

Review of Part 1 of the Children (Scotland) Act 1995 and creation of a Family Justice Modernisation Strategy

Analysis of Consultation Responses: Summary Report

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1 Introduction

1.1 The Consultation Exercise

1.1.1 The Scottish Government is committed to improving family law and how the child's voice is heard within cases, and to ensure that the child's best interests are at the centre of the system. To assist the Scottish Government to target any necessary changes, a public consultation ran between May and September 2018 seeking views on potential changes to Part 1 of the Children (Scotland) Act 1995 (the 1995 Act).

1.1.2 The 1995 Act focuses on the needs of children and their families. This defines parental responsibilities and rights in relation to children, as well as setting out the duties and powers available to public authorities. Part 1 of the 1995 Act specifically covers parental responsibilities and rights. The consultation also sought views to assist with the development of a Family Justice Modernisation Strategy and other matters related to family law. Specifically, views were sought in relation to wide ranging topics, including:

- Obtaining the views of a child;
- Commission and diligence;
- Contact;
- Cross border cases within the UK: jurisdictional issues;
- Parentage;
- Parental Responsibilities and Rights;
- Child abduction by parents;
- Domestic abuse;
- Court procedure;
- Alternatives to court;
- Birth registration;
- Children's Hearings;
- Domicile of persons under the age of 16; and
- Various Impact Assessments.

1.1.3 Two versions of the consultation document were available - a main document containing 54 questions, and a child friendly version (henceforth referred to as the young persons' survey, with survey questions identified by the prefix YP)¹ containing 16 questions. Both documents contained a mix of closed and open questions.

1.1.4 The Scottish Government designed the questions for the consultation documents, and sought views from a range of stakeholders on areas that should be covered. A draft of the consultation was shared with the Scottish Courts and Tribunals Service and the Scottish Legal Aid Board in advance.

¹ The young persons' survey was aimed at young people up to the age of 26 as this is the maximum age for Members of the Scottish Youth Parliament.

- 1.1.5 Similarly, questions drafted for the young persons' survey were piloted with young people via several partners/forums, including Young Scot, the Scottish Youth Parliament and Scottish Women's Aid before being finalised.
- 1.1.6 The consultation launched on 15 May 2018 and closed on 28 September 2018.
- 1.1.7 In addition to the written consultation, the Scottish Government held a series of 28 separate events across the country to seek views and feedback on the main consultation themes. Results from these events are not included within this report.

1.2 Methodology

- 1.2.1 A total of 549 substantive responses were received - 254 responses to the main consultation and 295 responses to the young persons' survey.
- 1.2.2 A total of 171 individuals responded to the main consultation document, along with 83 organisations. For analysis purposes, these organisations were further categorised based on the organisation type, with the numbers of respondents in each category detailed in the table below.

	Number	Percentage
Children's Organisations	12	14%
Domestic Abuse Support Services	5	6%
Family Support Organisations	15	18%
The Legal Profession	11	13%
LGBT Organisations	3	4%
Local Authorities	19	23%
Public Bodies	8	10%
Other Organisations	10	12%
Total	83	100%

- 1.2.3 Respondents to the main consultation were also asked to identify their geographic residence, with most coming from Scotland (n=238, 94%). A further 10 (4%) respondents came from the 'Rest of the UK', and only 2 (1%) respondents came from the 'Rest of the World', while 4 (1%) respondents did not provide an answer.
- 1.2.4 The young persons' survey asked respondents to identify which age category they belonged to. Nearly half (46%) were aged 16 or under, 12% were aged 17-18, and 17% were aged 19-25. The table below provides a detailed breakdown of the age of respondents who answered the young

persons' survey. It should be noted that some of the respondents who preferred not to say their age may have been over the age of 25.

	Number	Percentage
Under 8 years old	7	2%
8 - 12 years old	45	15%
13 - 16 years old	85	29%
17 - 18 years old	35	12%
19 - 25 years old	50	17%
Prefer not to say	68	23%
No Response	5	2%
Total	295	100%

- 1.2.5 Across both consultation modes, all questions were answered by at least one respondent. Responses were read and logged into a database, and all were screened to ensure that they were appropriate/valid. None were removed for analysis purposes. Although some responses to individual questions did not directly address what was being asked, all feedback was analysed and is presented under the appropriate sections below.
- 1.2.6 Closed question responses were quantified and the number of respondents who agreed/disagreed with each proposal is reported below. Comments given at each open question were examined and, where questions elicited a positive or negative response, they were categorised as such. For most of the questions, respondents were also asked to state the reasons for their views, or to explain their answers. The main reasons presented by respondents both for and against the proposals set out across the consultation were reviewed, alongside specific examples or explanations, alternative suggestions, caveats to support, and other related comments.
- 1.2.7 Verbatim quotes were extracted in some cases to highlight the main themes that emerged. Respondents to the main consultation document completed a Respondent Information Form (RIF) which allowed them to specify their publishing preferences. Only extracts where the respondent indicated that they were content for their response to be published were quoted. Respondents to the young persons' survey were not asked about publishing preferences, although completion was anonymous. As such, suitably anonymised quotes have also been presented from this respondent group.
- 1.2.8 All consultation responses were analysed, across both the main consultation document and the young persons' survey, to identify the main themes and issues arising. Given the large volume of responses, however, this report focuses primarily on the dominant issues raised rather than providing a summary of all comments and concerns. Full consultation responses are

published separately by the Scottish Government meaning that no data is lost.

1.3 Report Presentation and Research Caveats

- 1.3.1 Findings are presented as they relate to each question contained under the core sections of the consultation document.
- 1.3.2 The tables below show the difference in views expressed by the respondent group as a whole, however, where responses have been heavily influenced by one respondent type (i.e. by individuals or organisations) this has been highlighted in the descriptive text. Given the differing sizes of some of the organisation groupings and the relatively small number of organisations present within some categories, it was decided that disaggregated analysis by organisation typology would be unreliable. However, in any cases where organisation type correlated clearly with the views expressed, this is picked up narratively in the report. Similarly, any differences in opinions between individuals and organisations, or between consultation mediums is highlighted in the discursive narrative.
- 1.3.3 As a guide, where reference is made in the report to ‘a few’ respondents, this relates to five or less respondents. The term ‘several’ refers to more than five, and typically less than ten.
- 1.3.4 It should also be noted that, while some adults may have completed the young persons’ survey, it was not possible to reliably identify such participants and remove them from the analysis. There is also a risk that some respondents may have contributed via both consultation formats (i.e. the main consultation and the young persons’ survey). Again, however, due to the anonymous nature of the child friendly instrument, it was not possible to identify such individuals and remove them from the analysis, so some double counting may exist.
- 1.3.5 Finally, the views presented here should not be taken as representative of the wide range of stakeholders invited to respond to this consultation, nor should they be generalised too broadly. Rather, they reflect the views of those individuals and organisations who responded.

2 Discussion of Key Results

- 2.1.1 Both consultation exercises were successful in engaging a wide range of stakeholders in discussion of all the topics included. Many responses came from individuals, including children and young people, and adults with direct experience of family disputes as well as professionals speaking in their own right. Organisations that responded included members from the legal profession and courts responsible for managing family disputes, as well as public sector organisations who act as corporate parents and provide social work services to families in dispute. Third sector organisations responsible for supporting individuals and families impacted by family disputes also took part.
- 2.1.2 Detailed comments were provided throughout the consultation, however, it appears that later questions may have suffered from an element of respondent fatigue, with fewer responses provided overall (indeed, in five out of the final six questions dealing with topical issues, 40% or more failed to provide a response). Qualitative comments were often much reduced in length compared to those provided at earlier questions. The length of the consultation most likely contributed to this.

2.2 Main Findings

- 2.2.1 A number of questions from the main consultation document attracted overall support. Each question in the table below elicited supportive ratings from at least half of all respondents.

	Percentage of Respondents Who Said 'Yes'
Q6. Should Child Contact Centres be regulated?	66%
Q9. Should the 1995 Act be clarified to make it clear that siblings, including those aged under 16, can apply for contact without being granted PRRs?	67%
Q22. Should fathers who jointly register the birth of a child in a country where joint registration leads to PRRs have their PRRs recognised in Scotland?	55%
Q23. Should there be a presumption in law that a child benefits from both parents being involved in their life?	50%
Q28. Should the Scottish Government take action to try and stop children being put under pressure by one parent to reject the other parent?	56%

Q33. Should section 11 of the 1995 Act be amended to provide that the court can, if it sees fit, give directions to protect domestic abuse victims and other vulnerable parties at any hearings heard as a result of an application under section 11?	51%
Q36. Should action be taken to ensure the civil courts have information on domestic abuse when considering a case under section 11 of the 1995 Act?	50%
Q38. Should the Scottish Government explore ways to improve interaction between criminal and civil courts where there has been an allegation of domestic abuse?	50%
Q39. Should the Scottish Government introduce a provision in primary legislation which specifies that any delay in a court case relating to the upbringing of a child is likely to affect the welfare of the child?	54%
Q44. Should the Scottish Government produce guidance for litigants and children in relation to contact and residence?	60%
Q46. Should a person who is applying to record a change of name for a young person under the age of 16 be required to seek their views?	59%
Q47. Should S.I. 1965/1838 be amended so that a father who has a declarator of parentage and has PRRs can re-register the birth showing him on the birth certificate?	51%
Q49. Should changes be made which will allow further modernisation of the Children's Hearings System through enhanced use of available technology?	57%
Q50. Should safeguarder reports and other independent reports be provided to local authorities in advance of Children's Hearings in line with other participants?	50%

2.2.2 Only two questions resulted in at least half of the respondents providing a negative response:

- Q17. Should the term "parental rights" be removed from the 1995 Act? - 50% said no; and
- Q24. Should legislation be made laying down that courts should not presume that a child benefits from both parents being involved in their life? - 52% said no.

2.2.3 The young persons' survey elicited supportive ratings from over half of the respondents at three questions, as follows:

- YP4. Should a child have contact with both parents? - 54% said only when it was good for the child;
 - YP5. Should a child have contact with their grandparents? - 51% said only when it was good for the child; and
 - YP11. Should we give information to children on what it is like to go to court about who they live with or have contact with? - 54% said yes.
- 2.2.4 Young people were also supportive of being allowed to keep in contact with their brothers and sisters, however, responses were more split between always being allowed (31%) and only when it was good for the child (44%).
- 2.2.5 One key recurring message was a need for the child's best interests, their welfare and their voice to be of paramount importance in any changes to the legislation. There were concerns that some of the questions focused too much on the concerns or interests of the parents and risked losing focus on the child. While it was felt important to allow children to keep in contact with a range family members (including both parents, siblings and grandparents), and issues around domestic abuse and the difficulties faced by non-resident parents being excluded from their child's life were often discussed, it was stressed by many that all legislation and processes should remain focused on the child and their welfare/best interests.
- 2.2.6 It was often considered difficult to legislate for the wide range of possible circumstances of a child's life. Similarly, if a family case had reached court there was clearly some level of dispute involved, again making it difficult for broad assumptions to be made. Rather, respondents expressed that it would be more appropriate for each case to be assessed and investigated on its own merits.
- 2.2.7 Responses suggest there are perceptions of inherent bias prevalent within some cases, however, there was no consistency as to whether this bias was perceived to be towards either the resident parent or the party seeking contact. Similarly, respondents felt that taking children's views into account may not be happening consistently or as often as it should. In several instances throughout the consultation it was felt that greater training and/or guidance may be required to ensure current legislation is being implemented effectively and consistently across the country. Additional/amended legislation or the introduction of assumptions as a starting point for cases may not be the solution.
- 2.2.8 Greater training for all those involved in the family court system was also considered to be needed, and was discussed at several points throughout the consultation. In particular, it was felt that in-depth training on eliciting and interpreting the views of children and young people was required in order to ensure this happens more consistently and more often. It was also suggested that training and a more nuanced understanding of domestic abuse, coercion, and alienation was needed for professionals.

- 2.2.9 Child support workers also appear to be a largely welcomed role for some. It was felt they would be more impartial than a court appointed child welfare reporter, could support a child throughout the process, explain the outcome of the case to the child, and would have greater training and experience of working with children to support them to provide their views. However, others felt that the role of the child welfare reporter could be expanded more easily and cost effectively, although it was again stressed that more extensive training would be required.
- 2.2.10 Several areas were considered (by some at least) to be not relevant to the 1995 Act and it was felt that they required much wider consultation to ensure that the views of all key stakeholders were considered. This included any changes to legislation or processes that would impact on looked after children, or on education or health providers in relation to information sharing.



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