

APPENDIX 7: Domestic Abuse: Children’s Rights Impact Assessment (CRIA)

Subject Focus: Domestic Abuse

This CRIA is useful to read alongside Scottish Government guidance, which can be found at <https://www.gov.scot/publications/childrens-rights-wellbeing-impact-assessments-crwia-guidance/> (please note, this Scottish Government guidance encompasses wellbeing frameworks used in Scotland, while the primary emphasis of this Alternative CRIA is on children’s rights)

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Date: 12 June 2020

STAGE 1: SCOPING (Background and Rights Framework)

Question 1: Name each measure (including relevant sections of legislation and guidance) being assessed and describe the overall aim	
Measure	Overall aim of the particular, relevant aspects of the measure
Coronavirus (Scotland) Act 2020 Schedule 3 Children Schedule 4 Justice	<p>Of relevance to domestic abuse, provisions under the Act include changes to the Children’s Hearing System, the Justice System, eviction notices and debt moratoria.</p> <p>An amendment to the Act (S.15A(1) and (2)) ensures Ministers must take account of the nature and number of incidents of domestic abuse (Police Scotland statistics) in their reviews of the provisions of the Act.</p> <p>There will be changes and delays to Children’s Hearings processes (see Appendix 6) which will affect children with close connection to a domestic abuse perpetrator and young people experiencing domestic/sexual violence in their own relationships: changes to time in which hearings need to take place, those who are required to be present at hearings (including children themselves). Changes to length of time of orders (interim assessment, compulsory supervision). Only Hearings for urgent and immediate protection of a child are taking place. Hearings are taking place remotely if the child has IT/phone or their views are collected through email, a trusted person can ‘attend’ virtually, non-essential Hearings rescheduled.</p>

	<p>Criminal justice proceedings in relation to domestic abuse will be affected through: the suspension of requirement to attend and attendance by electronic means, extension of time limits, changes to admissible evidence, regulations to postpone, vary or revoke requirements of community payback orders (CPOs) or Drug Treatment and Testing orders (DTTO's); early release of prisoners (see below), assessment and payment of legal aid.</p> <p>The Act makes changes to the notice period required for evictions in private and social sectors. The rules will be in place until at least the 30th September. The change in the length of notice depends on the type of tenancy and what ground is used. It extends the period of any new debt moratoria to a period of six months and removes the limitation that only one such moratorium can be applied for in any 12-month period. It introduces a duty to report bi-monthly on whether provisions are necessary.</p>
<p>Coronavirus (Scotland) (No. 2) Act</p>	<p>This Act includes provisions on the operation of the criminal justice system. It includes extensions of time limits (for adjournments prior to sentencing, remand for inquiry into physical and mental conditions), electronic means for prisoner appearance and expiry of undertakings (if a COVID-19 reason for non-appearance). It disapplies time limits on adjourning of sentencing diets around failure to comply with orders relevant to domestic abuse cases (Child Protection Order (CPO), DTTO or Restriction of Liberty Order – RLO). Where an accused is released pre-trial by the police subject to an undertaking, if the accused fails to attend the undertaking diet, the court could issue a warrant for arrest. If this is not done, protective conditions of undertaking fall. The Act provides that where accused do not appear for reasons relating to coronavirus and the sheriff does not wish to grant a warrant, they can then modify and continue the undertaking date to a later date with protective conditions remaining in force for victim safety.</p> <p>S.13 of the No. 2 Act created a requirement on Scottish Ministers to take account of Police Scotland information on the nature and number incidents of domestic abuse in reviewing provisions of the No. 2 Act, along with the parallel recommendation for the Coronavirus (Scotland) Act 2020 (see above). This includes a Ministerial explanation of how the information was taken account of. Currently, police statistics do not include Children and Young People Experiencing Domestic Abuse (CYPEDA).</p>

<p>Cessation of jury trials and restrictions to criminal and civil court business announced March 2020</p> <p>(Lord President, Lord Advocate, Cabinet Secretary for Justice, Scottish Courts and Tribunal Service, Crown Office and Procurator Fiscal Service (COPFS)).</p>	<p>Lord President, Lord Advocate, Scottish Courts and Tribunals Service (SCTS), Crown Office and Procurator Fiscal Service (COPFS) and Scottish Government announced cessation of jury trials and adjourned all but 'essential' summary trials (Scottish Courts and Tribunals Service, 2020).</p> <p>A Notice for Court Users was agreed at outset between SCTS, COPFS and the Law Society outlining what was essential business in the 10 hub courts operating during COVID-19: custodies, undertakings, custody sentencing diets, High Court Preliminary Hearings and Sherriff & Jury First Diets, summary custody trials and only other civil or criminal business if urgent need for court to make a decision. Those categories were slightly extended, for example to include accelerated pleas. Statements that ongoing trials (High and Sherriff Court) should reach conclusion where possible and a focus on judicial case management/COPFS/defence agent engagement to resolve earlier without need for trial/witnesses being 'unnecessarily called'. Court buildings were closed to the public and steps taken to minimise the number of people who need to physically attend in court. Details about court arrangements are available online (Scottish Courts and Tribunal Services, n.d.).</p> <p>Lord Advocate (2020) states domestic abuse will continue to be prosecuted vigorously but highlights backlog in solemn cases of serious domestic and sexual violence and 'alarming backlog' in outstanding domestic abuse summary trials and sentencing diets.</p>
<p>Release of Prisoners (Coronavirus) (Scotland) Regulations 2020</p>	<p>A person is excluded from early release under these Regulations if they are serving, or have served, a sentence of imprisonment or detention for domestic abuse under the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 [domestic abuse aggravator recorded] or the Domestic Abuse (Scotland) Act 2018 or is the subject of a non-harassment order [NHO's] S.34A of the Criminal Procedure (Scotland) Act 1995 or S.8 or S.8A of the Protection from Harassment Act 1997.</p>
<p>Lord Advocates Guidelines on Liberation by the Police - COVID-19 or Coronavirus</p>	<p>This guidance regards individuals who are in Police custody having been arrested during the period of disruption caused by COVID-19, stating that unless solemn proceedings (most DA cases are summary) and/or does not involve vulnerable victims or witnesses then in the current circumstances it is less likely to be appropriate to keep the accused in custody.</p> <p>The guidelines specifically identify domestic abuse:</p>

	<p><i>Given the particular risks associated with domestic abuse cases, in some cases, it will be both reasonable and necessary to hold a person in custody pending the submission of a report to the Procurator Fiscal. Police officers must have regard to the terms of the Domestic Abuse Protocol when considering release of persons arrested for domestic abuse offences (p.2).</i></p> <p>Factors to be considered in terms of custody are the nature (solemn/ summary) and circumstances of offence, severity, ongoing risks to victim, children, previous similar incidents with same victim, escalation of behaviour and likelihood they will cause harm, previous non-compliance and if incident part of course of conduct.</p> <p>If suspect released with undertaking (that the accused will appear in certain court/certain date), conditions of the undertaking should address risk, safety and views of the victim on conditions that would be appropriate. A constable can release on condition the suspect: commits no offence; does not interfere or cause alarm/distress to victim/witness. Further conditions (sergeant rank) <i>must</i> be considered in domestic abuse including, for example, to reside at different address, not approach victim/witness, not approach, communicate, enter street or area.</p> <p>[To note the undertaking period for cases to call in court has been extended from 14 to 90 days on account of the pandemic although domestic abuse cases still require to be reported to COPFS by the police within 14 days].</p>
<p>Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020</p>	<p>Closure of premises and businesses, move to two-metre physical distancing, to provide phone and online services only. Includes schools and domestic abuse services.</p> <p>Restrictions on movement 'no person may leave the place where they are living' and restrictions on gathering in public places, two-metre physical distance to be maintained. S.5 provides for 'Reasonable excuse' to leave home (food, exercise, etc.) includes</p> <ul style="list-style-type: none"> • (5) l) to access critical public services including ii) social services and iv) services provided to victims • (5) j) to continue existing contact arrangements for access to, and contact between parents and children • (5) m) to avoid injury, illness or to escape risk of harm.

<p>Coronavirus (COVID-19): guidance on domestic abuse</p>	<p>The aim is to highlight that the reference to escaping of ‘harm’ includes escaping from domestic abuse and thus constitutes a reasonable excuse for leaving home (for example, accessing support services, seeking help from friends or family or reporting to Police).</p> <p>Provides advice and information for child contact issues (such as the Lord President’s guidance) and advice to women/adults on seeking support.</p>
<p>Coronavirus (COVID-19): school and early learning closures – guidance about key workers and vulnerable children</p>	<p>Aim of the guidance is to reiterate who is considered a ‘key worker’ and a ‘vulnerable child’ and how their children and vulnerable children can attend school. There is no explicit mention in the guidance of domestic abuse as a factor in the criteria for who is deemed vulnerable.</p>
<p>Excellence and Equity during the COVID-19 Pandemic – a strategic framework for reopening schools, early learning and childcare provision in Scotland</p>	<p>Aim is to outline a phased approach for children returning to education (recognition of vulnerable children and young people but does not explicitly mention domestic abuse).</p>
<p>Coronavirus Crisis: Guidance on Compliance with Court Orders Relating to Parental Responsibilities and Rights</p>	<p>The aim of this Lord President’s guidance is to provide guidance to parents and carers whose children are subject to court orders relating to parental responsibilities and rights, for example contact or residence orders on how these orders may be complied with during the COVID-19 Crisis.</p>
<p>COVID-19 Guidance in respect of Progressing Certain Categories of Civil Business in the Sheriff Courts</p>	<p>The aim is to provide guidance on how “to facilitate the efficient disposal of certain categories of civil business in the Sheriff Court during the current COVID-19 emergency”. It sets out how family actions (including contact and residence) that were assisted by the court, administratively adjourned to a date on or after 1 June 2020 or in respect of which no further order was made, may be restarted.</p>
	<p>The guidance focuses on coordinated streamlined processes and action if new concerns are reported about a child at risk of significant harm from abuse or if the child is already on the</p>

<p>Coronavirus (COVID-19): supplementary national child protection guidance</p>	<p>child protection register. Process of named person, info sharing, remote IRD's (Inter Agency Referral Discussion) and child protection investigation/Children's Hearing if required. Updated (1 June) to include a section on domestic abuse acknowledging and outlining new risks to women and children experiencing or recovering from domestic abuse due to the pandemic, outlines these and possible action, including practitioner awareness DA, prioritise needs of children and young people as well as the non-abusing parent, take appropriate measures, work with specialist services, practitioners. It recognises updated safety plans for women need to be in place but does not mention children's safety plans.</p> <p>The aim is to ensure urgent "direct contact with each child at risk" (47) with accompanying guidance about visits from a social worker (Scottish Government, 2020x) Statutory guidance, Coronavirus (COVID-19): Guidance on Changes to Social Care Assessments, for partial assessments "to ensure protective and/or supportive services are provided to children and families who have the greatest need as quickly as possible" was issued also.</p>
<p>Coronavirus (COVID-19) Supplementary National Violence Against Women Guidance</p>	<p>The aim is to ensure a joined-up approach to safeguarding the needs of women, children and young people victims/survivors during COVID-19 is embedded at a local level. The guidance highlights risks to women, children and young people victims/survivors and how local decision-makers should identify and mitigate the risks.</p>
<p>Coronavirus (COVID-19): Framework for Decision-Making – Scotland's Route Map through and out of the crisis</p>	<p>Aim is to outline a phased approach in re-starting face-to-face Children's Hearings and for greater contact for social work and support services with at-risk groups and families (no explicit mention of domestic abuse). Recognises the impact of lockdown on most vulnerable children and how partnership approach will enable an increase in numbers of children attending school.</p>

<p>Question 2: Which human rights instruments and articles are particularly relevant to the measure(s)?</p>		
<p>Human Rights Instrument</p>	<p>Article</p>	<p>Further analysis on the expected / actual effect</p>
<p>United Nations Convention on</p>	<p>Article 3: 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative</p>	<p>Requires that all actions concerning children have the best interests of the child as the primary consideration</p>

the Rights of the Child	<p>authorities or legislative bodies, the best interests of the child shall be a primary consideration.</p> <p>2. States Parties undertake to ensure the child such protection and care as is necessary for his or her wellbeing, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.</p>	and ensure the child has protection and care as is necessary for his or her wellbeing.
European Convention on Human Rights	Article 2: 1. Everyone's right to life shall be protected by law	Requires the Government to take appropriate measures to safeguard life by making laws and taking steps to protect those whose life at risk, including when making decisions that might put families in danger.
Rights to protection and protective measures		
United Nations Convention on the Rights of the Child	<p>Article 19:1 States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.</p> <p>19:2 Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described</p>	Requires that children are protected from all forms of violence, abuse, neglect and maltreatment by their parents or anyone else they are in the care of – and that protective measures should include establishment of social programmes to provide the necessary support, as well as prevention and identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment.

	heretofore, and, as appropriate, for judicial involvement.	
United Nations Convention on the Rights of the Child	<p>Article 34 States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:</p> <p>(a)The inducement or coercion of a child to engage in any unlawful sexual activity;</p> <p>(b)The exploitative use of children in prostitution or other unlawful sexual practices;</p> <p>(c)The exploitative use of children in pornographic performances and materials.</p>	Requires that children are protected from all forms of sexual abuse and exploitation
Council of Europe Convention on preventing and combating violence against women and domestic violence ('Istanbul Convention')	<p>Article 56:2 A child victim and child witness of violence against women and domestic violence shall be afforded, where appropriate, special protection measures taking into account the best interests of the child.</p>	Requires that special protection measures be afforded to a child victim and child witness of violence, taking into account the best interests of the child
Istanbul Convention	<p>Article 18:1 Parties shall take the necessary legislative or other measures to protect all victims from any further acts of violence.</p> <p>Article 18:3 ... measures shall: be based on an integrated approach which takes into account the relationship between victims, perpetrators, children and their wider social environment; address the</p>	Requires legislative and other measures to protect victims of violence be taken, and take into account the relationship between victims, perpetrators, children and their wider social environment; and address the specific needs of vulnerable persons, including child victims.

	specific needs of vulnerable persons, including child victims, and be made available to them.	
Istanbul Convention	Article 26:2 Measures taken pursuant to this article shall include age-appropriate psychosocial counselling for child witnesses of all forms of violence covered by the scope of this Convention and shall give due regard to the best interests of the child.	Requires age-appropriate psychosocial counselling for child witnesses of violence
Child contact		
United Nations Convention on the Rights of the Child	<p>Article 9:1 – States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.</p> <p>Article 9:2 – In any proceedings pursuant to Para: 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.</p> <p>Article 9:3 – States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. (Article 9(3))</p>	Requires that children not be separated from their parents against their will, unless it is in their best interests (for example, if a parent is hurting or neglecting a child) and, that if they are separated, children stay in contact with both parents unless it is not in their best interests. Also requires opportunities be given for children to participate in proceedings and make their views known.
Istanbul Convention	Article 31:1 – Parties shall take the necessary legislative or other measures to ensure that, in the	Recognises that legislative and other measures should ensure that violence is taken into account when

	<p>determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account</p> <p>Article 31:2 – Parties shall take the necessary legislative or other measures to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children.</p>	<p>visitation or custody rights are being determined and that children’s safety will not be jeopardised in the exercise of those rights.</p>
<p>Right to Support – Provision</p>		
<p>United Nations Convention on the Rights of the Child</p>	<p>Article 39 States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse</p> <p>UN Committee General Comment No. 13 (2011) must take place “in an environment which fosters the health, self-respect and dignity of the child” (Article 39) (p. 20)</p> <p>(reference to Istanbul 26 above re <i>age appropriate</i> psychosocial services)</p>	<p>Requires that all children who have experienced abuse, neglect and/or exploitation receive support, in an environment that fosters the recovery of their health, self-respect and dignity.</p>
<p>Istanbul Convention</p>	<p>Article 20: 1 Parties shall take the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence. These measures should include, when necessary, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment.</p>	<p>Recognises that victim of violence should have access to services to facilitate their recovery from violence, including legal, financial, housing, education and psychological counselling.</p>

Istanbul Convention	Article 20: 2 Parties shall take the necessary legislative or other measures to ensure that victims have access to health care and social services and that services are adequately resourced and professionals are trained to assist victims and refer them to the appropriate services.	Requires that children have access to adequately resourced, health care and social services, with professionals trained to assist victims
UN Committee General Comment 13 (2011)	Page 19, Para: 48 Identification. This includes identifying risk factors for particular individuals or groups of children and caregivers (in order to trigger targeted prevention initiatives) and identifying signs of actual maltreatment (in order to trigger appropriate intervention as early as possible). This requires that all who come in contact with children are aware of risk factors and indicators of all forms of violence, have received guidance on how to interpret such indicators, and have the necessary knowledge, willingness and ability to take appropriate action (including the provision of emergency protection).	Requires that all who come into contact with children know how to identify risk factors and indicators of violence and have the necessary knowledge, willingness and ability to take appropriate action
Joint General Comment No. 31 of CEDAW and CRC (2014)	Page 20, Para: 87(a) Ensure that protection services are mandated and adequately resourced to provide all necessary prevention and protection services to children and women who are, or are at high risk of becoming, victims of harmful practices	Requires provision of prevention and protection services to children at high risk of becoming victims of harmful practices
Istanbul Convention	Article 22:2 Parties shall provide or arrange for specialist women's support services to all women victims of violence and their children.	Requires specialist support services to all women victims of violence and their children
United Nations Convention on the Rights of the Child	Article 27:1 States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.	Requires provision of a standard of living adequate for a child's development including material assistance and support programmes, including nutrition, clothing and housing.

	3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.	
Istanbul Convention	Article 23 Parties shall take the necessary legislative or other measures to provide for the setting-up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out pro-actively to victims, especially women and their children	Requires provision of appropriate, accessible safe accommodation for, and proactive reaching out to, victims, especially women and their children
Istanbul Convention	Article 26:1 Parties shall take the necessary legislative or other measures to ensure that in the provision of protection and support services to victims, due account is taken of the rights and needs of child witnesses of all forms of violence covered by the scope of this Convention.	Requires that the rights and needs of children are taken into account in provision of protection and support services to victims of violence
Committee on the Elimination of Discrimination Against Women General Recommendation 35 updating GR19	Widens definition to recognise gender-based violence against women across intersecting inequalities and the life cycle of women and girls. Recommends age sensitive and gender sensitive provisions and legal protection, accessible services, designed with victim-survivors. Aims to accelerate elimination of gender-based violence through preventative as well as protective measures.	Recommendation to recognise intersecting inequalities and need to address these through enhanced measures, with greater participation of victim-survivors and their representatives. Recommendation to accelerate human rights-focused preventative education measures to address the root causes of gender-based violence (GBV), empower victim-survivors to access support and recognise victim-survivors as rights holders with agency.
Right to education, prevention programmes and information		
United Nations Convention on	Article 28: 1 States Parties recognize the right of the child to education, and with a view to achieving this	Requires that primary education is compulsory and available free to all children and that different forms of secondary education, including general and vocational

<p>the Rights of the Child</p>	<p>right progressively and on the basis of equal opportunity, they shall, in particular:</p> <p>(a) Make primary education compulsory and available free to all;</p> <p>(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;</p> <p>(c) Make higher education accessible to all on the basis of capacity by every appropriate means;</p> <p>(d) Make educational and vocational information and guidance available and accessible to all children;</p> <p>(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.</p>	<p>education, are available and accessible to every child, and that appropriate measures are taken, such as the introduction of free education and offering financial assistance in case of need</p>
<p>UN Committee General Comment No. 13 (2011)</p>	<p>Page 17, Para: 44(b) <i>[Educational measures]</i> For children: provision of accurate, accessible and age-appropriate information and empowerment on life skills, self-protection and specific risks, including those relating to Information and Communications Technology (ICTs) and how to develop positive peer relationships and combat bullying; empowerment regarding child rights in general – and in particular on the right to be heard and to have their views taken seriously – through the school curriculum and in other ways</p>	<p>Requires that children are provided with information and empowerment in relation to self-protection and specific risks, including developing positive peer relationships and combatting bullying</p>
<p>United Nations Convention on the Rights of the Child</p>	<p>Article 17 States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and</p>	<p>Requires that children have access to information especially that aimed at the promotion of social, spiritual and moral wellbeing and physical and mental health</p>

	international sources, especially those aimed at the promotion of his or her social, spiritual and moral wellbeing and physical and mental health.	
Committee on the Elimination of Discrimination Against Women General Recommendation 19 (CEDAW, 1992)	Specific recommendation 24 (s) States parties should report on the extent of domestic violence and sexual abuse, and on the preventive, punitive and remedial measures that have been taken	Recognises that domestic violence and sexual abuse, and preventive, punitive and remedial measures taken, should be reported.
Participation		
United Nations Convention on the Rights of the Child	Article 12:1 States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.	Requires that children are listened to and their views are given due weight in decisions affecting the child in accordance with the age and maturity of the child.
UN Committee General Comment No. 13 (2011)	Page 3, Para: 3(e) Children's rights to be heard and to have their views given due weight must be respected systematically in all decision-making processes, and their empowerment and participation should be central to child caregiving and protection strategies and programmes	Recognises that children's participation should be central to protection strategies and programmes.
UN Committee General Comment No. 13 (2011)	Page 3, Para: 3(f) The right of children to have their best interests be a primary consideration in all matters involving or affecting them must be respected, especially when they are victims of violence, as well as in all measures of prevention	Requires that children's best interests should be the primary consideration in all matters involving them, especially when they are the victims of violence

Joint General Comment No. 31 CEDAW and CRC (2014)	Page 16, Para: 61 (Article 7.3.2. Empowerment of women and girls) There is a clear correlation between the low educational attainment of girls and women and the prevalence of harmful practices. States parties to the Conventions have obligations to ensure the universal right to high-quality education and to create an enabling environment that allows girls and women to become agents of change (Convention on the Rights of the Child, Articles 28-29; Convention on the Elimination of All Forms of Discrimination against Women, Article 10). (p. 17)	Outlines obligation to ensure high quality education and an enabling environment that allows girls to become agents of change.
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STAGE 2: EVIDENCE

Question 3a: What quantitative evidence have you used to inform your assessment? What does it tell you?			
Evidence collected	Evidence source	Explanation of the importance	What are the data gaps, if any?
There is a lack of robust quantitative evidence at present – see below for evidence that would have been beneficial			

Question 3b: What key missing information / evidence would have been beneficial to your analysis?
Scottish prevalence data on numbers of CYPEDA, including domestic and sexual violence in their own relationships
Data from police, COPFS, SCTS relating to DA cases including data on children affected, child witnesses and the child aggravator

Data from courts on the number of cases of disputes about contact affected – those assisted, adjourned, the numbers that are able to restart remotely, new cases
Evidence from services in relation to access, demand, waiting lists, etc. (Scottish Women’s Aid (SWA) conducting a survey) including age, gender, abuse etc.
Data on number of CYPEDA visited by social workers, no. CYPEDA identified as vulnerable children, no. child protection and Scottish Children’s Reporter Administration (SCRA) referrals including domestic abuse as a concern
Data on vulnerable children and no. of CYPEDA identified as ‘vulnerable’
Data from Scotland’s helplines in relation to domestic abuse and children/young people – Domestic Abuse and Forced Marriage Helpline (DAFMH), Childline, Parentline.

Question 4a: What qualitative evidence have you used to inform your assessment? What does it tell you?		
Evidence collected	Evidence source	Explanation of the importance
Key stakeholder interviews – undertaken by CRIA author	SWA; Together (Scottish Alliance for Children’s Rights); the Royal Conservatoire of Scotland (RCS); Advocacy, Support, Safety, Information, Services Together (ASSIST); Children 1 st , COPFS, Edinburgh Women’s Aid/EDDACS academics	Key issues from National Children, Young People and Domestic Abuse Experts, informed by members of their networks.
Films from children and young people	Yello! And Angus WA	Key issues from young expert groups in relation to COVID-19 that they have transformed into films for children and young people experiencing domestic abuse, including in their own relationships. Evidence that established young

with experience of domestic abuse.		survivors' expert groups, with support and IT, can contribute to the national and local response.
Interviews, documentary evidence and empirical examples from 42 third sector and statutory organisation/services	Scottish Government (2020) "Overview of domestic abuse/ Ending violence against women and girls (VAWG) trends and experiences during COVID-19 lockdown, for the period 30/3/20 – 18/05/20"	Scottish Government Justice Analytical Services have conducted the first overview of trends and experiences during COVID-19, with a specific question to service providers on increased risk for children and other relevant questions mainly answered in relation to adult 'clients'.
Qualitative research with young survivors of gender-based violence and other young experts	<i>Everyday Heroes Reports</i> , Houghton et al (2018)	Most recent consultation with children and young people experiencing gender-based violence to inform policy. Whilst not during COVID-19, issues raised are now exacerbated due to the measures.
Research report	Morrison et al (2020) <i>Children's Participation In Family Actions – Probing Compliance With Children's Rights Research Report</i> . Scottish Government	Recent research on the challenges for and barriers to realising and implementing children's participation rights in family actions and the implications these have for compliance with children's human rights. This recent research was undertaken before the advent of COVID-19. The suspension of court proceedings, is likely to mean that these issues will become more acute, especially as there is no guidance on how children's participation rights will be upheld in remote hearings or how existing mechanisms for facilitating children's views may be adapted to ensure that developing policy and practice is compliant with UNCRC.

Question 4b: What key missing information / evidence would have been beneficial to your analysis?
Perspectives of children and families affected by domestic abuse on measures

Perspectives of specialist children's support and advocacy workers on COVID-19 measures, the effects on their service and redesign of services
Perspectives of those agencies involved in the multi-agency response COVID-19 measures and the impact on women, children and young people
Perspectives of those working in criminal court systems and perpetrator programmes and advocacy for women and children involved in criminal justice system
Perspectives of those working in civil courts and the perspectives of children and parents involved with this system

Question 5: Has a broad range of relevant stakeholders, specifically groups of children and young people, been consulted *directly* by the body who initiated the measure (e.g. Scottish Government)?

It is not always evident from available documentation what consultations have taken place. From documents and further information gathering, children and young people were not directly consulted for the measures referred to in this CRIA.

As stated below, for some measures, information gathered pre-COVID-19 from children and young people was used to inform decisions as well as other evidence. Adult stakeholders and their organisations were consulted for some measures. Details that are known of such consultations are included below.

Further information on the developing engagement between Scottish Government and adult stakeholders and their organisations is available in Scottish Government (2020u).

Measure	Groups consulted	If group consists of children and young people			Results of consultation	
		Tick	Was an age appropriate consultation process used? Yes or No	Please provide a brief description of process	What were the findings?	What is the significance to the development of the measure(s)?
Coronavirus (COVID-19): Framework for Decision-	General public		No	A consultation was launched online by Scottish Government	Details of responses to this consultation have not yet been published; however the route map	At time of writing, significance is unknown.

Making – Scotland’s Route Map through and out of the crisis				(2020w) on the 5 May, closing on the 11 May.	was launched on Thursday 21 May 2020.	
Coronavirus (Scotland) Act 2020	The Child Rights and Wellbeing Impact Assessment (CRWIA) (2020q) outlines that unprecedented circumstances presented by the coronavirus outbreak have made it not possible to consult with children and young people on the proposed legislation. A range of relevant professionals and organisations				It is not evident from available documentation what findings or evidence were obtained from consultation with professionals and organisations. The CRWIA (2020q) states that the Scottish Information Commissioner was consulted. No children and young people-related concern was raised.	At time of writing, significance is unknown.

	were consulted directly. ⁷					
Coronavirus (Scotland) (No.2) Act 2020	As above. There has been limited informal consultation carried out with representatives of the debt advice sector and using evidence from previous consultations with young carers and others. ⁸				It is not evident from available documentation what findings and evidence were obtained from consultations with professionals and organisations (Scottish Government, 2020s).	At time of writing, significance is unknown.

Question 6: Has evidence from third party consultations with children and young people been considered in the development of the measure(s)?

⁷ List of consulted bodies: Scottish Children’s Reporter Administration, Social Work Scotland, Children’s Hearings Scotland, Police Scotland, Children 1st, Clan Child law, Children and Young People’s Commissioner for Scotland, CoSLA, The Justice Social Network, Independent Care Review, Society of Local Authority Reporters and Solicitors (SOLAR), the Law Society, Scottish Courts and Tribunals Service, Community Justice Scotland, Scottish Information Commissioner, and the Office of the Public Guardian.

⁸ Money Advice Scotland, StepChange, Citizens Advice Scotland) and creditors (UK Finance, ABCUL, CoSLA). It also draws upon consultation responses from the 2016 Social Security Scotland formal consultation and 2018 CRWIA for Carer’s Allowance Supplement which included engagement with members of the Carer Benefit Advisory Group which includes a range of carer organisations including Carers Trust who engage heavily with young carer services.

It is not always evident from available documentation what evidence has been considered in developing the measures. Details that are known of such consultations are included below.

Adult stakeholders and their organisations were consulted for some measures, who provided information about and from children and young people. Certain evidence from children and young people is referred to within the documents.

Further information on the developing engagement, between Scottish Government and adult stakeholders and their organisations, is available in Scottish Government (2020u).

Measure	Groups indirectly consulted	External source		Please provide a brief description of process	Results of consultation	
		Source of information	When information collected		What were the findings?	What is the significance to the development of the measure(s)?
Excellence and Equity during the COVID-19 Pandemic – a strategic framework for reopening schools, early learning and childcare provision in Scotland	Children and young people	How are you doing? online survey with children aged 8-14 (April 2020) (Children’s Parliament, 2020a)	April 2020	The framework references Children’s Parliament’s How are you doing? online survey with children aged 8 - 14 (Children’s Parliament, 2020a)	They present findings from the survey that “being indoors more and learning at home also impacts on the physical and mental health of children”.	The evidence appears to have informed Scottish Government’s decision to part-open schools in August 2020, in order to address the negative impact being at home, and learning at home, is having on children’s health and wellbeing.

Coronavirus (Scotland) (No. 2) Bill	Young carers	Children and Young People's Commissioner Scotland	February 2017	The CRWIA (Scottish Government, 2020r) makes reference to the survey results reported by Children and Young People's Commissioner Scotland in 2017.	The CRWIA (Scottish Government, 2020r) highlights that it is especially common for young carers from minority cultural and ethnic communities to be less likely to receive support for their caring role.	The CRWIA (Scottish Government, 2020r) goes on to suggest publicity to encourage take up of the proposed Carers' Allowance Supplement.
Coronavirus (Scotland) (No. 2) Bill	Children and young people; parents and carers	Step Change	Unknown	Unknown	The CRWIA (Scottish Government, 2020r) refers to statistics from StepChange, a debt advice agency, namely that "amongst children from families in problem debt, StepChange found that 60% often worried about their families' finances."	The evidence is used to support the rationale for making bankruptcy more accessible to debtors.

Coronavirus (Scotland) (No. 2) Bill	Young carers	The 2019 CRWIA for Carer's Allowance Supplement and the Young Carer Grant assessment	2018 and 2019	The 2019 CRWIA for example drew on evidence from a formal experience panel of young carers and workshops with young carer groups.	Unknown	Scottish Government (Scottish Government, 2020r) reports that the evidence helped identify the positive impacts on children and young people of the Coronavirus Carer's Allowance Supplement, and particularly those in lower income households.
<p>Note, there is a weekly meeting of key national stakeholders with Scottish Government which is a positive response This is significant in that it involves collection of COVID-19 related data and experts discussing the response, government assistance etc., it is not evident what discussions in relation to children/young people have taken place nor any action specifically in relation to CYPEDA.</p>						

STAGE 3: ASSESSING THE IMPACT

Question 7: What impact will (or does) the measure(s) have on children and young people's rights?			
Measure	Type of impact	Justification for Argument	Likely or actual short/medium/long-term outcomes
Coronavirus (Scotland) Act 2020	Negative	There will be changes and delays to Children's Hearings processes: changes to time in which they need to take place, those needing to be present (including children themselves). Changes to length of time of orders (interim assessment, compulsory supervision). Only Hearings for urgent and immediate protection of a child are taking place, remotely if the child has IT/phone or their views collected through email, a trusted person can 'attend' virtually, non-essential Hearings rescheduled.	<p>Delay and changes in proceedings will affect children's protection, provision and participation rights</p> <p>Will significantly impact the trauma women and children experience</p> <p>Delay trauma recovery as resolution of cases delayed</p>

		<p>Children and young people experiencing domestic abuse (CYPEDA) in Scotland are recognised as needing help and support, but not necessarily compulsory measures of supervision through the Children's Hearings Scotland (CHS). Nevertheless, domestic abuse is the second most common ground for referral (2018-19), including for a significant number of children under one-year old (323 babies) and 2,673 children were referred on the domestic abuse ground (decreasing with age), of which 234 were on compulsory supervision orders (SCRA official statistics). There will also be cases of sexual violence within peer relationships referred to CHS, RCS support a number of young people whose perpetrators go through the Children's Hearing System so these delays affect child victims of sexual violence too. Across domestic abuse and sexual violence services, children and young people report limited access to information.</p> <p>Therefore a significant number of CYPEDA will be affected by delays, this will affect protective measures, potentially contact also and provision in relation to support/advocacy.</p> <p>Many will find online participation difficult and this has already been reported by agencies: access is unsafe when living with the abuser, reliving trauma within home setting is difficult, many struggle with digital participation and have a lack of privacy to</p>	<p>Limited court or hearings advocacy will be available, increased waiting lists expected as number of cases increases</p> <p>Virtual proceedings will be particularly difficult for CYPEDA</p> <p>Provision of safe spaces for participation, with support, could ameliorate this</p> <p>Children and young people's participation from home is not appropriate nor safe if living with the abuser</p> <p>Digital exclusion will decrease opportunities to consider children's views</p> <p>The quality of evidence will be affected over substantial time periods for children</p> <p>Unresolved cases will lead to increased danger</p> <p>Perpetrators may be in the community for longer due to changes and concerns relating to COVID-19 in prisons</p>
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		<p>disclose abuse and report on current circumstances.</p> <p>Postponing, varying or revoking the requirements of Community Payback Orders or DTTOs, particularly conduct, residence or activity requirements can have safety implications for women and CYPEDA if perpetrators are allowed to remain in the community, with a potential detrimental effect on their right to not be abused (Article 19 of the UNCRC), their right to liberty and their right to respect for family life (Articles 5 and 8 of the ECHR respectively).</p> <p>The small number of non-custody trials that may go ahead, where witnesses are available, are likely to concern domestic abuse, sexual offending and violence. [To date these trials have not been possible and a substantial backlog is recorded].</p> <p>SCTS, COPFS, Police Scotland, Prisons, Scottish Legal Aid Board and Scottish Government are exploring ways to increase the opportunities to pre-record evidence, focusing on solemn cases at present. It is hoped this will be available for victims of serious domestic abuse and sexual violence although there needs to be a significant expansion of capacity within the court service.</p>	<p>A consequent increase in the use of Evidence by Commission could be of great benefit to child victims and witnesses, allowing them to give their evidence early and access support</p>
<p>Coronavirus (Scotland) (No. 2) Act</p>		<p>Extensions of time limits in criminal justice processes have a serious impact on rights to protection and the delays on right to provision. Where perpetrators' fail to comply with an order</p>	<p>Further danger for women and children in the short and medium term as perpetrators are released</p>

		<p>(Community Payback Order, DTTO, Restriction of Liberty Order (RLO)), courts can adjourn a case, prior to sentencing, for longer periods. There is a concern that despite guidance, the option to remand the abuser in custody will not be taken due to concerns about the spread of the virus in prisons. Further, if a suspect is released pre-trial on an undertaking, the time limit for his release into the community has been extended from 14 to 90 days. There are concerns perpetrator will be released on conditions they have previously breached, increasing danger for women and children.</p>	<p>into communities for longer length of time before trial</p> <p>Conditions of undertaking should address risk, safety and views of the victim on conditions that would be appropriate, but views of victims may be difficult to ascertain, including views of CYPEDA as per the DA protocol may be hindered through COVID-19 measures</p> <p>Further trauma for CYPEDA in relation to delays, processes and outcomes</p>
<p>Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020</p>	<p>Negative</p>	<p>Restrictions to movement (stay at home), physical distancing and restrictions on association (gatherings) meant women, children and young people experiencing domestic abuse were put at risk of further and escalating harm.</p> <p>Right to protection is severely curtailed through restriction of movement, leaving many women and children at home with abuser.</p> <p>Child contact arrangements risk being a site for continued and increased domestic abuse and coercive control. Children may not be 'returned' following child contact visits, arrangements for handover arrangements may place children and adult victims' at heightened risk.</p>	<p>Increased severity of abuse, increased danger (including potential homicides)</p> <p>Increased and longer terms effects of trauma</p> <p>Risk to mental and physical health wellbeing</p> <p>Support programmes, some 1:1 sessions, trauma recovery work stalled or undone</p> <p>Heightened abuse of women and children through contact</p>

	<p>Negative effect on services, identification, reporting, investigation, trauma recovery support. Children without digital access have less access to support.</p> <p>Through contact, lockdown restrictions (e.g. physical distancing) may be breached thus risking the health of children and adult victims.</p> <p>Closure of buildings including schools and youth settings meant that a key source key source of freedom, support, identification and preventative education was closed to them, with no space for reporting or accessing support</p> <p>Restricts face-to-face support for CYPEDA for the time being and moves to phone and online services are not reaching many</p> <p>Measures that aim to facilitate contact and protect children from abuse (e.g. child contact centres) are closed during lockdown.</p> <p>Access to social services and DA services not possible for child/young person living at home and often not able to leave house without parent</p> <p>Children and young people face enhanced stalking, coercion and image-based abuse from peers or partners (other than those in the home).</p> <p>(See Appendix 6)</p>	<p>Increased COVID-19 risk through restriction breaches during contact</p> <p>Restricted access to support, particularly for those with less access to technology</p> <p>Children and young people do not know they can leave home to avoid injury and escape harm, nor where there is a safe place to go.</p> <p>Heightened risk of stalking, coercion and image-based abuse from peers or partners</p>
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<p>Coronavirus (COVID-19): guidance on domestic abuse</p>	<p>Positive and Neutral</p>	<p>Guidance tells women/adult victims they can leave the home for safety reasons with their children. The reference to escaping of 'harm' includes escaping from domestic abuse and thus constitutes a reasonable excuse for leaving home (for example, accessing support services, seeking help from friends or family or reporting to Police). However, no reference to children and their safety planning/help-seeking nor adequate services to respond.</p> <p>Provides advice and information for child contact issues (such as the Lord President's guidance) and advice to women/adults on seeking support.</p>	<p>Women and children may leave and access help – although they need somewhere to go.</p> <p>Children do not know where and how to access help.</p>
<p>Coronavirus Crisis: Guidance on Compliance with Court Orders Relating to Parental Responsibilities and Rights</p>	<p>Negative</p>	<p>Children's rights to contact may be breached.</p> <p>Children's rights to participate in decisions about contact are not addressed in the guidance.</p> <p>Changing the boundaries of contact may be problematic in circumstances of domestic abuse. Indirect and virtual contact may increase opportunities for surveillance and harassment.</p>	<p>Negative outcomes for children and adult victims' physical and emotional wellbeing.</p> <p>Contact may come to an end for some children.</p> <p>Unsafe contact for some children may continue.</p> <p>Contact is a site for continued / heightened abuse.</p>
<p>Lord Advocates Guidelines on Liberation by the Police – COVID-19 or Coronavirus</p>	<p>Positive and Neutral</p>	<p>Requires full assessment of safety and risk needed, including views of victim, "Every effort should be made" (p. 8) to advise victims [of domestic abuse] of release and conditions, before suspect is released.</p>	<p>For the police to listen to and record the views of the child/ren at the incident might be even more difficult.</p>

		<p>Domestic abuse is taken on board but concerns over how practically the Domestic Abuse (DA) protocol can be implemented in regards to children during COVID-19.</p>	<p>The restrictions/difficulties in immediate provision of advocacy and support for the child affected and adult victim might limit how views are considered in release.</p> <p>Communication issues in relation to notifying victims of release have been reported</p> <p>Undertaking period extension means perpetrators will be in the community for significantly extended periods, impacting protection rights</p> <p>Potential impact on quality of evidence and use of the Dignity for All Students Act (DASA) child aggravator and NHO's for women and children in court.</p>
<p>Guidance in respect of Progressing Certain Categories of Civil Business in the Sheriff Courts</p>	<p>Negative</p>	<p>Children's rights to contact may be breached.</p> <p>There is limited access to legal measures to protect the rights and safety of children or adult victims.</p> <p>Children and parents are left anxious and uncertain about when and how major decisions about children's rights will be resolved.</p> <p>Children's rights to participate in major decisions about their lives are not upheld.</p>	<p>Likely impacts include:</p> <p>Quality of evidence is adversely affected</p> <p>Prolonged proceedings increase trauma and negative impacts</p> <p>Unresolved cases may lead to increased danger</p> <p>Contact ends</p> <p>Unsafe contact continues</p> <p>Contact is a site for continued / heightened abuse</p>

			Negative outcomes for children and adult victims physical and emotional wellbeing.
Coronavirus (COVID-19): Framework for Decision-Making – Scotland’s Route Map through and out of the crisis	Neutral	Potential for positive effect if CYPEDA are named as vulnerable and a targeted effort with support of services to sensitively enable access to education at an early stage	CYPEDA able to access support, reduce risk and improve mental and physical health, if education staff are skilled to respond.
Coronavirus (COVID-19): supplementary national child protection guidance	Positive and Neutral	<p>The section on domestic abuse acknowledges and outlines new risks to women and children experiencing or recovering from domestic abuse and GBV due to the pandemic. Includes barriers in access to services, increased isolation, increased economic abuse/dependency, increased access by perpetrators to women, children and young people either through being locked down together or through efforts of perpetrators to exert control through lens of pandemic (12) ... abusive behaviours may be perpetrated through the exploitation of contact arrangements for children (13). In terms of action</p> <p>Agencies and practitioners to maintain and develop awareness of dynamics of DA and coercive control, prioritise needs of non-offending parent and her children</p> <p>Take appropriate measures to protect women and children</p> <p>Work closely with local specialist services (e.g. WA)</p> <p>Engage with local VAWGP (14)</p>	<p>CYPEDA who are subject to a child protection plan will receive direct contact from a social worker. There are risk and safety issues for all involved and restrictions on communication.</p> <p>It will be important the social worker is appropriately trained in dynamics, the new law, risk and safety assessment in relation to non-abusing parent, child and perpetrator. This is an opportunity for safety planning and needs assessment.</p> <p>Direct contact with social workers raises some practical concerns: how this can happen in a safe place, opportunities to talk to children safely, privately and</p>

		<p>It recognises practitioners may be ‘ensuring updated safety plans are in place for <i>women</i> experiencing domestic abuse’ (46. no mention of children’s safety plans here) but is not a direction to do so.</p> <p>A substantial number of children on the child protection register will have experienced domestic abuse. The most common concern in 2018-19 was domestic abuse – 1,068/7,332 concerns relating to 2599 children on the child protection register, with overlap with other common concerns (emotional abuse, neglect, substance misuse). The aim of the guidance for these children is that there will be a “direct contact with each child at risk” (47) with accompanying guidance about visits from a social worker. Concern is how this can happen in a safe place, to talk to children safely and directly about what’s going on, and the woman too, also without furthering trauma e.g. potential use of personal protective equipment (PPE) in visits when child already scared.</p>	<p>directly about what’s going on, and the non-abusing parent</p> <p>Risk of furthering trauma e.g. potential use of PPE in visits when child already scared.</p> <p>Most children experiencing domestic abuse, including the majority of those engaged with specialist services or who have been present at a police incident, do not reach the criteria for child protection registration. This requires reasonable grounds to believe that a child has suffered or will suffer significant harm from abuse or neglect, and <i>that a child protection plan is needed to protect and support the child</i>. There are no clear plans to address the heightened risk and isolation for these CYPEDA.</p>
<p>Coronavirus (COVID-19) Supplementary National Violence Against Women Guidance</p>	<p>Positive and neutral</p>	<p>The aim is to ensure a joined-up approach to safeguarding the needs of women, children and young people victims/survivors during COVID-19 is embedded a local level. The guidance highlights risks to women, children and young people victims/survivors in the term (during periods of lockdown and social restrictions), medium term (as restrictions are lifted and move towards recover), and long-term (as partners transition to a ‘new</p>	<p>If local authorities act on the guidance, as well as third sector agencies, then local coordinated efforts could improve responses to women, children and young people and increase preventative action. Potential to be beneficial, needs to be resourced, needs local</p>

		normal), and how local decision-makers should identify and mitigate the risks. It emphasises support for local VAWG services and recommends that prevention and early intervention must be prioritised as restrictions are lifted.	collaboration and partnerships to be strong
Coronavirus (COVID-19): school and early learning closures – guidance about key workers and vulnerable children	Neutral and Negative	<p>Aim of the guidance is to reiterate who is considered a “key worker” and a “vulnerable child” and how their children and vulnerable children can attend school.</p> <p>There is no explicit mention of domestic abuse and many child victims/survivors will not be identified as vulnerable people.</p> <p>For CYPEDA that are included it is important the offer of space/assistance is done safely, sensitively, assessing need, risk and also the potential for stigma and identification as abuse survivor. Collaboration with key workers if the child has one is essential.</p>	<p>Child will not necessarily be comfortable in the environment without their trusted adults.</p> <p>May be a safer environment than being at home</p> <p>Stigma attached to being perceived as ‘vulnerable’</p> <p>A key place to access information and support</p>

Question 8: Will there be (or are there) different impacts on different groups of children and young people?			
Measure	Group of children affected	Initial analysis of the positive impact on rights	Initial analysis of the negative impact on rights
	Young children	In some cases where the perpetrator of domestic abuse is living apart from children, mothers and children have reported the positive effects of recovery from domestic abuse.	Right to support and protection negated, most accessing through mothers, if safe to do so.

	Young people experiencing abuse in their own relationships/online abuse.	Potentially they may have less contact with their abuser, for example if it is someone at school	Stalking and online abuse may escalate. Right to support negated, many are not accessing services, nor preventative services in school that may guide them
	Girls		Disproportionately face increased levels of coercion, controlling behaviour, stalking and image-based abuse
Further analysis and stakeholder interviews are need in relation to the impact of intersecting inequalities on access to protection, provision and participation rights, including BAME children, disabled children, LGBT+ children/young people and those with low income or no recourse to public funds.			

Question 9: If a negative impact is identified for any area of rights or any group of children and young people, what are the options to modify the measure(s), or mitigate the impact?		
Measure	Negative impact	What options are there to modify the measure(s) or mitigate the impact?
Coronavirus (Scotland) Act 2020	Participation rights affected Quality of evidence affected Prolonged proceedings increase trauma and impact Unresolved cases, increased danger	Urgently develop plans to restart sisted, adjourned and new civil proceedings that prioritise cases based on assessments of potential breaches to children's rights. Expedited use of pre-recorded evidence in domestic abuse cases (which are mainly summary) would be of great benefit to children and mothers and allow far earlier intervention to promote recovery.

<p>Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020</p>	<p>Increased severity of abuse, increased danger (including potential homicides), increased and longer terms effects of trauma</p> <p>Heightened abuse of women and children through contact</p> <p>Increased COVID-19 risk through restriction breaches during contact</p> <p>Risk, mental and physical health wellbeing, trauma recovery stalled or undone</p>	<p>Develop and regulate on-line platforms to facilitate safe indirect contact. These would enable different levels of supervision of contact to be upheld. e.g. supervised and supported contact. They would ensure that court directions and agreements can continue to be upheld safely.</p>
<p>Coronavirus Crisis: Guidance on Compliance with Court Orders Relating to Parental Responsibilities and Rights</p>	<p>Contact ends</p> <p>Unsafe contact continues</p> <p>Contact is a site for continued / heightened abuse</p> <p>Negative outcomes for children and adult victims physical and emotional wellbeing.</p>	<p>As above, develop and regulate on-line platforms to facilitate safe indirect contact.</p>
<p>Guidance in respect of Progressing Certain Categories of Civil Business in the Sheriff Courts</p>	<p>Quality of evidence is adversely affected</p> <p>Prolonged proceedings increase trauma and negative impacts</p>	<p>As above, urgently develop plans to restart sisted, adjourned and new civil proceedings. Cases should be prioritised on assessments of potential breaches to children's rights.</p>

	<p>Unresolved cases may lead to increased danger</p> <p>Contact ends</p> <p>Unsafe contact continues</p> <p>Contact is a site for continued / heightened abuse</p> <p>Negative outcomes for children and adult victims physical and emotional wellbeing.</p>	
<p>Please see Questions 13 and 14 for further recommendations.</p>		

<p>Question 10: To what extent does the measure(s) address Scottish Government's obligation to respect, protect and fulfil the rights enshrined in the UNCRC in Scotland?</p>			
<p>Measure</p>	<p>UNCRC provision(s) being further implemented through measure</p>	<p>Describe how the effect will be attained through the measure</p>	<p>UN Documents used to make the assessment</p>
<p>Coronavirus (COVID-19): guidance on domestic abuse</p>	<p>Article 19</p>	<p>It provides advice and support for women/adults seeking support and identifies escaping from home (e.g. to access support, seek help, report to the police) as a reasonable excuse to leave home. Thus, it contributes to realising children's rights to be protected from all forms of violence and abuse.</p> <p>Scottish Government also awarded £1.5 million to Scottish Women's Aid (£1.35m) and Rape</p>	<p>UN Committee General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence</p>

		Crisis Scotland (£226k) to support services across Scotland and a transformation in the way support is offered.	
Coronavirus (COVID-19): Framework for Decision-Making – Scotland’s Route Map through and out of the crisis	Article 39	<p>Outlines a phased approach in re-starting face-to-face Children’s Hearings and for greater contact for social work and support services with at-risk groups and families (no explicit mention of domestic abuse). Fulfilling Government duty to take all appropriate measures to promote physical and psychological recovery and social reintegration of for children who have experienced any form of neglect, exploitation, or abuse.</p> <p>Recognises the impact of lockdown on most vulnerable children and how partnership approach will enable an increase in numbers of children attending school, which can be a site of social support for children.</p>	UN Committee General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence
Coronavirus (COVID-19) Supplementary National Violence Against Women Guidance	Article 19 Article 39	Aims to ensure that a joined-up approach to safeguarding the needs of women, children and young people victims/survivors during COVID-19 is embedded at a local level. If local authorities act on the guidance, as well as third sector agencies, then local coordinated efforts could improve responses to women, children and young people.	UN Committee General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence
Coronavirus (COVID-19): supplementary national child protection guidance	Article 19 Article 39	The section on domestic abuse outlines and aims to address new risks to women and children experiencing or recovering from domestic abuse and GBV due to the pandemic.	UN Committee General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence

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Question 11: In what way(s) will (or does) the measure promote or impede efforts to meet the National Outcomes for Scotland for children? (see <https://nationalperformance.gov.scot/national-outcomes>) If there are GIRFEC indicators of wellbeing that are directly relevant to your response, please note these here (<https://www.gov.scot/policies/girfec/wellbeing-indicators-shanarri/>).

Measure	Outline how the measure(s) will or do promote or impede efforts to meet the National Outcomes for Scotland for children	List GIRFEC indicators that are directly relevant
Coronavirus (Scotland) Act 2020	The pause in Children’s Hearings and move to online processes impedes efforts to ensure that children grow up safe, impacting on their good health and wellbeing (Sustainable Development Goal 3). Their participation rights are affected, there is the potential for increased danger, trauma and impact of both delayed and prolonged processes. The Act impedes National Outcome for Children and Young People including indicators ‘Child social and physical development’, ‘Child wellbeing and happiness’ and ‘Children’s voices’.	Safe Healthy Respected Responsible
Coronavirus (Scotland) Act 2020 Coronavirus (Scotland) (No. 2) Act 2020 Directions and Guidance from Justice Partners	Delays and changes to criminal justice processes impedes efforts to ensure that children grow up safe, impacting on their good health and wellbeing (Sustainable Development Goal 3), resulting in increased long as well as short-term effects of abuse and trauma. Potential extended time for perpetrators in the community will affect ‘Child social and physical development’ and ‘Child wellbeing and happiness’. The commitment of justice partners to increase ‘Children’s voices’ from a police incident to court outcome are at risk as is use of protective measures contained within the Domestic Abuse (Scotland) Act 2018. The backlog of solemn and summary cases presents a stark dilemma for CYPEDA, their families and Justice partners.	Safe Healthy Nurtured Active Respected
Release of Prisoners (Coronavirus)	The exclusion from early release under these regulations of persons serving a sentence of imprisonment or detention for domestic abuse	Safe Nurtured

(Scotland) Regulations 2020	promotes efforts to ensure that children grow up safe, supporting National Outcome: Children and Young People, including indicator 'Child wellbeing and happiness'.	
Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020	The restrictions to movement and closure of buildings impact negatively on children experiencing domestic abuse, with risks of increased danger and severity, of abuse and longer effects of trauma. There is a risk to children's safety, mental and physical health that is at odds with the National Outcome for Children and Young People, including in relation to indicators 'Child social and physical development', 'Child wellbeing and happiness', 'Children's voices' and 'Children have positive relationships'.	Safe Healthy Achieving Nurtured Active Respected
Coronavirus (COVID-19): guidance on domestic abuse	The guidance provides 'permission' for women and children to leave home for safety reasons and access help. It thus promotes the National Outcome for Children and Young People, particularly in relation to indicators 'Child wellbeing and happiness' and 'Children have positive relationships'. The lack of reference to children and safety planning or help seeking impedes the National Outcome, in relation to 'Child wellbeing and happiness' and 'Children's Voices'.	Safe Healthy Nurtured
Coronavirus (COVID-19): school and early learning closures – guidance about key workers and vulnerable children	This guidance reiterates who is considered a 'key worker' and a "vulnerable child" and how their children and vulnerable children can attend school. It thus impacts on quality education (Sustainable Development Goal 4) and promotes the National Outcome for Children and Young People, particularly in relation to indicators 'Child wellbeing and happiness' and 'Child social and physical development'. Children who experience domestic abuse are not addressed in the guidance. It may be argued that they are 'vulnerable children'.	Safe Achieving Active Included
Coronavirus Crisis: Guidance on Compliance with Court Orders Relating to Parental	Provides guidance to parents and carers whose children are subject to court orders relating to parental responsibilities and rights, so theoretically promotes the National Outcome for Children and Young People, particularly in relation to indicators 'Child wellbeing and happiness' and 'Children have positive relationships'.	Safe Nurtured

Responsibilities and Rights		
Coronavirus (COVID-19): supplementary national child protection guidance	Section on domestic abuse acknowledges and outlines new risks to women and children experiencing or recovering from domestic abuse and GBV due to the pandemic and outlines actions to take mitigate against this. It impacts on good health and wellbeing (Sustainable Development Goal 3) and gender inequality (Sustainable Development Goal 5). It promotes the National Outcome for Children and Young People, particularly in relation to indicators 'Quality of children's services', 'Child wellbeing and happiness' and 'Child social and physical development'	Safe Healthy Nurtured Included
Coronavirus (COVID-19) Supplementary National Violence Against Women Guidance	Aims to ensure a joined-up approach to safeguarding the needs of women, children and young people victims/survivors during COVID-19 is embedded a local level and that prevention is prioritised following lifting of restrictions. It impacts on good health and wellbeing (Sustainable Development Goal 3) and gender inequality (Sustainable Development Goal 5). It promotes the National Outcome for Children and Young People, particularly in relation to indicators 'Quality of children's services', 'Child wellbeing and happiness' and 'Child social and physical development'	Safe Healthy Nurtured Included
Coronavirus (COVID-19): Framework for Decision-Making – Scotland's Route Map through and out of the crisis	Outlines a phased approach in re-starting face-to-face Children's Hearings and for greater contact for social work and support services with at-risk groups and families (no explicit mention of domestic abuse). It impacts on good health and wellbeing (Sustainable Development Goal 3), It promotes the National Outcome for Children and Young People, particularly in relation to indicators 'Quality of children's services', 'Child wellbeing and happiness' and 'Child social and physical development'	Safe Healthy Included Active

STAGE 4: CONCLUSIONS AND RECOMMENDATIONS

Question 12: Please provide a summarised overview of your key findings on the impact of the measure(s) on children and young people's rights, addressing two aims of the Alternative CRIA:

- *to observe and document children's human rights issues;*
- to learn from this both in positive and negative developments

Introduction

The COVID-19 pandemic poses serious and particular risks to the rights of children who experience domestic abuse. The restrictions imposed to stop the spread of the virus have significant consequences for rights to protection, provision, prevention and education and participation. They make it harder to report abuse, to seek help and for courts and service providers to respond effectively. Research shows that times of crises and unrest are linked to increased levels of violence against women and children (Fraser, 2020). Since the outbreak of COVID-19, there are already reports from across the globe about increases in rates of domestic homicide and surges in calls to helplines for survivors and perpetrators of domestic abuse. Domestic abuse services report children are experiencing more severe abuse during lockdown, there are significant concerns that child contact is becoming a particular site for abuse, and that there are particular challenges for engaging and providing support to children and young people who are experiencing domestic abuse (Scottish Government, 2020 forthcoming). In England, the National Society for the Prevention of Cruelty to Children (NSPCC) (2020) report that calls to their helpline about domestic abuse have increased by a third since lockdown was imposed. Domestic abuse has immediate to long-term physical and mental consequences for children, including death. It negatively affects children's wellbeing and development and prevents them from fully participating in society. Domestic abuse is a violation of children's human rights.

Children's rights to protection

UNCRC Article 19 establishes children's right to protection from all forms of abuse. It requires State Parties to take all appropriate measures to protect children and for those who care for children. This includes the establishment of social programmes to provide the necessary support, as well as prevention and identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment.

UNCRC Article 3 requires that on all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration

UNCRC Article 9 establishes children's right to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to a child's best interests.

Restrictions imposed to movement and physical distancing present serious risks to children's rights to protection. Many children are confined to home with the perpetrator of domestic abuse. The Coronavirus (Scotland) Act 2020 introduces a duty on Ministers to take account of the nature and incidents of domestic abuse. It is not clear the extent to which this includes children and young people. There are a lack of robust data on the numbers and nature domestic abuse affecting children and young people during the pandemic. There are significant concerns that Article 19 is not being met for the majority of children and young people who experience domestic abuse.

There are specific challenges to meeting Article 19 for children and young people who are identified by or are receiving services from statutory agencies. Physical restrictions make it difficult to make direct and independent contact with a child and for any ensuing referrals and/or investigations. Attending police officers at a domestic abuse 'incident' may be restricted in their efforts to speak directly with the child and record their views (Joint Protocol).¹ Social workers undertaking home visits may find it difficult to communicate directly with children due to the physical constraints of space and the presence of others. There are concerns about barriers to children's participation in risk, safety and need assessments and the subsequent impact on the quality of assessments and evidence – including as child witnesses, on referrals to child protection and/or specialist services and potentially on the use of the child aggravator of the Domestic Abuse (Scotland) Act 2018 (**see also Appendix 6**).

Reconciling children's Article 19 rights to protection and their Article 9 rights to contact in circumstances of domestic abuse is reported by specialist services as particularly difficult in the current pandemic context. Without adequate safeguards, child contact arrangements risk being a site for continued and increased domestic abuse and coercive control. Services report increased levels of abuse at contact handovers, children not being returned following contact and heightened incidences of surveillance and harassment when contact is carried out over virtual means and is unsupervised or unsupported.

The Children's Hearings System, the Criminal Justice System and Civil Justice System are key systems for safeguarding children's rights under Articles 3, 9, 12, and 19. Restrictions made to the operation of these systems pose serious risks to these rights for children who experience domestic abuse.

Children's Hearings System

Children's hearings have been restricted to those that are urgent and require the immediate protection of a child. Hearings are taking place remotely and children's rights to participate in them have been significantly constrained. Having a close connection with someone who carries out domestic abuse is a specific ground for a child's referral to the Children's Hearings System. In 2018-19 domestic abuse was the second most common grounds for referral (SCRA, 2019). A significant number of children with experience of domestic abuse will be affected by delays caused to the restrictions imposed on the children's hearings system. Children and young people experiencing domestic abuse may find participation in virtual hearings especially difficult. It may be unsafe for children to participate if they are still living with the perpetrator of abuse. Children may struggle with or not have access to resources for digital participation. If hearings take place virtually with children at home, rights to privacy and safety to enable children to discuss or disclose abuse are severely curtailed. Restrictions to the children's hearings system limits access to legal measures and systems that protect children's rights (**see Appendix 6**). This risks children's rights to protection (Article 9), ensuring children's best interests are paramount consideration in decisions (Article 3) and children's participation rights (Article 12).

Criminal Justice System

Scottish Government and Justice partners have acknowledged significant, increased risk and safety issues for adult victims and their children during COVID-19. Several protective measures and guidance documents have been issued to support Article 19. These include: considering custody following an incident of domestic abuse, and further bail conditions if the accused is released; excepting domestic abuse perpetrators from early release from prison; allowing domestic abuse to be one of the few non-custody summary court hearings and excepting victims of domestic abuse from orders to stay at home if escaping harm. Such measures offer further protection to some women experiencing domestic abuse and through this further children's rights to protection. Concerns remain about the extent to which women and children's views are included in regard to the 'incident'/course of conduct, risk and safety assessments; lapses in communication and notifications from the criminal justice system; and breaches in bail conditions with little reparation.

Criminal trials have been severely restricted, summary court hearings in particular – where the majority of domestic abuse cases are heard – and major delays are expected due to an alarming backlog. Delays and uncertainty in non-COVID-19 circumstances are a source of fear and trauma for children which may be alleviated somewhat through specialist support, information and communication throughout (see Houghton et al, 2018). Court advocacy services for children report child victims may struggle to engage with services that are provided by telephone or digitally, and decreases in referrals during COVID-19. The move to virtual proceedings requires creative solutions to enable women and children to participate safely, with specialist support/advocacy, outwith their own homes. The recent resumption of evidence by commissioner hearings at

the High Court is positive, enabling pre-recording of children's evidence in High Court cases (including sexual offending and domestic abuse) in advance of trial. This will help to capture children's evidence at an earlier stage and avoid lengthy waits before trial, though capacity is limited and needs expanded. This is particularly important as COVID-19 will increase delays considerably. Urgent consideration of the routine use of pre-recorded evidence in summary trials would make a real difference to the majority of children involved in criminal proceedings, who are currently facing lengthier delays. There are concerns that recent progress in relation to children's rights within the criminal process may be undermined. This includes the protocol to listen and record children's views (ref); expansion in the advocacy services; the use of the Domestic Abuse (Scotland) Act 2018 child aggravator; consideration of Non-Harassment Orders. This potentially negatively impacts children's rights to protection, quality of evidence, outcomes of justice, and children's trauma and recovery.

Civil Proceedings (child contact)

Issues associated with child contact and domestic abuse have been well documented in Scotland (Mackay, 2013; Morrison et al, 2013; Scottish Women's Aid, 2017) and other parts of the UK (see Birchall and Choudhry, 2018). They are given priority in S.11(7C) of the Children (Scotland) Act 1995. Service providers report that for some children contact arrangements risk being a particular site for continued and increased domestic abuse and coercive control. Children may not be 'returned' following child contact visits, arrangements for handover arrangements may place children and adult at heightened risk. Through child contact, lockdown restrictions (e.g. physical distancing) may be breached thus risking the health of children, adult victims and wider public.

Restrictions imposed because of COVID-19 mean the majority of civil proceedings that deal with disputes about child contact have been suspended. On-going cases have been sisted or adjourned. Only 'urgent and necessary' cases are being heard. The minority of cases that are being heard take place remotely without parties present and only in cases where evidence does not need to be led. Lengthy delays to new or on-going disputes about child contact will cause significant anxiety and uncertainty to children with experience of domestic abuse. Restrictions to civil proceedings limits access to legal recourse to protect children's rights. This includes their rights to contact (Article 9), rights that ensure their best interests are the paramount consideration in decisions (Article 3) and rights to participate in major decisions that affect their lives (Article 12). Going forward, it is unclear how children's participation rights will be given effect in remote hearings (see later discussion on children's participation rights) and how cases that involve the leading of evidence will be addressed. The Lord President has issued guidance on complying with child contact orders during the suspension of civil proceedings. The guidance makes no specific reference to domestic abuse, children's best interests nor on implementing children's participation rights in these circumstances. It directs that if it is not possible to comply with a court order due to Government advice on COVID-19,

parents' may temporarily vary orders. In such circumstances, it directs that indirect contact should take place and prioritises the use of video technology. In contexts of domestic abuse, changing the boundaries of contact can be dangerous. Indirect and virtual contact may increase opportunities for surveillance and harassment. It may not necessarily be in children's best interests. Younger children in particular may struggle with this type of contact.

Key issues to be addressed to meet children's rights to protection under UNCRC

Restrictions imposed to movement and physical distancing present serious risks to children's rights to protection. Many children are confined at home with the perpetrator of domestic abuse.

Physical restrictions present challenges to making direct and independent contact with a child experiencing domestic abuse and meeting their rights to protection.

Restrictions that have been imposed to the operation of different legal systems pose serious risks to children's rights to protection.

Delays in hearings and proceedings will adversely affect children. They will cause significant anxiety and uncertainty.

In circumstances of domestic abuse unresolved cases risks increased danger thus undermining children's rights to protection.

Changes to the ways that children's hearings and criminal and civil proceedings will be held has serious implications for children's rights. They may limit children's access to support and advocacy and the delivery of child-friendly justice.

Children's rights to provision

UNCRC Article 39 establishes children's rights to support. It requires States Parties to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

UNCRC Article 27 requires State Parties to recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Restrictions imposed present particular challenges to meeting children's rights under Article 39. The majority of children who experience domestic abuse are 'hidden' without access to on-going support to ensure their Article 39 rights. Children with experience of domestic abuse often do not meet 'thresholds of risk' for statutory services (e.g. see Stanley et al, 2010) and

the capacity of specialist domestic abuse services is limited. During lockdown, it is highly likely that many children experiencing domestic abuse will not have any contact with any agency that provides on-going support. While efforts have begun to create 'safe spaces' for adult victims of domestic abuse (e.g. in supermarkets and pharmacies) to increase their access support, there have been no parallel developments for children.

Since lockdown, specialist support and advocacy services have been reconfigured so that children's services are offered digitally and by telephone. Constraints on service delivery mean that core elements of support for abused children are missing (e.g. physicality, comfort, creative art space and tools). There are particular issues with providing age appropriate therapeutic support (Istanbul 26), acknowledging the diverse range of support needed for different ages and abilities applies to virtual support also. The child's home is most often not a suitable, healthy, rights respecting environment (UN Committee General Comment No. 13, 2011), particularly if the perpetrator of abuse lives there. Trauma recovery work is limited if safety cannot be assured through protective measures. The required range of support and recovery services (including health services) are difficult to access for all child and adult victims (see UNCRC Article 39, Istanbul 22). Innovation in service design is possible but it must be resourced and build upon the expertise of specialist services and young survivor expert groups. Specialist services have raised concerns about challenges to meeting children's Article 39 rights. These relate to children who have been newly referred to services, younger children, young people experiencing on and offline abuse from peers and partners and the implications of risk for providing such service delivery when domestic abuse is on-going. Steps have been taken to addressing digital exclusion through funding, including targeted provision to those families currently in receipt of specialist services (**see Appendix 4**). However, further challenges remain to ensure Article 39 rights of children have information about support services that are available, children without no access to their own digital resources; and ensuring children's rights to privacy (Article X) and confidentiality are upheld while physical restrictions are imposed.

For those families that become homeless because of domestic abuse, access to housing and an adequate standard of living (Article 27) are key issues exacerbated by COVID-19. There are issues in refuges due to lack of space and now a COVID-19 'backlog' in families unable to move on; difficulties in communal living exacerbated by the limited number of self-contained flats within refuges (children's preferred model, Fitzpatrick et al, 2003); limited safe, affordable housing options available to women and children experiencing domestic abuse. Every effort to ensure women and children are safe at home, including exclusion of abuser accompanied by protective measures, should be made as well as efforts to provide housing for those in need/in refuge now to prepare for the expected spike in referrals as lockdown eases.

Those working in education settings may be the first and only adults outwith the family that a child has contact with when they return to school or through a child's attendance at a school hub. School premises are the preferred location for many young

survivors to access support. Professionals working in these settings will need support to be alert to risk factors and indicators of domestic abuse and to be able to respond appropriately to children (UN Committee General Comment No. 13, 2011). To meet the requirements of Article 39, it is vital that as schools reopen plans, physical space and resources are made available to provide support in schools to children with experience of domestic abuse. As lockdown eases, it is anticipated that there will be 'a spike' in demand for such support and it therefore must be adequately planned for and resourced.

Key issues to be addressed to meet children's rights to provision under UNCRC

- The majority of children experiencing domestic abuse are hidden – they will not have contact with trusted adults outwith their family or with any statutory or voluntary agency.
- There is a lack of capacity and resources amongst services to provide digital services and meet children's rights to provision.
- There are challenges for providing digital services to children experiencing domestic abuse which risk undermining children's rights to provision.
- There is an urgent need to plan for and make resources available to provide support to children with experience of domestic abuse in school and educational settings.

Children's rights to education, information and preventative education

UNCRC Article 28 establishes children's rights to education. It requires States Parties to recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity.

1. UNCRC Article 17 establishes children's rights to information. It requires States Parties to recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral wellbeing and physical and mental health.

The closure of schools and other educational settings risk children's rights to education under Article 28 (**see Appendix 3**). School hubs have remained open for children whose parents are key workers and for children who are understood to be 'vulnerable'. Children with experience of domestic abuse are potentially 'vulnerable'. Guidance is needed to ensure that

children with experience of domestic abuse have access to the protective measures that schools offer children during lockdown and other physical restrictions.

As discussed above, targeted guidance and support is required for those working in education settings on domestic abuse. This should address the impact of domestic abuse on children, the increased risks for this group of children during COVID-19 and resources should be planned to expand children's access to support in education settings. There is an urgent need for preventative educational measures (UN Committee General Comment No. 13, 2011) and to ensure Relationships, Sexual Health and Parenthood (RSHP) and prevention programmes are a key part of the (perhaps limited) curriculum once children return to school, to empower child victim-survivors to name abuse, access support as rights-holders with agency (CEDAW GR 35).

To ensure children's rights under Article 17, media and prevention education campaigns are needed to enable children identify and name the abuse that they have experienced during lockdown restrictions. These campaigns must be linked to support for children experiencing domestic abuse. Evidence from young survivors and services indicate public education on domestic abuse that is targeted at children with linked sources of help is a priority. Young expert groups of survivors in Scotland have already taken action by creating films that aim to empower young people to seek help (Scottish Women's Aid and Yello!, 2020a, b) and highlight the urgent priority that is needed to develop ways for children and young people to escape abuse and to access help (Angus Women's Aid and AWARE, 2020). Both groups highlight young people experiencing abuse in their families and their own relationships. They echo priorities identified by Everyday Heroes young survivors in relation to their rights to protection-justice journeys, provision-improved services, prevention/education and participation (Houghton et al, 2018).

Key issues to be addressed to meet children's rights to education, information and preventative education under UNCRC

- Guidance is needed to ensure that children with experience of domestic abuse have access to the protective measures that schools offer children during lockdown and other physical restrictions
- Preventative education on gender and violence and RHSP is a vital part of the curriculum on return to school
- Media and prevention education campaigns are required to enable children to identify and name the abuse that they have experienced during lockdown restrictions and meet children's rights under Article 17. These must be linked to readily accessible support for children with experience of domestic abuse.

Children's rights to participation

UNCRC Article 12 establishes children's rights to participation. It requires that States Parties assure the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Other relevant Articles 13, 14, 15 and 17.

As we discuss under children's rights to protection, urgent work is needed to ensure children's participation rights under Article 12 are met. The widespread suspension of hearings and proceedings in children's hearings, criminal and civil proceedings pose serious risks to children's participation rights. There is urgent need to consider and to monitor the implementation of children's participation rights as virtual hearings and proceedings accelerate. Guidance is required for courts and hearings on how to give effect to children's participation rights in remote hearings. This must be compliant with the UN Committee General Comments. Therefore, mechanisms must ensure that children's views must be transmitted directly to the court, not mediated by adults. Attention must be given to how children are supported through the legal process. Preparation before their views are given, feedback on decisions made (including how their views were considered) and access to complaints and redress should children feel their rights have not been upheld (see Morrison et al, 2020). A rapid expansion of the range and accessibility of on and off-line advocacy services is needed to ensure that children's participation rights are met. The accelerated use of pre-recorded evidence in domestic abuse and sexual offences criminal proceedings (which are mainly summary) could make a real difference to the children's experience of legal systems, reduce trauma and enhance recovery.

Under the UNCRC children have the right to participate in public decision-making more broadly (Articles 12, 13, 14, 15 and 17) (see Forde et al, 2020). Children with experience of domestic abuse are experts of their own lived experiences. As underscored by the work of Yello! and AWARE, children have unique insights and recommendations on how respond to domestic abuse. It is therefore critical that children with experience of domestic abuse are involved in developing the response to domestic abuse and COVID-19. It is vital that Ministerial reviews and government meetings consider evidence from children, involve national experts and develop child-friendly infrastructures for children direct involvement in national policy-making (Houghton, 2018). Upholding children's rights to participate in wider decision-making is key to ensuring that all of children's rights are upheld.

Key issues to be addressed to meet children's rights to participation under UNCRC

- The widespread suspension of hearings and proceedings in children's hearings, criminal and civil proceedings pose serious risks to children's participation rights under Article 12.
- There is urgent need to consider and to monitor the implementation of children's participation rights as virtual hearings and proceedings accelerate.
- Guidance is required for courts and hearings on how to give ensure children's participation rights in remote hearings.
- Rapid expansion of the range and accessibility of on-line specialist support and advocacy services is needed to ensure that children's participation rights are met.
- Urgent redesign and reconfiguration of systems and services needs to include young expert groups and expert children and young people specialist workers
- Increased visibility of CYPEDA in national responses is vital
- Children must be involved in developing the responses to domestic abuse and COVID-19. Upholding children's rights to participate in wider decision-making about responses is key to ensuring that all of children's rights are ensured.

Conclusion

Most children/young people experiencing domestic abuse remain unknown to services at a time of increased risk which makes renewed efforts on public education, reporting and identification vital. There are many children and families known to specialist and statutory agencies without any current contact (e.g. waiting lists, previous contacts) for whom urgent, revised risk, safety and needs assessments/plans are vital. There are many children and young people struggling to access the support they need through online means that needs tackled urgently through national and local redesign alongside young expert groups. Access to justice and participation in decision-making for many remains elusive. The expected spike in referrals as lockdown eases is expected to apply to children and young people and requires concerted efforts to ensure support, advocacy and justice is available. This requires revived participation of children and young people with experience of domestic abuse in national decision-making and responses to COVID-19. Whilst capacity for this is limited, resourcing involvement of specialist workers and established young expert groups has great potential for improvement, innovation and accountability.

Question 13: Based on your key findings what recommendations should be made and to whom should they be addressed?

Summary of recommendation	Body addressed to (e.g. Scottish Government)
Right to Protection	
<p>The redesign and recovery of justice systems should involve key domestic abuse and children’s rights organisations, increase visibility of CYPEDA and enable the participation of young expert groups. Redesign of summary cases where most domestic abuse cases are heard, with significant backlog, is urgent.</p>	<p>Scottish Government and Justice partners, non-governmental organisations in Scotland (NGOs), young expert groups</p>
<p>Ministerial review of decisions should include data on CYPEDA as should senior level response meetings.</p>	<p>Scottish Government and partners.</p>
<p>Police responding to any calls involving a family with a child(ren) should be particularly proactive in speaking to the child(ren), in recording their views, providing information on accessing support and assessing whether there is a need to refer the child(ren) to children’s specialist services and/or social work.</p>	<p>Police Scotland/COPFS</p>
<p>Expansion of the nature and reach of domestic abuse/sexual violence court advocacy services for children and young people is needed: Expansion of services across Scotland and co-development of children and young people’s model and training Development of online interactive support mechanisms Consideration of young people experiencing abuse in their own relationships/online Increased efforts through justice agencies to ensure adults and children are informed of support available</p>	<p>Scottish Government, Justice partners, ASSIST, EDDAC, SWA and partners</p>
<p>Monitoring of COVID-19 protective measures in relation to domestic abuse is needed: response, bail conditions, release, notifications, etc., integrating perspectives of adult and child victims. Return to timescales as soon as possible needed e.g. undertakings within 2 weeks.</p>	<p>Scottish Government, Justice partners, NGOs</p>

<p>Urgent trauma-informed action is needed to address delays in criminal trials and the effects on both adult and child victims of domestic and sexual violence</p> <ul style="list-style-type: none"> • Action to address the backlog of domestic abuse and sexual violence cases and reduce court waiting times for women and children (between police response and trial, then to outcome) • Increased use of evidence by commission is required urgently to allow CYPEDA to give evidence at a far earlier stage, made more pressing given expected delays. This needs extended to cover summary as well as solemn cases, which requires an urgent increase in capacity • Creative consideration of safe, virtual spaces for adult and child victims to give evidence during virtual proceedings • Consideration of how child and adult victims can be reassured that GBV continues to be taken seriously 	<p>Scottish Government, Justice partners, NGOs</p>
<p>DASA implementation needs to consider children and young people specifically, target the public and CYPEDA with public education, monitor DA cases involving children including child's views throughout, use of child aggravator and NHO's</p>	<p>Domestic Abuse (Scotland) Act 2018 Implementation group, young expert group/s</p>
<p>Collect data on and review the number and nature of domestic abuse cases are affected by the suspension of Children's Hearings, civil and criminal proceedings. Assess what impact this suspension has had on children's rights (e.g. the rights to contact, participation, provision and protection).</p> <p>Urgently develop plans to restart sisted, adjourned and new civil and criminal proceedings that are prioritised through assessments of potential breaches to children's rights.</p>	<p>Justice Partners</p>
<p>Develop and regulate on-line platforms to facilitate safe indirect contact. These would enable different levels of supervision of contact to be upheld. e.g. supervised and supported contact. They would ensure that court directions and agreements can continue to be upheld safely.</p>	<p>Scottish Government, NGOs (Relationship Scotland, Scottish Women's Aid), young expert groups with experience of court-ordered contact.</p>

Ensure agencies have capacity for updating child protections plans and safety planning for women and children in relation to new risks, decreased protective factors and reconfigured services. This applies to all families known to services and on waiting lists and all new referrals, particularly those living with perpetrator or having contact so that those in greatest need can access services as soon as possible.	Scottish Government, CPC's, NGOs
Right to Support	
Development and expansion of the planned online platform on GBV: to include national interactive online and telephone-based support services, linked to expanded local children and young people's specialist support services	Scottish Government, SWA, RCS, Young Scot
Young experts and expert workers involvement in design and redesign of local and national services, including support programmes and age appropriate tools	Scottish Government, SWA, RCS and children's organisations, young expert groups
Expansion of local specialist support services for children and young people – increased capacity, diverse range of support, innovation in online and telephone support services <ul style="list-style-type: none"> Consider specific gaps including young people experiencing domestic abuse/sexual violence in their own relationships 	Scottish Government, SWA, RCS and children's organisations, the Convention of Scottish Local Authorities (COSLA) and VAWG partnerships, Improvement Service, practitioners/support workers, young expert groups
Increased partnership working to enable access to specialist services within education and other settings	Education partners, SWA, RCS
Protect services funding at pre COVID-19 level and disregard previous targets/measures, whilst considering reconfigured approaches.	Scottish Government, local authorities, funders
Resource continued development and piloting of online resources and programmes e.g. art therapy for young children, Children Experiencing Domestic Abuse Recovery (CEDAR) groupwork, etc.	Scottish Government, SWA and partners, Improvement Service, VAWG partnerships, practitioners/support workers, young expert groups

<p>Create targeted guidance/information for children and young people about escaping harm, reporting, accessing support and safe spaces. Agencies need to be informed of, advertise and respect this</p>	<p>Scottish Government, SWA, Young expert groups, YoungScot, Police Scotland, Social Work Scotland</p>
<p>Consider housing needs for women and children experiencing domestic abuse with key experts (see SWA/ Chartered Institute of Housing (CIH) guidance to social landlords) and plan for the expected increase in help-seeking and requirement for safe, suitable accommodation.</p>	<p>Scottish Government, SWA, Housing and Homelessness partners, young experts</p>
<p>Review training needs of key statutory agencies (social work, education, housing, health, police) in relation to equipping those who come into contact with children with skills to respond appropriately to GBV at a time of heightened risk. Ensure this is consistent across Scotland.</p>	<p>Scottish Government, COSLA, Improvement Service, and social work, education, housing, health, Police Scotland partners</p>
<p>Right to Education</p>	
<p>Run a public awareness campaign on domestic abuse and children/young people, linked to identified options for support (currently DAFMH and Childline).</p> <ul style="list-style-type: none"> • Ensure it refers to the existing ‘stay at home’ exemption for circumstances like domestic abuse • Promotes an understanding of DASA in relation to children. • Considers development of a complementary ‘safe space’ campaign for children as well as adults experiencing domestic abuse. • Increases public awareness about the need to be vigilant for any child or family who may be struggling and might benefit from an assessment of their need for additional support at this time. 	<p>Scottish Government, SWA, RCS, Childline, Children 1st and children and young people organisations, young expert groups, Police Scotland</p>
<p>Update guidance from Scottish Government to local authorities as regards ‘vulnerable’ children and prioritised access to school spaces. Identify</p> <ul style="list-style-type: none"> • domestic abuse is a factor in relation to ‘vulnerability’ • local specialist DA services as partners in decision-making on school spaces 	<p>Scottish Government, COSLA, VAWG partnerships, education partners. Increased local collaboration of education with specialist GBV services.</p>

<ul style="list-style-type: none"> • sensitive consideration of how to implement safe, easy and non-stigmatised access to spaces in Hubs for those who require them. 	
Urgent targeted accessible guidance to education staff on domestic abuse, the increased risk during COVID-19 and its aftermath, the law (DASA) and access to support. As children return to school, school staff should be alert to any indications of children's need for additional support, including protection from harm	Scottish Government, COSLA, RCS, SWA and partners, education partners
Urgent resumption of RHSP and prevention education on children's return, prioritising understanding of abuse, consent, healthy relationships and where to get help	Scottish Government, COSLA, RCS, SWA and partners, education partners
Consideration and protection of space for specialist support in or attached to schools and youth settings on reopening	Scottish Government, COSLA, SWA, RCS and partners, education partners
Right to Participation	
Ensure current measures, including the move to online proceedings, considers factors affecting the participation of both adult and child victims of domestic abuse in criminal justice proceedings and collaborate to mitigate those.	COPFS, ASSIST, Police Scotland, Prisons, Scottish Legal Aid Board and Scottish Government
<p>Develop guidance for family courts (see Appendix 6 for CHS) on how to give effect to children's participation rights in remote hearings. This should consider:</p> <ul style="list-style-type: none"> • How practice in relation to children's legal representation, child welfare reporters, judicial interviewing and F9 forms might be adapted. • How children are supported through the process and their access to specialist advocacy services • How children's views are transmitted directly to hearings and courts and not mediated through adults • Access to complaints and redress should children feel their rights have not been upheld <p>Collect data and monitor the implementation of children's participation rights in hearings.</p>	Scottish Government, Justice partners, NGOs, young expert groups

Provide information directly to CYPEDA about changes to children's hearings, criminal and civil proceedings and the implications they have for them. Include information on where children might be able to access support and advocacy e.g. legal information and advice for children, ChildLine etc.	Scottish Government, Justice partners, NGOs, young expert groups, Our Hearings Our Lives
Include children and young people in reconfiguration of services and in creative expansion of online services and programmes	Scottish Government, SWA. RCS, children and young people's organisations, young expert groups
Develop infrastructures for young expert groups to be involved in national responses to COVID-19 and its aftermath. Continue to action Everyday Heroes recommendations and adapt them for the current situation.	Scottish Government, Equally Safe Joint Strategic Board and Delivery Partners, young expert groups

Question 14: The COVID-19 response is likely to have several phases, with varying degrees of restrictions, and uncertainty about their removal and possible re-impositions. What (if any) additional concerns about children and young people's rights do you anticipate in the coming phases?	
Potential concerns about children and young people's rights.	What recommendations do you have that could mitigate these concerns?
Domestic abuse data collection needs to include CYPEDA at every phase. Review of measures needs to include direct consideration of children and young people as well as adult victims.	Improve data collection across agencies and monitoring systems. Ensure this is a standard agenda item at weekly stakeholder meetings.
A potential surge in referrals to already overstretched services, with capacity lowered due to the effects of all of COVID-19 Measures.	Maintain and expand funding for services and reassurance of sustained provision in times of financial uncertainty.
Concerns about potential use of 'contact and trace' to further abuse women and children.	Consideration at stakeholder group of measures that could mitigate these concerns.

<p>Following the suspension of prison visits, Scottish Government announced the intention to provide mobile phones to those in custody in order to allow them to maintain vital family contact, whilst putting in place robust restrictions to prevent their misuse. Concerns that this will increase abuse, control, surveillance of women and children https://news.gov.scot/news/plans-for-mobile-phones-to-be-used-to-support-those-in-custody</p>	<p>Hasn't been enacted at time of writing – urgent consideration at stakeholder group of measures that could mitigate risk.</p>
<p>Concerns about continued use of measures to abuse women and children through contact, handover, not returning children</p>	<p>Consideration at stakeholder group of measures that could mitigate these concerns.</p>
<p>Concerns about virtual participation need to be address in relation to all proceedings</p>	<p>Consideration of safe spaces as an interim move.</p>
<p>Concerns about continued lack of access to schools for CYPEDA</p>	<p>Update guidance and improve communication to ensure immediate provision of support in schools including specialist support.</p>
<p>Concern that CYPEDA are isolated, at risk and do not know how to access help</p>	<p>Co-develop an online public education campaign with young expert groups. Develop information for CYPEDA that services can distribute. Consider safe spaces.</p>

Reference List

References listed here are specific to this CRIA, additional references appearing in other CRIA also are included in the Alternative CRIA reference list

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