

APPENDIX 8: Children with Additional Support Needs (ASN) and Disabilities: Children’s Rights Impact Assessment (CRIA)

Subject Focus: Children with Additional Support Needs (ASN) and Disabilities

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: Sheila Riddell, Professor of Inclusion and Diversity, University of Edinburgh. sheila.riddell@ed.ac.uk

Date: 18.06.20

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 Act 2020: Educational Continuity Direction	To set out “necessary and proportionate steps” with regard to the continued provision of education. The Direction applies to all 32 local authorities (LAs) (but not the independent and grant aided sector nor to Further Education/ Higher Education). The Direction requires LAs to “plan and prepare for” children to resume attendance at schools, including nursery schools, “at the earliest time it is safe to do so”, having regard to Scottish Government guidance. Support for children at transition points should be prioritised. The Direction requires LAs to support in-home learning in accordance with appropriate local arrangements. Local authorities must provide education and childcare for (i) children of key workers and (2) vulnerable children (including those eligible for free school meals, with complex additional support needs and at-risk children).
Education (Additional Support for Learning) (Scotland) Act 2004 (provision for additional support needs), as amended 2009 and 2016	The Education (Additional Support for Learning) (Scotland) Act 2004 (amended in 2009 and 2016) provides a definition of which children should be regarded as having Additional Support Needs (ASN) (including disabled children) and sets out the duties of the local authority in relation to children deemed to have ASN. The Educational Continuity Direction suspends all LAs’ duties to children with ASN, as long as failure to comply with the duty may be attributed to the COVID-

	19 pandemic.
Education (Scotland) Act 1980 S.30(1)	As a result of the Direction, the duty on parents to ensure that their child receives an education has been disregarded.
The Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020	Local authorities have more time in which to take a decision on placing requests and education appeal committees have more time in which to hear appeals. Changes to placing request regulations mean that many disagreements about school placements will not be resolved for many months after the commencement of the academic year. This means that the parent will have to agree to the school suggested by the local authority or keep their child at home until after the appeal is heard.
The First-tier Tribunal for Scotland Health and Education Chamber (Procedure) Regulations 2017	Only time critical tribunal cases will go ahead, with minimal involvement by children and young people. Tribunal hearings will not be face to face, and cases will be resolved by conference call. A case may also be decided by a judge without the input of other members. A range of witnesses are unlikely to be called to give evidence.

Question 2: Which human rights instruments and articles are particularly relevant to the measure(s)?		
Human Rights Instrument	Article	Further analysis on the expected / actual effect
United Nations Convention on the Rights of the Child (UNCRC)	<p>Article 28 - Guarantees the child's right to education.</p> <p>Article 29 - Education directed to: (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential etc.</p>	<p>Local authorities no longer have a duty to provide education and parents no longer have a duty to ensure that their child is educated. LAs were advised by Scottish Government to ensure that hub schools are available for the children of key workers and those children deemed 'vulnerable'.</p> <p>The category of the vulnerable child is not defined, and there is no register in Scotland of which children are counted as vulnerable (Scottish Government, 2020e). Certain children who would be deemed 'vulnerable' may be shielding (or others in their families), which may mean they are not able to attend hubs.</p> <p>Information on which children are deemed to be vulnerable would be necessary to conduct an individual risk assessment.</p>

	Article 31 - Right to rest, leisure, play, cultural life and the arts	If a child is entitled to a Co-ordinated Support Plan (CSP) but, like so many, does not have this in place, then it is very difficult to assess risks and needs on an individualised basis to determine what is in the child's best interests (Article 3) during lockdown or route map phases in return to school.
UNCRC	<p>Article 12 - Guarantees that all children capable of forming their own views have the right to express their views freely in all matters affecting them, and that due weight will be given to these views in accordance with the age and maturity of the child. The UN Committee General Comment No.12 (2009) explains: "Respect for right of the child to be heard within education is fundamental to the realization of the right to education" (UN Committee 2009, Para: 105).</p> <p>(See also Article 5 on evolving capacities)</p>	<p>The Education (Scotland) Act 2016 extended the rights of children aged 12-15 in Scotland, giving them effectively the same rights as those already enjoyed by parents and young people aged 16 and 17. However, there were certain conditions for children related to capacity and 'wellbeing'. Because the local authority no longer has a duty to educate children, as long as the suspension of normal provision is as a result of COVID-19, all of the new educational rights acquired by children and young people (over the age of 12) have been suspended.</p> <p>Further issues in relation the 2016 Act pre-date the COVID-19 measures. The UNCRC Article 12 rights and European Convention on Human Rights (ECHR) Article 6 rights to participation, fair hearing and due process are not restricted to children aged over 12. Thus, there is a pre-COVID issue about the concentration on children aged 12 and above in the 2016, and not extending participation rights to those under the age of 12. For those aged 12 or over, the conditions of 'capacity' and 'wellbeing' are problematic.</p> <p>Looked after children are at risk of being disproportionately impacted by these provisions as the local authority making the decisions about 'capacity' and 'adverse impact on wellbeing' are also the children's 'corporate parent'.</p>
United Nations Convention on the	Article 7 - States Parties shall take all necessary	The potential participation of people with additional support needs and disabilities in virtual decision-making processes, such as children's

<p>Rights of Persons with Disabilities (UNCRPD)</p>	<p>measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.</p> <p>In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.</p> <p>States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.</p>	<p>hearings and court procedures, raise issues of accessibility, and the ability to obtain advice and representation.</p> <p>Generally, there are issues of digital exclusion for children and parents with additional support needs and disabilities, ranging from families for whom English is an additional language, who have particular communication needs or who have learning difficulties.</p>
<p>UNCRPD</p>	<p>Article 24 - Requires states to ensure “an inclusive education</p>	<p>Article 24 of the UNCRPD reinforces the fundamental right to be educated in an inclusive environment with reasonable adjustments to ensure full participation. This interacts with Article 7 of the UNCRPD, where children</p>

	system at all levels” which is directed to “enabling persons with in a free society” and that disabled children and young people should have access to primary and secondary education “on an equal basis with others in the communities in which they live”.	<p>with disabilities have the rights to express their views on all matters affecting them. These views should be given due weight in accordance with their age and maturity, with disability and age-appropriate assistance to do so.</p> <p>Children and young people with additional support needs and disabilities may be differentially impacted by changes in schooling and learning, such as the school closures and proposals for blended learning in autumn 2020, and cancelling of examinations.</p> <p>Children and young people in transitions and who are awaiting school placement decisions are at particular risk for their education rights to be addressed.</p>
UNCRC	Article 2 – Non-discrimination	
ECHR	<p>Article 14 – Non-discrimination</p> <p>Article 6 – Right to fair hearing and due process</p>	See above, under Article 12 of the UNCRC and Article 7 of the UNCPRD.

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?
Teacher Tapp survey reported	Sutton Trust (Montacute, 2020)	Impact of school closures on social inequality and social mobility	Evidence for Scotland missing

COVID-19 and social mobility	Centre for Economic Performance, London School of Economics (Major and Machin, 2020)	Negative impact of school closure on social mobility	Evidence for Scotland missing
Schools' responses to COVID-19	Nuffield Trust/ National Foundation for Educational Research (NFER) (Sharp et al, 2020)	Survey of school leaders in England suggests that children in socially deprived areas less likely to return to school following reopening.	Evidence for Scotland missing
Link between absence and attainment for academic year 2013-14 Department for Education (2016)	Department for Education (2016)	Strong association between school attendance and attainment, particularly for children with Special Educational Needs and Disability (SEND) and those entitled to free school meals. Underlines social disproportionality associated with school closure.	Evidence for Scotland missing
COVID-19 and social mobility	Sutton Trust (Cullinane and Montacute, 2020)	Socially unequal access to on-line learning. Children in independent schools twice as likely to receive daily on-line lessons. Those in disadvantaged areas are the least likely to receive on-line lessons.	Evidence for Scotland missing
Riddell (2020, forthcoming)	University of Edinburgh	Local authorities in England and Scotland have little knowledge and awareness of the rights of children with ASN/Special Educational Needs. Strong association between ASN and social deprivation.	Covers England and Scotland. Quantitative and qualitative data. Indicates mismatch in official policy discourse of adherence to children's rights and classroom reality. Particular problems in relation to the rights of

			children from socially deprived neighbourhoods and those with particular types of difficulty, e.g. social, emotional and behavioural difficulties.
Family Fund (2020)	Family Fund (2020)	Low income parents of disabled children report that educating children and keeping them entertained is their major concern, along with supporting their health and wellbeing. Access to new computing equipment/printer would make life easier.	Two surveys conducted – more than 1,000 responses in each case. Few details given about characteristics of sample, and whether the same population of parents responded on both occasions.
Schoolwork in Lockdown: new evidence on the epidemic of educational poverty	UCL, Institute of Education LLAKES Research Report 67, (Green, 2020)	One fifth of pupils across the UK (two million pupils) have done virtually no schoolwork since lockdown (less than one hour a day). Huge gaps between state and private schools, particularly in provision of online schoolwork. About a third of private schools provided four or more lessons of online teaching (live or real-time lessons or meetings), compared with six per cent of state schools. Children with ASN are disproportionately likely to be entitled to free school meals, and this group has done least work of all.	Covers all regions and nations of the UK. Reliable data source (UK Household Longitudinal Study). Does not specifically address issues relating to pupils with ASN/ SEN.

Question 3b: What key missing information / evidence would have been beneficial to your analysis?

There is a dearth of quantitative data in Scotland using existing sources to explore the impact of the COVID-19 pandemic on the education of children with additional support needs and/or disability (ASND).

This includes the use of early learning childcare and school hubs, for children with ASND and their families, and for children who have a disabled family member. This would include disaggregated data.

The numbers of households who have been asked to shield who have a child or young person, disaggregated by family member and what access to support and learning has been available for the children and young people.

Question 4a: What qualitative evidence have you used to inform your assessment? What does it tell you?

Evidence collected	Evidence source	Explanation of the importance
Impact of school shutdown on parents of disabled children	BBC (Coughlan, 2020)	Illustrates particular economic and social difficulties encountered.
CREID Research Project: Autonomy, rights and children with special needs: a new paradigm	(Riddell et al, 2019; Riddell, 2020 forthcoming)	Children and young people with ASND/SEND, particularly those from socially disadvantaged backgrounds, have great difficulty in realising their newly enhanced rights of participation and redress.

Question 4b: What key missing information / evidence would have been beneficial to your analysis?

More recent Scottish research on the rights of children with ASND

The experiences of accessing and using early learning childcare and school hubs, for children with ASND and their families, and for children who have a disabled family member. This would include disaggregated data.

In-depth and broad evidence on the experiences for children and their families, with ASND, in relation to support available and needed, and barriers to, their learning online. To consider differentiated groups, such as disabled children who are looked after or refugee children.

The experiences and views on digital inclusion and exclusion, for children and their families, in relation to different ASND.

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

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

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

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

Measure	Groups consulted	If group consists of children and young people			Results of consultation	
		✓	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)?
Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020	The Child Rights and Wellbeing Impact Assessment (CRWIA) (Scottish Government (2020s) on the associated Bill outlines that unprecedented circumstances presented by the coronavirus outbreak made it not					At time of writing, significance is unknown.

	possible to consult with children and young people on the proposed legislation.					
--	---	--	--	--	--	--

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. For the measures and issues considered here, no evidence was found.

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).

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)?

STAGE 3: ASSESSING THE IMPACT

Question 7: What impact will (or does) the measure(s) have on children and young people’s rights?

Measure	Type of impact	Justification for Argument	Likely or actual

			short/medium/ long-term outcomes
<p>The Education Continuity Direction 2020 means that any failure to comply with a duty or time limit listed in existing education legislation is to be disregarded to the extent that the failure would be attributable to the Education Continuity Direction. The specific legislative measures which are to be disregarded are listed below.</p>	<p>Negative</p>	<p>International human rights' treaties provide guarantees of children and young people's right to education in an inclusive environment and to participate in educational decision-making (see Question 2). The Education (Scotland) Act 2016 extended the rights of children aged 12-15 with capacity so that they enjoy almost the same rights as their parents and young people. The Education Continuity Direction means that LAs no longer have to comply with existing education legislation, including time-lines for opening Co-ordinated Support Plans and reviewing placing requests. The Direction therefore suspends the legal underpinning of educational rights children and young people with ASND for an indeterminate period of time. This is likely to have a disproportionately negative effect on children with ASND compared with children who are not so identified. Children with ASN and disabilities are, by definition, entitled to additional support for learning and reasonable adjustments, (in terms of both the Education legislation and the Equality Act 2010) including individualised teaching and therapeutic support. Reports from Scottish parents' groups indicate that most learning materials provided by schools are non-differentiated and that parents are struggling to access multiple and inaccessible digital platforms. There are calls for one national accessible digital platform and guaranteed live on-line teaching (Brooks, 2020). Since children with ASND are likely to live in socially disadvantaged households, they are less likely to have internet access and the ability to use digital materials. Many households may lack outside space, leading to further physical restrictions which impact disproportionately on ASND children</p>	<p>Medium/long-term</p>

		in socially disadvantaged environments (See Appendix 4). Inclusive education cannot be provided in individual home environments.	
Education (Additional Support for Learning) Scotland) Act 2004 S. 4(1) (provision for additional support needs)	Negative	Local authorities are no longer required to make adequate and efficient provision for children identified as having additional support needs, including those who are disabled under the terms of the Equality Act 2010, as long as failure to comply with existing duties is as a result of COVID-19. The LAs must ensure that hub schools are open to include (vaguely defined) vulnerable children, including some disabled children and those with ASN. However, the Scottish Children’s Services Coalition estimates that less than one per cent of the 97,000 children classified as vulnerable in Scotland are currently attending hub schools (Stuart, 2020) (see also Appendices 2, 4, 6, and 7 about concerns that local flexibility in defining ‘vulnerable’ is leading to inequalities of access and provision).	Medium/long-term
Education (Scotland) Act 1980 S. 30(1)	Negative	Under the Direction, the parental duty to comply with the duty to educate their child is disregarded. It is already known that many disabled children and those with ASN are more likely to be excluded from school, and that informal exclusion is a particular issue for this group (e.g. see ENABLE Scotland (2017)). Children with social, emotional and behavioural difficulties, including those with autistic spectrum disorder, are particularly likely to be informally excluded or placed on part-time programmes (Children in Scotland et al, 2019). These children are likely to be further marginalised, with parents discouraged from ensuring that they return to school at the end of the pandemic.	Medium/long-term
Education (Scotland) Act 1980 S. 53(2) (free school meals)	Negative	Disabled children and those with ASN are particularly likely to live in socially deprived neighbourhoods and be eligible for free school meals (Riddell and Gillooly, 2019) They are therefore likely to be disproportionately affected by non-attendance at	Medium/long-term

		<p>school and provision of free school meals in alternative forms (e.g. vouchers). Alternative forms of free school meals may be of low nutritional quality. In addition, disabled children/those with complex ASN may need supervision/feeding to ensure that they actually consume the food. In many households, adults may not be able to provide this level of support, particularly those living with social disadvantage, who are disproportionately like to be working outside the home during the pandemic. For families with several children to look after, there may not be sufficient time to provide the nutritional support required to ensure the child is adequately nourished. There is a risk of abuse in such situations, for example, force feeding of children with autistic spectrum disorder. For many children with ASND, learning to eat is part of the school curriculum, so this is another aspect of the suspension of normal teaching and learning which is likely to have a negative impact on their future development. (For further discussion of free school meals, see Appendix 4.)</p>	
<p>Time limits prescribed in or under the 2004 Act (except placing request time limits, which have already been extended) CSPs, independent adjudication etc.</p>	Negative	<p>The Education (Scotland) Act 2016 extended the rights of children with additional support needs, including strengthening their right to access dispute resolution, such as adjudication, independently of their parents. This type of dispute resolution includes strict time limits: for example, in relation to the requirement for LAs to provide evidence or make a formal response. Since 2018, children aged 12 or over have also been able to request a CSP, or a review of a CSP, independently (subject to conditions of capability and wellbeing). The suspension of time lines relating to statutory support plans and adjudication means that children and young people's rights in these areas are effectively suspended.</p>	<p>Medium/long-term</p>

The First-tier Tribunal for Scotland Health and Education Chamber (Procedure) Regulations 2017	Negative	The existing regulations for the First-tier Tribunal for Scotland (Health and Education Chamber) allow face to face hearings to be suspended. Only those which are 'time critical' (strictly defined) will go ahead.	
--	----------	--	--

Question 8: Will there be (or are there) different impacts on different groups of children and young people?			
Measure	Group of children affected	Initial analysis of the positive impact on rights	Initial analysis of the negative impact on rights
The Education Continuity Direction	All children. Specific impact on the rights of children with ASND. Additional negative impacts on those experiencing multiple disadvantage, e.g. children with ASND living with social deprivation, care experienced children with ASND, children with social, emotional and behavioural difficulties.	None	Rights to education effectively disregarded. For children with ASND, new rights of participation and redress disregarded. Specific impacts for those living with economic disadvantage and disability.

Question 9: If a negative impact is identified for any area of rights or any group of children and young people, what are the options to modify the measure(s), or mitigate the impact?		
Measure	Negative impact	What options are there to modify the measure(s) or mitigate the impact?
The Education Continuity Direction 2020	Lack of education and care	Resume full time education as soon as possible.
The Education Continuity Direction 2020	Local authorities no longer have a duty to ensure that children are	Place a binding duty on LAs to take all practicable steps to meet the educational needs of children with ASND. Ensure individual assessments are conducted of the educational needs of children with ASND, particularly

	educated	those with Co-ordinated Support Plans, and these are followed up with concrete measures. Reinstitute key timelines as soon as possible (e.g. those associated with opening of CSPs, dealing with placing requests etc.)
--	----------	---

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
As outlined in Question 1.	Articles 1, 6 and 24	<p>The measure has been introduced to mitigate the health risks posed by the COVID-19 virus, and therefore could be seen to address Scottish Government's obligation to promote protect and fulfil children's right to health (Article 24), life, survival, development and health (Article 6).</p> <p>However, the measures simultaneously compromise a significant number of children and young people's provision, protection and participation rights, including those specific to children with ASND (Article 23). The failure to account for children and young people's views in the development of measures raises concern about whether the decisions have been made in their best interests (Article 12).</p> <p>Evidence suggests that children and young people's right to access quality education (Article 28) is being compromised. With schooling limited to the home setting and heavily reliant on</p>	UN Committee General Comment No. 9 (2006)

		<p>digital access and parental/carer' engagement, there are concerns that the measures compromise, and discriminate against, the education rights of disabled children and young people (Articles 2, 28 and 29). As outlined in UN Committee (2006) "Children with disabilities should also be provided with the appropriate technology and other services and/or languages, e.g. Braille and sign language, which would enable them to have access to all forms of media, including television, radio and printed material as well as new information and communication technologies and systems, such as the Internet." (Para: 36)</p> <p>As outlined in previous questions, evidence highlights that children with ASND are more likely to live in socioeconomically deprived neighbourhoods. Given the disproportionate impact of school closures on children in poverty due to digital inequalities, food insecurity and material deprivation (breach of Article 27) (see Appendix 4), children with disabilities and ASN may experience additional, intersectional rights violations.</p> <p>The school closures bring many health-related problems (Article 24), including access to adequate nutrition and long-term damage to economic wellbeing of children and their families (Article 27).</p>	
--	--	---	--

<p>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/).</p>		
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
Ambition is to improve education, narrow attainment gap, reduce poverty	Measures discussed above will impede progress towards these goals.	Achieving Nurtured Active Respected Included

STAGE 4: CONCLUSIONS AND RECOMMENDATIONS

<p>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:</p> <ul style="list-style-type: none"> • to observe and document children’s human rights issues; • to learn from this both in positive and negative developments 	
<p>Four years before the COVID-19 pandemic, Scottish Government passed the Education (Scotland) Act 2016, boosting the rights of children and young people with ASND in an effort to ensure that domestic legislation reflected the principles of international human rights’ treaties including the UNCRC and the UNCRPD. The table below summarises the new rights.</p>	
<p>Summary of new rights accorded to children aged 12-15 (C) and young people (YP) with additional support needs in Scotland (post Education (Scotland) Act 2016)</p>	
<p>Right to ask local authority to:</p> <ul style="list-style-type: none"> Find out if they have ASN (C) Request a specific assessment (C) Find out if they need a Co-ordinated Support Plan (CSP) (C) Ask for a CSP to be reviewed (C) 	<p>Right regarding information and advice:</p> <ul style="list-style-type: none"> About their ASN (C) Receive a copy of the CSP (C) Be told about decisions about their rights(C) Be asked if they are happy for information to be shared when they leave school (C)

<p>Rights regarding having their views heard and considered: Be involved in decisions about their support(C) Access to support and advocacy to have their views heard (My Rights My Say) (C)</p>	<p>Right to be involved in resolving disagreements and disputes: Ask for independent adjudication(C) Make a reference to the First tier Tribunal(C) Attend tribunal and have views heard and considered (C) Opt for mediation (YP only) Be asked for their views during mediation (C)</p>
<p>The confusingly named Education Continuity Direction (Scottish Government, 2020f), which claimed to focus on reopening schools, in fact provides the legal underpinning for their closure. Since LAs no longer have a duty to provide education for children, and parents no longer have a duty to ensure that their children are educated, this effectively negates the co-relative right of the child to be educated. For children with ASND, who have additional rights compared with other children, this suspension of rights is particularly significant. The key question is whether the suspension of these rights is short-term, or whether it is likely to continue for the foreseeable future.</p> <p>Widening of social inequality <i>Health and wellbeing</i></p> <p>The measures associated with school shutdown are likely to have a medium or long-term effect on the health and wellbeing of children with ASND. Because most children are not in school, they will not be receiving medical and therapeutic interventions, including physiotherapy, speech and language therapy and psychotherapy (see Appendix 1). In addition, the suspension of free school meals, along with access to support staff to help with feeding, may have medium or long-term adverse effects on children’s development. For specific groups of children with ASND, including care experienced children, those living with parents with addiction issues and those who are young carers, the medium to long-term impact on mental and physical wellbeing may be considerable. These problems are strongly associated with social deprivation, so health inequalities among disabled children, as well as between disabled children and others, are likely to widen. Scottish Government (2020x) has published scientific advice indicating that, particularly for children living with social deprivation, the risks to health and wellbeing of staying at home may outweigh the risks of returning to school. Researchers at Imperial College have shown that children have a much lower fatality rate from COVID-19 than adults (Ferguson et al, 2020). The Infection Fatality Rate for children aged 0 to 9 is 0.002%, compared with 9.3% for those aged 80+. Children are 10,000 times less likely to die of COVID-19 than those aged over 75.</p> <p><i>The home learning environment, school attendance and attainment</i></p> <p>In a review of evidence for the Sutton Trust, Montacute (2020) notes the importance of the home learning environment for children from all socio-economic backgrounds. Difficulties in engaging with children’s education are likely to be experienced by parents with lower levels of education who may be living in cramped housing conditions. The negative impact on social mobility of</p>	

school closure is also highlighted by Major and Machin (2020). As further discussed in **Appendix 4**, existing inequalities may worsen under these measures in response to COVID-19.

There is a well-established connection between school attendance and attainment (Department for Education (DFE), 2016). Analysis of administrative data by the DfE shows that children with SEND and free school meal entitlement have considerably worse attendance and attainment levels compared with others. A recently published Nuffield Trust funded survey (Sharp et al, 2020) conducted by NFER researchers shows that English school leaders in more socially deprived neighbourhoods believe that children in their area are unlikely to return to school in June due to parental fears of the virus. By way of contrast, school leaders in less deprived areas believe that children will return to school, because parents are better informed about the relatively low risks of the COVID-19 to children.

In May 2020, Scottish Government (2020x) published its scientific assessment of the relatively low risk of children contracting and spreading COVID-19, but this is more likely to be read and understood by parents with higher levels of education living in more affluent areas.

Impact on family life of caring and educating for children with ASND at home

It is important to recognise that the mental, physical and educational wellbeing of children and young people with ASND cannot be separated from their family situation. A BBC report (Coughlan, 2020) highlights feelings of social isolation experienced by parents of disabled children. The report indicates that financial concerns may also be a particular problem for this group, especially for those with less secure employment who may not be able to work from home. Additional pressure is likely to be experienced by all parents of children with ASND, since there are tensions in trying to balance home working with educating and caring for a disabled child and their siblings. However, these pressures are likely to be felt more acutely by parents with fewer financial resources, with learning difficulties or disabilities, and poorer housing conditions, including those who may have to leave home to work (**see Appendix 4** and the Scottish Commission for People with Learning (SCLD) Disabilities, 2020).

Exposing the digital divide (see Appendix 4)

Home education depends on digital access and knowledge of how to use IT. Research funded by the Sutton Trust (Cullinane and Montacute, 2020) shows that the closure of schools is likely to have an adverse effect on social mobility, partly as a result of differential access to digital learning by different social groups.

Recent polling by Teacher Tapp reported by Montacute (2020) showed that independent school pupils were twice as likely to get access to on-line lessons every day, as opposed to state school pupils. Pupils in state schools located within areas of social

deprivation were less likely to get access to on-line lessons compared with this in more advantaged areas. The Sutton Trust research review suggests that the differential impact of school shutdown in England is likely to have a long-term negative impact on social mobility (Montacute, 2020). Based on data from the UK Household Longitudinal Study, Green (2020) notes that one fifth of pupils across the UK (two million pupils), particularly those from socially disadvantaged backgrounds, have done virtually no schoolwork since lockdown

Weaknesses in educational planning in Scotland for children with ASND

School shutdown highlights weaknesses in educational planning in Scotland for children with ASND. There is no consistent view across Scotland about which children count as vulnerable and there is likely to be wide regional variation (**see also Appendices 2, 4, 6, and 7**). There is also no central record of which children have CSPs. Furthermore, there is large regional variation in the use of CSPs, which provide access to key rights of participation and redress. Recent research shows lack of knowledge and understanding of CSPs in Scottish schools and confusion about the locus of responsibility between LAs and schools (Riddell et al, 2019; Riddell, 2020 forthcoming).

By way of contrast, in England ten times as many children have statutory support plans (three per cent of children in England have Education, Health and Care Plans (EHCPs) c.f. 0.3% with CSPs in Scotland). 97% of children in special schools in England have an EHCP, compared with 0.3% of the equivalent population in Scotland. There appears to have been a greater emphasis on safeguarding the rights of children with ASND in England during the pandemic. English LAs must make 'reasonable endeavours' to ensure that measures proposed in EHCPs are still delivered. Where it is not possible to deliver a service as stipulated in the EHCP, then parents must be informed of what the LAs will provide in its place. A risk assessment of every child with an EHCP must be conducted. Specific guidance from the DfE was published on 26th May about what LAs must do in relation to school return for children with SEND (DfE, 2020). No equivalent document has yet been published in Scotland.

Looking ahead: What is to be done?

Scottish Government's strategic framework for the reopening of schools from August 2020 suggests that the blended learning approach will continue for the foreseeable future, with children attending school part-time and spending the rest of their time at home (Scottish Government, 2020e).

This implies that the current situation, with its potential to increase social inequality, will continue for some time. Scottish Government (2020e) acknowledges that "the current situation is likely to affect disproportionately the most disadvantaged children and young people in our society". The proposed solution, set out in the document entitled Supporting Pupils, Parents and Teachers – Learning During Term 4, is to encourage the flexible use of Attainment Scotland Funding by LAs (Scottish

Government, 2020k) However, no concerted and coordinated national approach is envisaged and it is unlikely that a short-term increase in funds will negate the significant negative impact of school closure.

There is a risk that school shutdown and the suspension of children’s rights may have long-term consequences in terms of the social marginalisation of disabled children, young people and their families.

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

Summary of recommendation	Body addressed to (e.g. Scottish Government)
<p>Ensure that the rights of children and young people with ASND, which have been suspended since March, are restored as a priority.</p> <p>Address the longstanding problem in Scotland of an educational planning system which is unfit for purpose, since statutory plans are virtually moribund and appear to be only available to those whose parents are able to struggle to ensure that one is opened for their child. Statutory support plans are essential to the realisation of children’s rights, but are regarded as an unnecessary bureaucratic exercise by many people working in schools and LAs in Scotland (Riddell et al, 2019; Riddell, 2020 forthcoming).</p> <p>Ensure that a centralised record is maintained on children with ASND, which may be used to ensure that they are adequately supported during any national emergency which might arise in the future.</p> <p>Provide accessible information to teachers, parents and pupils to ensure widespread understanding of the relative risks of school attendance as opposed to non-attendance by disabled children and young people.</p> <p>Initiate a strong public awareness campaign communicating the importance of school attendance by pupils with ASND.</p>	<p>Scottish Government</p>
<p>Encourage parents of children with ASND, including those living with social disadvantage, to ensure that their children and young people return to school as soon as possible.</p>	<p>Schools and teachers</p>

<p>Ensure that schools and teachers welcome the return of children and young people with ASND, particularly those with mental health problems and social, emotional and behavioural difficulties, who have sometimes been ‘cooled out’ of education.</p> <p>Identify and meet the specific needs of different groups of disabled children, including those who are care experienced, those identified with autistic spectrum disorder, those with social, emotional and behavioural difficulties and those with multiple and complex difficulties.</p> <p>While the school shutdown continues, ensure that all children and young people have equal access to daily online lessons and that access to on-line platforms is simple and accessible.</p>	
<p>Demand that schools, teachers, LAs and Scottish Government explain their plans to resume the education of children with ASND and ensure that their recently enhanced rights are respected.</p>	<p>Parents</p>

<p>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?</p>	
<p>Potential concerns about children and young people’s rights</p>	<p>What recommendations do you have that could mitigate these concerns?</p>
<p>The suspension of the rights of children and young people with ASND may move from being a temporary emergency measure to a normal state of affairs.</p>	<p>Scottish Government needs a coherent and transparent plan to reactivate the rights of children and young people with ASND. Clear lines of accountability need to be established.</p>
<p>‘Blended education’, with children and young people attending school on a part-time basis, may become the norm. This is likely to widen social inequalities because parents’ ability to home educate children and young people effectively is strongly associated with their</p>	<p>Ensure that all children return to full time education as soon as possible.</p>

access to social, cultural and educational resources.	
There may be an increasing reliance on the delivery of education via on-line digital platforms, widening social inequality because of differential access.	Acknowledge the limitations of digital learning and get children and young people back to school.
The education of certain groups of disabled children (e.g. care experienced children, those with behavioural difficulties, mental health difficulties, complex difficulties) may be neglected, particularly when these children are seen as 'challenging'.	Duties of LAs to provide education and parents' duty to ensure that their child is educated, needs to be reinstated rather than allowed to lapse. Children and young people cannot enjoy their right to education if those with a duty to provide it fail to ensure that this duty is fulfilled.

Reference List

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

Brooks, L. (2020) 'Parents Call for Virtual School for Scottish Pupils', *The Guardian*, [online] 31 May 2020. Available from: <https://www.theguardian.com/uk-news/2020/may/31/parents-call-for-virtual-school-for-scottish-pupils> [Accessed 11 June 2020].

Children in Scotland, the National Autistic Society Scotland and Scottish Autism (2019) Not Included, Not Engaged, Not Involved: A Report on the Experiences of Autistic Children Missing School. Edinburgh: Children in Scotland, the National Autistic Society Scotland and Scottish Autism, [online] Available from: <https://www.notengaged.com/download/SA-Out-Of-School-Report.pdf> [Accessed 11 June 2020].

Coughlan, S. (2020) 'Coronavirus: Parents of Disabled Children 'cut off and ignored'', *The BBC*, [online] 27 May 2020, Available from: <https://www.bbc.co.uk/news/education-52806105> [Accessed 11 June 2020]

Cullinane, C. and Montacute, R. (2020) COVID-19 and Social Mobility Impact Brief #1: School Shutdown. London: The Sutton Trust, [online] Available from: <https://www.suttontrust.com/wp-content/uploads/2020/04/COVID-19-Impact-Brief-School-Shutdown.pdf> [Accessed 11 June 2020].

Department for Education (2020) Supporting Children and Young People with SEND as Schools and Colleges Prepare for Wider Opening. Department for Education, [online] 26 May 2020, Available from: <https://www.gov.uk/government/publications/coronavirus-covid-19-send-risk-assessment-guidance/coronavirus-covid-19-send-risk-assessment-guidance> [Accessed 11 June 2020].

Department for Education (DfE) (2016) The Link Between Absence and Attainment at KS2 and KS4: 2013/14 Academic Year. London: Department for Education, [online] Available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/509679/The-link-between-absence-and-attainment-at-KS2-and-KS4-2013-to-2014-academic-year.pdf [Accessed 11 June 2020].

ENABLE Scotland (2017) #IncludED in the Main?! 22 Steps on the Journey to Inclusion for Every Pupil Who Has a Learning Disability, [online] Available from: <http://www.enable.org.uk/wp-content/uploads/2017/08/IncludED-in-the-Main-22-Steps-on-the-Journey-to-Inclusion.pdf> [Accessed 18 June 2020].

Ferguson, N.M., Laydon, D., Nedjati-Gilani, G. et al. (2020) Impact of Non-Pharmaceutical Interventions to Reduce COVID-19 Mortality and Healthcare Demand. London: Imperial College

Green, F. (2020) LLAKES Research Report 67, Schoolwork in Lockdown: New Evidence on the Epidemic of Educational Poverty. London: UCL Institute of Education

Major, E.L. and Machin, S. (2020) COVID-19 and Social Mobility: A CEP COVID-19 Analysis. London: Centre for Economic Performance, London School of Economics and Political Science, [online] Available from: <http://cep.lse.ac.uk/pubs/download/cepcovid-19-004.pdf> [Accessed 11 June 2020].

Montacute, R. (2020) Social Mobility and COVID-19: Implications of the COVID-19 Crisis for Educational Inequality. London: The Sutton Trust. Available from: <https://www.suttontrust.com/wp-content/uploads/2020/04/COVID-19-and-Social-Mobility-1.pdf> [Accessed 11 June 2020].

Riddell, S. (2020, forthcoming) Autonomy, Rights and Children with Special Educational Needs: Understanding Capacity Across Contexts. Basingstoke: Palgrave Macmillan.

Riddell, S. and Gillooly, A. (2020) Autonomy, Rights and Children with Special Needs: A New Paradigm? Working Paper 1 (Update): An Overview of Statistics on SEN in England and ASN in Scotland. Edinburgh: CREID, University of Edinburgh, [online]

Available from: http://www.docs.hss.ed.ac.uk/education/creid/Projects/39_ii_ESRC_SENChildren_WP_1_Update.pdf [Accessed 11 June 2020]

Riddell, S., Gillooly, A., Harris, N. and Davidge, G. (2019) *Autonomy, Rights and Children with Special Needs: A New Paradigm? The Rights of Children with Special Additional Support Needs in England and Scotland*. Edinburgh: CREID, University of Edinburgh and Manchester: School of Law, University of Manchester, [online] Available from: http://www.docs.hss.ed.ac.uk/education/creid/Projects/39_vi_ESRC_SENChildren_FinalRpt.pdf [Accessed 11 June 2020].

Sharp, C., Sims, D. and Rutt, S. (2020) *School's Responses to COVID-19: Returning Pupils to School*. Slough: NFER, [online] Available from: https://www.nfer.ac.uk/media/4060/schools_responses_to_covid_19_early_report_final.pdf [Accessed 11 June 2020].

Stuart, G. (2020) 'Just 1% of Vulnerable Children Attending School Hubs', *Third Force News*, [online] 18 May, Available from: <http://thirdforcenews.org.uk/tfn-news/just-1-of-vulnerable-children-attending-school-hubs> [Accessed 11 June 2020].

The Scottish Commission for People with Learning Disabilities (2020) *The Impact of Coronavirus on People with Learning Disabilities and Their Parents, Carers and Supporters*, [online] Available from: <https://www.sclld.org.uk/wp-content/uploads/2020/06/SCLD-Coronavirus-Report-FINAL.pdf> [Accessed 18 June 2020].