

96. Children and young people's participation – throughout the pandemic we expressed our concern about the limited extent to which children and young people were able to participate in decision-making – not only having their voices heard but taken into account. The Independent CRIA found that this was a major failing of the initial pandemic response from the Scottish Government.

Other key children's rights issues

97. There are a number of key human rights issues that I would like to elaborate on further, as they constituted significant pieces of work for my former office, based on our prioritisation model.

School Closures, online education and digital exclusion

98. It is worth noting, because it appears to be much misunderstood, that the Scottish Government never closed Scotland's schools. Ministers had the power to do so, and at the start of the pandemic may well have been justified in making an order to that effect using the powers in the Coronavirus Act 2020. However, no Education Closure Direction was made, which meant the necessity and proportionality of that decision was not scrutinised by the Parliament. When, on 20 March 2020, state schools were closed to most pupils, it was Local Authorities that made the decision on the advice of Ministers.
99. This decision highlighted the challenging relationship between central and local government on the delivery of the State's duty to secure children's rights to education, and it had a number of consequences. Most obviously, there was no derogation of local authority duties to provide education, except insofar as a duty could not be performed as a result of an Education Continuity Direction. The extent to which these duties were fulfilled over the course of the pandemic, particularly as regards disabled children and others with Additional Support Needs (ASN), was a feature of our 23 June 2020 paper for the Scottish Government's Education Recovery Group. Setting out the framework around human rights to education, we noted our concern that as a result of the