



Children's
Rights Alliance
for England

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JUST FOR KIDS



YJLC
Youth Justice Legal Centre

Just for Kids Law, CRAE and YJLC submission JCHR Inquiry - The Government's response to COVID-19: human rights implications

June 2020

Just for Kids Law (JfKL) is an award-winning UK charity working with and for children and young people to hold those with power to account, fighting wider reform by providing legal representation and advice, direct advocacy and support, and campaigning.

The Children's Rights Alliance for England (CRAE) merged into Just for Kids Law in 2015 and works with over 100 members to promote children's rights and monitor government implementation of the UN Convention on the Rights of the Child.

The Youth Justice Legal Centre (YJLC) was set up by Just for Kids Law in 2015 to provide legally accurate information, guidance and training on youth justice law. It aims to raise standards in criminal courts and supports lawyers doing vital work representing children and young people across England and Wales.

CRAE and YJLC are part of Just for Kids Law.

Key points

- The emergency provisions in the Coronavirus Act 2020 and its associated regulations restricts many children's rights set out in the UN Convention on the Rights of the Child (CRC) and will have many long-term consequences on children's lives, particularly those whose rights are most often at risk. Despite this Child Rights Impact Assessments (CRIA) have not always been carried out. As part of the six-month review of the Coronavirus Act, the Government must ensure a CRIA is undertaken and the impact on children's rights are considered.
- SI 445 has relaxed local authorities' duties to children in care as part of emergency COVID-19 measures. These changes remove vital legal safeguards and rights for children and should be revoked immediately.
- COVID-19 has affected care leavers' financial security and impacted their right to food and housing. The Government must take urgent steps to protect care leavers from homeless, eviction and financial insecurity.
- COVID-19 has heightened the risks for families living in temporary accommodation, in insecure housing and at risk of homelessness. These families must be protected against eviction and have access to suitable self-contained accommodation.

- The SEND Regulations 2020 have weakened the entitlements children rely on to access their right to education. The Government should make sure children with SEND or an Education and Health Care Plan (EHCP) who need and want to be in school can attend.
- The Government should make a comprehensive plan to ensure that as schools reopen, children with SEND are reintegrated into school with enough support, reasonable adjustments and resources so that this does not result in a rise in exclusions.
- COVID-19 poses a risk of further criminalising children and young people for minor offences, compromising their rights to a fair trial, by being unable able to effectively participate and benefit from the legal protections designed to apply to those who offend as children. The Government should review the approach taken to child defendants and ensure children and young people are dealt with outside of the Criminal Justice System wherever possible.¹

Impacts on children's rights

The emergency provisions in the Coronavirus Act 2020 and its associated regulations are far-reaching pieces of legislation that restrict many children's rights outlined in the UN Convention on the Rights of the Child (CRC), including their right to an education, adequate standard of living, good mental health, and play. The measures have already had a devastating and long-lasting impact on children's lives, particularly on those whose rights are often most at risk such as BAME children, children with SEND, living in poverty or in the criminal justice system. The impact of some of the measures will be felt for a generation and beyond.

Despite the scale of the changes, the Coronavirus Act was rushed through parliament with very little democratic scrutiny or opportunity to change it. There was also no Child Rights Impact Assessment (CRIA) carried out. All signatories to the CRC should carry out CRIAs when developing new policy and legislation. Last year, in a welcome development, the Department for Education developed a CRIA template which they are promoting across Whitehall for use whilst developing policies and legislation. However, to date, only two have been carried out. One of these was on the The Adoption and Children (Coronavirus) (Amendment) Regulations 2020² (see below for our concerns). We are pleased this was carried out, but are disappointed that one was not conducted on the Special Educational Needs and Disability (Coronavirus) (Amendment) regulations 2020 (see below for concerns) and an answer to a parliamentary written question does not elaborate why except to say that Equality Impact Assessments (EIA) have been conducted on both.³ However, EIAs do not sufficiently assess the impact on children's rights.

We also do not agree with the assertion set out in the social care regulations CRIA that these changes are "*low risk and small scale*". We believe that children's social care is of such nature that even small-scale changes might create risks. A key point in the changes is that "*Reasonably practicable*" is the new threshold and standard for social workers' interventions, including visits. However, we would question whether this approach is in line with the recommendation by the UN Committee on the Rights of the Child in their COVID-19 statement: "*Define core child protection services as essential and ensure that they remain functioning and available, including home visits when necessary*".⁴ The UN Committee uses the word 'necessary' as it views the measures to be taken by States from the perspective of children and their rights - primarily their best interests (article 3 of the CRC). On the other hand, the approach taken in the changes to the regulations is principally from the perspective of service providers, their capacity and resources.

We have written to the Children's Minister, Vicky Ford MP, to ask her to conduct a CRIA on the legislation and all associated regulations. She responded that she is committed to protecting children's rights and DfE officials will work with the Department of Health and Social Care to ensure that, where provisions of the Act have been commenced and are being used, the impact on children's rights will be part of that review. In written questions, she also commits to consider children's rights as she keeps the impact of the SEND regulations under review.

We hope the JCHR can work with us to push for and inform a CRIA to ensure the impact on children's rights, particularly those at most risk, is understood and plans are put in place to mitigate such impact.. This will also be an important tool to help inform the UN CRC Committee's examination of the UK which is due to start later this year. We owe it to children to take sufficient measures to protect their rights and their futures during this period of crisis.

We are also concerned that to date, there has been no direct address to children from the Government, as in many other countries, or any attempt to engage them in having a say about the impact of the far-reaching COVID-19 measures on their lives and ensure their voices are at the heart of the recovery. We understand that children were not consulted in the production of the CRIA due to the urgency of the situation, we therefore urge the Government to consult with children as part of the review of the legislation.

Recommendation

- Ensure that the Government undertake a CRIA on the Coronavirus Act 2020 and its associated regulations and the impact on children's rights are considered as part of the 6-month review.
- Ensure that children's voices are at the heart of the recovery and inform part of the 6-month review.

Children's social care and housing

Emergency changes to children's social care

We are extremely concerned that Statutory Instrument (SI) 445 (The Adoption and Children (Coronavirus) (Amendment) Regulations 2020) introduced around 100 changes to children's social care regulations.⁵ These include:

- The removal of the requirement for social workers to visit children in care every six weeks to instead "as soon as is reasonably practicable" and the associated change that these visits can now be made by "telephone, video-link or other electronic means".
- Watering down of the timescale for preparation of placement plans for children in care, including placement plans for children on remand.
- The timescale for independent reviews for children in care moving from every six months to "where reasonably practicable".
- Relaxation of timescales for complaints to be considered by an independent review panel.

These changes, and others introduced by the SI, remove vital safeguards and legal protections for children in care at a time when they need more support not less due to the pandemic. They also put many children at greater risk of harm as many will be having less contact with children's services or are not in school where safeguarding concerns would normally be raised. They risk contravening Article 25 of the CRC which stipulates that children in care have the right to a regular review of their treatment, the way they are cared for and their wider circumstances.

As emergency legislation, the 21-day rule did not apply meaning there was no parliamentary scrutiny of the SI before it came into force the next day. We do not believe these changes are justified and are calling for the regulations to be revoked in full, as a member of the [Scrap SI 445 campaign](#).

Recommendation:

- The Adoption and Children (Coronavirus) (Amendment) Regulations 2020 should be revoked without delay.

Rights of care leavers

Just for Kids Law's advocacy and legal practitioners regularly work with young people who have spent time in local authority care as a child ("care leavers") to support them to secure their rights and entitlements. We are concerned that care leavers have been disproportionately affected by the pandemic and that Government has not stepped in to ensure their basic rights in relation to food and housing are met. Care leavers we work with have told us they are in an extremely precarious financial situation as a result of COVID-19, with benefits as their only source of income, often having to rely on food banks. Others are living in cramped, unsafe or unhygienic environments where they struggle to self-isolate.

Local authorities have a legal duty to step in and meet care leavers' needs for food and housing, and yet evidence from our practice shows this is not always happening. We have seen a significant increase in requests to our hardship fund scheme from care leavers, for example, from one young woman with two small children who had no money for food and was told by her local authority that they were unable to send her any money due to staff shortages in the finance department. Another young woman was reliant on an abusive ex-partner to bring her food whilst in isolation.

Care leavers' right to safe and suitable housing has also been impacted by COVID-19 and there is a risk that many care leavers will become homeless as lockdown measures are lifted and temporary support with housing comes to an end. To prevent this, we are calling for all care leavers up to age 25 to be eligible for emergency housing from their local authority.

For care leavers and other young people housed in 'unregulated' semi-independent accommodation, they are at risk of eviction, as the ban on evictions which is currently in place covering the private rented sector and social housing does not apply to unregulated settings, despite the vulnerabilities of young people living in them. Unregulated accommodation is a form of supported housing and housing providers have the power to decide what form of licence they provide to young people living in these settings; many will not give them protected occupier status under the Protection from Eviction Act 1977. Without this young people can be evicted on the spot and without providing alternative accommodation for the young person.

Recommendations:

- Local authorities should ensure that discretionary payments are available to all care leavers who need them, including at short notice if necessary.
- The Government should extend priority need for emergency housing to include all care leavers up to 25.
- The ban on evictions should be extended to include all care leavers in semi-independent/supported unregulated accommodation.

Homeless families

Even before the COVID-19 pandemic, the chronic shortage of suitable housing in England meant that thousands of children in homeless families have been living in unsuitable, insecure and overcrowded housing, with serious impacts on their human rights. At the end of 2019 there were 128,340⁶ children housed in temporary accommodation. This includes children living in B&Bs, hostels and private sector accommodation leased by local authorities. 1,900 households with children were living in B&Bs, with shared annexes, and 530 of these households were there for more than the six-week legal limit. Much of this accommodation is unsafe and damaging for children, especially during a major public health emergency. Children who have experienced such living conditions have told us of the devastating impacts on their rights, including their right to adequate housing, to health, to education, to nutritious food and to safety and security.⁷

The COVID-19 emergency has heightened the risks for families living in temporary accommodation, in insecure housing and at risk of homelessness. The Lancet⁸ has highlighted the risks for children growing up in unsuitable and cramped living conditions, in terms of their health, safety, their development and education, and their increased vulnerability and marginalisation due to COVID-19. ONS data shows that people living in more deprived areas have experienced significantly higher COVID-19 mortality rates⁹, and there is a likely correlation between overcrowded housing and higher COVID-19 mortality rates.¹⁰

While many local authorities have been working to secure suitable self-contained accommodation for homeless families, many are still stuck in unsafe and unhealthy accommodation, often sharing facilities with strangers. The impact of COVID-19 also means that many households will face even greater financial hardship and greater risk of eviction, debt and homelessness.

Recommendations:

- During and after the COVID-19 emergency, all households, including homeless families living in temporary accommodation, must be protected against eviction and have access to suitable self-contained accommodation, including households with no recourse to public funds.
- Local authorities must be given the resources necessary to ensure that all homeless families have access to safe and secure housing.
- The Government must ensure that social security benefits are sufficient to enable all households to have an adequate standard of living. Local Housing Allowance should be increased to the 50th percentile so that renters are supported to pay actual rent costs and do not face eviction and homelessness.

Education

Access to Special Educational Provision during COVID-19

Every child has a right to education, enshrined in Article 2 of Protocol 1 to the EHRC. Measures taken during the shutdown have made this right less effective for many young people, with a disproportionate burden falling on young people with SEND, which contradicts the Article 14 ECHR prohibition on discrimination and the UNCRC's requirement to ensure disabled children receive an education (article 23).

This is because the SEND Regulations 2020 have relaxed the framework for completing timely assessments¹¹ and creating EHCPs.¹² This has created further chaos in a system already under strain and young people with SEND have been left without any certainty about when they'll get an EHCP, and if they'll get the provision set out within it when they do.

This makes it difficult for young people to access their right to education in two ways. Firstly, they may not have a right to be in school if they are in a year group that is not returning until September because the right to be in school for children with SEND but with no EHCP is uncertain. Secondly, even if young people are in school, if their SEND is not addressed, they will struggle to receive an effective education.

As mentioned above, we have concerns that no CRIA was completed for these regulations despite the huge impact these changes have on vulnerable children's access to education.

Recommendations:

- The Government should make sure children with SEND or an EHCP who need and want to be in school can attend to ensure they have access to the right support and resources they need to continue their education.
- The Government should complete the SEND review as soon as possible.
- The Government should prioritise opening all schools in September for all year groups.

Ensuring Successful Reintegration back into Schools

It will take time for children to reintegrate back into school routines and will be particularly challenging for those with SEND and particularly a condition such as autism, which can be exacerbated by breaks in routine and familiarity or those who may have experienced abuse or mental health problems during the lockdown. Close attention should be paid to unexpected and disruptive behaviours as these could be an indication of underlying needs, especially if this change is out of character for the child. If not properly supported, this behaviour could lead to a spike in children being unfairly excluded from school which will have long-lasting consequences. This is particularly concerning as the Government measures that have weakened EHCP entitlements have made it more difficult for young people with SEND to access the support they need to effectively manage their behaviour.

Further, Just for Kids Law have observed schools amending their behaviour policies to specify tough sanctions for children who breach social distancing rules, including permanent exclusion. These rules can be difficult for children to follow, particularly those with SEND and sensory disorders. Exclusions already fall disproportionately on these children and those who have experienced adverse childhood experiences, we are concerned that these measures will simply increase the already high rate at which they are denied access to school.

Recommendations:

- The Government should work with school leaders to make a comprehensive plan to ensure that as schools reopen, children with SEND are reintegrated into school with enough support, reasonable adjustments and resources so that this does not result in a rise in exclusions.
- The Government should issue guidance to schools to take a welfare and pastoral approach to disruptive behaviour during reintegration where that behaviour flows from SEND or adverse experiences during lockdown.
- The Government should ensure that breaching social distancing rules are not used as a reason for exclusion, particularly for young children or those with SEND and sensory disorders.

Children and young people within the Criminal Justice System (CJS)

The risk brought about by COVID-19 is disproportionate to the need to arrest and detain children and young people for minor offences. Especially now that, as and when the disease moves into different phases, the UK Government Coronavirus [action plan 4.48](#) will require police forces to concentrate on

responding to serious crimes and maintaining public order. Officers should pay particular regard to the timing of any necessary arrests of children and young people, ensure that they are detained for no longer than necessary, both pre and post-charge, and avoid holding them overnight in police cells unless *absolutely necessary*¹³ or as a *last resort*¹⁴ In line with the CRC. Despite such legislation and guidance, we are continuing to see too many children arrested for minor offences and being held for long periods in police cells. This is particularly concerning in relation to BAME children and their families who are at greater risk from COVID-19.

Children who contravene the Coronavirus Act 2020 or the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 commit an offence. The Police can enforce compliance with the Act and Regulations using reasonable force and we have seen children confronted by the police ending up arrested for other offences. This could lead to increased criminalisation of the most vulnerable children and young people, including Black children who are already disproportionately policed.

We are further concerned that the increase in video link hearings for child defendants, both during the coronavirus and subsequently, severely compromises a child's right to a fair trial and their ability to effectively participate. Children in the CJS are some of the most vulnerable in society and often have high rates of learning and communication disability; the importance of building rapport and trust with a child, recognising non-verbal cues and identifying communication, social or learning difficulties are all impeded by the use of video link. Every decision to undertake a virtual hearing should be undertaken with extreme caution and the default position should be that children should never appear via video link for non-administrative hearings.

Additionally, the COVID-19 pandemic has exacerbated a CJS that was already struggling with long delays between offence and trial date. It is vital that criminal cases involving child defendants are heard as close to the date of offence as possible, otherwise they will have difficulty in relating the sentence to the offence. We have been alarmed to hear of many cases, for those children both on remand and bail, being adjourned to dates in late 2021. This will obviously have significant and long-term implications for a child's well-being. We are also concerned about those who commit offences as children but are not proceeded against until they have turned 18 and the inequities that exist for this cohort, a phenomenon that will be further exacerbated by delays caused by COVID-19.¹⁵ The damaging consequences of turning 18 between the date of the offence and conviction include loss of anonymity, reduced likelihood of diversion, only being eligible for adult sentences, longer supervision periods (heightening the risk of breach) and much longer rehabilitation periods.¹⁶

Recommendations:

- The Government should issue urgent national guidance requiring police officers and custody sergeants to refrain from arresting and detaining children and young people, unless absolutely necessary and only pursue the most serious offences.
- The Government should collect data on children and young people coming into contact with the CJS under the emergency legislation, which must be fully disaggregated by gender, ethnicity and age.
- The Government should collect and monitor data on the use of video links with children during COVID-19, as well as conduct an independent research on children's ability to participate and the types of justice outcomes they receive.
- The Government should amend the Policing and Crime Act 2017 to include a maximum time limit that any child can be subject to Released Under Investigation; ensure youth diversionary schemes remain available when children turn 18; and start the process in a youth court for all individuals who are charged with an offence that they committed as a child, ensuring access to specialist courts and lawyers.

For more information on each of these areas, please see our submissions to other current Select Committee Inquiries on COVID-19:

- Education Committee inquiry on the impact of COVID-19 on education and children's social care – our evidence on [education](#) and on [children's social care](#)
- Housing Committee inquiry on Impact of COVID-19 on homelessness and the private rented sector – our [evidence](#)
- Women and Equalities Committee inquiry on COVID-19 and the impact on people with protected characteristics – our [evidence](#)
- Timely Justice: Turning 18 [A briefing](#) on the impact of turning 18 in the criminal justice system (2020) Youth Justice Legal Centre, Just for Kids Law

For more information please contact: Natalie Williams, CRAE Policy and Public Affairs Manager, NWilliams@crae.org.uk, 07890583511.

¹ United Nations Convention on the Rights of the Child Art 40 3(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'.

<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

² Written Question: 52285 – Tulip Sadiq (01 June 2020) <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-06-01/52285/>

³ Written Question: 45341 – Tulip Sadiq (11 May 2020) <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-05-11/45341/>

⁴ UN Committee on the Rights of the Child (CRC) 8 April 2020 <https://www.ohchr.org/en/hrbodies/crc/pages/crcindex.aspx>
<https://article39.org.uk/scrapsi445/>

⁵ MHCLG, Live tables on homelessness, The latest data tables on homelessness, Last updated 21 May 2020

Table TA1 - Number of households in temporary accommodation at the end of quarter by type of TA provided

⁷ 'It's like being in prison' Children speak out on homelessness (2018) CRAE

⁸ D. Rosenthal, M. Ucci, M. Heys, A. Hayward, M. Lakhanpau, 'Impacts of COVID-19 on vulnerable children in temporary accommodation in the UK' *The Lancet*, Comment, Published Online, March 31, 2020 [https://doi.org/10.1016/S2468-2667\(20\)30080-3](https://doi.org/10.1016/S2468-2667(20)30080-3)

⁹ Deaths involving COVID-19 by local area and socioeconomic deprivation: deaths occurring between 1 March and 17 April 2020, Office of National Statistics

¹⁰ N. Barker, *The housing pandemic: four graphs showing the link between COVID-19 deaths and the housing crisis*, Inside Housing, 29 May 2020

¹¹ *The Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020*, see regulation 5.

<http://www.legislation.gov.uk/uksi/2020/471/contents/made>

¹² Notice of the Secretary of State for Education (2020) *Coronavirus Act 2020 Modification of section 42 of the Children and Families Act 2014 (England) Notice 2020*

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/882290/CV19_Act_modification_notice_SEND.pdf

¹³ College of Policing, 23 October 2013, Section 2, Detention and custody: Children and young persons

<https://www.app.college.police.uk/app-content/detention-and-custody-2/detainee-care/children-and-young-persons/> (Last modified: 5 January 2017)

¹⁴ National Police Chiefs' Council, 2017, *The National Strategy for Police Custody*

<https://www.npcc.police.uk/documents/NPCC%20Custody%20Strategy.pdf>

¹⁵ The UN Convention on the Rights of the Child has made it clear that "child justice systems should also extend protection to children who were below the age of 18 at the time of the commission of the offence but who turn 18 during the trial or sentencing process." UN Committee on the Rights of the Child (2019) *General Comment No. 24 on children's rights in the child justice system*, paragraph 31

¹⁶ *Timely Justice: Turning 18 A briefing on the impact of turning 18 in the criminal justice system* (2020) Youth Justice Legal Centre, Just for Kids Law

https://justforkidslaw.org/sites/default/files/fields/download/YJLC%20Turning%2018%20briefing%20%28June%202020%29_0.pdf