

CYPCS BRIEFING (1) Independent Advisory Group Children and Young People's Commissioner Scotland

The impact of emergency police powers on the human rights of children and young people in Scotland during the Covid-19 pandemic

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights. The Commissioner is fully independent of the Scottish Government.

Introduction

This briefing has been prepared by the office of the Children and Young People's Commissioner Scotland, to support the scrutiny and monitoring of the Independent Advisory Group (IAG) and is informed by our work and engagement with stakeholders, partners, civil society, families, and importantly, children and young people since the outset of the emergency period.

It is provided to support IAG members to *'pay particular attention to any use of powers involving children, young people or persons within disadvantaged communities ... to ensure that they are fully reflective of Police Scotland's duties.'*¹

In particular, the IAG must ensure that Police Scotland's use of emergency powers is compliant with human rights principles, Police Scotland's values and the overall aim of safeguarding public health.

We have taken account of the submissions and information provided by the other members of the IAG, to date, and do not propose to duplicate the comprehensive human rights analysis of the Scottish Human Rights Commission. Because children and young people have the same human rights entitlements as adults, we will focus on circumstances where additional protections exist to safeguard children and young people who are at risk of being disproportionately affected by the emergency measures.

With particular reference to the principles of the United Nations Convention on the Rights of the Child (UNCRC) we outline the current Scottish legal and policy youth justice frameworks in place to respond to children and young people, in conflict with the law, reflecting on Police Scotland's 'policing by consent' approach and consider whether further data or information is required to assist scrutiny by the IAG.

We hope that our briefing will assist the IAG in its conclusions and recommendations to Police Scotland in planning its human rights-based approach to policing, particularly for children and families, and to Scottish Government, as Scotland moves out of lockdown, in line with the [Scottish Government's Route Map](#).⁵

Background

This briefing considers the first four pieces of relevant emergency legislation:

- Coronavirus Act 2020 ("The UK Act");
- Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations ("Scottish Regulations");
- Coronavirus (Scotland) Act 2020 ("CVS Act 1");
- Coronavirus (Scotland)(No2) Act 2020 ("CVS Act 2").

The UK Act contains a range of new, temporary powers, intended to protect the public in this global health emergency. These include powers to remove and detain "*potentially infectious persons*" for screening and assessment. The Scottish Regulations impose restrictions and requirements upon the general population, and are the means, and associated police powers, by which current social distancing measures may be legally enforced in Scotland.

Whilst both Scottish Acts⁶ contain a range of miscellaneous provisions and measures, with the intention of protecting public health, it is the CVS Act 1 which contains most of the new justice provisions affecting the human rights of children and young people in conflict with the law.

Section 1: International Human Rights and Policing

Assessment of the proportionality of these emergency measures is key to striking the appropriate balance between children and young people's human rights, and the legislation's legitimate aims. This is best achieved through application of international human rights' standards, treaties and guidance. These are outlined in SHRC Annex 2¹ and provide the overarching framework of human rights in the pandemic.

¹ Namely ECHR; ICCPR; CEDAW; UN CAT; CERD; UN CRPD and UNCRC.

Further international guidance and guidelines² reflect the principles of these standards: that measures taken to protect people in a health emergency, by restricting individual's rights and freedoms, must be **lawful, necessary, proportionate, time-limited**, and take into consideration the disproportionate impact on marginalised or vulnerable groups of people, to ensure they are **non-discriminatory**.

On 16 March 2020, in a joint statement, international human rights leaders reminded states of these fundamental principles and urged them “...*to remain steadfast in maintaining a human rights-based approach to regulating this pandemic, in order to facilitate the emergence of healthy societies with rule of law and human rights protections.*”³

When considering ECHR rights and a human rights-based approach to policing, the guidance from the Council of Europe: *The European Convention on Human Rights and Policing 2013: A handbook for police officers and other law enforcement officials* stresses that standards in policing children and young people ‘should be seen as being complementary to those set out in a panoply of other international instruments’, including:

- The UNCRC;
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (the *Beijing Rules*);
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency (the *Riyadh Guidelines*).

Children’s ECHR rights are enhanced by these additional safeguards from international law and policy. So, for example, in the context of the pandemic, children’s ECHR rights to life (ECHR Art. 2) and non-discrimination (ECHR Art.14) are mirrored in UNCRC Articles 6 and 2, and are particularly important for those groups of children most at risk of contracting coronavirus and/or disproportionately affected by social inequalities and vulnerabilities, including: children who are living in poverty; who are at risk of abuse or exploitation; children from ethnic minority or marginalised groups; migrant, asylum seeking and refugee children; children with disabilities, and care experienced children.

² For example, [the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights; the Human Rights Committee, General Comment 29, States of Emergency \(article 4\); the CCPR General Comment No. 27: Article 12 \(Freedom of Movement\); and most recently, Council of Europe Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis: a toolkit for member states’ 7 April 2020](#)

³ UNOHRC: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722>

For those children and young people in conflict with the law, their rights to liberty and security of person (Art 5); protection from inhuman, degrading treatment or punishment (Art 3); privacy (Art. 8); fair trial and due process (Art. 6) must all be respected in line with the international standards of child-friendly juvenile justice⁴.

What does this mean for policing in the current crisis, and what additional precautions have been taken by Police Scotland to ensure children are not being exposed to additional risks during this time?

Where children are being deprived of their liberty in police custody, for example, police officers must ensure in accordance with the ECHR Article 5 principles that they are only ever deprived of their liberty as a measure of last resort, and for the shortest possible period of time.⁵ In addition to fair process rights, such as to a presumption of innocence, legal advice or fair trial, consideration must also be given to the age, maturity, understanding and needs of the child, throughout the process.

If, during the emergency period, police officers are questioning a child, whether as a suspect, accused person, victim or witness they must take account of, not only the human rights principles of **necessity, proportionality and prevention**, but also the General Principles of the UNCRC, and only act in the ‘best interests’ of the child, taking account of their views throughout.⁶ This right to ‘effective participation’ is one of the core concepts underlying the guidance and guidelines, from both the Council of Europe⁷ and the UN Committee on the Rights of the Child⁸, and finds its legal basis in a child’s UNCRC rights to be heard⁹ and to a fair trial and treatment¹⁰ and the equivalent international treaties, including Articles 3 and 6 of ECHR. The European Court of Human Rights has made explicit reference to the rights of children in conflict with the law and Articles 12 and 40 of the UNCRC, holding that:

‘It is essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that the steps are taken to promote his ability to understand and participate in the proceedings.’¹¹

⁴ In accordance with UNCRC, Article 40; UN Committee on the Rights of the Child: General Comment No.24 (2019) on children’s rights in the child justice system; and Council of Europe Guidelines on Child Friendly Justice 2010 (See below).

⁵ Echoed in UNCRC Article 37 b. and Rules 13 and 19 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the ‘Beijing Rules’).

⁶ UNCRC Articles 3 and 12.

⁷ Council of Europe Guidelines on Child Friendly Justice 2010.

⁸⁸ UN Committee on the Rights of the Child (2019) ‘General Comment No.24 (2019) on children’s rights in the child justice system’ and UN Committee on the Rights of the Child (2009) ‘General Comment No.12’.

⁹ UNCRC Article12 (see also ‘Beijing Rules’ 14).

¹⁰ UNCRC Article 40.

¹¹ ECtHR (GC), 16 December 1999, appl.no, 24724/94 (T v UK para 84).

The UN Committee on the Rights of the Child has recently revised its General Comment on children's rights in the child justice system,¹² reminding states of the international standards and principles of 'child-friendly justice' and, in particular, that in accordance with UNCRC Article 40:

“States parties should enact legislation and ensure practices that safeguard children’s rights from the moment of contact with the system, including at the stopping, warning or arrest stage, while in custody of police or other law enforcement agencies, during transfers to and from police stations, places of detention and courts, and during questioning, searches and the taking of evidentiary samples.”

Section 2: Domestic law and policy - ‘Child-friendly justice’ and policing in Scotland

For those members of the IAG who may not be acquainted with the Scottish Youth Justice System, it may be helpful for us to outline a short summary of the key elements and reference significant areas of law, policy and practice which impact on Police Scotland's approach to responding to children and young people during the pandemic.

For over 50 years, Scotland has underpinned its approach to children who are either in conflict with the law, or in need of care a protection, with a welfare-based philosophy that prioritises the best interests and needs of the child, over a traditional, punitive response to criminal behaviour.²³ This 'Kilbrandon' philosophy established the quasi-judicial, Children's Hearings System which has evolved to take account of changing social norms and international human rights obligations.

For the purposes of this briefing, it should be noted that children and young people have the same human rights in the Children's Hearings System as any individual (both adults and children) has in the adult justice system, under international human rights law. In addition, irrespective of which system a child under 18 is involved in, the child has human rights' protections under the international standards (outlined above).

It is beyond the scope of this briefing to provide commentary on the impact of these dual-systems of justice for children in Scotland, and whether they meet Scotland's obligations as a human rights' guarantor for some of the most marginalised and vulnerable children who are in conflict with the law.¹³

¹² UN CRC 'General comment No.24 (2019) on children's rights in the child justice system'.

¹³ For further recent analysis see Claire Lightowler's CYCJ Report, 'Rights Respecting? Scotland's Approach to Children in Conflict with the Law'.

The Children and Young People (Scotland) Act 2014 first referenced the UNCRC in Scots law, providing that Scottish Government and public authorities (including Police Scotland) have statutory duties as Corporate Parents, and are required to report on what steps they have taken to, ‘*secure better or further effect within their areas of responsibility of the UNCRC requirements*’.

In Scotland, these duties are embodied in the Scottish Youth Justice Strategy 2015-2020; GIRFEC and Whole Systems Approach, incorporating the Early and Effective Intervention and prevention approaches aligned with a rights-respecting framework for public services meeting the wellbeing needs of children and young people. This was mirrored in the Children’s Hearings (Scotland) Act 2011, the Criminal Justice (Scotland) Act 2016, Police Scotland’s Children and Young People: Our Approach 2016-2020 Policing Plan and the Standard Operating Procedures: Offending by Children (revised 2019).

The Youth Justice Strategy and WSA require police officers to engage in community-based collaborative responses to children who offend, and to ensure children’s wellbeing needs and rights are being met and avoid criminalisation of children. During the pandemic, this means police officers must consider alternative, diversionary justice responses to formal disposals for every child under 18, who behaves in a way that may be in breach of emergency provisions and guidance. Officers are expected to adopt the *Engage, Explain, Encourage* as the primary response, with *Enforcement* as a last resort, taking place in line with the *Youth Justice Strategy* principles. This reflects the fact that the emergency powers are provided to the Police for the purpose of protecting public health, rather than keeping public order.

Before considering the specific issues of what implementation of these duties and ‘child-friendly justice’ means in Scotland during the pandemic, we must alert the IAG to our concerns about the potentially discriminatory provisions of the emergency legislation for Scottish children and young people.

The UK Act, the CVS Act 1, and the Scottish Regulations, all contain provisions which define ‘a child’ as a person under the age of 16, in Scotland.¹⁴ This is *not* consistent with the English, Welsh and Northern Irish definitions of a ‘child’ which define a child as a person under the age of 18, in accordance with Article 1 of the UNCRC. This reflects the varying definitions of a child which exist in Scots law and concerns have been raised by international human rights experts, including the UN Committee on the Rights of the Child, stressing the obligation on the State to recognise the inherent vulnerabilities of children aged 16 or 17 and extend protections to all children under the age of 18.¹⁵

¹⁴ UK Act, Sch. 21(3), para. 40(7).

¹⁵ Concluding Observations on the 5th Periodical Report of the UK and NI (12 July 2016: CRC/C/GBR/CO/5).

The UK has been specifically criticised regarding the treatment of children in ‘adult’ systems and contemporary research and evidence suggests that much greater consideration of childhood and adolescent maturation and developmental factors is necessary to ensure rights compliance in the criminal justice system.¹⁶ Of particular significance is the failure of the state to increase the age of criminal responsibility. In Scotland this age remains at 8 years of age and legislation to increase the age is not in force.¹⁷ For the avoidance of doubt, it is clear in Scots law that the age of ‘majority’ remains consistent with the rest of the UK, and the UNCRC, as 18¹⁶.

We thank the IAG and Police Scotland for their support in securing an amendment to prevent 16/17 year olds from being issued with Fixed Penalty Notices, and for their assurances that, for the purposes of the work of the IAG, and in line with Police Scotland’s commitments in policy, law and practice, children are defined as everyone under the age of 18.

Impact on children and young people

Since the outset of the crisis, we have undertaken a process of intelligence gathering through engagement with partner organisations, civil society, parents, carers and children and young people. This has been with a view to identifying circumstances of concern about the impact of the emergency provisions for children and young people and supporting a prioritised approach to our work. This has allowed us to identify a number of areas and concerns which will be relevant for Police Scotland and the IAG. Mindful of the UN Committee on the Rights of the Child’s warning on 8th April 2020, of the, “**grave physical, emotional and psychological effect of the COVID-19 pandemic on children**”, urging all states to ensure they put adequate human rights protections in place for all children during the pandemic, we have referred to the Committee’s list of the most important 11 issues affecting children as a result of the pandemic.¹⁸

Adopting the Committee’s 11 issues as a framework for considering the use of police powers allows a recognition that officers do not exercise their powers in a vacuum. The extent and nature of their contact with children during the pandemic will be influenced by a wide range of social, economic and environmental factors, and the decisions they make will have an impact on children’s exposure to additional risk factors in other parts of the justice system. This is explicitly recognised in the Whole Systems Approach and the research that underpins it, but the pandemic both

¹⁶ The Scottish Sentencing Council Guidelines Consultation is underway (closing in August 2020) and includes research, ‘*The development of cognitive and emotional maturity in adolescents and its relevance in judicial contexts Literature Review*’ Feb 2020.

¹⁷ The Age of Criminal Responsibility (Scotland) Act 2019 raises the minimum age to 12, but this has not yet been brought into force. The age of 12 falls below the internationally accepted norm as an absolute minimum of 14 years of age.

¹⁸ See Annex 1 for List of 11 issues from UN Committee on the Rights of the Child.

exacerbates existing factors and creates new ones (either directly or as a result of the state response) that officers will need to recognise.

The Committee recognises the importance of limiting restrictions placed on children's rights as a result of the pandemic. We have noted that the two Children's Rights (and Wellbeing) Impact Assessments undertaken by Scottish Government on the two Scottish Acts²⁰ do not adequately address some of the negative or positive impacts on particular groups of children, and fail to consider the steps required to mitigate against adverse impacts. For example, no consideration was given to Article 1 of the UNCRC and the risks of disproportionate criminalisation of children (as noted above).

Similarly, in CVS Act 1, there were significant changes to the administration of justice, in both the adult and children's hearings systems, yet no consideration was given to the impact on children of ECHR rights, particularly regarding Articles 5, 6 and 8 rights to liberty, fair hearings and private and family life²¹ for children subject to Child Protection Orders, Secure Accommodation authorisations or being deprived of their liberty in detention settings.

Importantly, the Scottish Government has been reporting to the Covid-19 Children and Families Directorate Leadership Group on measures in place to respond to the UN Committee's list of issues. However, we have been concerned that most policies and guidance documents produced by Scottish Government and public bodies during the emergency period, have failed to assess the likely impacts on children's human rights, mitigate against adverse impacts, or involve children and young people's participation in their development.

CYPCS has therefore commissioned the Observatory of Children's Human Rights Scotland to undertake an expert analysis through a Children's Rights (& Wellbeing) Impact Assessment, across all areas of children's lives, to consider the most concerning human rights issues for children and young people during this time. We look forward to sharing this work with the IAG and Police Scotland, but in the meantime would encourage the use of a CRIA model to inform decision making, supported by data and consultation with children and young people. We have provided an outline of the recommendations from the CYPCS Young Advisers Group (YAG) following very positive engagement with Police Scotland.¹⁹

We would also refer the IAG to the first Report of findings from CYCJ (which contains views and reflections from young people and people working with them on their experiences of policing during the pandemic).

¹⁹ See Annex 2.

Taken together, these reports will assist the IAG and Police Scotland in adopting a critical approach not only to the use of emergency powers, but also to their necessity. This will provide an evidential base for decisions on when to seek the repeal of powers when they are no longer necessary (as with Fixed Penalty Notices for 16/17 year olds) or disproportionate in their effect.

Additional Considerations

The Committee has also recognised that children's rights to play and association have been significantly restricted due to lack of access to outdoor space and being unable to see friends. As lockdown eases, their right to be in public spaces (e.g supermarkets or parks) is also more likely to be challenged by adults. It is important for officers to be aware of this, and to respond sensitively to any apparent breaches. There may be a number of legitimate reasons why a child is outside of the home. Many children will require more exercise, and opportunities to play, than adults, which are important for their mental health and wellbeing. This means that the starting point for police officers should not be to assume that the child is in breach of the regulations. The first step should be to seek to understand why the child is outside as a key part of the "Engage" step.

The loosening of restrictions for children also involves the prospect of returning to school. One of the impacts of the pandemic has been to highlight that schools are not just places where children learn; they are places where they socialise, eat and play. Particular challenges have been experienced by children with Additional Support Needs, for whom a lot of support which is normally provided by the school has not been available. For some children they are also places of safety where vulnerabilities and needs can be identified and support offered. We note that during the lockdown the measures put in place to identify and support vulnerable children through hubs have not been well taken up and the impacts of that missing support may well take some time to emerge.

Poverty was the biggest human rights issue facing children in Scotland before the COVID-19 pandemic and this crisis is having a disproportionate effect on those already most at risk. It creates strain on relationships, on mental health and on physical health. Children living in poverty are less likely to have space to themselves or access to the outdoors.

Family conflict may result in them being outside more. They may be more likely to come into contact with the police and more likely to display trauma-related responses to that contact. We note that there has been no uniform approach to the delivery of free school meal replacements and as a result some families have not been able to access the food their children are entitled to. Children experiencing hunger may act in way that appears challenging or may resort to stealing food.

As our CYPSC Young Advisors Group (YAG) noted, some children will struggle with understanding the changing rules, especially where they are subject to interpretation.

Mental health has been a significant concern throughout the lockdown and the impacts are likely to remain for some time to come. Certain groups of children are more at risk of negative mental health impacts from lockdown (including children with disabilities and additional support needs, young children, children due to be making school transitions this year, children affected by domestic abuse, those affected by substance abuse, those whose parents have mental ill-health).

Many services which would otherwise support children have been restricted or withdrawn entirely. Those that are available are often responding only to crisis situations. It will be important for officers to remain mindful of the reasons why a child may be exhibiting particular behaviours and to respond appropriately.

There are risks that children who display distressed behaviour, whether as a result of mental health concerns, poverty, disability, or as a response to neglect or abuse, end up being criminalised in the form of challenging behaviour.

Officers should be mindful of needs that may not always be immediately apparent. Some groups of children experienced disproportionate levels of police contact prior to the pandemic, including care-experienced children and children from BAME backgrounds. For example, children living in residential care reported their homes often calling for police assistance in circumstances where families would only do so as a last resort.

The Committee urges the release of children from situations of detention, or places where they may be deprived of their liberty. This is of relevance to Police Scotland when children are alleged to have committed serious crimes or offences, or have to attend an adult court hearing where they may be detained in police custody. For some time, we have expressed concerns that children should not be detained in police custody and called for greater scrutiny and monitoring of conditions of detention to prevent breaches of children's human rights. For example, calls have been made for the practice of strip searching in police custody to be abolished. In this time of a life-threatening health pandemic the violation of children's rights of privacy and bodily integrity may also put the police officers and children at serious risk.

Unfortunately, there is insufficient data to assess whether children's rights are being upheld when detained, and given the significant concerns for children's health and protection during the pandemic and the recommendations of the UN Committee on the Rights of the Child and the CPT, we would call on Police Scotland to **ensure that data is provided to the IAG confirming the number of children under 18 and young people under 21 who were detained, for any reason during the emergency period.**

It would be helpful to know how any decisions to detain took account of the current human rights principles and guidance. This is an issue we are raising with the UK Joint Committee on Human Rights, and the Scottish Parliamentary Justice, Covid-19 and Equality and Human Rights Committees.

Looking to the future

Reflecting on the year prior to the start of the Covid-19 pandemic, it is worth noting that there were a number of important events and publications which were relevant to children's human rights in the justice system in Scotland. These included:

- Scottish Government's commitment to incorporating the UNCRC into Scots law;²⁰
- Report on an Expert Review of the Provision of Mental Health Services, For Young People Entering and in Custody at HMP YOI Polmont²¹;
- Report of the Independent Expert leading the United Nations Global Study on Children Deprived of Liberty;²²
- Claire Lightowler's CYCJ Report, Rights Respecting? Scotland's Approach to Children in Conflict with the Law;²³
- Reports of the Scottish Independent Care Review 'The Promise' 2020;²⁴
- UN Committee on the Rights of the Child (2019) 'General Comment No.24 (2019) on children's rights in the child justice system.'²⁵

As Scotland navigates the route out of lockdown, it will be important to be guided by these expert findings and recommendations and informed by a children's rights-based approach in preparation for incorporation of the UNCRC.

We hope this briefing helps the IAG identify some of the most important considerations required to respect children and young people's human rights in the monitoring and scrutiny of the use of police powers during the Covid-19 pandemic and at this stage would make the following **recommendations**:

- **Police Scotland should collect and provide to the IAG disaggregated data on the use of emergency powers in relation to children, broken down by protected characteristic and care experience.**

²⁰ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12376&i=111834>

²¹ https://www.prisonsscotland.gov.uk/sites/default/files/publication_files/Report%20on%20Expert%20Review%20of%20Provision%20of%20Mental%20Health%20Services%20at%20HMP%20YOI%20Polmont%20-%20Final%20Version.pdf

²² <https://www.ohchr.org/EN/HRBodies/CRC/StudyChildrenDeprivedLiberty/Pages/Index.aspx>

²³ <https://cycj.org.uk/wp-content/uploads/2020/01/Rights-Respecting-Scotlands-approach-to-children-in-conflict-with-the-law.pdf>

²⁴ <https://www.carereview.scot/destination/independent-care-review-reports/>

²⁵ <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsqIkirKQZLK2M58RF%2F5F0vEnG3QGKUxFlvhToQfiGxYiV05tUAiIgpOwHQJsFPdJXCiixFSrDRwow8HeKLLh8cgOw1SN6vj%2Bf0RPR9UMtGkA4>

This will support an assessment of proportionality in terms of use of powers and should include information where parents and carers have been issued Fixed Penalty Notices (FPN) as a result of their child's behaviour.

- **Police Scotland should engage in further consultation with affected groups and those most likely to come into contact/conflict with the law.**

We note that consultation with CYPCS Young Advisers Group (YAG)²⁶ resulted in guidance to Police officers that was informed directly by the views of young people and would encourage this approach.

- **Police Scotland should keep under regular and critical review the necessity of emergency powers, and seek their repeal as soon as they become unnecessary or disproportionate in effect.**

Police Scotland's support for the repeal of the provisions on FPNs for 16/17 year olds was an example of a human rights-based approach to necessity of powers and this should continue.

- **Police Scotland should confirm how many children under the age of 18, and young people under the age of 21 received Fixed Penalty Notices at each phase of the Scottish Government's Route Map.**
- **Police Scotland should undertake a review of FPNs issued to 16/17 year olds prior to the amendment of the Scottish Regulations to ensure that the penalties will be removed from the children's records and the interim Vulnerable Persons Database**
- **Police Scotland should confirm how many children and young people were referred to SCRA, Crown Office and Procurator Fiscal Service or subject to diversionary measures under the Youth Justice Strategy as a result of their conduct or behaviour during the emergency period.**

Maria J. Galli
Children and Young People's Commissioner Scotland
05 June 2020

²⁶ See **Annex 2** CYPCS YAG Notes of Meeting Police Powers.

ANNEX 1:

The Committee on the Rights of the Child warns of the grave physical, emotional and psychological effect of the COVID-19 pandemic on children and calls on States to protect the rights of children

The Committee on the Rights of the Child expresses concern about the situation of children globally, particularly those in situations of vulnerability, due to the effects of the COVID-19 pandemic. Many children are gravely affected physically, emotionally and psychologically, especially in countries that have declared states of emergencies and mandatory lockdowns.

In addition to the [declaration of ten human rights treaty bodies](#), the Committee further urges States to respect the rights of the child in taking measures to tackle the public health threat posed by the COVID-19 pandemic. In particular, the Committee calls on States to:

1. **Consider the health, social, educational, economic and recreational impacts of the pandemic on the rights of the child.** Although initially declared for short terms, it becomes clear that declarations of States of emergencies and/or disaster may be maintained for longer periods, leading to longer periods of restrictions on the enjoyment of human rights. The Committee recognizes that in crisis situations, international human rights law exceptionally permits measures that may restrict the enjoyment of certain human rights in order to protect public health. However, such restrictions must be imposed only when necessary, be proportionate and kept to an absolute minimum. Additionally, while acknowledging that the COVID-19 pandemic may have a significant and adverse impact on the availability of financial resources, these difficulties should not be regarded as an impediment to the implementation of the Convention. Nevertheless, States should ensure that responses to the pandemic, including restrictions and decisions on allocation of resources, reflect the principle of the best interests of the child.
2. **Explore alternative and creative solutions for children to enjoy their rights to rest, leisure, recreation and cultural and artistic activities.** Such solutions should include supervised outdoor activities at least once a day which respect physical distance protocols and other hygiene standards, and child-friendly cultural and artistic activities on TV, radio and online.
3. **Ensure that online learning does not exacerbate existing inequalities or replace student-teacher interaction.** Online learning is a creative alternative to classroom learning but poses challenges for children who have limited or no access to technology or the Internet or do not have adequate parental support. Alternative solutions should be available for such children to benefit from the guidance and support provided by teachers.
4. **Activate immediate measures to ensure that children are fed nutritious food** during the period of emergency, disaster or lockdown, as many children receive their only nutritious meal through school feeding schemes.
5. **Maintain the provision of basic services for children including healthcare, water, sanitation and birth registration.** Despite the increasing pressure on health systems and the scarcity of resources, children should not be denied access to health care, including to testing and a potential future vaccine, to COVID-19 – related and COVID-19 – unrelated

medical treatment, mental health services and treatment for pre-existing conditions. Children should also have access to clean water and sanitation facilities during the period of emergency, disaster or lockdown. Birth registration services should not be suspended.

6. **Define core child protection services as essential and ensure that they remain functioning and available, including home visits when necessary, and provide professional mental health services for children living in lockdown.** Confinement may expose children to increased physical and psychological violence at home, or force children to stay in homes that are overcrowded and lack the minimum conditions of habitability. Children with disabilities and behavioural problems, as well as their families, may face additional difficulties behind closed doors. States should strengthen phone and online reporting and referral systems as well as sensitization and awareness activities through TV, radio and online channels. Strategies to mitigate the economic and social impact of the COVID-19 pandemic should also include specific measures to protect children, particularly those living in poverty and lacking access to adequate housing.
7. **Protect children whose vulnerability is further increased by the exceptional circumstances caused by the pandemic.** These include children with disabilities; children living in poverty; children in street situations; migrant, asylum-seeking, refugee and internally displaced children; minority and indigenous children; children with underlying health conditions including HIV/AIDS; children deprived of their liberty or confined in police lock-up facilities, prisons, secure care centres, migrant detention centres or camps; and children living in institutions. States should respect the right of every child to **non-discrimination in its measures** to address the COVID-19 pandemic as well as take targeted measures to protect children in vulnerable situations.
8. **Release children in all forms of detention, whenever possible, and provide children who cannot be released with the means to maintain regular contact with their families.** Many States have adopted measures to restrict visits and contact opportunities for children living in institutions or deprived of their liberty, including children confined in police institutions, prisons, secure centres, migration detention centres or camps. While these restrictive measures can be seen as necessary in the short term, over long periods they will have a marked negative effect on children. Children should at all times be allowed to maintain regular contact with their families, and if not in person, through electronic communication or telephone. If the period of emergency, disaster or State-ordered confinement is extended, consideration should be given to reassessing the measures that prohibit such visits. Children in migration situations should not be detained nor separated from their parents if accompanied.
9. **Prevent the arrest or detention of children for violating State guidance and directives relating to COVID-19,** and ensure that any child who was arrested or detained is immediately returned to his or her family.
10. **Disseminate accurate information about COVID-19 and how to prevent infection in languages and formats that are child-friendly and accessible to all children including children with disabilities, migrant children and children with limited access to the Internet.**
11. **Provide opportunities for children's views to be heard and taken into account in decision-making processes on the pandemic.** Children should understand what is

happening and feel that they are taking part in the decisions that are being made in response to the pandemic.

8 April 2020

ANNEX 2 CYPICS YAG: Notes of Meeting Police Powers

***** Internal Use Only*****

CYPICS Young Advisers Group-Summary of notes from discussion on Police Powers May 2020

Attendees: Nick Hobbs, Nicola Harris (CYPICS), CM, BW, EM, JH, VP (YAG)

How much do you feel you understand the rules? 1(not at all) – 5(completely) show of fingers (not a test!)

- All showed 3-4 fingers

What is clear and what isn't?

- Extent of powers are not clear.
- What does reasonable force mean? When would it be used?
- What are the sanctions for breaching the restrictions?
- What is expected of members of the public?

Key messages for Police Officers

- Don't make presumptions about people and why they might be outside
- Speak to young people as individuals
- Try not to patronise them
- Listen to what they've got to say and try to understand their perspective
- Bear in mind they may believe their excuse is reasonable even if you don't. If that's the case, they're not deliberately breaking the law. They need explanation and help to understand.
- Remember that not everyone has access to reliable and accurate information
- Be open to them asking you questions
- Remember that some children and families are not "typical". Think about disabilities (may not be visible), or people for whom English is not a first language
- Remember that some children won't have any experience of speaking to the police and may find you scary or intimidating. Don't make this worse by trying to scare them with talk of death.
- Be clear about your job. Is it to send everyone home or is it public health, or public protection, or child protection? What's the priority?
- Be mindful of the possibility of domestic abuse or other protection issues
- Use force/enforcement as a last resort

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Do you have any suggestions for ways in which police could open a conversation with a young person? What question should they ask?

- Normalise the conversation from the start
- Say hello/hi
- Introduce yourself
- As a neutral question eg how are you?
- Don't assume there's a problem

What principles should police apply when providing information to young people?

- Videos work well on social media but make them “more chill” and less scary
- Best not to come directly from the Police, use other people to deliver the message (young people, key workers etc)
- Don't make it seem that young people are the main problem. Lots of older people are breaching the restrictions too – they need to hear messages too
- Remember that there are lots of different messages out there and some of them are confusing and contradictory. Try to deliver a simple one.
- Maybe a letter to every house, but not specifically aimed at young people for the reasons explained above

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