

Child Rights and Wellbeing Impact Assessment (CRWIA)

for **Changes to the Composition of
Children's Hearings and Pre-Hearing
Panels**

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Introduction

Background

At the outset of the COVID-19 pandemic, the Coronavirus (Scotland) Act 2020 emergency legislation relaxed certain requirements in the Children's Hearings (Scotland) 2011 Act ('the 2011 Act'), including in relation to section 6(3):

“(3)The National Convener must ensure that the children's hearing—

(a)includes both male and female members of the Children's Panel, and

(b)so far as practicable, consists only of members of the Children's Panel who live or work in the area of the local authority which is the relevant local authority for the child to whom the hearing relates.”

The relaxation was to insert “so far as practicable” in sub-section (3)(a). This meant where hearings with both male and female members could not practicably be arranged, because of the pandemic restricting volunteers' availability, sometimes at very short notice, the hearing could still be lawfully convened and make decisions in relation to children to support them and keep them safe. This allowed hearings and pre-hearing panels which otherwise could not have been lawfully convened to go ahead, taking legal measures to keep children safe and protect their rights.

The flexibilities of the emergency legislation were expired on 30 September 2021. At that time, the temporary measures were considered no longer appropriate or proportionate. The decision to expire children's hearings provisions, rather than to extend or suspend them, was taken following discussion with core system partners including the Children's Hearings Scotland and the Scottish Children's Reporter Administration.

When the emergency flexibilities were first adopted in April 2020, it was agreed that they should only be used where justifiable, and only remain in place for as long as they were demonstrably necessary. See attached for agreed principles:

[Coronavirus-Scotland-Act-2020-guidance.docx.pdf \(chip-partnership.co.uk\)](#)

The use of the flexibility was limited to where that was necessary. It was used 415 times between May 2020 and September 2021 (a relatively small proportion of hearings - over 16,000 hearings were held during 2020-21, and thousands more held April to September 2021). Normally, outwith the COVID-19 pandemic, around 30,000 hearings are held per year.

Current Position

Children's Hearings Scotland (CHS) have identified that the ongoing pressures associated with COVID-19 on the availability of male panel members, as well as their ability to recruit suitable new male volunteers, have posed significant issues with their ability to comply with strict and inflexible gender balance requirements of

section 6(3)(a) of the 2011 Act, and of Part 2, Rule 3(2) of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) 2013 ("the Rules"). Despite a focused effort to recruit more males able to satisfy the requirements of the role, these problems are going to persist.

Projecting forward into later 2022, CHS forecast being unable to satisfy their section 6(3)(a) requirements on some occasions. Prior to their latest recruitment campaign in early 2022, CHS established that 452 male panel members needed to be brought into service this year. While the campaign specifically targeted males, CHS received only 268 suitable applications from males. Of that 268 figure, 106 males are anticipated to complete in-service training.

While CHS will continue to look at measures to increase the recruitment of men, these low numbers, coupled with an anticipated increase in current panel members choosing not to accept reappointment at the end of their 3-year terms this year, have combined to introduce fragility into the sustainability of the volunteer tribunal element of the hearings service.

Area Support Teams (local volunteer managers) report an over-reliance on small clusters of males - with some male panel members bearing an unhealthy burden of service on multiple hearings – well beyond the usual expectation of 1-2 sessions per month.

As well as concentrating expectations and practice experience in this small group, there is a consequential further risk that these overworked volunteers will either leave the service due to burn-out, or stay on due to their outstanding individual dedication to their role, but become less effective in discharging it due to tiredness and overwork. Critically, this is assessed as posing potential risk to the quality of discussion and decision-making for children and families supported by the system.

If there remains no flexibility in the gender balance requirements, CHS advise that hearings will not be able to be lawfully convened in some cases from late 2022. This puts the resilience of the hearing system at risk and could lead to delayed or deferred hearings for vulnerable children, contrary to their interests, and may put some children at risk.

Alternatively, if a hearing were to be convened, in exceptional circumstances due to the risk to a child, with a 'single gender hearing' in breach of the legal requirement for mixed gender, that hearing's decision – however sound otherwise – would be open to challenge. Again, this would not be in the best interests of the children affected.

The National Convener remains committed to diversity in the recruitment of panel members and in relation to the composition of individual hearings. If this flexibility were introduced, it still requires the National Convener to ensure that there are both male and female members unless this is not practicable. In practice, it would only be where efforts to ensure a mixed gender hearing had been unsuccessful, that a hearing could still be lawfully convened.

The Scottish Government therefore considers change is necessary to allow hearings to be lawfully convened where, due to a combination of current circumstances including recovery from the pandemic, it is not practicable to convene a children's hearing with a mixed gender panel. Whilst this proposed change amends provisions that have been in place in the same or similar form for many years, in practice it is introducing a flexibility only where a mixed gender panel cannot practicably be arranged. We anticipate that this flexibility will be utilised on a limited basis.

1. Which articles of the UNCRC does this policy/measure impact on?

The change to the absolute gender balance requirement has potential impacts on the following articles:

[Article 3\(1\)](#) best interest to be a primary consideration

[Article 3\(3\)](#) standards for institutions services and

[Article 8](#) preservation of child's identity

[Article 9](#) separation from parents

[Article 12](#) respect for the views of the child

[Article 16](#) protection of privacy

[Article 21](#) adoption

[Article 37\(b\)-\(d\)](#) restriction of liberty

[Article 40](#) administration of juvenile justice

Article 3(1) is of greatest significance to the change, and the hearings system in general. The remaining articles can broadly be considered under the need for any interference in the child's rights to be lawful for the purposes of these articles.

2. What impact will your policy/measure have on children's rights?

Positive – in the main, the change will ensure operational flexibility and continuity, with lawful decisions continuing to be made where a mixed hearing cannot be convened. The impact is therefore broadly neutral, though it may mean that on some occasions there is less delay in convening a hearing. It is possible that there could be positive impacts in relation to [Article 3\(1\)](#) best interest to be a primary consideration. Feedback from children and young people has indicated that retaining a rigid requirement for mixed gender panels is of limited importance.

3. Will there be different impacts on different groups of children and young people?

We anticipate it will affect a very small proportion of children and young people who are referred to a Children's Hearing, as we expect the flexibility introduced by this change to be used infrequently. Proportionally, more boys than girls are referred to a Children's Hearing (43.4% female to 56.6% male), and the most common ages of referral are 14 and 15.

4. If a negative impact is assessed for any area of rights or any group of children and young people, can you explain why this is necessary and proportionate? What options have you considered to modify the proposal, or mitigate the impact?

No negative impacts have been assessed.

5. How will the policy/measure give better or further effect to the implementation of the UNCRC in Scotland?

The members of the Children's Panel selected for individual hearings make legal decisions on how to support infants, children, and young people who come to children's hearings. At every children's hearing there are always three volunteer, lay members of the Children's Panel and it is their role to: listen to the child or young person's views, understand their circumstances, and ultimately make legal decisions about how to best protect and care for them.

This measure will ensure that decisions continue to be lawfully made in instances where it is not practicable to select both male and female Children's Panel members. Introducing this flexibility does not negatively impact on the ability of the individual members of the Children's Panel at a children's hearing to make decisions in the best interests of the child.

6. How have you consulted with relevant stakeholders, including involving children and young people in the development of the policy/measure?

We have undertaken a focussed and targeted engagement exercise, requesting views from 21 key stakeholder organisations working in children's rights, protection and justice. As part of this, we specifically sought their views on the potential impact on children and young people. Response rate was limited, which reflects the broad support for the proposed change that was consistent when discussing informally with stakeholders. The responses we received furthermore indicated clear support. On the issue of the impact on children and young people, the responses touched on ensuring that a lawful hearing goes ahead where a mixed panel cannot be convened.

As part of the process of gathering evidence to support their proposal of this change, Children's Hearings Scotland undertook engagement with children and young people. They did this through in-person engagement with Our Hearings, Our Voice, the independent board for children and young people from across Scotland between the ages of 8-18, who have experience of the Children's Hearings System. Furthermore, they had three face to face meetings with children and young people with experience of the hearings system and CHS. Feedback was gathered using a child friendly feedback form.

Of those children and young people consulted, only half were aware of the existing prescriptive requirement for a mixed gender panel. The majority of respondents had no strong feelings about the gender balance of a panel, saying either they had no preference, or it wasn't important to them. The issue of potential trauma, and creating safe spaces within hearings was raised, with some respondents alert to the need for children's views to be considered. Retaining a strict requirement for mixed gender panels was of low importance to these children.

7. What evidence have you used to inform your assessment?

Feedback through the engagement with stakeholders, children and young people has informed this assessment. An analysis of staffing levels and the potential impact of not implementing this change has also informed our consideration.

8. How will the impact of the policy/measure be monitored?

The impact will be monitored by Children's Hearings Scotland, the body with operational responsibility. National Convener Guidance will be issued to Area Support Teams on how the flexibility should be employed, and the impact of the change in law will be carefully monitored and a process for data collection has been identified. This will enable monthly internal reporting for an initial period, with Senior Management of Children's Hearings Scotland oversight and review. Significant or unexpected use, should it arise, will be addressed with the rota managers within Children's Hearings Scotland through the existing management and reporting structures.

9. How will you communicate to children and young people the impact of the policy/measure on their rights?

It is not considered necessary for widespread communication on such a minor and discrete change. However, we will explore options with operational partners to consider how broadly this change needs to be communicated to those children who may be affected.

10. Sign & Date

Policy Lead Signature & Date of Sign Off: Craig Milne, 12 August 2022

Deputy Director Signature & Date of Sign Off: Tom McNamara, 12 August 2022

Once signed off, please send to CRWIA@gov.scot and publish on gov.scot website.

Annex 1 – UNCRC Article Clusters

[CRC Clusters \(unicef-irc.org\)](https://www.unicef-irc.org/)

I General measures of implementation

[Article 4](#) implementation obligations

[Article 41](#) respect for existing standards

[Article 42](#) making Convention widely known

[Article 44\(6\)](#) making reports widely available

II Definition of a child

[Article 1](#)

III General principles

[Article 2](#) non-discrimination

[Article 3\(1\)](#) best interest to be a primary consideration

[Article 3\(2\)](#) State's obligations to ensure necessary care and protection

[Article 3\(3\)](#) standards for institutions services and facilities

[Article 6](#) the right to life, survival and development (see also: [VI Basic health and welfare](#))

[Article 12](#) respect for the views of the child

IV Civil rights and freedoms

[Article 7](#) right to name, nationality and to know and be cared for by parents

[Article 8](#) preservation of child's identity

[Article 13](#) freedom of expression

[Article 14](#) freedom of thought, conscience and religion

[Article 15](#) freedom of association and peaceful assembly

[Article 16](#) protection of privacy

[Article 17](#) child's access to information, and role of mass media

[Article 37\(a\)](#) right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment

V Family environment and alternative care

[Article 5](#) parental guidance and child's evolving capacities

[Article 18\(1\) and \(2\)](#) parental responsibilities and State's assistance

[Article 9](#) separation from parents

[Article 10](#) family reunification

[Article 11](#) illicit transfer and non-return

[Article 27\(4\)](#) recovery of maintenance for the child

[Article 20](#) children deprived of their family environment

[Article 21](#) adoption

[Article 25](#) periodic review of placement and treatment

[Article 19](#) protection from all forms of violence

[Article 39](#) rehabilitation and reintegration of victims of violence (see also: [VIII - Special protection measures](#))

VI Basic health and welfare

[Article 6](#) right to life, survival and development (see also: [III - General principles](#))

[Article 18\(3\)](#) support for working parents

[Article 23](#) rights of disabled children

[Article 24](#) right to health and health services

[Article 26](#) right to social security

[Article 27\(1\)-\(3\)](#) right to adequate standard of living

VII Education, leisure and cultural activities

[Article 28](#) right to education

[Article 29](#) aims of education

[Article 31](#) right to leisure, play and participation in cultural and artistic activities

VIII Special protection measures

A - Children in situations of emergency

[Article 22](#) refugee children

[Article 38](#) children and armed conflict

[Article 39](#) rehabilitation of child victims (see also: [V Family environment and alternative care](#))

B - Children involved with the system of administration of juvenile justice

[Article 40](#) administration of juvenile justice

[Article 37\(a\)](#) prohibition of capital punishment and life imprisonment

[Article 37\(b\)-\(d\)](#) restriction of liberty

[Article 39](#) rehabilitation and reintegration of child victims (see also: [V Family environment and alternative care](#))

C - Children in situations of exploitation

[Article 32](#) child labour

[Article 33](#) drug abuse

[Article 34](#) sexual exploitation

[Article 35](#) sale, trafficking and abduction

[Article 36](#) other forms of exploitation

D - Children belonging to a minority or an indigenous group

[Article 30](#)

[Optional Protocol to the UNCRC on the Involvement of Children in Armed Conflict](#)

[Governments](#) should ensure that children under 18 who are members of the armed forces do not take a part in combat. Any recruitment of children under 18 must be voluntary and carried out with the full consent of the child's parents/carers. The UK Government has entered interpretive Declarations to this Optional Protocol. The UK would not exclude the deployment of under 18s who are members of the armed forces in direct combat if there is a genuine military need; it is not practicable to withdraw them before deployment; or doing so would undermine the operational effectiveness of their unit. The minimum age at which children may join the UK armed forces is 16 years, with parental consent required.

[Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child](#)

[Pornography Governments](#) must prohibit the sale of children, child prostitution and child pornography, and recognise the vulnerability of child victims, protect their privacy, provide appropriate support services and ensure their safety.

Annex 2 – General Comments

General Comments are non-legally binding interpretive aids issued by the UN Committee on the Rights of the Child to provide State parties with assistance regarding the interpretation of an article or issue relating to the UNCRC, and what actions governments should take to ensure its implementation. New General Comments appear at irregular intervals.

[Treaty bodies Search \(ohchr.org\)](#)

1. [The aims of education \(2001\)](#)
2. [The role of independent National Human Rights Institutions in the protection and promotion of the rights of the child \(2002\)](#)
3. [HIV/AIDS and the rights of children \(2003\)](#)
4. [Adolescent health and development in the context of the Convention on the Rights of the Child \(2003\)](#)
5. [General measures of implementation on the Convention on the Rights of the Child \(2003\)](#)
6. [Treatment of unaccompanied and separated children outside their country of origin \(2005\)](#)
7. [Implementing child rights in early childhood \(2005\)](#)
8. [The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment \(2006\)](#)
9. [The rights of children with disabilities \(2006\)](#)
10. [Children's rights in juvenile justice \(2007\)](#)
11. [Indigenous children and their rights under the Convention \(2009\)](#)
12. [The right of the child to be heard \(2009\)](#)
13. [The right of the child to freedom from all forms of violence \(2011\)](#)
14. [On the right of the child to have his or her best interests taken as a primary consideration \(2013\)](#)
15. [On the right of the child to enjoyment of the highest attainable standard of health \(2013\)](#)
16. [State obligations regarding the impact of the business sector on children's rights \(2013\)](#)
17. [On the right of the child to rest, leisure, play, recreational activities, cultural life and the arts \(2013\)](#)
18. [On harmful practices \(Joint General Comment with the Committee on the Elimination of Discrimination against Women\) \(2019\)](#)
19. [Public budgeting for the realisation of children's rights \(2016\)](#)
20. [Implementation of the rights of the child during adolescence \(2016\)](#)
21. [Children in street situations \(2017\)](#)
22. General principles regarding the human rights of children in the context of international migration ([Joint General Comment with the Committee on the](#)

[Protection of the Rights of All Migrant Workers and Members of their Families](#)
[\(2017\)](#)

23. State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return [\(Joint General Comment with the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families\) \(2017\)](#)
24. [General comment No. 24 \(2019\)](#) on children's rights in the child justice system
25. [General comment 25 \(2021\)](#) Children's Rights in relation to the digital environment.