

## APPENDIX 9: Children in Conflict with the Law and Children in Secure Care: Children’s Rights Impact Assessment (CRIA)

Subject Focus: Children in conflict with the law and children in secure care

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)

Impact Assessment by: Lightowler, C., and Nolan, D. - Centre for Youth and Criminal Justice (CYCJ)

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### 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	A range of changes to practice as a result of COVID-19. This includes changes to requirements and timescales for a range of childcare and justice processes (Schedule 3 and 4), including the period a child can be in secure care without authority (Schedule 3, Part 1) and process for the early release of prisoners (Schedule 4, Part 8).
Coronavirus (Scotland) (No. 2) Act	Schedule 2 modifies the law in response to COVID-19 in the operation of the justice system. The Act (Schedule 2, Part 1) raises the age limits for Fixed Penalty Notices from 16 to 18, meaning they no longer apply to children.
Coronavirus Act 2020	Introduces restrictions and requirements that can be made in response to threats to public health, such as requiring someone to submit to a medical examination, be removed or detained and to be kept in isolation or quarantine. Allows for the creation of offences for non-compliance with such measures and enables the court to take remedial action (S.49 and

	Schedule 19). Due to the definition of a child in Scots law being 16, these measures apply to 16 and 17-year-olds. The maximum penalty for such offences is imprisonment for 12 months for a summary conviction (S.49 and Schedule 19). The Act also relaxes disclosure requirements to support recruitment in key areas (S.34) and allows for relaxation of the statutory retention deadlines for biometric material (DNA and fingerprints) (S.61).
Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020	Introduction of new powers in relation to COVID-19. Includes introduction of police enforcement powers: offences and penalties, fixed penalty notices (Part 4).
Prisons and Young Offenders Institutions (Scotland) Amendment Regulations 2020	Changes requirements in prison and young offenders institutions in response to COVID-19, including changing requirements around visits, food, accommodation, recreation, health and wellbeing supports.
Release of Prisoners (Coronavirus) (Scotland) Regulations 2020	Enables the release of people from custody, subject to exceptions set out in the Coronavirus (Scotland) Act 2020 and these regulations.
Coronavirus (COVID-19): Framework for Decision-Making – Scotland’s Route Map through and out of the crisis	Describes likely phases as lockdown is released, having different impacts on children and young people across the phases. Phase 1 includes the resumption of face-to-face Children’s Hearings with physical distancing and greater direct contact for social work and support services for children and families deemed to be most at risk. Phase 1 also includes re-opening of court and tribunal buildings, with limited public and business access. Further resumption of justice system processes and services proposed in phase 3.
Coronavirus (COVID 19): residential childcare	Guidance on residential childcare in the context of COVID-19, including guidance on physical distancing and isolation.
Missing persons guidance (22 May 2020)	Guidance to clarify that if you are providing care to a child or young person, you should follow the local protocols and procedures which were in place prior to COVID-19, and that all reasonable efforts should be made to locate the child before calling Police Scotland, unless there is evidence that the child or young person is at risk of harm.

Social Work Scotland (SWS) and Crown Office and Procurator Fiscal (COPFS) guidance on diversion from prosecution (COVID-19)	Agreement between Social Work Scotland and Crown Office and Procurator Fiscal about changes to timescales for diversion commencement, assessment and completion of interventions.
Joint statement from Lord Advocate and Chief Constable	Priorities set out for the investigation and prosecution of crime and agreed by the Lord Advocate and Chief Constable.
Scottish courts and tribunals – Coronavirus (COVID-19)	Range of guidance and processes in relation to operation of courts and tribunals, such as operation of remote hearings and protocol on physical distancing and hygiene.
Business Continuity and service prioritisation for justice social work services	Sets out clear priorities for justice social work services, setting out a focus on cases where there is a high risk.

<b>Question 2: Which human rights instruments and articles are particularly relevant to the measure(s)?</b>		
<b>Human Rights Instrument</b>	<b>Article</b>	<b>Further analysis on the expected / actual effect</b>
United Nations Convention on the Rights of the Child (UNCRC) (1989)	Article 1 – A child means under 18	Children in conflict with the law must be treated differently to adults on account of their vulnerabilities and stage of development (Article 40 UNCRC) yet the 2020 UK Act makes no distinction between the penalties for adults and children. There is no differentiation between the penalties for non-compliance with the new powers set out in Schedule 21 for adults and children. This lack of distinction is particularly concerning as children in Scotland could receive a maximum 12 month custodial sentence. Whilst we recognise a need for additional powers to ensure that COVID-19 is not spread, we feel these penalties are excessive for children and could have far reaching consequences if they result in a criminal record. Research into practitioner’s experiences of supporting children in conflict with the law highlighted that whilst in some areas of Scotland offences being committed by children had reduced, in other areas they reported changes to offence

		<p>types (initial reports by professionals of increases in shoplifting, antisocial behaviour and COVID-19 related offences such as coughing and spitting; more recently more serious concerns about increases in organised crime and child criminal exploitation). Practitioners in two local authority areas also reported an increase in the use of police warnings and children being held in custody for COVID-19 related offences (Nolan, 2020b).</p> <p>A range of justice processes and legislation define children as under 16 which means in certain circumstances not all children are seen as children when in conflict with the law. 16 and 17-year-olds are at a significantly greater risk of being fined or criminalised than those elsewhere in the UK due to Scots Law definition of 'child' being 16 rather than 18 years of age. The Coronavirus (Scotland) 2020 Act allows for the criminalisation of 16 and 17-year-olds in Scotland for non-compliance with testing powers.</p> <p>The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 initially permitted children aged over 16 to be issued with Fixed Penalty Notices for non-compliance with COVID-19 related restrictions. This contradicts Article 1 and was in contrast to the position of the rest of the UK. While this has been amended via the Coronavirus (Scotland) (No2) Act, an unknown number of children have been issued with Fixed Penalty Notices, which by virtue of their age and means they may have difficulty paying which could accelerate their escalation into the justice system. There is a lack of certainty about any opportunity for Fixed Penalty Notices that were previously issued to be revoked or challenged in light of this legislative change. Together (Scottish Alliance for Children's Rights) have highlighted concerns that Police Scotland can keep Fixed Penalty Notice information for two years, meaning that children who received a Fixed Penalty Notice before the amendment may be subjected to detrimental labelling with the potential for negative on-going police interaction (Together, 2020).</p>
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UNCRC	Article 2 – Non-discrimination	<p>The impact of poverty, household difficulties and lack of access/ability to engage effectively with electronic means of communication is potentially a barrier to justice, particularly when such methods are required in place of attendance at court/hearings. For instance, research with 150 families revealed that 20% do not have access to all the devices that they need, 16% of those surveyed access the internet via their mobile data and 11% do not have devices with video call functionality, with one in four saying using video calling would put pressure on their data allowances (Includem, 2020). As discussed in Appendix 4, digital exclusion and poverty are also barriers to accessing education, learning and development; maintaining social and family connections; accessing financial support; health and wellbeing advice and support. There are also known concerns about the level of resource, support and the nature of professional interaction with certain children, for instance, children who are from BAME and Roma communities, care experienced children, children with disabilities, children who are/whose families are seeking asylum, children with additional support needs (<b>see Appendix 8</b>).</p>
UNCRC	Article 3 – Best interests	<p>Many changes to the care and justice system have been made to accommodate process needs (doubling timelines for instance) not based on what is needed or in the best interests of the child. There is an issue of</p>

		<p>proportionality where provisions have been made that can come into force immediately and apply universally, as opposed to being utilised only when necessary.</p> <p>For those who are subject to a Community Payback Order (CPO), the Coronavirus (Scotland) 2020 Act automatically extends the period within which unpaid work or other activities must be completed by 12 months, and ensures that any newly made orders have a minimum period of 12 months within which to undertake the allotted hours. Furthermore, it authorises local authorities to 'pause' a CPO. In doing so, it will be important that cognisance is taken of the fact that CPOs are usually an alternative to custody and recognising the supports children need to successfully complete orders, meaning children should be given specific consideration when utilising these powers.</p> <p>There is also the long-standing issue that children from the age of 12 can go to adult courts, where there is no 'best interest' consideration, and little if any consideration of their status and rights as a child. In 2017-18, 37% of children who come into contact with the 'formal justice system' for their offending behaviour in Scotland (either going through the Children's Hearing System or the Courts), went to Court; one 13-year-old, one 14-year-old, nine 15-year-olds, 384 16-year-olds and 1,381 17-year-olds (Lightowler, 2020: 55).</p>
UNCRC	Article 9 – Where the child is separated from their parents they have a right to maintain personal relations and direct contact with both parents on a regular basis, unless this is not in the child's best interests	Given the need for physical distancing it can be a challenge for children in restricted settings to maintain personal relations with parents. Electronic means of communication rely on family having access to such devices, with limited support to families with this. They also rely on children and young people being able to access devices to enable such communication, and these are not suitable for very young children or those who do not use speech to communicate. In prison/Young Offender Institutions (YOIs), all visits have been suspended and phone contact, email a prisoner and voicemail appear to be the only options. Virtual visits are due to begin in

		<p>three establishments from 15 June and then to be rolled out, however, there has been no pro-active approach to ensuring families have what they need to ensure that can visit virtually. This is time critical for children in particular given they have not had face to face contact with their families and friends now for three months. There have also been discussions about mobile phones but as yet there are not in place. One child in a Young Offenders Institution explained with some frustration that there were no video calls, visits or mobile phones allowed in cells, despite promises about this (Nolan, 2020b: 4). Children and young people with family members within prison/YOI have also highlighted the difficulties of maintaining contact at this time (Nolan, 2020b).</p>
<p>UNCRC</p>	<p>Article 12 – Participation</p>	<p>Not all children are able to truly participate in virtual court and hearing processes, with implications for the ability to deliver fair justice. Who Cares? Scotland provide powerful examples about how moving to digital mechanisms can cause anxiety and concerns about stigma, for instance, due to people being able to see your house (Who Cares? Scotland, 2020: 21). This is particularly concerning given that even before the move to online hearings children sometimes reported finding panels traumatic, judgemental and disrespectful (Vaswani and Gillon, 2018). Such examples also clearly show that digital exclusion is not simply about access to devices but there are multiple barriers to participation via digital associated with confidence and the need for support. These issues can be more challenging for children involved in offending, for instance, due to the stigma associated with their offending and the high prevalence of additional support needs. There is, therefore, a specific need for support from practitioners to assist with participation and a need for independent advocacy to ensure that children are able to overcome barriers to their participation, such as power imbalances, lack of confidence and a history of being ignored. In certain contexts legal representation will also be necessary if children are to realise their rights. There is a particular issue for children subject to risk management measures that constrain their digital access. These young people are likely to be engaging in processes</p>

		<p>with much more serious implications for their future, rendering their engagement even more important. The limited number of courts being physically open has also been identified as an issue in terms of access to justice and participation,</p> <p><i>The court being closed causes problems, I had to borrow money to get to a different town to go to the court there, some people might not have money to get there and then they would get in even more trouble (Nolan, 2020b: 4).</i></p> <p>There are also issues across local authorities and a range of organisations around staff access to digital technology, and matching what they are permitted to use with the technology children and families use, which is impacting upon their ability to support children and their participation. Interestingly, anecdotally, some practitioners have shared that some children and families have found the telephone more helpful to support their participation than other online or previous face to face mechanisms, highlighting the important of a continuum of opportunities for participation and the need for a tailored approach for each child/family (practitioners sharing information in meetings with the Centre for Youth and Criminal Justice).</p> <p>Participation in the more informal justice processes, such as Early and Effective Intervention (EEI) and Care and Risk Management processes (CARM) has been highlighted as a concern pre-dating COVID-19, but the current situation seems to be compounding these issues, with difficulties ensuring children and their families know about a charge and referral, had information about it and were able to participate in decision-making noted as being particularly problematic (Nolan, 2020b).</p>
UNCRC	Article 15 – Freedom of association and peaceful assembly	Restrictions on children’s freedom of association/assembly in the community, in residential settings and in prison/YOIs. Research into the experiences of children who are in contact with the justice system found



		that the main issues associated with COVID-19 experienced were isolation, lack of contact with others and a lack of activities/things to do (Nolan, 2020b).
UNCRC	Article 16 – No arbitrary or unlawful interference with privacy, family, home or correspondence	Restrictions on visits and family contact for children in residential settings and in prison/YOIs, and the use of limited communication mechanisms potentially make the interference of correspondence unavoidable. This is a particular issue for children in prison/YOI due to the reliance on phone, voicemail and emails a prisoner, the two latter requiring messages to be given and passed on to/from children to staff.
UNCRC	Article 37a – No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment  <i>[Also EHRC – Article 3 – No one shall be subjected to torture or to inhuman or degrading treatment or punishment].</i>	Enforced use of isolation, increased time in cells/rooms, lack of social contact in response to COVID-19 has the potential to be cruel, inhuman or degrading treatment. Young people have highlighted the detrimental impact of the lack of physical contact, such as hugs and affection touch, on their wellbeing (see Who Cares? Scotland, 2020; Nolan, 2020b).  Where a child in secure care develops symptoms of COVID-19 those they live will need to also self-isolate for 14 days. This is a significant length of time for children, and is likely to impact negatively on wellbeing, particularly for children in secure care, who by its nature have experienced distress and trauma. Some, but not all, secure care centres have developed isolation processes when children first arrive at secure care, at a time likely to be extremely disorientating and distressing the impacts on wellbeing are likely to be even greater and more concerning (Who Cares? Scotland, 2020: 25). Scottish Government intent to shortly issue guidance on this matter.
UNCRC	Article 37b – No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with	Extensions to timescales around the deprivation of liberty in secure care without authorisation is a significant concern given the potential impact on children (Coronavirus Scotland Act 2020). In addition, timescale extensions for court/hearings and changes to court/hearing processes may impinge on ability to challenge the legality of the deprivation of liberty. For instance, one respondent from a local authority gave the following example

	<p>the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.</p> <p>Article 37d – Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action</p> <p><i>[Also EHRC – Article 5.1- No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law]</i></p>	<p><i>He was detained on remand in February and thereafter “fully committed” a week later. However last week his case was reviewed (virtually) by the Court and his solicitor (copied in) made the case for his release. The Sheriff deferred decision-making for a further seven days to allow the matter to be considered again today. In the intervening period I provided as comprehensive an overview of the multi-agency package of support that would be made available to the young person as possible [...] Furthermore the court would have had the option to impose a robust bail curfew. Alas, it made no difference. His remand was continued. Moreover, the next Court date is now not scheduled until August 2020 and no trial date has been set. I am deeply concerned about the impact upon this young man’s wellbeing and how this decision interacts with his human rights</i> (Respondent from a local authority quoted in Nolan, 2020b)</p> <p>The Edinburgh Bar Association (McPartlin, 2020) has also raised significant concerns about court administration and delays in court processes. The United Nation’s Committee on the Rights of the child has recommended that children in detention should be released wherever possible (UN Committee on the Rights of the Child, 2020: Recommendation 8), examples such as the one above indicates that this is not happening in all circumstances.</p> <p>Another respondent highlighted the delay in progressing a jointly reported case, with one young person still awaiting a case to be concluded 3 years later (Nolan, 2020b). It would appear that COVID-19 has exacerbated existing issues in terms of delays to court process. Practitioners have raised their concern that delays in court might mean some young people are waiting longer than 110 days for trial, with the uncertainty, mental health/wellbeing and human rights implications of this.</p>
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		<p>The current circumstances at times also restricted children’s access to legal and other supports. For example,</p> <p><i>When I was trying to get in touch with my lawyer it was hard to start with because normally I would just pop into his office. My worker helped me but if I didn’t have her I wouldn’t have got my bail conditions changed and be able to attend the birth of my child (Nolan, 2020b: 4).</i></p>
UNCRC	<p>Article 39 – State Parties ‘shall take all appropriate measures to promote physical and psychological recovery and social integration of a child victim’</p>	<p>Lack of consideration about, and prioritisation of, child victims seems highly likely given the prioritisation across social work justice services around high risk work (see Business Continuity and service prioritisation for justice social work services). There is, therefore, the potential for needs and rights to go ignored. Services rendering the access of support more challenging (e.g. Child and Adolescent Mental Health Services (CAMHS)). In addition, there is variation in what support is afforded to children while they are on the waiting list for such services. Understandably many services have moved to phone or virtual contact but as outlined above access to and utilising such technology can be problematic, even more so given the nature of such supports (For further information on some of these issues see, Scottish Government (2020). This is a considerable concern given the prevalence of mental health and wellbeing concerns for children in contact with the justice system or in secure care, highlighted in Nolan, 2020b. There are additional specific concerns here for children who are looked after at home, given the risks to these children and the failure to include the need for local authorities to report on the frequency of contact (unlike for children who are looked after and accommodated) (<b>see Appendix 6</b>).</p>
UNCRC	<p>Article 40 (3) – States Parties shall seek to promote the establishment of laws, procedures, authorities</p>	<p>From 23 March-5 May, the period affected by COVID-19 there has been a reduction in offence referrals to the Children’s Hearing System, from 661 (2019) to 548 (2020) (Scottish Government, 2020). Research with practitioners across Scotland working with children in conflict with the law also noted, in the main, a decline in offending behaviour and contact with</p>

	<p>and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, and, in particular:</p> <p>(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;</p> <p>(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected</p>	<p>the justice system, although changes in offence type and some increases in offending has been noted more recently, with particular concerns about serious organised crime and child criminal exploitation (Nolan, 2020b).</p> <p>Evidence from practitioners highlights that initially diversion schemes and EEI mechanisms were paused in some areas, and delays have been reported in undertaking diversion from prosecution assessments (Nolan, 2020b; and additional evidence based on approaches to, and discussions with, the team at the Centre for Youth and Criminal Justice). However, most areas across Scotland now appear to be doing EEI again, though there has been a reduction in referrals to EEI (Nolan, 2020b). The reduction in the use of diversion and early and effective intervention is concerning as these are processes designed to minimise contact with the more formal justice processes/system; increasing the potential longer term for children coming into conflict with the law during this period is then more likely to have negative consequences linked to ongoing contact with the justice system. There is also though the potential that, given delays in the Children’s Hearing System and Courts, that there will be a preference to avoid formal justice processes. Either way, however, it is likely that these trends will be system-driven rather than based on the needs and interests of children, families and communities.</p> <p>Overall practitioners reported the approach from Police Scotland had been appropriate and cited beneficial help and support to partners. However, there are examples of children being made subject to Fixed Penalty Notices and of carers being threatened with being made subject to such measures, these issues with have been raised with Police Scotland locally and nationally (Nolan, 2020b).</p> <p>Amongst the small number of children who had come into contact with the police during the lockdown period, around half reported that the response had been fair and appropriate. However, a similar number reported more</p>
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		<p>adversarial and negative contacts including being arrested, charged or that they knew people who had been fined. A few young people also reported feeling unfairly targeted by Police officers:</p> <p><i>Nasty they approach me most times I am out.</i></p> <p><i>I've made an effort to stay in and keep my head down and the police have still been at my door blaming me for things.</i></p> <p><i>I think the government should be putting a fund in so there is more things to offer help to people at this time.</i></p> <p><i>It would be helpful if Nicola Sturgeon could reassure care experienced young people that police are still corporate parents and they have a responsibility to make sure we are safe and can confide in the police. I worry that a lot of care placements will be breaking down and young people will feel helpless in these situations (Nolan, 2020b: 7 and 9).</i></p> <p>There are echoes here of McAra and McVie's (2005) work about 'the usual suspects', describing how policing differs for different children and young people, with children from deprived backgrounds who hang around in public spaces 2.7 times more likely to face adversarial police action than more affluent children, and children from less affluent backgrounds more likely to be charged by the Police for the same behaviours as the more affluent peers (McAra and McVie, 2005: 25). Children who are not complying in public areas or who are in contact with agencies will also be more visible due to lockdown.</p>
<p>UN Committee General Comment No. 24 (2019) on Children's</p>	<p>(Para: 22) States parties are encouraged to take note of recent scientific findings, and to increase</p>	<p>An age of criminal responsibility below the age recommended by the Committee on the Rights of the Child means that children in Scotland have their behaviours treated as criminal at a younger age than the majority of their European counterparts. In the context of COVID-19 this means that</p>

rights in the Justice System	their minimum age accordingly, to at least 14 years of age	children as young as 12 years of age are presumed to be able to exercise independent judgement and action, and can be treated as behaving with criminal intent.
Beijing Rules	The juvenile justice system shall emphasise the wellbeing of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence (5.1)	There are risks that children who do not comply with the restrictions placed on them or in the face of the current anxiety-provoking circumstances display distressed behaviour in the form of challenging behaviour, and of this being criminalised, resulting in charges such as breach of the peace rather than recognised and responded to as trauma and anxiety. Such behaviours can have significant implications in terms of accelerating entry to justice system and up-tariffing young people (For a discussion about the evidence and issues here see, Lightowler, 2020: 42-44).
Riyadh Guidelines	The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others (5)	The prioritisation of services to respond to where there is a high risk of harm to self or others highlights the de-prioritisation of prevention policies and practices (see <a href="#">Business Continuity and service prioritisation for justice social work services</a> ). Practitioners have highlighted the challenges of getting the right support to children prior to the point of crisis being reached, with typical methods of preventative work, face-to-face or group work, a challenge to deliver safely (Nolan, 2020b). There is significant variation across Scotland, meaning the support children get will strongly depend on the area they live in.
Havana Rules	The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the	There are a range of changes to rules and practices in secure care, Young Offenders Institutions (YOIs) and prison which change the conditions in which children are deprived of their liberty, affecting: exercise, activities available, time outside cell/rooms, visits/contact with family/friends. Restrictions on visits; home leave; ability to access phones and equipment

	<p>human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society (12).</p> <p>Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless</p>	<p>to communicate all stifle the ability to fulfil these rights (Prisons and Young Offenders Institutions (Scotland) Amendment Regulations 2020; Scottish Government, 2020g).</p> <p>The regulations do not differentiate between children, young people and adults, and there is a particular concern about the lack of specific consideration of children given their additional vulnerabilities, developmental and social needs, as well as their additional rights as children. The Children and Young People's Commissioner Scotland and Together (Scottish Alliance for Children's Rights) have highlighted significant concerns about solitary confinement, family contact, access to health care (particularly mental health support), access to showers, education, social work support and access to legal representatives (Children and Young People's Commissioner Scotland, 2020; Together, 2020).</p> <p>The experience is powerful expressed by one young person (over 18) in the open estate,</p> <p><i>no contact with friends and family; locked up at 5pm, no information, nothing is getting done, no support, we don't know what's going on, no gym, only £2 been added as credit for phone calls for friends and family, lots of tension, prison politics, no video calls, visits or mobile phones in cells- said this was going to happen weeks ago (Nolan, 2020b: 4)</i></p> <p>In relation to prison/YOI exercise and recreation are available but in smaller groups, impacting the time available. External agencies are currently prevented from entering prison/secure care to deliver programmes and activities, increasing the potential for isolation and marginalisation. There are also potential issues here in terms of progression from custody and preparation for reintegration and return to the community if supports cannot be provided (Nolan, 2020). The Scottish</p>
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	<p>used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles (17).</p> <p>The possession of personal effects is a basic element of the right to privacy and essential to the psychological wellbeing of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected (35).</p> <p>Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a</p>	<p>Human Rights Commission has highlighted similar concerns about adults in prison,</p> <p><i>We are aware, for example, of people being confined to their cell for 24 hours a day, for extended periods of time, with no access to shower facilities or time out of cell, including access to outdoor exercise. We are also aware that prisoners who are confined in their cells for COVID-19 related reasons are afforded limited telephone contact with their lawyer, and that some prisoners have been unable to maintain any form of telephone contact with their families’</i> (Scottish Human Rights Commission, 2020).</p> <p>The Coronavirus (Scotland) 2020 Act also specifically excludes children who have not been tried and sentenced (children on remand) from early release from custody, which given the circumstances questions the treatment of untried children as innocent as well as whether children are truly being considered as children. United Nations Children’s Fund (UNICEF) and the Alliance for Child Protection in Humanitarian Action (2020) have highlighted the importance of prioritising children for early release. However, in Scotland specific measures were not made for children or consideration given to vulnerability, instead the focus for early release was on the status and nature of the offence.</p> <p>There are specific new issues to pay attention in respect of the timeliness and approach taken when children who are deprived of their liberty experience bereavements in relation to COVID-19, for instance, when and how they are notified of deaths and opportunities to attend funerals or mark the bereavement. This is a particular concern given the known impacts of bereavement and loss, and the difficulties processing emotions particularly grief when children are in a YOI (Vaswani, 2015).</p>
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	<p>quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time (37).</p> <p>A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family member and should be provided with the opportunity to attend the funeral of the deceased or go to the bedside of a critically ill relative (58).</p> <p>Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential</p>	<p>Concerns have also been raised about the variability in the level of interventions children have been receiving in secure care since lockdown, with significant differences between the interventions provided across the secure care centres. There is a significant issue in terms of children being deprived of their liberty of the purposes of intervention but not taken place, and thus issues for progression plans and transition. There are also broader concerns being expressed about the availability of support to assist with children's transition to the community, with additional concerns at this time about what they are transitioning to (Scottish Parliament, 2020). In evidence gathered by CYCJ for this CRIA, practitioners also highlighted the issue of notice and preparation for court release (Nolan, 2020).</p> <p>Finally, there are challenges posed for inspectorates to hold the system to account and keep an eye on settings which are sometimes hidden from public view. For instance, HM Inspectorate of Prisons Scotland (HMIPS) has temporarily suspended all prison, Court Custody Unit, and prisoner transport inspections, along with all monitoring services carried out by Independent Prison Monitor volunteers, with this to be reviewed in July 2020 (HM Inspectorate of Prisons for Scotland, 2020). A Remote Monitoring Framework and Liaison Visits Framework has been introduced (HM Inspectorate of Prisons for Scotland, 2020). The Care Inspectorate has also committed to minimising inspection demands on partners at this time (Care Inspectorate, 2020).</p>
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to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence (59).

Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that

	<p>respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel (60).</p> <p>Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities (72).</p>	
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	<p>All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end (79).</p>	
<p>UN Standard Minimum Rules for the Treatment of Prisoners</p>	<p>Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits (23.1).</p> <p>Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end, space, installations and equipment should be provided (23.2).</p> <p>Prisoners should enjoy the same standards of health care that are</p>	<p>The Scottish Prison Service is continuing employment and recreation activities; however, the duration, frequency and variety have been reduced (Children and Young People’s Commissioner Scotland, 2020). External partners are not able to physically access institutions to provide any activities or supports at this time and the remote support that can be provided is inherently limited.</p> <p>As across prison/YOIs all visits have been suspended and phone contact, email a prisoner and voicemail appear to be the only options. There are a range of barriers to young people accessing support, communicating with services and with family/friends, including literacy issues and concerns about privacy given the need for others to pass on voicemails and emails. The demand on email a prisoner also is meaning there are long intervals to wait to communicate (Evidence from Youth Justice Voices project). These barriers and delays are a major concern given the importance of communication to children’s mental health and wellbeing within these institutions. In the Mental Health and Wellbeing of Young People in Custody: Evidence Review, family contact and relationships were identified most consistently by young people as helping them cope with the distress of institutionalisation, preventing suicidal and self-harming behaviours, and promoting mental wellbeing (Armstrong and McGhee, 2019).</p>

	<p>available in the community (24.1).</p> <p>Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals: (a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and (b) By receiving visits (58).</p> <p>Recreational and cultural activities shall be provided in all prisons for the benefit of the mental and physical health of prisoners (105).</p>	
<p>European Convention on Human Rights (ECHR)</p>	<p>Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this</p>	<p>Children in contact with the range of care and justice services, supports and settings must have their right to life protected at all times, a key consideration in relation to the need for children to be in prison/YOI and residential care settings where physical distancing protections are particularly challenging. There may potential be legal challenges from children in conflict with the law, and those whose work involves supporting them, around the availability of personal protective equipment (PPE) and how organisations/workplaces have implemented physical distancing measures to ensure everyone's right to life is realised.</p>

	penalty is provided by law (Article 2.1).	Tragically in Scotland due to COVID-19 there has been the death of a prison officer working in Her Majesty's Young Offender Institution (HMYOI) Polmont (BBC News, 2020) as well as the deaths of six adult prisoners (Hutcheon, 2020). As at 28 May 2020 there were 4 individuals who were self-isolating across 3 establishments but no confirmed cases of COVID-19 across the prison estate – this data is not provided specifically for children (Scottish Prison Service, 2020a).
ECHR	Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him (Article 5.2).	<p>An issue at any time for children, particularly as a high proportion of children who come into contact with the justice system have additional support needs, including speech, language and communication needs. However, this is a particular challenge in current circumstances when the law and guidance frequently change, can be open to interpretation and/or challenging to understand.</p> <p>While it is positive that additional guidance has been published, for example in respect of supporting adults with learning disabilities and autism, and resources have been developed, for instance, by <a href="#">Autism Network Scotland</a>. Communicating this information to children and young people and promoting consistent understanding and application by those enforcing this information is particularly challenging.</p>
ECHR	Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the	Delays to timescales around courts and children's hearings impact on the reasonable time dimension of children's rights (see discussion above in relation to Article 37). The delays caused by the COVID-19 pandemic will have a disproportionate impact on a young person, with a lack of information and uncertainty highlighted by children and young people (Nolan, 2020b), further, six months for a 17-year-old is very different to six months for a 25-year-old. The ability to achieve a fair trial is also questionable where children face barriers to their effective participation due to use of online mechanisms.

	<p>interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice' (Article 6.1).</p>	<p>Evidence highlights the importance of hearings being held as close the time as the offence as possible: delays have implications in terms of children's mental health and in relation to children's understanding of the consequences of behaviours.</p> <p>Children's ability to move on and see future is a key component of desistance. (Beyond Youth Custody, 2017). There are also implications here in relation to procedural fairness and the extent to which children have the opportunity to be heard, feel respected, understand decision-making processes, feel that decisions, requirements and expectations on them have been made in a trustworthy and unbiased manner (Bowen and Whitehead, 2016). This is particularly important as research has shown when people feel they have been treated fairly, they are more likely to accept that courts/the CHS have a moral right to make decisions and subsequently to comply with such decisions (Tyler and Fagan, 2008; Bottoms and Tankebe, 2012). Research by Murphy (2015) also found that procedural justice has greater importance for children than for adults.</p>
ECHR	<p>Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law (Article 6.2).</p>	<p>Issues in relation to presumed innocence pre-trial and pre-sentence given the caveat about the early release of prisoners not being extended to children on remand (see discussion in relation to the Havana Rules above).</p>
ECHR	<p>Everyone charged with a criminal offence has the following minimum rights:</p> <p>(a) to be informed promptly, in a language which he understands and in detail, of the</p>	<p>Potential issues about children being informed in language they understand and the time/processes to prepare a defence. There are also issues in relation to access to a lawyer both in the community (see discussion in relation to UNCRC, Article 37b) and within custody (see discussion in relation to UN Standard Minimum Rules for the Treatment of Prisoners), and associated issues about the confidentiality of this correspondence given the mechanisms needed to be used for communication, and the mediation of this by others.</p>

	<p>nature and cause of the accusation against him;</p> <p>(b) to have adequate time and facilities for the preparation of his defence;</p> <p>(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;</p> <p>(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;</p> <p>(e) to have the free assistance of an interpreter if he cannot understand or speak the</p>	
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	language used in court (Article 6.3).	
ECHR	No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed (Article 7).	Given delays in timescales it is likely that offences committed by children come to court when they are then adults, potentially leading to higher penalties and impacts in relation to disclosure of offences (see discussion in relation to UNCRC, Article 1).
ECHR	Everyone has the right to respect for his private and family life, his home and his correspondence (Article 8(1)).	The impacts of physical distancing and public health measures potentially affect children's ability to have private and family life, and have private communication (see discussion in relation to UN Standard Minimum Rules for the Treatment of Prisoners).

## 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?

Police enforcement information – Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020	Police Scotland data- <a href="https://www.scotland.police.uk/about-us/covid-19-policescotlandresponse/enforcement-and-response-data">https://www.scotland.police.uk/about-us/covid-19-policescotlandresponse/enforcement-and-response-data</a>	Show numbers of arrests, fixed penalty notices and dispersals	Not broken down by age – but believe this data is being recorded and monitored.
Prison Numbers – Daily population	Scottish Prison Service- <a href="https://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx">https://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx</a>	Shows the number of children in prison/YOI	
SPS Early Release Data	Scottish Prison Service – <a href="https://www.sps.gov.uk/Corporate/Information/covid19/covid-19-information-hub.aspx">https://www.sps.gov.uk/Corporate/Information/covid19/covid-19-information-hub.aspx</a>	Shows the number of people released early in different tranches, broken down by establishment, local authority area, age range and gender.	

<b>Question 3b: What key missing information / evidence would have been beneficial to your analysis?</b>
Numbers of children charged by the police for different offence types across Scotland
Number of children referred to the Scottish Children’s Reporter Administration (SCRA) on offence or ‘conduct’ grounds, diverted from prosecution and prosecuted by the courts
Number of children going through EEI measures at this time
Number of children supported by legal representatives or independent advocacy in EEI and children’s hearings

<b>Question 4a: What qualitative evidence have you used to inform your assessment? What does it tell you?</b>		
<b>Evidence collected</b>	<b>Evidence source</b>	<b>Explanation of the importance</b>

Views of practitioners and policy makers, views of young adults who were in conflict with the law and views of children	Nolan (2020b) The impact of COVID-19 on those involved in the youth justice system (Centre for Youth and Criminal Justice)	Research documenting the views and experiences of children in contact with the justice system, the perceptions of practitioners who support children in conflict with the law, and of young people who were involved in the justice system as children.  There are limitations to the research due to timescales and access issues, including a reliance on existing networks and a lack of direct contact with children (children's views were collated by practitioners).
A summary of advocacy support requested by care experienced young people and the issues raised	Who Cares? Scotland (2020) The impact of COVID-19 on Scotland's care experienced community (second update)	Outlines some of the key issues faced by the care experienced community in contact with Who Cares? Scotland
Surveyed 150 families via phone call, to understand their current access to digital devices and services, barriers and any concerns.	Includem (2020) Staying Connected: Assessing digital inclusion during the COVID-19 pandemic	Provides a helpful sense of the scale and nature of issues about access to digital devices.

<b>Question 4b: What key missing information / evidence would have been beneficial to your analysis?</b>
Direct research about the views and experiences of children in conflict with the law in the community, in contact with the courts and the hearing system and in settings where they are deprived of their liberty.
Research about the views and experiences of families and carers supporting children who pose a risk to others or are in conflict with the law
More comprehensive research about the perceptions of practitioners supporting children in conflict with the law

**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. There has been a lack of consultation specifically with children in contact with the justice system and children deprived of their liberty.

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	
		✓	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-Making – Scotland’s Route Map through and	General public	✓	No	A consultation was launched online by Scottish Government (2020w) on the 5th May, closing on the 11th May.	Details of responses to this consultation have not yet been published; however the route map was launched on Thursday 21st May 2020.	At time of writing, significance is unknown.

out of the crisis						
Coronavirus (Scotland) Act 2020	<p>The Child Rights and Wellbeing Impact Assessment (CRWIA) (Scottish Government, 2020q) outlines that unprecedented circumstances presented by COVID-19 have made it not possible to consult with children and young people on the proposed legislation. A range of relevant professionals and organisations were</p>				<p>It is not evident from available documentation what findings or evidence were obtained from consultation with professionals and organisations.</p> <p>The CRWIA (Scottish Government, 2020q) states that the Scottish Information Commissioner was consulted. No children and young people-related concern was raised.</p>	At time of writing, significance is unknown.

	consulted directly. <sup>9</sup>					
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 (Scottish Government, 2020r) <sup>10</sup>				It is not evident from available documentation (Scottish Government, 2020r) what findings and evidence were obtained from consultations with professionals and organisations.	At time of writing, significance is unknown.

<sup>9</sup> 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.

<sup>10</sup> 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.

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

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. There has been a lack of consultation specifically with children in contact with the justice system and children deprived of their liberty.

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)?
Coronavirus (Scotland) (No. 2) Bill	Young carers	“Coping is difficult, but I feel proud” Perspectives on mental health and wellbeing of young carers”  (Children and Young People’s Commissioner, 2017)	February 2017	The CRWIA (Scottish Government, 2020r) makes reference to the survey results reported in Children and Young People’s Commissioner (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	Scottish Government’s 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.



### STAGE 3: ASSESSING THE IMPACT

<b>Question 7: What impact will (or does) the measure(s) have on children and young people's rights?</b>			
<b>Measure</b>	<b>Type of impact</b>	<b>Justification for Argument</b>	<b>Likely or actual short/medium/long-term outcomes</b>
<p>Coronavirus (Scotland) Act 2020</p> <p>Scottish courts and tribunals – Coronavirus (COVID-19)</p>	<b>Negative</b>	<p>The inability of children to participate in justice processes is a major barrier to achieving fair trial and the ability to do 'justice'. The ability of children to exercise their rights to participation in justice processes given the reliance on online mechanisms, limited supports in place to assist with participation and the de-prioritisation of activities not related to immediate management of risk will almost certainly make the situation significantly worse. Further, the lack of specific action to ensure that all children are able to access the support of an independent advocate and automatically be entitled to legal aid to ensure legal representation will exacerbate these issues.</p>	Medium term
<p>Coronavirus (Scotland) (No. 2) Act</p> <p>Joint statement from Lord Advocate and Chief Constable</p>	<b>Negative</b>	<p>The extension to court timescales makes it more likely that those charged with offending when a child will go to court as an adult, meaning they may experience harsher penalties, short and medium term impacts in respect of mental health and wellbeing, and longer term impacts in relation disclosure of offences and an ability to move on.</p>	Short, medium and long term impacts for those affected

		<p>The reduction in custody numbers overall (mainly relates to adults) seems to have been much more driven by suspension of court business than anything else, and there appears to be an increased use of bail in cases which have gone to court (McCallum, 2020). There is a longer-term issue, therefore, about what happens when court resumes given estimates of 1,600 solemn trials outstanding and a backlog of 1,800 trial cases by August 2020 (McQueen, 2020; Scottish Courts and Tribunals, 2020). These issues are in addition to pre-existing concerns about the inappropriateness of adult courts for children and exacerbate pre-existing issues about the length of time involved (Lightowler, 2020: 55-59).</p>	
<p>Coronavirus Act 2020</p> <p>Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020</p>	<p><b>Negative</b></p>	<p>How police powers are enforced will be a critical issue to monitor. Further detail and analysis should shortly be available via the Scottish Police Authority's recently established Independent Advisory Group on Police Use of Temporary Powers Related to COVID-19.</p> <p>There are risks that, if not applied with care, that children will be criminalised for behaviours displayed due to anxiety, distress, trauma, confusion and uncertainty. Children who find rules and boundaries challenging may be at particular risk for experiencing a criminal response. Additional care is needed in responding to children with additional support needs, including autism spectrum disorders and</p>	<p>Short term scenario having impact, but long-term impact for those criminalised</p>

		<p>children with speech, language and communication needs.</p> <p>Research has also highlighted specific concerns about the potential criminalisation of children in residential childcare: children being charged, when previously behaviour would have been managed differently; parental contact of the police when situations in the home escalate; and the visibility of young people meaning they were more likely to come to the attention of services. In addition, it was reported that reluctance to comply with restrictions has at times impacted on placement decisions and resulted in questioning of the suitability of placement types and suggestions that more restrictive placements were needed. There were also reports of young people being fearful of leaving their home even for legitimate reasons as this may bring them into contact with the police (Nolan, 2020b: 14).</p> <p>Although Fixed Penalty Notices can no longer be issued there is a bigger issue about responses to behaviours that may result in increased criminalisation in the form of different offences around non-compliance, breach of the peace, and potentially if things escalate associated with assault of a police officer. This is inherently difficult to monitor though given firstly the lack of baseline, secondly data collection, and thirdly that sweeping statements on fall in</p>	
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		<p>detected offences/charges has potential to obscure these nuances. Together (Scottish Alliance for Children’s Rights) have also highlighted concerns that Police Scotland can keep Fixed Penalty Notice information for two years, meaning that children who received a Fixed Penalty Notice before the amendment may be subjected to detrimental labelling with the potential for negative on-going police interaction (Together, 2020).</p> <p>There are also potential longer-term consequences for relations between children and the police. As discussed above (see question 2, UNCRC Article 40), the negative interaction with the police for some children who feel inappropriately targeted and blamed can have implications beyond the immediate situation by undermining trust and confidence, as one young person who had been in contact with the care and justice system as a child highlights,</p> <p><i>It would be helpful if Nicola Sturgeon could reassure care experienced young people that police are still corporate parents and they have a responsibility to make sure we are safe and can confide in the police. I worry that a lot of care placements will be breaking down and young people will feel helpless in these situation (Nolan, 2020b: 9).</i></p>	
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<p>Prisons and Young Offenders Institutions (Scotland) Amendment Regulations 2020</p>	<p><b>Negative</b></p>	<p>The inevitable decline in the conditions experienced by children in young offenders institutions or prisons is a serious concern. Already some of our most vulnerable children in extremely distressing conditions, any loss of social contact and positive engagement with others is a serious issue, at its most serious with implications in respect of the right to life (ECHR, Article 2.1).</p> <p>It is important to recognise that even with the best available training and programmes, prison cannot create safety and trusting relationships due to the purpose of prison, the inbuilt power balances, the restricted regime, a climate of fear, the building design and a lack of in-depth trauma related support, skills and qualifications for staff (Vaswani and Paul, 2019). This means that a 'truly trauma informed approach is not possible in an environment that is shaped by a criminal justice system that has punishment at its core' (Vaswani and Paul, 2019: 18), raising questions about the appropriateness of a prison environment for children and young people, with the inevitable additional vulnerabilities involved. The current response to COVID-19 compounds the potential for trauma, re-traumatisation and deterioration of mental health for children and young people in YOIs/prisons (<b>see Appendix 2</b>). We cannot express strongly enough how concerning this is given the pre-existing levels of self-harm, suicide and range of concerns about</p>	<p>Short, Medium and long term</p>
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		<p>the mental health of children and young people in HMP YOI Polmont (HM Inspectorate of Prisons for Scotland, 2019). Further, family contact and relationships, both of which are significantly impacted by the response to COVID-19, have been identified as the most important things to help children and young people cope with the distress of institutionalisation, prevent suicidal and self-harming behaviours, and promote mental wellbeing (Armstrong and McGhee, 2019). For children who have their own children, these children are likely to be young rendering face-to-face contact even more important, even if this needs to be virtual.</p> <p>We have been made aware of the fact that children and young people within custody do not always understand, receive appropriate information or are provided with support to make sense of information about COVID-19 and the necessity of physical distancing (Evidence from Youth Just Us). In addition to the increased risks then within YOIs and prisons, there are also concerns about children and young people understanding the restrictions in place when released. Without additional support to help children transition to the community at this time there is a significant risk of major issues when returning to a changed society, again with the potential for the lack of understanding and support to change being interpreted through a</p>	
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		<p>criminal lens, with major implications for these children given the potential to breach bail conditions.</p> <p>More broadly, the period immediately after release has been identified as a window of opportunity during which children and young people may be committed to giving up offending but if the shock of leaving custody is not addressed and supports are not provided, there is an increased risk of breach, reoffending and other negative outcomes (Bateman and Hazel, 2013). With restrictions and limitations of service provision, these opportunities may not be available to children, having implications in terms of development and reintegration.</p>	
<p>Release of Prisoners (Coronavirus) (Scotland) Regulations 2020</p>	<p><b>Neutral</b></p>	<p>It is positive that these regulations enable the early release of people from custody given the inappropriateness of prison/YOI as a setting for children, discussed above. However, the lack of a distinct recognition and consideration of the status of children, and specifically about children on remand is not compliant with UNCRC. Decisions about early release are to be based on factors such as the nature of the offence and the length of sentence, with no consideration of risks, needs and wellbeing. Further, there is no consideration that these are children or of what this means in relation to rights, in particular the need to consider their best interests (UNCRC, Article 3).</p>	<p>Short term</p>

		<p>The Scottish Prison Service data shows that in tranches 1, 2 and 3, only one child has been released (Scottish Prison Service, 2020a). Thirty-one young people aged 18-23 have been released. As of the 12 June there were 19 children in prison/YOI and note this is just slightly lower than the 21 children in prison on the 27 March, four days after lockdown (Scottish Prison Service, 2020b). The early release arrangements are due to finish imminently and there does not appear to currently be intention to extend. To be effective, early release arrangements need to ensure appropriate, and given the context, additional, supports are made available for children leaving custody. A significant concern is that there was no consideration of human rights in developing the rules for early release and specifically no Child Right's Impact Assessment because 16 and 17-year-olds are commonly defined as adults or young people, not as children (in law, policy and practice). There are also additional social, cultural and attitudinal issues when it comes to responding to children in prison/YOIs as children, and even remembering that they are children (for further discussion see Lightowler, 2020).</p> <p>Additionally, a number of children have been remanded or sentenced to custody during the pandemic, which should only have happened in exceptional cases (Scottish Prison Service,</p>	
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		2020b). Therefore, it does not appear that Courts are considering the child's best interests or all the human rights obligations in state of emergency to avoid mass incarceration and prevent risk of contagion.	
Coronavirus (COVID-19): Framework for Decision-Making – Scotland's Route Map through and out of the crisis	<b>Negative</b>	<p>Phase 1 post lockdown includes the resumption of face-to-face Children's Hearings with physical distancing, and greater direct contact for social work and support services for children and families deemed to be most at risk. Phase 1 also includes re-opening of court and tribunal buildings, with limited public and business access. Further resumption of justice system processes and services are proposed in Phase 3.</p> <p>The likely impacts are delays in responding to children who are in contact with the justice system. Resource pressures are further likely to compound issues of limited support available for children to help them cope with underlying issues, support them to change behaviours and to help them navigate justice processes. It is likely that this situation will be ongoing as services are overwhelmed and prioritise the management of high risk, meaning children who have committed low level offences may not receive the immediate support to help them avoid longer term patterns of offending.</p>	Medium term
Coronavirus (COVID-19): residential childcare	<b>Negative</b>	Where a child in secure care develops symptoms of COVID-19 those they live will need to also self-isolate for 14 days. This is a	Short term measure but may have medium/long-term

		<p>significant length of time for children, and is likely to impact negatively on wellbeing, particularly for children in secure care, who by its nature have experienced distress and trauma. Some, but not all, secure care centres have developed isolation processes when children first arrive at secure care (Who Cares? Scotland, 2020: 25), at a time likely to be extremely disorientating and distressing the impacts on wellbeing are likely to be even greater and more concerning. Scottish Government intends to shortly issue guidance on this matter.</p> <p>More broadly, the residential childcare guidance fails to acknowledge or address the concerns about secure care involving the deprivation of children's liberty, and the need to take all possible steps to avoid secure care placements and assess all children in secure care for release to alternative placements or home wherever possible, as set out by the UN Committee on the Rights of the Child (2020), recommendations 7, 8 and 9.</p>	<p>consequences for those affected.</p>
<p>SWS and COPFS guidance on diversion from prosecution (COVID-19)</p> <p>Business Continuity and service</p>	<p><b>Negative</b></p>	<p>We are concerned about the de-prioritisation of preventative, early intervention and diversion policy and practice. As resources have tightened there has been an understandable but detrimental focus on managing high risk to self and others. There is therefore a real danger that for a small group of usually the most traumatised and vulnerable children they are being drawn</p>	<p>Long-term (if limited mitigation)</p>

<p>prioritisation for justice social work services</p>		<p>into or more deeply into the justice system, when previously such contact would have been avoided or minimised.</p> <p>There is a longer-term concern that with increased need associated with COVID-19 (for example as a result of poverty, mental health impacts, increase in domestic abuse, family breakdown) and costs for example staffing of the workforce during this time, use of agency staff etc., that 'Cinderella services', such as youth justice (Stocks-Rankin, 2020: 89), will face funding challenges in future.</p>	
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<b>Question 8: Will there be (or are there) different impacts on different groups of children and young people?</b>			
<b>Measure</b>	<b>Group of children affected</b>	<b>Initial analysis of the positive impact on rights</b>	<b>Initial analysis of the negative impact on rights</b>
<p>Coronavirus (Scotland) Act 2020</p> <p>Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020</p> <p>Coronavirus Act 2020</p>	<p>Children in distress, those who struggle to manage their emotions, adhere to rules/boundaries, those who have/are experiencing anxiety, childhood trauma, mental health difficulties.</p> <p>Care Experienced Children.</p>		<p>Concerned about the potential for behaviour due to distress, anxiety, trauma, mental health difficulties or difficulties managing emotions and behaviour being interpreted as criminal, responded to as such and having long term consequences for children affected due to contact with the justice system and the possession of a criminal record (Lightowler, 2020: 42). From our research it would appear this is a challenge across settings-children in the community, family home, looked</p>

	<p>Children who are been previously in contact with social services, the Children’s Hearing System and the police.</p> <p>Children from BAME communities</p>		<p>after and accommodated children, with some emerging offence types across,</p> <p><i>Types of offences we are seeing during lockdown are online or fights with family, within the family home (Nolan, 2020b).</i></p> <p>It is a particular concern given current concerns about the availability of EEI and diversion at all times across Scotland (Nolan, 2020b).</p> <p>There is the further potential that such criminal labelling and responses will impact upon certain children more than others, with care experienced children, those who are known to services and professionals, children from BAME communities particularly likely to be negatively labelled and behaviours misunderstood due to prejudice and preconceptions.</p>
<p>Prisons and Young Offenders Institutions (Scotland) Amendment Regulations 2020</p>	<p>Children in YOI/prison</p>		<p>Children in a YOI or prison are already in an extremely vulnerable position. The changes in regulations and inevitable changes in practice to facilitate physical distancing and</p>

			support isolation where necessary mean that children are spending longer in their cells, without activities and without much needed contact with family and friends. The consequences for the mental health and wellbeing of children in YOI/prison are of significant concern.
<p>Coronavirus (Scotland) Act 2020</p> <p>Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020</p> <p>Scottish courts and tribunals – Coronavirus (COVID-19)</p>	<p>Children with speech, language and communication needs.</p>		<p>Concerned about the ability of children with speech, language and communication needs to be able to explain behaviours when come into contact with the police, courts and children’s hearing system, potentially leading to inappropriate criminalisation. Also risks that children will not understand the restrictions in place associated with COVID-19, potentially exacerbated when children return to the community from periods of being deprived of their liberty, potentially missing information/news about what is currently allowed.</p>
<p>Coronavirus (COVID-19): residential childcare</p>	<p>Children in secure care</p>		<p>The mental wellbeing of children in secure care is potentially significantly impacted by the increased use of isolation and physical distancing required in response to COVID-19. Physical comfort can be of huge significance</p>

			<p>to children and its lack can have significant negative consequences, particularly for children in secure care.</p> <p>There are concerns here that different standards are being applied to children who are in secure care where they have been refused face to face contact, even if there is a legal order in place. This is in contrast to children in other situations where the First Minister and the Courts have directed that children can go between two households and maintain family contact- even where there is no court order. It does not appear that in all cases legal orders from the Children's Hearing System and Courts are being complied with, with amendments as required for safety measures and in consultation with the child and family about their best interests. Concerns have also been shared that not all secure care centres have fully utilised alternative and creative safe ways to restore direct contact (for example, in gardens) and the importance of socially distanced contact in children's best interests.</p>
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			<p>Further, the residential childcare guidance fails to acknowledge or address the concerns about secure care involving the deprivation of children's liberty, and the need to take all possible steps to avoid secure care placements and assess all children in secure care for release to alternative placements or home wherever possible, as set out by the UN Committee on the Rights of the Child (2020), recommendations 7, 8 and 9. Children should be being regularly assessed to see if they could move to a more appropriate placement or return to parents, and this does not appear to be happening.</p>
<p>Coronavirus (Scotland) Act 2020</p> <p>Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020</p>	<p>Children in residential childcare</p>		<p>Research has highlighted that children in residential childcare in Scotland continue to be criminalised for vandalism or very low level behaviours which include trashing rooms or throwing things at people, that in other family settings would not be met with a formal justice response (Nolan and Moodie, 2016; Who Cares? Scotland, 2018). Therefore, in the current context there are concerns that children in residential care settings could be</p>

			criminalised for non-compliance of regulations associated COVID-19 that for other children are dealt with by the family/community rather than resulting in a police/criminal response.
Coronavirus (Scotland) Act 2020	Children leaving secure care, prison or a YOI		The likely limited resources and associated need to prioritise services/supports; a long-standing lack of support for children returning to the community from secure care, prison/YOIs (Centre for Youth and Criminal Justice, 2019); and the additional transitional support needed to return to a society impacted by COVID-19, means it is very likely that these children will not get the support they need to transition well. This could lead these children to encounter increased risky circumstances, such as precarious/inappropriate accommodation and limited employment opportunities.
SWS and COPFS guidance on diversion from prosecution (COVID-19)  Business Continuity and service	Children being drawn into the justice system or displaying early signs of a pattern of offending behaviour		The limited use of diversion and EEI means it is more likely than during other times that children will be drawn deeper into the criminal justice system than would have otherwise been the case. We know that contact with the formal justice system makes future contact more



prioritisation for justice social work services			likely, hence, the limited availability of EEI and diversion is extremely concerning for the long-term outcomes of children coming into contact with the justice system.
Coronavirus (Scotland) Act 2020  Business Continuity and service prioritisation for justice social work services	Children who pose a significant risk of harm to others		Given the scarcity of resources, despite the stated prioritisation of children who pose a significant risk of harm to themselves and others, it is likely that many children, their families and carers will not be receiving the pro-active support they need to help them and others stay safe. This puts the child who poses the risk at greater harm, and given that the victims of harm caused by children are usually other children, there is also an increased risk to the children residing with these children.

<b>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?</b>		
<b>Measure</b>	<b>Negative impact (AS ABOVE)</b>	<b>What options are there to modify the measure(s) or mitigate the impact?</b>
Coronavirus (Scotland) Act 2020  Coronavirus (Scotland) Act 2020	Concerned about the potential for behaviour due to distress, anxiety, trauma, mental health difficulties or difficulties managing emotions and behaviour being interpreted as criminal, responded to as such and having long term consequences for children affected due to contact with the	Information and training for children about their rights if they are stopped, moved on or presented with a fine. Support for children who report violations of their rights with respect to police contact. Training and support for police officers to fulfil and understand their corporate parent duties when responding or stopping care-experienced young

<p>Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020</p> <p>Coronavirus (COVID-19): residential childcare</p> <p>Coronavirus Act 2020</p>	<p>justice system and the possession of a criminal record (Lightowler, 2020: 42). From our research it would appear this is a challenge across settings-children in the community, family home, looked after and accommodated children, with some emerging offence types across,</p> <p>Types of offences we are seeing during lockdown are online or fights with family, within the family home. (Nolan, 2020b).</p> <p><i>It is a particular concern given current concerns about the availability of EEI and diversion at all times across Scotland (Nolan, 2020b).</i></p> <p>There is the further potential that such criminal labelling and responses will impact upon certain children more than others, with care experienced children, those who are known to services and professionals, children from BAME communities particularly likely to be negatively labelled and behaviours misunderstood due to prejudice and preconceptions.</p> <p>---</p> <p>Research has highlighted that children in residential childcare in Scotland continue to be criminalised for vandalism or very low</p>	<p>people in the community, along with broader awareness raising to help police officers see the child, understand children's rights, issues of diversity and have a good understanding of trauma and distress behaviours and how to best respond to de-escalate.</p> <p>Training and support for child care professionals to aid understanding about distress behaviours and how to develop strategies for managing such behaviours (for all those who come into contact with children – education, residential child care, secure care, YOIs, youth work, nursery staff etc.) alongside what it means to take a human rights-based approach.</p> <p>Support for all children in contact with the Children's Hearing System or in conflict with the law (including EEI) to have access to independent advocacy and legal aid to ensure access to a lawyer as needed to help ensure they understand, can participate in decision making and ensure their rights and realised.</p> <p>Decisions about placements, supports and services to be made on the basis of children's needs as opposed to behaviour and to involve full and meaningful participation in all decision-making.</p> <p>Strengthen resources and the profile of Youth Justice Strategy, Getting It Right for Every Child (GIRFEC), Whole Systems Approach (WSA), EEI and diversion, to avoid formal justice contact where possible and ensure consistency of support across Scotland.</p> <p>Increasing the age of criminal responsibility to at least 14 ensure that we avoid seeing and responding to children's distress behaviours as criminal.</p>
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	<p>level behaviours which include trashing rooms or throwing things at people, that in other family settings would not be met with a formal justice response (Moodie and Nolan, 2016; Who Cares? Scotland, 2018). Therefore, in the current context there are concerns that children in residential care settings could be criminalised for non-compliance of regulations associated COVID-19 that for other children are dealt with by the family/community rather than resulting in a police/criminal response.</p>	<p>Improved mental health supports for children, with supports put in place automatically for those who have experienced domestic abuse/trauma. Awareness raising and clear strategic positioning around serious organised crime and child criminal exploitation, ensuring that where relevant the child's behaviour is understood in the context of the exploitative adults around them.</p>
<p>Prisons and Young Offenders Institutions (Scotland) Amendment Regulations 2020  Coronavirus (COVID-19): residential childcare</p>	<p>Children in a YOI or prison are already in an extremely vulnerable position. The changes in regulations and inevitable changes in practice to facilitate physical distancing and support isolation where necessary mean that children are spending longer in their cells, without activities and without much needed contact with family and friends. The consequences for the mental health and wellbeing of children in YOI/prison are of significant concern.</p> <p>---</p> <p>The mental wellbeing of children in secure care is potentially significantly impacted by the increased use of isolation and physical distancing required in response to COVID-19. Physical comfort can be of huge significance to children and its lack can</p>	<p>All children currently in YOI/prison and in secure care to be urgently assessed and wherever possible supported to transition to alternative placements for their care and protection. Legislative amendment required to ensure that no child under 18 can be detained in a YOI or prison. Make changes to legislation to allow for the early release for children on remand. The extension of time limits in secure care regulations should be recalled immediately, as this represents a disproportionate breach of children's rights to liberty. Provide greater resources and support to enable the use of electronic tagging where this is in the best interest of children and the community Work with and support secure care centres to be in a position to support children to transition from YOI/prison only if there is current risk and a continued need for children to be deprived of their liberty.</p>

	<p>have significant negative consequences, particularly for children in secure care.</p> <p>There are concerns here that different standards are being applied to children who are in secure care where they have been refused face to face contact, even if there is a legal order in place. This is in contrast to children in other situations where the First Minister and the Courts have directed that children can go between two households and maintain family contact- even where there is no court order. It does not appear that in all cases legal orders from the Children’s Hearing System and Courts are being complied with, with amendments as required for safety measures and in consultation with the child and family about their best interests. Concerns have also been shared that not all secure care centres have fully utilised alternative and creative safe ways to restore direct contact (for example, in gardens) and the importance of socially distanced contact in children’s best interests.</p> <p>Further, the residential childcare guidance fails to acknowledge or address the concerns about secure care involving the deprivation of children’s liberty, and the need to take all possible steps to avoid</p>	<p>Across prison/YOIs and all secure care centres there should be immediate re-establishment of face to face visits for children with family, social work and lawyers with safety measures in place for physical distancing and maintaining hygiene.</p> <p>Needs to be prioritisation of video conferencing for agencies/services, access to lawyers, and communication with family and friends, and the provision of a confidential room or space to facilitate this.</p> <p>Resources need to pro-actively be offered to all families to ensure they have the Internet connections and devices necessary to enable them to participate in virtual visits and meetings (ensuring contact continues even if the children or their families need to self-isolate or need shielding).</p> <p>Creative use of resources to ensure young people have activities to do and access to devices to improve physical and emotional wellbeing, are able to access support services confidentially and support services are able to meet demand.</p> <p>Improved communication and resources to ensure that children and young people are aware of COVID-19, changes to the regime, changes in society in language that they understand (for instance, in YOI/prison over radio TV channel in cells).</p> <p>Prioritisation of mobile phones for children to be able to access when in cells in YOI/prison and rooms in secure care.</p> <p>Additional credit for phone calls provided immediately.</p>
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	<p>secure care placements and assess all children in secure care for release to alternative placements or home wherever possible, as set out by the UN Committee on the Rights of the Child (2020), recommendations 7, 8 and 9. Children should be being regularly assessed to see if they could move to a more appropriate placement or return to parents, and this does not appear to be happening.</p>	<p>Increased privileges in recognition of the situation, such as in YOI/prison more money for food and new items on canteen sheets.</p>
<p>Coronavirus (Scotland) Act 2020</p> <p>Scottish courts and tribunals – Coronavirus (COVID-19)</p>	<p>Concerned about the ability of children with speech, language and communication needs to be able to explain behaviours when come into contact with the police, courts and children’s hearing system, potentially leading to inappropriate criminalisation. Also risks that children will not understand the restrictions in place associated with COVID-19, potentially exacerbated when children return to the community from periods of being deprived of their liberty, potentially missing information/news about what is currently allowed.</p>	<p>Minimise the use of adult courts for children by increasing advice/disposal remittal to the Children’s Hearing System and implementing the proposed changes for 16 and 17-year-olds in the Children’s Hearing System.</p> <p>When courts reopen fully prioritise children, and take into specific account the status and needs of children, and the disproportionate impacts of delays on children (six months for a 15-year-old is experienced differently to six months for an adult).</p> <p>Raise awareness of the impacts/effects of speech, language and communications needs in how children present.</p> <p>Support the distribution and awareness of resources (such as those developed by Autism Network Scotland (2020)</p> <p>Ensure access to independent advocacy and legal representation as appropriate in the Children’s Hearing System and the Courts.</p>
<p>Business Continuity and service prioritisation for</p>	<p>The likely limited resources and associated need to prioritise services/supports; a long-standing lack of support for children</p>	<p>Greater resources to support care and justice experienced children on an on-going basis</p>

<p>justice social work services</p> <p>Coronavirus (Scotland) Act 2020</p>	<p>returning to the community from secure care, prison/YOIs (Centre for Youth and Criminal Justice, 2019); and the additional transitional support needed to return to a society impacted by COVID-19, means it is very likely that these children will not get the support they need to transition well. This could lead these children to encounter increased risky circumstances, such as precarious/inappropriate accommodation and limited employment opportunities.</p>	<p>Prioritisation of personal and structural support (housing, employment and education access etc.) for care and justice experienced children</p> <p>Consistent supportive relationships provided as children transition from institutions to the communities, including automatic referral to independent advocacy to support transitions</p> <p>Support provided as soon as a child is deprived of their liberty to help explore, plan and minimise the stress of the transition to the community</p>
<p>SWS and COPFS guidance on diversion from prosecution (COVID-19)</p> <p>Business Continuity and service prioritisation for justice social work services</p>	<p>The limited use of diversion and EEI means it is more likely than during other times that children will be drawn deeper into the criminal justice system than would have otherwise been the case. We know that contact with the formal justice system makes future contact more likely, hence, the limited availability of EEI and diversion is extremely concerning for the long-term outcomes of children coming into contact with the justice system.</p>	<p>Clear policy and resource prioritisation of EEI and diversion across partners, with a particular need for Scottish Government to indicate prioritisation given local resource constraints</p> <p>More broadly, there is an urgency need to intensive efforts and focus on preventative services and supports, focusing on social and economic inclusion</p>
<p>Coronavirus (Scotland) Act 2020</p> <p>Business Continuity and service prioritisation for justice social work services</p>	<p>Given the scarcity of resources, despite the stated prioritisation of children who pose a significant risk of harm to themselves and others, it is likely that many children, their families and carers will not be receiving the pro-active support they need to help them and others stay safe. This puts the child who poses the risk at greater harm, and given that the victims of harm caused by children are usually</p>	<p>Develop support, advice and consultation service for parents and carers support children who pose a significant risk of harm to themselves and to others (expanding the IVY service, which primarily supports the professionals working with children).</p>

	other children, there is also an increased risk to the children residing with these children.	
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**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?**

Measure	UNCRC provision(s) being further implemented through measure	Describe how the effect will be attained through the measure	UN Documents used to make the assessment
See <b>Question 2</b> for this information structured according to specific human rights instruments.			

**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  Scottish courts and tribunals – Coronavirus (COVID-19)	Potential risk that for children in conflict with the law measures associated with COVID-19 will impede efforts to meet key National Outcomes, due to increased criminalisation of behaviours, a lack of early intervention/prevention and diversion services/supports, increased social isolation and declining mental health and wellbeing – particularly for children deprived of their liberty, a lack of resources for transitions and reintegration to support children returning to the community:	Safe Healthy Achieving Nurtured Active Respected Responsible Included

<p>Prisons and Young Offenders Institutions (Scotland) Amendment Regulations 2020</p> <p>Coronavirus (COVID-19): residential childcare</p> <p>Business Continuity and service prioritisation for justice social work services; Coronavirus (Scotland) Act 2020</p> <p>SWS and COPFS guidance on diversion from prosecution (COVID-19); Business Continuity and service prioritisation for justice social work services</p>	<p>We live in communities that are inclusive, empowered, resilient and safe</p> <p>We are well educated, skilled and able to contribute to society</p> <p>We are healthy and active</p> <p>We tackle poverty by sharing opportunities, wealth and power more equally</p> <p>We respect, protect and fulfil human rights and live free from discrimination</p> <p>We grow up loved, safe and protected <i>so that we realise our full potential</i></p>	
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## 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

The legal measures, changes to regulations and the guidance introduced in Scotland in response to COVID-19 the potential to have significant and long-term impacts on children in conflict with the law and children in secure care.



There is a specific risk that children will fail to adhere to regulations put in place to control COVID-19 and this could result in a criminal justice response with potentially long-lasting implications for them. Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 introduced a range of police powers to enforce restrictions relating to COVID-19. As of 20 May there were 197 arrests, 247 people were dispersed using force and 2,851 fixed penalty notices issued (Police Scotland, 2020). This information is not broken down by age so we are unable to say how many children this relates to (data will be available by age shortly). Caution also needs to be applied about assuming the proportion of recorded crime by children and young people will be the same as previous years given practitioner's perceptions that in many places there has been a reduction in recorded offences by children, and changes to offence types. Initially there were indications about increases in shoplifting, antisocial behaviour and COVID-19 related offences such as coughing and spitting as well as online offending and fights within the family home, but overtime there have been significant concerns about increases in serious organised crime and child criminal exploitation (Nolan, 2020b: 10).

Children may be detained and tested as 'potentially infectious persons' under the Coronavirus (Scotland) Act 2020 and there is the potential for children to pick up other charges, such as breach of peace, due to their response to enforcement action. Criminalising the behaviour of children could almost by definition never be in their best interests (UNCRC, Article 3). The research evidence clearly shows that children in conflict with the law are some of the most vulnerable members of any society, with high levels of trauma, adversity and victimisation (McAra and McVie, 2010, Vaswani, 2018, Henderson et al, 2016). In the context of the COVID-19 pandemic, we are particularly concerned that children, particularly those with existing levels of trauma and adversity, will be more likely to display distressed behaviours in response to the anxiety-provoking circumstances they are living through and experience mental ill health in attempting to comply,

*I have found social distancing really hard because I feel awkward because naturally I'm just daft and in my own world and now I need to be aware of everything around this makes me drained and overwhelmed* (Young Person with previous contact with justice services quoted in Nolan, 2020b: 6)

If children's distress behaviours are seen or responded to through a criminal lens there is the potential for them to be misunderstood as wilful and deliberate offending, with the potential for a lack of a fair hearing (European Convention on Human Rights (ECHR), Article 6.1) and for the response to children's offending not being proportionate 'to the circumstances of both the offenders and the offence' (Beijing Rules, 5.1 and UNCRC, Article 40). This is a particular concern given the potential for children to not understand the inherently confusing and changing requirements on them or the implications for breaching the relevant regulations. Further, lockdown and the need for physical distancing reduced the opportunities and support available to assist children to be able to meaningfully participate in the processes set up to deliver justice (UNCRC,

Article 12). Certain children are also more likely to come into contact with justice agencies and receive a criminal response, for instance, some children are treated as ‘the usual suspects’, with indications that children from deprived backgrounds who hang around in public spaces 2.7 times more likely to face adversarial police action are more likely to be charged by the Police for the same behaviours as the more affluent peers (McAra and McVie, 2005: 25). For children and young people who are treated as ‘the usual suspects’ their experience of police contact during lockdown is described as,

*Nasty they approach me most times I am out.*

*I’ve made an effort to stay in and keep my head down and the police have still been at my door blaming me for things.*  
(Children quoted in Nolan, 2020b)

These negative interactions can result in damage to children’s trust in the police, their willingness to report issues or seek support, potentially affecting child-police relations on a longer-term basis. Children and young people who have had contact with the justice system explained some of these potential impacts,

*I have seen the police around but have not directly spoken to them but the thought of them approaching me asking why I’m out gives me so much anxiety and makes me not want to go anywhere.*

*It would be helpful if Nicola Sturgeon could reassure care experienced young people that police are still corporate parents and they have a responsibility to make sure we are safe and can confide in the police. I worry that a lot of care placements will be breaking down and young people will feel helpless in these situations.*  
(Young People with previous contact with justice services quoted in Nolan, 2020b)

There is also a long-established concern about children in residential childcare being criminalised for behaviours that in other settings would be dealt with and responded to by the family or members of the community (Nolan and Moodie, 2016) and about children with speech, language and communication needs who may experience difficulties explaining behaviours when in contact with the police, courts or children’s hearing system (UNCRC, Article 2).

The risk of criminalisation is a particular concern in Scotland due to the low age of criminal responsibility, with children as young as 12 being deemed to be criminally responsible for their behaviours, and therefore, are considered able to exercise autonomy, to be able to regulate their behaviour and to understand the implications of not obeying these new laws. Such a

low age of criminal responsibility is not compliant with the United Nations Committee on the Rights of the Child which has recommended is increased to at least 14 years of age (General Comment No. 24, 2019, Para: 22).

There are also specific concerns in Scotland with respect of children aged 16 and 17. Scots law defines a child as being under the age of 16 rather than 18, with a complicated situation for 16 and 17-year-olds in Scotland depending on their status and current contact with the Children's Hearing System. The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 initially permitted children aged over 16 to be issued with Fixed Penalty Notices for non-compliance with COVID-19 related restrictions, as opposed to using existing more age appropriate measures (such as Early and Effective Intervention or referral to the Scottish Children's Reporters Administration), contradicting UNCRC (Article 1) and was in contrast to the position of the rest of the UK. While this has been amended via the Coronavirus (Scotland) (No. 2) Act, an unknown number of children have been issued with Fixed Penalty Notices, which by virtue of their age and means they may have difficulty paying which could accelerate their escalation into the justice system. There is a lack of certainty about any opportunity for Fixed Penalty Notices that were previously issued to be revoked or challenged in light of this legislative change, and currently these charges may be retained on children's records for up to two years (Together, 2020). Further, 16 and 17-year-olds still lack some of the safeguards available for children in England, Wales and Northern Ireland, as, for instance, in Scotland 16 and 17-year-olds can be charged for non-compliance with testing powers.

The Coronavirus (Scotland) 2020 Act also does not distinguish between penalties for children and adults, raising questions about the extent to which children are being treated as children, and the justice system is taking children's age and stage of development into account (UNCRC, Article 1; UNCRC, Article 40). This lack of distinction is particularly concerning as children in Scotland could receive a maximum 12 month custodial sentence. These penalties are excessive for children and could have far reaching consequences if they result in a criminal record.

We have particular serious concerns about children and young people in Young Offenders Institutions and prisons, with the changed regime following COVID-19 described below,

*... no contact with friends and family; locked up at 5pm, no information, nothing is getting done, no support, we don't know what's going on, no gym, only £2 been added as credit for phone calls for friends and family, lots of tension, prison politics, no video calls, visits or mobile phones in cells- said this was going to happen weeks ago*  
(Young person quoted in Nolan, 2020b: 4)

Avoiding the detention of children wherever possible is even more important in the context of coronavirus, given the additional risks to life (ECHR, Article 2) and the potential traumatising effects resulting from physical distancing and limited social contact. UNICEF and The Alliance for Child Protection in Humanitarian Action (2020) have highlighted the importance of prioritising children for early release. In Scotland, as of 12 June there were 19 children in prison or a YOI, ten were untried, two were convicted but awaiting sentence and seven were sentenced (Scottish Prison Service, 2020b). It is concerning that just over half of the children in YOI/prison are untried or are tried but awaiting sentence, this questions the extent to which children are been treated as innocent until proven guilty and whether detention before is limited to exceptional circumstances (Havana rules, Para: 17). The Coronavirus (Scotland) 2020 Act specifically excludes children who have not been tried and sentenced (children on remand) from early release from custody. It appears that the children's status as children and their specific vulnerabilities given their age and stage of development were not taken into account in relation to early release from custody. Instead it appears that the focus for early release was on the status and nature of the offence, a clear failure then to consider the best interests of the child (UNCRC, Article 3). The quote below highlights practitioners concerns that not all is being done to support children to be supported in the community wherever possible,

*He was detained on remand in February and thereafter "fully committed" a week later. However last week his case was reviewed (virtually) by the Court and his solicitor (copied in) made the case for his release. The Sheriff deferred decision-making for a further seven days to allow the matter to be considered again today. In the intervening period I provided as comprehensive an overview of the multi-agency package of support that would be made available to the young person as possible [...] Furthermore the court would have had the option to impose a robust bail curfew. Alas, it made no difference. His remand was continued. Moreover, the next Court date is now not scheduled until August 2020 and no trial date has been set. I am deeply concerned about the impact upon this young man's wellbeing and how this decision interacts with his human rights (Respondent from a local authority quoted in Nolan, 2020b).*

Further, since lockdown, a number of children have been remanded or sentenced to custody during the pandemic, which should only have happened in exceptional cases (Scottish Prison Service, 2020b). Therefore, it does not appear that Courts are considering the child's best interests or all the human rights obligations in state of emergency to avoid mass incarceration and prevent risk of contagion. There is an urgent need to assess all children who are in YOI/prison to identify if deprivation of liberty is the only option available to manage the risk they pose to others, with alternative placements found wherever possible. If deprivation of liberty is the only option then children should be supported to transition to secure care (which is a more appropriate child-focussed setting) wherever possible, and support provided to secure care to ensure they can support all children longer term.

Children in a YOI or prison are already in an extremely vulnerable position. The changes in regulations and inevitable changes in practice to facilitate physical distancing and support isolation where necessary mean that children are spending longer in their cells, with activities more limited than usual and without much needed contact with family and friends. The consequences for the mental health and wellbeing of children in YOI/prison is of significant concern. The importance of family contact and adverse impact of social isolation (e.g. segregation, limited time outwith your cell, or being separated from supportive peers and family), was starkly highlighted by Armstrong and McGhee (2019) in the Mental Health and Wellbeing of Young People in Custody: Evidence Review. Family contact and relationships were identified most consistently by young people as helping them cope with the distress of institutionalisation, preventing suicidal and self-harming behaviours, and promoting mental wellbeing, with recommendations including the need to minimise isolation, particularly for those on remand and in early weeks of custody, the need to support engagement with family and friends, and enable access to belonging as a key areas for improvement (Armstrong and McGhee, 2019).

We are particularly concerned about the use of lack of mechanisms to facilitate communication for children, who are reliant on phone calls, voicemail messages and the email a prisoner service (UNCRC, Articles: 9,15 and 16). This means there are no opportunities to confidentially raise rights issues or discuss sensitive matters, as phone calls are only available in a public setting and emails are received and passed on via prison staff. Further, children and young people in prison have only been given a supplementary £2.50 per week added to their phone balance, despite the evidence about the importance of social contact on mental wellbeing. Given the urgency and importance of social interaction, face to face contact with appropriate physical distancing and hygiene measures needs to be reintroduced immediately for families, social work, lawyers and mental health support services. In addition, virtual prison visits, teleconferencing facilities in a private room and mobile phones /phones in cells need to be prioritised for children both for social contact and also as a means of accessing mental health supports and helpline services; identified as an important element of supporting boys and young men seek help (Vaswani, 2014). There are also concerns about the ability of children to realise their rights in respect of access health care (UNCRC, Article 24) and access to education (UNCRC, Article 28). It is also not clear that the Havana rules and the UN Standard Minimum Rules for the Treatment of Prisoners are being met. Children and young people in prison/YOIs identified that increasing privileges in recognition of the current situation, such as more money for food and new items on their canteen sheets, would also help (Nolan, 2020b).

The mental wellbeing of children in secure care is also potentially significantly impacted by the potential increased use of isolation in response to admission and responses to COVID-19 symptoms and physical distancing measures required in response to COVID-19. Whilst secure care is a more appropriate child-focused setting than YOIs/prison for children who require to be deprived of their liberty for their own safety and/or the safety of others, it needs to be recognised that deprivation

of liberty should only be used when intensive supports in the community cannot ensure safety. Coronavirus (COVID-19): residential childcare fails to acknowledge or address the concerns about secure care involving the deprivation of children's liberty, and the need to take all possible steps to avoid secure care placements and assess all children in secure care for release to alternative placements or home wherever possible, as set out by the UN Committee on the Rights of the Child (2020), recommendations 7, 8 and 9. Children should be being regularly assessed to see if they could move to a more appropriate placement or return to parents, and this does not appear to be happening. The fact that the Coronavirus (Scotland) Act 2020 also extends the timescales in which children can be deprived of their liberty in secure care without authorisation is a significant concern given the potential impact on children. This also potentially suggests that the experience of secure care as a form of depriving children of their liberty, and the seriousness of this, is not always understood, or informing policy and practice.

Physical comfort and face to face contact with family can be of huge significance to children and its lack can have significant negative consequences, and there is a need to prioritise physically distanced face to face contact with family, social work and mental health supports. Variation in access to services and supports has been reported across the secure care centres, and it is of utmost importance to ensure this is consistently available ensure right of access to such health care services (UNCRC, Article 24). Where a child in secure care develops symptoms of COVID-19 those they live with will need to also self-isolate for 14 days. This is a significant length of time for children, and is likely to impact negatively on wellbeing, particularly for children in secure care, who by its nature have experienced distress and trauma. Some, but not all, secure care centres have developed isolation processes when children first arrive at secure care, at a time likely to be extremely disorientating and distressing the impacts on wellbeing are likely to be even greater and more concerning (Who Cares? Scotland, 2020: 25). Scottish Government intend to shortly issue guidance on this matter.

There has been a long-standing lack of support for children returning to the community from secure care and prison/YOIs, and due to COVID-19 additional transitional support is now also required if children can return successfully to a significantly changed society. The lack of resources and the lack of prioritisation of children who are leaving secure care or prison/YOI means we are likely to continue to fail to comply with UNCRC, Article 39, 'State parties shall take all appropriate measures to promote physical and psychological recovery and social integration of a child victim'. It has also been argued that there is an additional reparatory obligation on state's where they deprive children of their liberty 'to restore the child to the position she would have been in had she not been punished' (Hollingsworth, 2013: 1068). Research about children and young people's experiences of the COVID-19 response highlighted than in respect of transition support there has been both an exacerbation of pre-existing issues, and some additional issues to overcome (Nolan, 2020b).

Even before considering the impact of COVID-19, the issue of limited resources to provide appropriate support for children in conflict with the law is an issue, particularly in relation to preventative services/support, with many children and families only able to access what is needed when a crisis point is reached. This issue is exacerbated in the context of COVID-19 as preventative work often relies on practice which is more difficult to do; face-to face contact or group work. Further, there has been a slowing, pausing or even stopping of Early and Effective Intervention (EEI) in some local authorities (though evidence suggest this is beginning to restart now) along with limited availability of timely diversion. The limited use of diversion and EEI means it is more likely than during other times that children will be drawn deeper into the criminal justice system than would have otherwise been the case. The initial offending behaviours following lockdown, as observed by practitioners, were shoplifting, antisocial behaviour and COVID-19 related offences such as coughing and spitting (Nolan, 2020b), offences which would be well-suited for EEI and diversion (though note more recently there have been more serious concerns about increases in organised crime and child criminal exploitation). We know that contact with the formal justice system makes future contact more likely, hence, the limited availability of EEI and diversion is extremely concerning for the long-term outcomes of children coming into contact with the justice system. Without additional resources and support to bolster EEI and prevention activities in the context of resource constraints there is a significant risk that important progress is lost and we fail to comply with the ethos of prevention and early intervention guidelines (Riyadh Guidelines) and policies (Scottish Government's Whole System Approach) and to comply with the requirements to have an approach to children in conflict with the law based on their status as children (UNCRC; Article 40). There is also an additional need to invest in independent advocacy and where appropriate ensure children have legal representation to ensure that children are able to participate fully, meaningfully and actively, particularly in relation to EEI, the Children's Hearing System and the Courts. The delays in children's hearings and in court processes compounded by COVID-19 are of significant concern (Nolan, 2020b), with the potential that some children will be waiting months for trial, with all the uncertainty, mental health/wellbeing and human rights implications of this.

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

<b>Summary of recommendation</b>	<b>Body addressed to (e.g. Scottish Government)</b>
Amend the Coronavirus Act to ensure that children are treated differently to adults and are not criminalised for failing to comply, or at the very least be given a significantly reduced sanction.	Scottish Government / Scottish Parliament

Needs to be robust safeguards for all children (under 18s) and ensure 16 and 17-year-olds in Scotland are not criminalised.	Scottish Government
Revoke Fixed Penalty Notices issued to 16 and 17-year-olds before this power was amended in the Coronavirus (Scotland) (No. 2) Act	Scottish Government / Police Scotland
Prioritise children's cases when courts reopen to reduce stress associated with awaiting trial and reduce the number of children who turn 18 whilst waiting for proceedings. Provide protection for those who were charged when under 18 but are not convicted until 18 in terms of disclosure arrangements, protections and special measures when appearing as accused. Monitor the impacts on children of court delays and changes.	Scottish Court Service/ Scottish Government
Repeal regulations to restore legal safeguards in relation to time limits for secure care authorisation and Children's Hearing decision making.	Scottish Government, Scottish Children's Reporter Administration, Children's Hearing Scotland
Deliver training for all Corporate Parents, Scottish Children's Reporter Administration, Children's Hearing Scotland, Chief Social Work Officers, Scottish Courts and Tribunals Service, Crown Office and Procurator Fiscal Service about children's rights and particularly the need for deprivation of liberty decisions to be lawful, particularly in the context of the pandemic given increased risks of infection.	Scottish Government, Scottish Children's Reporter Administration, Children's Hearing Scotland, Chief Social Work Officers, Scottish Courts and Tribunals Service, Crown Office and Procurator Fiscal Service
Prioritise policy and legislative changes to ensure 16 and 17-year-olds are retained in the Children's Hearing System, and raise awareness of the ability for courts to remit to the Children's Hearing System for advice or disposal.	Scottish Government
Strengthen resources and raise the profile of Early and Effective Intervention, to avoid formal justice system contact where possible.	Scottish Government
Explore whether and if so how independent advocacy could support children to participate in EEI processes	Scottish Government
Ensure legal aid is available for all children in conflict with the law regardless of age and family income	Scottish Government
Commit to ensuring that all children in the Children's Hearing System have access to an independent advocacy worker and independent legal advice, to ensure that all children in conflict with the law have access to	Scottish Government



legal representation to ensure they know their rights and have a mechanism to realise them.	
Increase the age of criminal responsibility to at least 14 ensure that we avoid seeing and responding to children's distress behaviours as criminal.	Scottish Government
Support practice to ensure that decisions about placements, supports and services to be made on the basis of children's needs as opposed to behaviour and in their best interests and taking account of their views and rights.	Social Work Scotland / Scottish Government / Local authorities
Improve mental health supports for children, specifically those whose behaviour is deemed challenging, with supports put in place automatically for those who have experienced domestic abuse/trauma.	Scottish Government / NHS Scotland/ Local authorities
Raise awareness of the impacts/effects of speech, language and communications needs in how children's present, and support the distribution and awareness of resources (such as those developed by Autism Network Scotland, 2020)	Scottish Government, COSLA, local authorities, health and social care partnership
Develop information and training for children about their rights if they are stopped by the police, moved on or presented with a fine, with advocacy and support for children who report violations of their rights	Scottish Government
Training and support for police officers to fulfil and understand their corporate parent duties when responding or stopping care-experienced young people in the community, along with broader awareness raising to help police officers see the child, understand children's rights and have a good understanding of trauma and distress behaviours and how to best respond to de-escalate.	Police Scotland
Ensure Scottish Government and Community Planning Partnerships include children in conflict with the law in their emergency planning arrangements, ensuring The Strategic Leadership Groups and Education Recovery Groups set up by Scottish Government are considering the most vulnerable children who are deprived of their liberty or are in the adult court system (including children deprived of liberty in mental health facilities/ immigration centre/ children under English orders in residential children's house).	Scottish Government, Community Planning Partners, Local Authorities

<p>Children currently in YOI/prison to be individually assessed and supported to transition to alternative placements as soon as possible, with greater recognition across policy and guidance of the specific status of children and their needs when considering early release. Immediately amend the Coronavirus (Scotland) Act to allow for the early release of children on remand. Ensure that all alternatives are explored for children coming to court during the pandemic.</p>	<p>Scottish Government</p>
<p>Provide resources and guidance about the use of intensive support approaches, including electronic tagging, where this is in the best interest of children currently deprived of their liberty.</p>	<p>Scottish Government</p>
<p>Work with and support secure care centres to be in a position to support children to transition from YOI/prison if there is a present risk meaning that deprivation of liberty is the only option to ensure the safety of others.</p>	<p>Scottish Government, Secure Care Centres, Scottish Prison Service</p>
<p>Individually assess all children in secure care to consider whether deprivation of liberty is essential, or whether alternative placements can manage the risks children pose to themselves and/or others.</p>	<p>Scottish Government, Secure Care Centres, Social Work</p>
<p>From Phase 2 of lockdown onwards immediately re-introduce safe ways to have direct contact with family, social work and lawyers for all children deprived of their liberty.</p>	<p>Scottish Government, Scottish Prison Service, Secure Care Centres, Social Work</p>
<p>Urgently implement the plans for video conferencing for support for access to support agencies/services, access to lawyers, and communication with family and friends, and the provision of a confidential room or space to facilitate this. Ensuring families have the appropriate support required to purchase internet connections and devices to visit virtually. Prioritise mobile phones accessible within cells or in-cell phones. Provide additional credit for phone calls immediately and increase privileges in recognition of the situation, such as more money for food or new items on canteen sheets.</p>	<p>Scottish Prison Service</p>
<p>Use resources creatively to ensure children deprived of their liberty have activities, education and access to devices to improve physical and emotional wellbeing (as well as to support access to health care and services).</p>	<p>Scottish Prison Service</p>

Improve communication and resources across YOIs/prisons to ensure that children and young people are aware of COVID-19, changes to the regime, and changes in society in language that they understand (for instance, over radio TV channel in cells).	Scottish Prison Service (with support from partners with particular expertise- such as Autism Scotland)
Invest additional resources to support children who have been deprived of their liberty to transition to the community successfully, prioritising personal and structural support (housing, employment and education access etc.), ensuring consistent supportive relationships as children transition from institutions to the communities, and provide specialist support to help explore, plan and minimise the stress of the transition to the community.	Scottish Government, Local authorities, Social Work, Community Planning partner
Clear policy and resource prioritisation of EEI and diversion across partners, with a particular need for Scottish Government to indicate prioritisation given local resource constraints.	All partners with a need for coordination and resource reallocation and rights-based budgeting led by Scottish Government (as required under UNCRC, Article 4).
More broadly there is an urgent need to intensive efforts and focus on preventative services and supports, focusing on social and economic inclusion	All partners but requires senior, strategic leadership
Develop support, advice and consultation service for parents and carers support children who pose a significant risk of harm to themselves and to others (one options could be to expand the Interventions for Vulnerable Youth (IVY) service, which currently primarily supports the professionals working with children).	Scottish Government,
Ensure data is collated, published and analysed about offences associated with COVID-19 related legislation and guidance, broken down by age, gender and ethnicity.	Police Scotland

**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?
The long-term opportunities for children who are/have been in conflict with the law will almost certainly be significantly impacted by the economic decline resulting from the COVID-19 response.	A prioritisation of social and economic inclusion, and a redistribution of wealth to ensure greater equality across society.

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