclusive education has been severely affected by school closures and the rapid shift to online learning. School closures also exacerbated educational inequalities. Many children, particularly from lower socio-economic backgrounds, had limited or no access to information technology, limited devices for concurrent use by multiple family members, low bandwidth internet or no internet access. The educational attainment gap is likely to widen. Funding was made available to local authorities to support distribution of digital devices and ensure families had access to good broadband, but the digital divide persists.

The consistency and quality of children's learning experiences varied across schools and settings. The remote/blended learning offered has been inconsistent in different settings, disrupting learning and increasing pressure on children, parents/carers, and educational staff. Disabled children and those with Additional Support Needs (ASNs) have been particularly affected by school closures and the temporary suspension of pupil support and other fundamental services, exacerbating the systemic issues these children already faced. Reform is required to ensure these children can access appropriate, effective, and timely support and services.

Secondary school examinations were cancelled in the 2019/2020 year and students were awarded grades based on teacher estimates, moderated by computer-generated algorithms. After widespread protests, results were changed to teachers' estimated grades. Students experienced challenges with no direct access to appeals processes where they disagreed with the estimated grade. Secondary school exams for all national qualifications have again been cancelled in the 2020/2021 academic year and problems persist regarding guidance on how students will be assessed.

During the period where schools reopened from August – December 2020, some children had to isolate at home due to contracting or being in contact with someone who has Covid-19, disrupting learning as there was limited and inconsistent provision for home learning.

Child poverty

An estimated [230,000 children per year](#) lived in relative poverty after housing costs in 2016-19. Government responses have significant immediate and long-term impacts for children, with [numbers of families in poverty](#) predicted to increase. Scottish Government is [not on target](#) to meet its poverty reduction targets.

Food insecurity

Food insecurity worsened due to the pandemic, but to date, there is no comprehensive data on the number of children affected by food insecurity in the wake of the pandemic. There was no standard approach to free school meals across local authorities. Whilst alternatives were provided via meal replacements, cash replacements, or food vouchers, their delivery was inconsistent, particularly the availability of direct payments. Take-up by parents increased if provision was via a cash payment. The [value of substitution](#) varied across local authorities (from £10-£20 per week). Furthermore, the [Good Food Nation Bill](#) has been postponed and will not be tabled before the end of the Scottish parliamentary term in May 2021.

Highest attainable standard of health

Children's physical and mental health has been severely affected by the pandemic. The impact of the pressures on the National Health Service and restricted face-to-face contact on children's healthcare is concerning. Access to urgent medical care and paediatric care dropped. There is also a lack of available, accessible information for children. Access to services for children with ongoing health conditions or disabilities were restricted and continue to be affected. The government must guarantee safe levels of paediatric care, including routine vaccinations, medical appointments, sexual health services, procedures, and assessments during crises.

The pandemic will have long-term impacts on children's mental health. In [a survey of over 6,000 young people](#) conducted from September to November 2020, 38% disagreed that they felt good about their mental health and wellbeing. Children and young people have reported increased stress and mental ill-health.

Children accessing mental health services pre-pandemic, and subsequently, have reported a difference in service delivery with many areas only providing mental health support online or by phone. Barriers to mental health support include limited or no access to a private space to discuss mental health, a lack of knowledge of where to access advice, or an inability to access mental health support and information as it is primarily online. [Public Health Scotland figures](#) for the period ending 31 December 2020 reported a 165% increase in the numbers of children waiting over a year to be seen by Child and Adolescent Mental Health Services.

Measures applied due to the pandemic also exacerbated barriers to children's right to play, affecting their development, health, and wellbeing. Children without a private space for play were particularly disadvantaged. A lack of outdoor access and the closure of sports and recreational facilities resulted in fewer opportunities for exercise. Early Learning and Childcare was limited, reducing pre-school children's access to space, time, and support for play activity. Children also experienced restrictions on their social interactions, such as time spent with their friends and in-person contact due to physical distancing.

Child protection from violence, abuse, and neglect

With schools closed, and other services operating virtually, if at all, many children in vulnerable situations became less visible to those services designed to protect and support them. Child protection visits continued mostly in person where necessary, while virtual visits took place for others. Referral rates for child protection and support from social services decreased at the start of the pandemic, due to a lack of contact from universal services, extended family or the local community, who may identify issues.

Children and the justice system

In some areas of Scots law, a 'child' is defined as someone under 16. Under the UK-wide Coronavirus Act 2020, 16- and 17-year-old children in Scotland, unlike their peers in the other UK nations, are at risk of being charged, arrested, detained, and convicted of criminal offences.

Emergency coronavirus legislation has extended the duration of court and tribunal proceedings and how long children may be kept in secure care or in Young Offenders' Institutions (YOIs), contravening the principle that deprivation of liberty should only ever be applied as a last resort and for the shortest time possible.

Despite [clear guidance to the contrary](#), children were not prioritised for release from custody. No individualised assessments for children in detention were undertaken to ensure the correct balance between rights and public safety, and no consideration at all was given to releasing children detained on remand.

Children deprived of their liberty in residential care, mental health wards, and YOIs experienced significant reductions in access to education and recreation. They also experienced an extended period without face-to-face contact with their families, social workers, or lawyers. As digital access is not systematically available, family and professional contact has also been restricted online.

Technical or other support needed to address the challenges identified

The Scottish Government should adopt an effective, child rights-based response to pandemics and health-related emergencies, which protects and benefits those in most vulnerable situations, and includes targeted responses for those groups most at risk of being left behind, including adequate resourcing. The government should consider the support that children affected by poverty will require post-pandemic. Children's participation in decision-making, the use of Child Rights Impact Assessment (CRIA), and the use of rights-based budgeting are crucial in this regard.

Evidence-based decision-making is essential to ensuring that the human rights challenges faced by children and young people can be avoided or mitigated in future responses. The pandemic has demonstrated the need for a structured CRIA process as government responses often overlooked children's rights. Several decisions affecting children were taken without a published CRIA, including school closures and support for education, childcare-related decisions, and restrictions on family contact. Even if the evidence is published, the reasoning behind the decisions has not been as clear as it needs to be. In 2020, the European Network of Ombudspersons for Children developed a [Common Framework of Reference for Child Rights Impact Assessments and Impact Evaluations](#) to guide States in these processes.

Engagement between decision-makers and children was lacking in Covid-19 responses. Decision-makers should have engaged with children and considered their views throughout the decision-making process, yet children's views were at times completely absent from decision-making. Furthermore, the lack of certainty and clarity around measures has also created additional stress for children and young people. It is important that the rationale for decision-making is clear and transparent in order to retain public confidence, including of children and young people. Communication with children and young people must be accessible and child-friendly. Children and young people need to be listened to and understood and receive clear communication and certainty about what measures will be applied and when.

Good practices

The Scottish Government adopted several poverty alleviation measures quickly in response to the pandemic. They responded to findings that digital exclusion was impacting home learning and socialisation [by committing £30 million](#). Other initiatives included the [winter support fund for families and children](#) (£100 per family for low-income families until payments started for the Scottish Child Payment in February 2021) and the provision of free school meals or alternatives during school holidays to address the loss of school meals and the longstanding issue of food insecurity.

The UK government also adopted time-bound policy initiatives to address poverty alleviation such as protection of incomes by the [Coronavirus Job Retention Scheme](#), increases to Universal Credit, and a reversal of cuts to the Local Housing Allowance.

Covid-19 regulations were also amended to provide for additional socialisation for children, exempting them from limits on household numbers and permitting them to meet in larger groups, thereby recognising the importance of socialisation for children's development.

The Scottish Government recognises that [closing schools presents a serious risk of harm to the wellbeing of children and young people](#), particularly those who are vulnerable.