

Registers of child welfare reporters, curators ad litem and solicitors appointed when a person is prohibited from conducting their own case

Consultation

March 2021



Scottish Government
Riaghaltas na h-Alba
gov.scot

Table of Contents

Glossary of Terms used in this consultation.	2
Part 1: Introduction and how to respond to this consultation	4
Part 2: Register of Child Welfare Reporters	8
Part 3: Register of Curators ad litem.....	33
Part 4: Register of solicitors	41
Part 5: Conclusion	48
Annex A Respondent Information Form	50
Annex B Consultation questions.....	52
Annex C Indicative timetable for implementation of registers.....	64
Annex D Operation and management of registers.....	65
Annex E Scottish Government expenses – rates.....	69
Annex F Draft Business and Regulatory Impact Assessment.....	71
Annex G Draft Child Rights and Wellbeing Impact Assessment	85
Annex H Draft Data Protection Impact Assessment	103
Annex I Draft Equality Impact Assessment Record.....	121
Annex J Draft Fairer Scotland Duty Impact Assessment	143
Annex K Draft Islands Community Impact Assessment	149

Glossary of Terms used in this consultation.

Note: On-line access to legislation is available at legislation.gov.uk¹

“1995 Act” – The Children (Scotland) Act 1995

“2020 Act” – The Children (Scotland) Act 2020

“body appointed to operate and manage the register” – Any reference to a body appointed to operate and manage the register includes the Scottish Government (if it decides to do the work in-house) or an external contractor appointed by the Scottish Government.

“Child Welfare Hearing” – When a dispute reaches court and a section 11 order is sought a Child Welfare Hearing will take place. Child Welfare Hearings are usually held in private with both parties being present. They are intended to allow the sheriff to speak to the parties directly, identify the issues and establish how the issues are to be dealt with. Child Welfare Hearings are generally informal procedures.

“Child welfare reporter” – formerly called “bar reporters”. They are court appointed individuals who prepare reports on the best interests of the child.

“Children (Scotland) Bill” – the Children (Scotland) Act 2020 was called the Children (Scotland) Bill when it was being considered by the Scottish Parliament.

“Curator ad litem – an officer of the court who is appointed to represent and protect the interests of an individual lacking full capacity, including a child.

“Family law” – covers a wide range of areas including divorce and dissolution, parental responsibilities and rights, contact and residence, and permanence and adoption cases.

“Family Law Unit” – a team within the Scottish Government who are responsible for policy in relation to private family law including divorce and dissolution, parental responsibilities and rights and contact and residence cases.

“FLC” – the Family Law Committee of the Scottish Civil Justice Council². Its role is to keep the relevant civil court rules under review, consider and make proposals for modification and reform, require that family actions and proceedings are dealt with as efficiently as possible, review, develop and promote a case management structure for family actions and to report to the Scottish Civil Justice Council with its recommendations and, where applicable, draft rules of court.

¹ <http://www.legislation.gov.uk/>

² [Family Law Committee \(scottishciviljusticecouncil.gov.uk\)](http://scottishciviljusticecouncil.gov.uk)

“Legal Aid” – publicly funded legal assistance allowing individuals to pursue or defend their rights, or pay for their defence, when they could not otherwise afford to do so. When someone applies for legal aid, their application is subject to statutory tests which cover the merits of the case and the means available to the applicant.

“Lord President” – the most senior judge in Scotland and the head of the judiciary.

“party litigant” – person who represents themselves in court.

“PRRs” – parental responsibilities and parental rights with the meanings given to those terms in sections 1 and 2 of the Children (Scotland) Act 1995.

“SCJC” – the Scottish Civil Justice Council³ prepares draft rules of procedure for the civil courts in Scotland and advises the Lord President on the development of the civil justice system in Scotland.

“SCTS” – the Scottish Courts and Tribunals Service is an independent body providing administrative support to Scottish courts and tribunals and to the judiciary.

“Section 11 order” – an order made by either the Court of Session or the Sheriff Court under section 11 of the 1995 Act in relation to parental responsibilities, parental rights, guardianship, or the administration of a child’s property. Orders which relate to parental responsibilities or parental rights can say who a child should live with or spend time with.

“Sheriff” – a judge in the Sheriff Court. Sheriffs deal with the majority of civil (including family) and criminal cases in Scotland.

“Sheriff Principal” – the Sheriffs Principal head each of Scotland’s six Sheriffdoms. They have responsibility for ensuring the efficient disposal of sheriff court business.

“Sheriffdom” - the geographic areas into which Scotland is divided for the administration of sheriff court business.

“SLAB” – the Scottish Legal Aid Board. Manages the legal aid system in Scotland.

³ More information on the Scottish Civil Justice Council is available from their website: [Scottish Civil Justice Council](#)

Part 1: Introduction and how to respond to this consultation

Introduction

1.1. The Children (Scotland) Act 2020 (the 2020 Act) gained Royal Assent on 1 October 2020. The 2020 Act builds on the existing Children (Scotland) Act 1995 (the 1995 Act). During the passage of the 2020 Act through the Scottish Parliament, the Scottish Government committed to a full and public consultation on the establishment of the registers of child welfare reporters, curators ad litem appointed in cases under section 11 of the 1995 Act and solicitors who can be appointed when an individual has been prohibited from personally conducting a case themselves. The last register covers both cases under section 11 of the 1995 Act and Children's Hearings court proceedings.

Why we are consulting

- 1.2. Consultation is an essential part of the policy making process. We will consider the views expressed in response to this consultation along with other available evidence to help inform the Scottish Government's decisions.
- 1.3. As indicated in the glossary, references in this consultation to a body appointed to operate and manage the various registers includes the Scottish Government, if the Scottish Government decides to do the work in-house, or any external contractor(s) appointed by the Scottish Government.
- 1.4. Once the 2020 Act is in force, the Scottish Government intends that the fees, outlays and expenses of child welfare reporters, curators ad litem appointed in section 11 cases and of solicitors appointed when an individual has been prohibited from conducting their case themselves will be met by the Scottish Government, either through an in-house unit or through any external contractor appointed by the Scottish Government.
- 1.5. Section 101A(3A) of the 1995 Act as inserted by section 9 of the 2020 Act require the Scottish Ministers before making, revising or revoking regulations in relation to the register of child welfare reporters to consult people with lived experience of domestic abuse and court ordered contact. This consultation forms part of this requirement.

Responding to this consultation

1.6. We are inviting responses to this consultation by 12 July 2021.

[Replying on-line using Citizen Space](#)

- 1.7. Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/justice/registers-of-child-welfare-reporters/>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 12 July 2021.

Replying by post

- 1.8. While normally the Scottish Government would be happy to accept postal responses, given the COVID19 pandemic, it would be helpful if you responded online via Citizen Space wherever possible.
- 1.9. However, if you are unable to respond online using Citizen Space, the Scottish Government will by exception accept postal responses. You must complete and return the Respondent Information Form at Annex A (see "Handling your Response" below) with your response. You can answer the Consultation Questions using Annex B. Please send your response and the completed Respondent Information Form to:
- Family Law Unit
Room GW-15
St. Andrew's House
Regent Road
Edinburgh
EH1 3DG

Not accepting responses by email

- 1.10. We will not accept responses submitted by email.

Handling your response

- 1.11. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.
- 1.12. If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.
- 1.13. All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

1.14. If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

1.15. To find out how we handle your personal data, please see our privacy policy:

<https://www.gov.scot/privacy/>

Next steps in the process

1.16. Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

1.17. Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

1.18. After the consultation, the Scottish Government intends to lay regulations in the Scottish Parliament. Annex C to this consultation sets out an indicative timeframe for implementation of these registers.

Comments and complaints

1.19. If you have any comments about how this consultation exercise has been conducted, please send them by email to family.law@gov.scot.

Scottish Government consultation process

1.20. Consultation is an essential part of the policy making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

1.21. You can find all our consultations online: <https://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views.

1.22. Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

1.23. While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Part 2: Register of Child Welfare Reporters

Introduction

- 2.1. This section of the consultation focuses on child welfare reporters. It seeks views on:
- who should operate and manage the register of child welfare reporters
 - the process for including someone on the register of child welfare reporters
 - the reappointment process for child welfare reporters to the register
 - who would not be eligible to be included on the register of child welfare reporters
 - how a child welfare reporter could be removed from the register
 - the remuneration (fee rates) and expenses to be paid to child welfare reporters
 - the requirements that a person must satisfy in order to be included on the register
 - what ongoing training requirements there should be for child welfare reporters
 - how a child welfare would be selected from the register and
 - what a child friendly complaints mechanism should look like.

Existing situation

- 2.2. Child welfare reporters can be appointed by the court in cases under section 11 of the Children (Scotland) Act 1995 either to seek the views of the child and report any views expressed by the child back to the court; or to undertake enquiries and report to the court. Where the court asks a reporter to undertake enquiries, this can include seeking the views of the child and producing recommendations on their best interests. There are other ways the court can seek the views of the child⁴.
- 2.3. We understand there are approximately 400 child welfare reporters in Scotland appointed across the six Sheriffdoms and the Court of Session. Individuals seeking to be a child welfare reporter may be appointed to lists held by the Court of Session and by the six Sheriffs Principal (for the Sheriff Courts in their respective Sheriffdom). The presiding judge or sheriff can then appoint a child welfare reporter on the appropriate list to report on a case.
- 2.4. In cases under section 11 of the 1995 Act, a court may appoint a local authority to report on a child. The Scottish Government understands that in certain areas of Scotland the courts are using these provisions to order a child welfare report from local authorities.

⁴ See the paper produced by the Scottish Government during the Bill process for the Children (Scotland) Bill:
[Children \(Scotland\) Bill SG paper revised version1.pdf \(parliament.scot\)](#)

- 2.5. Individuals can apply to the Sheriff Principal of a Sheriffdom to be added to the lists of child welfare reporters. The appointment criteria are set by each Sheriff Principal.
- 2.6. Most child welfare reporters are practising solicitors and many of them are family lawyers. However, some child welfare reporters have other backgrounds such as in social work or in teaching.
- 2.7. Generally, the appointments are not for a fixed period of time and finish when an individual asks to be removed from the list. The procedure for removing a child welfare reporter from office is a matter for each Sheriff Principal/ the Lord President.
- 2.8. We understand that child welfare reporters do not have regular appraisals or any other monitoring or review except to ensure that their Protecting Vulnerable Groups registration is maintained⁵. In general, there is no requirement for any specific training. However, we are aware that certain Sheriffs Principal have organised training for the child welfare reporters on the list in their Sheriffdom.
- 2.9. The Financial Memorandum⁶ which accompanied the Children (Scotland) Bill when it was introduced into the Scottish Parliament included information on Scottish Legal Aid Board (SLAB) funding of child welfare reports. SLAB may fund child welfare reports when one or both parties to the case are in receipt of legal aid.
- 2.10. We have recently produced information for children about child welfare reports.⁷ This is aimed at children and young people with a reading age over 11. We are now working on a guide for younger children.

Historical position

- 2.11. From 2013 – 2015, the Scottish Government chaired a working group to examine the role of child welfare reporters.⁸ This working group led to a number of outputs including:
 - a guide to the child welfare report,⁹

⁵ [The Protecting Vulnerable Groups \(PVG\) scheme - mygov.scot](http://mygov.scot)

⁶ See para 34. <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/children-scotland-bill/introduced/financial-memorandum-children-scotland-bill.pdf>

⁷ [Speaking to a Child Welfare Reporter - mygov.scot](http://mygov.scot)

⁸ <https://www.webarchive.org.uk/wayback/archive/20150218194231/http://www.gov.scot/Topics/Justice/law/17867/reporters>

⁹ <https://www.webarchive.org.uk/wayback/archive/3000/https://www.gov.scot/Topics/Justice/law/17867/reporters/child-welfare-guide>

- instructions to child welfare reporters,¹⁰
 - a change in the name from Bar Reporters to child welfare reporters, and
 - proposed training requirements¹¹.
- 2.12. The working group also led to changes in court rules. In October 2015, changes were made to rules for family cases in relation to the use of child welfare reporters. The Scottish Civil Justice Council (SCJC) has published information about these changes.¹² The changes to the rules included a presumption that the parties to the case would meet the costs of a child welfare report equally. The court has power to order that the costs be split unequally.
- 2.13. The rule changes also included a new form of written court order for sheriffs and judges in the Court of Session to complete when requesting a child welfare report.¹³ This allows the sheriff or judge to set out what the child welfare reporter can do¹⁴. In the interlocutor appointing a child welfare reporter, the sheriff or judge can say:
- whether views of the child or children are to be sought
 - the enquiries the reporter should undertake
 - the issues to be addressed in the report.

Children (Scotland) Act 2020

- 2.14. Section 101A of the 1995 Act places a duty on the Scottish Ministers to establish and maintain a register of individuals to act as child welfare reporters. The 1995 Act gives Scottish Ministers the power by regulations to make provision about:
- the requirements that a person must satisfy in order to be included, and remain, on the register
 - the process for including a person on, and removing a person from, the register
 - the process for how, and by whom, a registered person is to be selected as the appointed child welfare reporter in a case

¹⁰<https://www.webarchive.org.uk/wayback/archive/20160402013237/http://www.gov.scot/Topics/Justice/law/17867/reporters>

¹¹ An exchange of correspondence between the Scottish Government, the Lord President's Office and the Sheriffs Principal on the proposed training scheme for reporters is at:

<https://www.webarchive.org.uk/wayback/archive/20161002073206/http://www.gov.scot/Topics/Justice/law/17867/reporters/letters-judiciary-Sep-16>

¹² <https://www.scottishciviljusticecouncil.gov.uk/news/2015/10/21/new-court-rules-for-child-welfare-reporters>

¹³ See F44 at the link below: <https://www.scotcourts.gov.uk/rules-and-practice/forms/sheriff-court-forms/ordinary-cause-forms>

¹⁴ SLAB produced a report for the FLC on the impact of the changes to the court rules: paper-4-2---report-by-slab---child-welfare-reporters.pdf (scottishciviljusticecouncil.gov.uk)

- the remuneration of child welfare reporters including expenses and outlays
 - the operation and management of the register.
- 2.15. Section 11(1B) of the Matrimonial Proceedings (Children) Act 1958 as inserted by section 19 of the 2020 Act means that if a local authority employee wishes to continue to act as a child welfare reporter then they would need to apply to be on the register of child welfare reporters and meet the required eligibility standards.
- 2.16. The 2020 Act also introduces two additional new functions for child welfare reporters. Section 20 of the 2020 Act inserts section 11F into the 1995 Act. This ensures that the decisions in section 11 cases are explained to the child concerned in an impartial manner unless the court considers it not in the best interests of the child to give an explanation. Explanations can be provided by either the court or by appointing a child welfare reporter.
- 2.17. Section 22 of the 2020 Act inserts section 11G into the 1995 Act. This introduces a requirement on the court where it is considering whether to find a person in contempt of court for failing to obey an order under section 11, or to vary or discharge an order under section 11 on the bases that a person has failed to obey it, to establish the reasons for that failure. The investigation can be by the court or by appointment of a child welfare reporter. We would expect a child welfare reporter would be appointed in more complex cases.

Who would operate and manage the register of child welfare reporters

Background

- 2.18. Currently, child welfare reporters are appointed from lists held by each Sheriff Principal for cases heard in the sheriff court and by the Lord President for child welfare reporters appointed in cases in the Court of Session.
- 2.19. The 2020 Act inserts section 101A into the 1995 Act. Section 101A(3)(e) of the 1995 Act gives the Scottish Ministers the power to make provision for or in connection with the operation and management of the register. We will do this by making regulations.
- 2.20. The Scottish Ministers have not yet decided whether to contract out the operation and management of the register or retain this work in house. The Scottish Government's initial view, however, is that contracting out the operation and management of the registers may be preferred. In particular, external expertise could be needed in relation to functions such as organising training for professionals from a variety of areas. Annex D to this consultation sets out the Scottish Government's view on what would be done by the body appointed to operate and manage

the register if the Scottish Government decides to contract out this role.

- 2.21. In their responses to the Justice Committee call for evidence on the Children (Scotland) Bill the judiciary suggested that the register of child welfare reporters should continue to be maintained by individual Sheriffs Principal, or by the Lord President for cases in the Court of Session.¹⁵ The Judiciary argued that the court may wish to appoint a specific child welfare reporter on the basis they have specific skills. In addition, they have highlighted that it would not be value for money to appoint a child welfare reporter who lives in, for example, Shetland to undertake a child welfare report in Stranraer.
- 2.22. The Scottish Government recognises the concern above regarding location of child welfare reporters. However, one of the key aims of establishing a register of child welfare reporters is to increase consistency. We consider that a centralised register of child welfare reporters is the best way to ensure that there is consistency across Scotland in terms of appointment process, complaints procedure and training requirements.
- 2.23. Leaving the registers to be maintained at Sheriffdom level would put additional resource requirements on the SCTS.
- 2.24. To ensure value for money, we would propose to require child welfare reporters when they are included on the register to identify the locations that they would be willing to work in. There would be an expectation that child welfare reporters would only undertake work in their local area. However, this could cover a number of Sheriffdoms or the Court of Session. Even if a child welfare reporter operates in more than one Sheriffdom and in the Court of Session they would only need to be registered once on the central register.
- 2.25. A child welfare reporter may be appointed by a court in one Sheriffdom but have to travel to another area of the country to speak to a parent, a child or another family member if it is not possible to do this remotely.

Options

- 2.26. As indicated above, the Scottish Government considers that a centralised (ie national) register of child welfare reporters is the best way to ensure that there is consistency across Scotland in terms of appointment process, complaints procedure and training requirements. There are therefore three options which would all involve running a national register across Scotland:

¹⁵ See responses from the Senators of the College of Justice, Sheriffs' Association and Sheriffs Principal at: <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/113648.aspx>

- the Scottish Government running it in house
 - the Scottish Government letting a contract for the operation and management of the register to a third party organisation
 - the SCTS running a single register of child welfare reporters across Scotland.
- 2.27. As indicated above, the Scottish Government's initial view is that contracting out the operation and management of the register (option 2) may be preferred as this could bring valuable expertise to the role. Option 3 could put additional pressure on the SCTS and could also involve them in carrying out new functions such as organising training for solicitors, social workers and other professionals.
- 2.28. If the Scottish Government were to adopt option 2 then we would propose to run a full public tender for this contract. If the Scottish Government chose option 1 then the team responsible for the operation and management of the register would be separate from the current Family Law Unit in the Scottish Government.

Question 1):
Who should provide the operation and management of the register of child welfare reporters? (please select one answer).

- (a) the Scottish Government
- (b) the Scottish Government should contract this out to a third party
- (c) this should be run by the SCTS on a national level.
- (d) another option
- (e) don't know

Why did you select your answer?

Process for including an individual on the register of child welfare reporters & reappointment process

- 2.29. The Scottish Government would anticipate that advertisement for the role of child welfare reporter would take place in 2022. This would be subject to any regulations setting out eligibility requirements being made and coming into force. We would expect that in future years further recruitment rounds would be undertaken to replace people ceasing to be on register or to deal with an upsurge in demand.
- 2.30. Individuals would need to complete an application form which would be sifted on an anonymous basis. Individuals who pass the sift may then be interviewed to assess their suitability for inclusion on the register. The application form would seek evidence of how candidates meet the requirements. The application form may also require individuals to indicate the areas of the country that they would be available to work in. This would be used to ensure that there was sufficient coverage of child welfare reporters across the country.

- 2.31. Successful individuals would be required to agree to terms and conditions and obtain a disclosure certificate¹⁶. They would then be asked to confirm the areas of the country that they would be willing to work in.
- 2.32. Practice varies in relation to the length of appointment in other areas Safeguarders appointed to the panel in Children’s Hearings are appointed for three years. Reappointment can be for between one and three years. The Tribunals (Scotland) Act 2014 provides that appointments to the Scottish tribunals are for five years and reappointment is automatic for a further five years.
- 2.33. As a number of safeguarders are also child welfare reporters the Scottish Government considers a three year appointment period to be appropriate to allow for consistency.
- 2.34. Practice also varies in relation to reappointment. Safeguarders on the Children’s Hearings panel may only be reappointed if the Scottish Ministers are satisfied that the person is fit to be a member of the Panel. In Scottish tribunals an individual is automatically reappointed unless the member has declined to be reappointed, the member is ineligible for reappointment or the President of Tribunals has recommended to the Scottish Ministers that the member should not be reappointed. This process ensures judicial independence for tribunal members. This is not necessary for child welfare reporters.
- 2.35. The Scottish Government believes that it is important that child welfare reporters have to demonstrate that they continue to have the relevant skills and experience and therefore reappointment should not be automatic. We would expect that child welfare reporters would be subject to an annual appraisal. This would involve discussion about the performance of the individual.
- 2.36. In considering whether an individual should be reappointed to the register the outcome of the annual appraisals would be taken into account.

Question 2): Do you agree/disagree with the proposed process for including an individual on the register of child welfare reporters?
Agree
Disagree
Don't Know
Why did you select your answer?

¹⁶ [Disclosure and criminal record checks - mygov.scot](https://mygov.scot)

Question 3): Do you agree/disagree that child welfare reporters should be included on the register for a three year period?

Agree
Disagree
Don't know

Why did you select your answer?

Question 4): Do you agree/disagree with the proposed reappointment process for child welfare reporters?

Agree
Disagree
Don't Know

Why did you select your answer?

Individuals who are not eligible to be included on the register of child welfare reporters

2.37. The Scottish Government believes that certain individuals should not be eligible to be included on the register of child welfare reporters. This will help to ensure the safety of the child concerned. It will also help to ensure that all child welfare reporters are impartial and do not have any conflict of interest.

2.38. We consider that to help ensure the safety of children an individual should be barred from being a child welfare reporter if they are barred from regulated work with children by virtue of the Protection of Vulnerable Groups (Scotland) Act 2007¹⁷. An individual can be barred from working with children if they have:

- harmed a child
- placed a child at risk of harm
- engaged in inappropriate conduct involving pornography
- engaged in inappropriate conduct of a sexual nature involving a child or
- given inappropriate medical treatment to a child.

2.39. The Scottish Government believes that to avoid any conflict of interest the following individuals should be ineligible to be a child welfare reporter:

- an individual directly involved in the establishment, maintenance, operation or management of the register of child welfare reporters

¹⁷ <http://www.legislation.gov.uk/asp/2007/14/section/2>

- an individual employed by the SCTS
- a member of the judiciary
- a member of the Scottish Government or junior Scottish Minister.

2.40. In terms of any conflict of interest we would expect that an individual included on the register of child welfare reporters who subsequently accepts a post that would make them ineligible to be included on the register would need to resign as a child welfare reporter.

Question 5):

For each of the following categories of people, should they be ineligible for inclusion on the register of child welfare reporters? (Please select yes/no/don't know for each option)

an individual directly involved in the establishment, maintenance, operation or management of the register of child welfare reporters

an individual employed by the SCTS

a member of the judiciary

a member of the Scottish Government or junior Scottish Minister

an individual barred from regulated work with children by virtue of the Protection of Vulnerable Groups (Scotland) Act 2007

Why did you select your answers?

Question 6) Is there anyone else who should be ineligible for inclusion on the register of child welfare reporters?

Yes

No

Don't Know

If you answered yes please provide details.

Removal of individual from the register of child welfare reporters

2.41. Section 101A(3)(b) of the 1995 Act gives the Scottish Ministers the power to lay down in regulations the process for removing someone from the register of child welfare reporters. The Scottish Government believes that someone should be removed from the register if they do not meet the required standards. This could be done by removing them from the register before their period on the register has been completed. Alternatively, a decision could be made not to reappoint them when their period of appointment has come to an end.

2.42. The body appointed to operate and manage the register may receive complaints about the conduct of a child welfare reporter or the quality of the reports they have produced. This would be investigated. If the body considers that the conduct is serious enough or the quality is low enough to merit the individual's removal from the register then the person could be removed. In appropriate cases, such as where there

is an urgent and serious concern, the person's inclusion on the register may be suspended whilst investigations are pending. Please refer to paragraphs 2.99 – 2.109 on the complaints procedure.

- 2.43. If the Scottish Ministers remove an individual from the register of child welfare reporters due to the quality of their report writing this would not affect their appointment to other registers, such as the register of curators ad litem or to the safeguarders panel. In appropriate cases, such as where there is an urgent and serious concern, the Scottish Ministers or the body appointed to operate and manage the register may suspend a person's inclusion on the register whilst investigations are pending.
- 2.44. However, if there are serious concerns about the conduct of a reporter, the Scottish Ministers may need to refer the matter to the reporter's professional regulatory body. This may result in an individual being barred from regulated work with a child under the Protection of Vulnerable Groups (Scotland) Act 2007. The Scottish Government will consider further with relevant bodies how such referrals could be made.
- 2.45. An individual may also be removed from the register if they indicate to the body appointed to operate and manage the register that they wish to be removed.
- 2.46. If an individual has been removed from the register they will cease with immediate effect to be a child welfare reporter. The Scottish Government considers that any reports that they are currently undertaking may need to be redone by another child welfare reporter. This may mean slight delay in the affected case as a new child welfare reporter would need to take over investigations. A new reporter to a case in these particular circumstances would need to be appointed. Once a person is no longer on the register of child welfare reporters, that person could no longer carry out child welfare reporter functions, including the functions of providing an explanation of a decision to a child (section 20 of the Act) or to investigate the reasons for non-compliance with a decision (section 22 of the Act).

Question 7) Do you agree/disagree with the approach proposed when an individual is removed from the register of child welfare reporters?

Agree
Disagree
Don't know

Why did you select your answer?

What requirements should an individual satisfy to be eligible to be included in the register

Background

- 2.47. One of the key aims in establishing a register of child welfare reporters is to ensure that individuals on the register meet minimum standards. The same standards would apply to child welfare reporters appointed across Scotland. Currently, appointment criteria can vary between Sheriffdoms. This section of the consultation focuses on what the requirements should be.
- 2.48. Currently over 90% of child welfare reporters are lawyers. Whilst recognising the valuable role played by lawyers who act as child welfare reporters, other professionals also have skills which mean they too could be good child welfare reporters. Indeed, in the past, it was common for child welfare reporters to be social workers¹⁸.
- 2.49. At stage 2 of the Bill an amendment was brought forward calling for all child welfare reporters to be social workers. The Scottish Government did not support this amendment for a number of reasons. Firstly, the most important factor for any child welfare reporter is that they meet the required standards, regardless of their professional background. The Scottish Government was not convinced that there is a justification for losing a pool of expertise by limiting the role to social workers only.
- 2.50. The Scottish Government was also concerned that there would be limited capacity within the social work sector to take this role on, and that further detailed consideration and consultation with the sector would be required. Capacity issues could lead to delays in producing child welfare reports which could in turn delay cases overall. This would not be in the best interests of the children concerned. In addition, limiting the role to social workers would mean that existing child welfare reporters who are lawyers would not be eligible to apply despite the significant experience and skills they bring to this role. It would also stop other professionals from acting as child welfare reporters.
- 2.51. During the passage of the Bill it was also argued that if a social worker wishes to be on the register of child welfare reporters they should be automatically eligible to be on the register as social workers already have to meet specific standards as set out in their Code of Practice¹⁹. The Scottish Government has concerns about this. It is important to ensure that those working as child welfare reporters have the specific skills needed to carry out the child welfare role.

Eligibility Requirements

¹⁸ See, for example, this research published in 1987: [00403905.pdf](https://www.webarchive.org.uk/00403905.pdf) ([webarchive.org.uk](https://www.webarchive.org.uk/))

¹⁹ <https://www.sssc.uk.com/knowledgebase/article/KA-02412/en-us>

- 2.52. During the passage of the Bill suggestions for eligibility requirements were put forward, in terms of training, qualifications and experience, in the following areas:
- coercive control and alienating behaviour
 - domestic abuse
 - influence of a parent
 - how to take the views of the child
 - how to look after children's information
 - child development
 - learning disabilities
- 2.53. In addition the Scottish Government believes that a child welfare reporter should be able to produce a succinct report on what is in the best interests of the child or the views of the child.
- 2.54. It may also be beneficial for a child welfare reporter to have experience of the family court system. However, making this mandatory may exclude some individuals who would have the required skills to undertake this role despite not having family court experience. As noted above, a child welfare reporter could be a lawyer but could also be a child psychologist or social worker. In the Scottish Government's view it is less about an individual's profession and more about the skills they can bring to the role.
- 2.55. In considering the requirements that a person must satisfy in order to be included on the register it is also important to balance how to ensure that individuals have sufficient experience and also to ensure enough individuals would be able to apply.
- 2.56. The Scottish Government suggests that an individual would be eligible to be included on the register of child welfare reporters if they can demonstrate relevant skills and experience in:
- communicating with children including obtaining the views of children
 - understanding domestic abuse, particularly the dynamic of coercive control
 - report writing
 - understanding the ways adults can influence a child
 - understanding family conflict
 - child development including learning disabilities
 - understanding of child protection issues and the child protection system.
- 2.57. By not specifying that a child welfare reporter must come from a specific professional background this allows the role to be open to an individual who can demonstrate the requirements above but who may not be a member of one of these professions.

- 2.58. The Scottish Government would not propose to specify that the experience an individual has needs to be current as this would be difficult to define and could also exclude an individual who has relevant experience but not within the specified timeframe. However, in assessing whether the skills and experience are relevant we would expect the panel sifting the child welfare reporter applications to take into account when the experience was obtained.

Question 8): Do you agree/disagree with the proposed requirements that a person must satisfy in order to be included on the register of child welfare reporters?

Agree
Disagree
Don't know

Why did you select your answer?

Question 9): Are there any other requirements that a person must satisfy in order to be included on the register of child welfare reporters?

Yes
No
Don't know

Please give the additional requirements you feel are necessary and why you feel they are important.

Existing child welfare reporters

- 2.59. As mentioned above, existing child welfare reporters are on lists held by each Sheriff Principal and the Court of Session. Different criteria are applied for each Sheriffdom/Court of Session. The Scottish Government considers that existing child welfare reporters would have to apply to be on the new register. This would ensure that everyone meets the same minimum standards.
- 2.60. An existing child welfare reporter may not wish to transfer across to the new register. There would be no obligation on existing child welfare reporters to apply to be on the new register. If a local authority employee wishes to continue to produce child welfare reports then they would need to apply to be on the register.

Question 10): Do you agree/disagree that existing child welfare reporters having to apply to be on the new register?

Agree

Disagree

Don't know

Why did you select your answer?

Ongoing training requirements for child welfare reporters

2.61. The Scottish Government would expect anyone who is included on the register of child welfare reporter to undergo regular training to ensure they are aware of the latest understanding in key areas. Training would be commissioned by the body appointed to operate and manage the register. It would not necessarily be provided by the body. Training would cover the following areas:

- the role of the child welfare reporter
- communicating with children, including obtaining the views of the child and providing explanations of decisions to a child
- understanding domestic abuse, particularly the dynamic of coercive control
- report writing
- understanding the ways adults can influence a child
- child development including learning disabilities
- child protection issues

2.62. Attending a certain number of training days would be mandatory as part of a child welfare reporter's terms and conditions. In the Financial Memorandum which accompanied the Bill as it was introduced to the Scottish Parliament the Scottish Government estimated that a child welfare reporter should receive four days paid training a year.

2.63. Four days was considered appropriate as it would strike a balance between ensuring regular training is provided and recognising that a child welfare reporter may only produce a limited number of reports a year meaning training requirements cannot be overly burdensome. In addition, all child welfare reporters will be required to demonstrate experience in key areas when they apply to be on the register.

2.64. The recruitment process will ensure that all child welfare reporters have experience in a variety of areas. The Scottish Government would expect training to be provided by experts in the relevant areas. Training would be provided by the body appointed to operate and manage the register or by individuals and organisations the body asked to carry out the training.

2.65. A number of child welfare reporters are also curators ad litem and safeguarders in the Children's Hearings system. Any training

requirements that overlap between these roles would be taken into account to avoid duplication. In addition, professionals undertake Continuing Professional Development (CPD).

- 2.66. If a child welfare reporter does not attend the required number of training days without a reasonable excuse they could be in breach of their terms and conditions and could be recommended for removal from the register.

Question 11): Do you agree/disagree with the proposed training requirements for child welfare reporters?

Agree
Disagree
Don't know

Why did you select your answer?

Question 12): Is four days of paid training per year for child welfare reporters appropriate?

Yes
No, I believe it should be fewer days
No, I believe it should be more days
Don't know

Why did you select your answer?

Fee rates for child welfare reporters

Existing situation

- 2.67. Currently child welfare reporter fees are paid by either the parties in a case themselves or by SLAB if the parties are eligible for legal aid. Once the register of child welfare reporters is operational this cost would no longer fall to SLAB or the parties. Instead this cost would be met through the body appointed to operate and manage the register of child welfare reporters. Table 6 of the Financial Memorandum which was published when the Children (Scotland) Bill was introduced into the Scottish Parliament provides the following estimated costs:

Year	Estimated number of individual payments made for child welfare reporter costs	Estimated average cost per report (£)	Estimated average cost per report x 1.6 to reflect the proportion of cases where SLAB fund both sides in a case and an estimate of percentage of cases in which the court splits the cost between parties (£)	Total cost (£m)
2016/17	1,711	2,800	4,500	3.0
2017/18	1,983	3,500	5,600	3.5
2018/19	2,263	2,700	4,300	3.7

2.68. The Scottish Government would expect to set fee rates to ensure consistency of remuneration. The Scottish Government expects fee rates to vary from case to case, as outlined in more detail below.

2.69. However, only in exceptional circumstances should fee rates exceed £3,000 in total for one report. Currently if a child welfare reporter is paid through legal aid and their costs exceed £3,000 then permission is required from SLAB²⁰.

Options

2.70. It would not be appropriate to set a per report fee rate as the information requested by a court in a report can vary significantly. The court may order a child welfare reporter speak to a number of individuals and this could necessarily take time.

2.71. The Scottish Government's considers there are two options of how the fee rate could be established. These could be:

- an hourly rate; or
- a per page rate for the report to be published.

2.72. An hourly rate would ensure there is no incentive to write excessively long reports. An hourly rate would also reflect that a child welfare reporter may need to travel to speak to individuals whereas a per page rate may not reflect this. An hourly rate may also be more appropriate for the two new functions for child welfare reporters. In particular, the function of explaining court's decision does not require a report back to the court

²⁰ <https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/flc-meeting-files/flc-meeting-papers-23-october-2017/paper-4-2---report-by-slab--child-welfare-reporters.pdf?sfvrsn=2>

- 2.73. A per page rate would need to reflect the time taken to speak to individuals and to travel to a meeting as opposed to simply writing the report itself.
- 2.74. The Scottish Government expects that the hourly fee rate for providing an explanation of a decision to a child and for investigating reasons of apparent non-compliance with an order could be the same as for producing a child welfare report. These function would also be skilled and would involve speaking to a child, and others.

Fee rates in other similar situations

- 2.75. Safeguarders in the Children's Hearings system have a per appointment fee of £260 which covers the investigation, written report including interim report, written communications, contribution at hearing considering report and administrative expenses. Safeguarders can then claim additional fees as appropriate: for example, for attending a Children's Hearing or for attending court²¹. They can also claim expenses.
- 2.76. Rates for members of the Scottish Tribunals vary depending on the tribunal. The Scottish Government considers the two tribunals which are most similar to the work undertaken by child welfare reporters are the Mental Health Tribunal for Scotland²² (MHTS) and the First Tier Tribunal for Scotland (Health & Education Chamber) Additional Support Needs jurisdiction²³.
- 2.77. The MHTS' primary role is to consider and determine applications for compulsory treatment orders under the Mental Health (Care and Treatment) (Scotland) Act 2003. Considering restricting people's liberty could be seen as broadly equivalent to the role of a child welfare reporter as both areas involve exercising judgement in sensitive and personal areas.
- 2.78. The Additional Support Needs jurisdiction of the Health & Education Chamber of the First Tier Tribunal for Scotland²⁴ hears references (appeals) from parents and young people against decisions of education authorities regarding the provision of educational support. This could be seen as a similar role to child welfare reporters as this tribunal engages with children and young people. A child welfare reporter would be similar to an ordinary member in that they have specific experience of working with children. An ordinary member is also required to weigh up potentially conflicting evidence and support

²¹ [Fees and expenses | Children 1st](#)

²² [MHTS - Welcome to the Mental Health Tribunal \(mhtscotland.gov.uk\)](http://mhtscotland.gov.uk)

²³ [Additional Support Needs | First-tier Tribunal for Scotland \(Health and Education Chamber\)](#)

²⁴ [Additional Support Needs | First-tier Tribunal for Scotland \(Health and Education Chamber\)](#)

the other members of the panel to reach an independent and reasoned decision. This could be seen as equivalent to a child welfare reporter weighing up potentially conflicting evidence and preparing a report for the court. A legal member of either tribunal is not considered a comparable role as a legal member of a tribunal is making a decision and chairing a panel whereas a child welfare reporter is seeking the views of various individuals and preparing a report.

- 2.79. The ordinary member daily rate for the First-tier Tribunal for Scotland Health & Education chamber is £239.86; the medical member for the MHTS receives £422.71 per day.

Question 13): How should fee rates for child welfare reporters be applied?

Hourly rate
Per page rate
Another way
Don't know

Why did you select your answer?

Expenses for child welfare reporters

- 2.80. The Scottish Government expects that child welfare reporters would only be able to claim actual expenses and allowances incurred whilst carrying out child welfare reporter work, including actual receipted costs and flat rate mileage payments. Where there are items of expenses where it is not possible to obtain receipts (such as paying for parking by phone) then this should be claimed for with an explanation of why the receipt isn't available.
- 2.81. The Scottish Government would expect that child welfare reporters seek value for money in terms of travel expenses. For example they would be expected to purchase standard class rail fares. The expenses a child welfare reporter can claim may be in line with civil service rates set by the Scottish Government for its staff. These are set out at Annex E to this consultation.
- 2.82. Any remuneration would be paid through the organisation that is appointed to operate and manage the register.

Question 14): Do you have any comments on the proposed policy in relation to expenses for child welfare reporters?

Yes
No

Please provide your comments

How a court would appoint a child welfare reporter to undertake a report

Background

- 2.83. Currently, under the court rules a court can decide to appoint a child welfare reporter to seek the views of the child or to undertake enquiries and to report to the court, where this would be in the best interests of the child and it will promote the effective and expeditious determination of an issue in relation to the child to undertake enquiries and to report to the court²⁵. The court issues an interlocutor which details who the child welfare reporter should speak to and what they should investigate. The court may complete a form (the form F44²⁶) to outline this. Ordinary Cause Rule 33.21(5)²⁷ requires the report to be sent to the court no less than three clear days before the relevant hearing (excluding any day on which the sheriff clerk's office is not open for civil court business) unless cause exists for specifying a later date. There are identical provisions in relation to Civil Partnership actions (see Ordinary Cause Rule 33.21A(5) and also for cases in the Court of Sessions (see Court of Session Rule 49.22(5)²⁸).
- 2.84. The child welfare reporter is required to send the report to the sheriff clerk by the date specified; and unless otherwise directed, send a copy of the report to each party to the proceedings by that date.

Proposed new procedure

- 2.85. The Scottish Government envisages that the court should continue to only appoint a child welfare reporter to produce a child welfare report if this would be in the best interests of the child and will ensure an effective and expeditious determination of an issue in relation to the child. The Scottish Government also considers that the court should continue to specify in the interlocutor who the child welfare reporter should speak to and what information they are to obtain.
- 2.86. Revised court rules are likely to be needed setting out how the court is to ask the body appointed to operate and manage the register to select a child welfare reporter to produce a child welfare report and for the functions of a child welfare reporter explaining decisions to a child and investigating the reasons for non-compliance with a court order. The Scottish Government will, in line with usual practice, prepare a policy paper for the Family Law Committee of the Scottish Civil Justice

²⁵ See ordinary cause rules 33.21, 33a.21 and court of session rule 49.22

²⁶ <https://www.scotcourts.gov.uk/rules-and-practice/forms/sheriff-court-forms/ordinary-cause-forms>

²⁷ <https://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/sheriff-court--civil-procedure-rules/ordinary-cause-rules>

²⁸ <https://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/rules-of-court/court-of-session/chap49.pdf?sfvrsn=26>

Council proposing new and revised court rules. This policy paper will reflect the regulations that will be made by the Scottish Ministers under section 101A of the 1995 Act (as inserted by section 9 of the 2020 Act).

- 2.87. The working group on child welfare reporters discussed how child welfare reporters should be appointed.²⁹ The Scottish Government's preferred approach is that when a court orders a child welfare reporter be appointed the clerk of the court will contact the body appointed to operate and manage the register. The body would then select the next child welfare reporter from the register who is willing to work in the specific geographic location. The body would need to ensure that there was no conflict of interest for the child welfare reporter in that particular case. A child welfare reporter may also turn down the work due to other commitments. Child welfare reporters should have sufficient training in all relevant areas to not require a specialist in a particular area to be appointed.
- 2.88. There is an alternative approach. Under this system, when the court orders that a child welfare reporter be appointed, the court could also, if it wished, specify areas it would expect the child welfare reporter to have expertise in. These areas could, for example, relate to domestic abuse or to drug or alcohol addiction or to other areas of expertise which child welfare reporters could be asked to identify when applying to be included on the register.
- 2.89. As indicated above, the Scottish Government's initial view is that it is preferable for the next available reporter on the register to be selected as:
- 2.90. If a child welfare reporter is appointed early in a case, it may not be evident then what particular areas will feature strongly in the case. Therefore, a reporter appointed because they have a specific area of expertise might find other areas are more relevant. Appointing the next available reporter may be more transparent. Many of the skills needed for child welfare reporters (eg listening to children; a full understanding of domestic abuse; report writing) will be required generally and all child welfare reporters will need these skills. In future, child welfare reporters will not just be writing reports. They will also be explaining decisions and investigating reasons for non-compliance with a court order. Unless a child welfare reporter who has already been involved in a specific case is selected for these tasks (see below), it seems appropriate that the next reporter on the register is selected as all reporters should have the skills required for these roles.

²⁹

<https://www.webarchive.org.uk/wayback/archive/20161001162022/http://www.gov.scot/Topics/Justice/law/17867/reporteebrs>

Question 15): When a child welfare reporter is selected should this be:

The next person on the register

A person with specific areas of expertise requested by the court

Through another system

Why did you select your answer?

- 2.91. Where a child welfare reporter has already provided a report, the court would be able to request that the same child welfare reporter is selected to provide an explanation of a decision to the child or investigate the reason for non-compliance with the order, if this is considered in the best interests of the child.
- 2.92. If a child welfare reporter has a query about, for example, expenses or payment for the report, this would be dealt with by the body appointed to operate and manage the register. Queries about, for example, who they are supposed to speak to would be addressed to the court itself, as now

Child welfare reporter being asked to provide a recommendation in reports on what is in the best interests of the child

Background

- 2.93. This section of the consultation specifically relates to the existing roles of a child welfare reporter and also the new function of investigating the reasons for non-compliance with a court order. A recommendation would clearly not be required where a child welfare reporter is appointed to provide an explanation of a decision to a child.
- 2.94. The instructions to child welfare reporters which were published as a result of the working group on child welfare reporters suggests that the report should include recommendations³⁰. These instructions, which are non-statutory, could be amended without the need for legislation.
- 2.95. It would also be open to the Scottish Government to prepare a policy paper for the Family Law Committee of the Scottish Civil Justice Council to propose court rules on whether or not a child welfare reporter should make recommendations.

³⁰

https://www.webarchive.org.uk/wayback/archive/20170215041453mp_/http://www.gov.scot/Resource/0049/00498005.pdf

Options

- 2.96. One option is for the court to be able to ask the child welfare reporter to provide recommendations on what is in the best interests of the child. This reflects that in some cases the child welfare reporter after having spoken to a range of individuals may be well placed to provide views on what is in the child's best interests. The child welfare reporter may consider it in the child's best interests to express these views to the court.
- 2.97. However, this could be seen as undertaking the role of the court which is to, after considering all the evidence, decide what is in the best interests of the child. Making a recommendation could also be seen as influencing the court when the child welfare reporter may not have access to all the evidence held by the court.
- 2.98. If the child welfare reporter has concerns about the safety of the child that they should raise this in the report or raise it immediately with either the court or the relevant authorities (police or social work services) if the situation warranted.

Question 16) Should a child welfare reporter provide recommendations on what is in the best interests of the child in their report?

Yes

No

Don't Know

Why did you select your answer?

Complaints procedure

Complaints by a person about not being included on the register of child welfare reporters and about being removed from the register.

- 2.99. An individual may wish to complain about being unsuccessful in their application to be on the register of child welfare reporters or about being removed from the register. The Scottish Government envisages that any such complaint would initially be handled by the team which led on the appointments. If the individual remains dissatisfied then the complaint would be dealt with by another team who had no role in the original decision-making process.

Question 17):

Do you have any comments on the proposed procedure for complaints from individuals who are unsuccessful when applying to be on the register of child welfare reporters or are removed from the register?

Yes

No

Please provide your comments.

Grievance procedure

2.100. A person on the child welfare reporter register may have a grievance about fees or expenses; or comments on their appraisal; or on the quality of the training provided and the subjects covered; or on other points about the way in which the register is run. Any such grievances would be handed by the body appointed to operate and manage the register.

Question 18):

Where a child welfare reporter has a grievance about fees or expenses or comments on their appraisal should this be dealt with by the body appointed to operate and manage the register?

Yes

No

Don't Know

Why did you select your answer?

Complaints about a child welfare reporter

2.101. Currently an individual can complain about the conduct of a child welfare reporter to the relevant Sheriff Principal. If the child welfare reporter is a lawyer holding a practising certificate with the Law Society of Scotland or a member of the Faculty of Advocates an individual could make a conduct complaint to the Scottish Legal Complaints Commission³¹. If a child welfare reporter is a social worker an individual could make a complaint to the Scottish Social Services Council.³²

2.102. One of the key aims of establishing the register of child welfare reporters is to ensure that there is a child friendly complaints process available. If a child or adult wishes to complain about the conduct of a

³¹ <https://www.scottishlegalcomplaints.org.uk/your-complaint/>

³² <https://www.sssc.uk.com/fitness-to-practise/raising-a-concern>

child welfare reporter they should contact the body appointed to operate and manage the register.

- 2.103. Complaints would be limited to the conduct of the child welfare reporter or the standard of the report. The body would not handle complaints about the outcome arising from the report as the mechanism for any person aggrieved by a decision of the court is to appeal that decision.
- 2.104. A complaint could be raised by the child, a party to a case or by one of the individuals that the child welfare reporter has spoken to. Any complaint by the party to a case could cover both the standard of the report itself and also the conduct of the child welfare reporter.
- 2.105. Individuals who are not parties to the case, including the child at the centre of the case, do not automatically receive a copy of the report. Therefore, it might be harder for them to complain about the standard of the report. An individual who has given their views to a child welfare reporter may ask for the child welfare reporter to share that section of the report with them, and they could complain that their views have been misrepresented. It would not be appropriate to share the full content of the report with an individual who is not a party to the case as it may contain personal information.
- 2.106. On receiving a complaint the body appointed to operate and manage the register would decide whether it has any merit. If there is evidence of failings a decision would be taken on the outcome which could be – more training, a verbal or written warning or being suspended from or removed from the register. The body may approach the relevant sheriff who requested the child welfare report to seek their views.
- 2.107. Any decisions to remove an individual from the register would be made by the Scottish Ministers based on evidence provided to them.
- 2.108. The Scottish Government would ensure that children and parties are aware of the complaints process by including information in the guide for children on child welfare reporters and in the guidance for parties on attending court. When parties receive a copy of the child welfare report this would also include information about how to raise a complaint about the conduct of a child welfare reporter or the quality of the report itself.
- 2.109. The Scottish Government would expect that parties and any other person could raise a complaint about the conduct of the lawyer to the Scottish Legal Complaints Commissioner in the usual manner³³. Similarly, complaints against other professionals could be raised with the relevant professional bodies.

³³ <https://www.scottishlegalcomplaints.org.uk/>

Question 19): Do you have any comments on the proposed procedure for complaints about child welfare reporters?

Yes

No

Please provide your comments.

Part 3: Register of Curators ad litem

Introduction

- 3.1. Curators ad litem are appointed to represent and protect the interests of an individual lacking full capacity, including a child. The role of the curator ad litem is entirely separate and distinct from the role of the child welfare reporter.
- 3.2. Curators ad litem are used in cases other than those under section 11 of the 1995 Act such as Mental Health Tribunals, divorce and dissolution proceedings where it appears to the court that the defender is suffering from a mental disorder; or to protect the interests of a child who is the subject of proceedings for permanence or adoption orders.
- 3.3. This section of the consultation focuses on curators ad litem. It seeks views on:
 - the process for including a person on, and removing a person from the register, ineligibility requirements and the complaints mechanism
 - the fee rates and expenses to be paid to curators ad litem
 - the requirements for curators ad litem to be on the register
 - what ongoing training requirements there should be for curators ad litem and
 - how the court would appoint a curator ad litem from the register.
- 3.4. The registers of child welfare reporters and of curators ad litem will be separate registers. However, the Scottish Government would expect that the body appointed to undertake the operation and management of the register of child welfare reporters would also undertake the operation and management of the register of curators ad litem.
- 3.5. The process for including a person on, and removing a person from, the register would be the same as the process in relation to child welfare reporters.
- 3.6. The same requirements for being ineligible for inclusion as a child welfare reporter would extend to curators ad litem.
- 3.7. The 2020 Act only covers establishing a register of curators for the purposes of orders made under section 11 of the 1995 Act. Therefore, unless otherwise indicated, reference in this consultation to curators ad litem are references only to curators appointed for the purposes of orders made under section 11 of the 1995 Act.

Existing situation

- 3.8. Currently, practice in relation to appointment of curators ad litem varies across Scotland. In some Sheriffdoms, curators are appointed from the list of child welfare reporters held by the Sheriffs Principal.
- 3.9. In other areas curators are appointed from the panel of curators held by each local authority for permanence and adoption cases³⁴.
- 3.10. The number of curators ad litem appointed varies across the country. For example, from a survey of Sheriffs Principal, in the Sheriffdom of Lothian and Borders there were four appointments of curators ad litem in the first two months of 2019 whilst in the Sheriffdom of South Strathclyde, Dumfries & Galloway there were six appointments for the whole of 2018/19.
- 3.11. The Scottish Government understands that the appointment of curators ad litem by the court has a long history and rests in the common law powers of the court. The Scottish Government is not aware of any relevant court rules on the appointment of curators ad litem in family cases although there are rules on fees and outlays of curators ad litem in respect of children (see Chapter 39 of the Sheriff Court Ordinary Cause rules)³⁵.

Children (Scotland) Act 2020

- 3.12. Section 101B of the 1995 Act (inserted by section 17 of the 2020 Act) places a duty on the Scottish Ministers to establish and maintain a register of individuals to act as curators ad litem. Section 101B gives Scottish Ministers the power by regulations to make provision about:
 - the requirements that a person must satisfy in order to be included, and remain, on the register
 - the process for including a person on, and removing a person from, the register
 - the process for how, and by whom, a registered person is to be selected as the appointed child welfare reporter in a case
 - the remuneration of child welfare reporters including expenses and outlays
 - the operation and management of the register.

Requirements for curators ad litem to be on the register

- 3.13. The Scottish Government expects that curators ad litem would need to be either solicitors or advocates as their role is to represent the interests of a child who is involved in a family court case. This is a different role to that of a child welfare reporter, which is to speak to a range of individuals and report back to the court on what they have heard and, in future, to explain decisions to the child. In most cases it is

³⁴ See http://www.legislation.gov.uk/ssi/2001/477/pdfs/ssi_20010477_en.pdf

³⁵ <https://www.scotcourts.gov.uk/docs/default-source/scr-ordinary-cause-rules--part-2/chapter-39828EF8421958444770E6B417.doc?sfvrsn=12>

not envisaged that the child welfare reporter would attend court. However, it is envisaged that a curator ad litem would attend court and participate in proceedings.

- 3.14. The Scottish Government would expect that an individual would need to hold a practising certificate from the Law Society of Scotland or be a member of the Faculty of Advocates.
- 3.15. As is the case for child welfare reporters, the Scottish Government considers that certain categories of people would not be eligible to be on the register of curators ad litem. This means that even if someone holds a practising certificate from the Law Society of Scotland or are a member of the Faculty of Advocates they would not be eligible to be on the register of curators ad litem if they are:
- an individual directly involved in the establishment, maintenance operation or management of the register of curators ad litem
 - an individual employed by the SCTS
 - a member of the judiciary
 - a member of the Scottish Government or a junior Scottish Minister.
- 3.16. In terms of any conflict of interest we would expect that an individual included on the register of curators ad litem who subsequently accepts a post that would make them ineligible to be included on the register would need to resign as a curator ad litem.
- 3.17. The Scottish Government suggests that an individual would also need to demonstrate relevant skills and experience in:
- the law in relation to children
 - an understanding of family conflict and
 - child development including learning disabilities

Question 20): Do you agree/disagree with the proposed requirements that a person must satisfy in order to be included on the register of curators ad litem?

Agree
Disagree
Don't know

Why did you select your answer?

Question 21): Should there be any other requirements that a person must satisfy in order to be included on the register of curators ad litem?

Yes

No

Don't know

Please give the additional requirements you feel are necessary and why you feel they are important.

Ongoing training requirements for curators ad litem

- 3.18. The Scottish Government would expect anyone who was included on the register of curators ad litem would undergo regular training to ensure that they are aware of the latest understanding in key areas. Training would cover the following areas:
- the role of the curator ad litem
 - family Law
 - family conflict
 - understanding domestic abuse, particularly the dynamic of coercive control
 - engaging with children and
 - child development including learning disabilities
- 3.19. Attending a certain number of training days would be mandatory as part of a curator ad litem's terms and conditions. In the Financial Memorandum which accompanied the Bill as it was introduced into the Scottish Parliament the Scottish Government estimated that a curator ad litem may receive four days paid training a year. Four days was decided as appropriate as it would strike a balance between providing regular training on a yearly basis and not being overly burdensome.
- 3.20. The recruitment process will ensure that all curators ad litem have experience in a variety of areas. The Scottish Government would expect training to be provided by experts in the relevant areas. Training would be provided by the body appointed to operate and manage the register or by individuals and organisations the body asked to carry out the training.
- 3.21. The Scottish Government is aware that a number of curators ad litem are also child welfare reporters. Any training requirements that overlap between the two roles would be able to be undertaken once rather than twice in a year. In addition, the Scottish Government is aware that lawyers undergo Continuing Professional Development (CPD).
- 3.22. If a curator ad litem does not attend the required number of training days without a reasonable excuse then they could be in breach of their

terms and conditions and could be recommended for removal from the register.

Question 22): Do you have any comments on the proposed training requirements for curators ad litem?

Yes

No

Please provide your comments

Question 23): Do you agree that four days of paid training per year for curators ad litem is appropriate?

Yes

No, I believe it should be fewer days

No, I believe it should be more days

Don't know

Why did you select your answer?

How a court would appoint a curator ad litem

- 3.23. Currently there is no procedure laid down in court rules for how a curator is appointed in a case under section 11 of the 1995 Act.
- 3.24. Section 11D of the 1995 Act requires the court to specify in the interlocutor the reasons for appointing of a curator ad litem and to review the appointment every six months. In line with usual practice, the Scottish Government will prepare a policy paper for the Family Law Committee of the Scottish Civil Justice Council proposing court rules on the procedures for appointing a curator ad litem and for reviewing the appointment.
- 3.25. When a court orders a curator ad litem be appointed the clerk of the court will then contact the body appointed to operate and manage the register. The body would then consult the register and where possible select the next curator ad litem on the register who is willing to work in a specific geographic location. The body will check this person is able to take on the role (eg has no conflicts of interest and has sufficient time to be able to carry out the function).
- 3.26. In relation to child welfare reporters, this consultation seeks views on whether the next person on the register should be selected or whether the court could specify that it wished a person with a specific skill set. That type of question reflects the varied nature of the role of child welfare reporters. In relation to curators ad litem, it appears to the Scottish Government that this type of question does not arise – and the next available person on the register should be selected – as the main

skill needed for the curator ad litem role is to represent the child's interests.

- 3.27. As indicated above, once the court has appointed a curator ad litem, the clerk will then contact the body appointed to operate and manage the register. The body will then select the next available person on the register. The next step then could be for the body to advise the court of the name of that person. The court could then send this person the interlocutor stating the reason for their appointment. The curator ad litem would then be responsible for assessing what is in the best interests of the child and representing these interests in the court proceedings. Where possible, the curator ad litem will wish to speak directly to the child.

If a curator ad litem has a query that relates to for example expenses or payment then this would be dealt with by the body appointed to manage and operate the register. Queries around the appointment of a curator ad litem by the court would need to be addressed to the court.

- 3.28. If a curator ad litem is appointed for a period of more than 6 months then the court will be required, by virtue of section 11D(2) of the 1995 Act as added by section 17 of the 2020 Act, to consider whether their appointment continues to be necessary.

Question 24) Do you have any comments on the proposed process for appointing a curator ad litem in a case under section 11 of the 1995 Act?

Yes
No

Please provide your comments

Fee rates for curators ad litem

- 3.29. Currently where the sheriff appoints a curator ad litem to a child, at the first instance, unless the court directs otherwise, the pursuer is responsible for the curator's fees and outlays (see Chapter 39 of the Ordinary Cause Rules). In future all curator ad litem fees and expenses would be paid by the body appointed to operate and manage the register.
- 3.30. The Scottish Government would expect that a per hour fee rate be set. This would reflect the fact that each case is different and a curator ad litem appointed in one case may be required to undertake a significantly different amount of work than one appointed in another case.
- 3.31. It would not seem appropriate to set a per case fee rate as each case would require a different degree of work and preparation. In addition, the length of time the appointment lasts will vary.

3.32. The Scottish Government expects that the same hourly fee rate would be applicable for curators ad litem as for child welfare reporters (see paragraphs 2.67 – 2.79.

Question 25): How should fee rates for curators ad litem be paid?

Hourly rate
Another way
Don't know

Why did you select your answer?

Expenses for curators ad litem

3.33. The Scottish Government expects that curators ad litem would only be able to claim expenses and allowances if the additional expense is actually incurred to carrying out official curator ad litem work. When this occurs all expenses and allowances including actual receipted costs and flat rate mileage payments are payable. Where there are items of expenses where it is not possible to obtain receipts (such as paying for parking by phone) then this should be claimed for with an explanation of why the receipt isn't available.

3.34. The Scottish Government would expect that curators ad litem seek value for money in terms of travel expenses. For example they would be expected to purchase standard class rail fares. It would be expected that the expenses that a curator ad litem can claim would be in line with the levels set by the Scottish Government for its own staff. These are set at Annex E to this consultation.

Question 26): Do you have any comments on the proposed approach in relation to expenses for curators ad litem?

Yes
No

Please provide your comments.

Complaints procedures

3.35. The Scottish Government considers that the complaints process in relation to curators ad litem would be similar to what is outlined above for child welfare reporters.

Not being on the register

3.36. An individual may wish to complain about being unsuccessful in their application to be on the register of curators ad litem or about being removed from the register. The Scottish Government envisages that

any such complaint would initially be handled by the team which dealt with appointments. If the individual remains dissatisfied then the complaint would be dealt with by another team which had no involvement in the original decision.

Grievances held by curators ad litem

- 3.37. A person on the curator ad litem register may have a grievance about fees or expenses; or comments on their appraisal; or on the quality of the training provided and the subjects covered; or on other points about the way in which the register is run. Any such grievances would be handed by the body appointed to operate and manage the register,

Complaints about a curator ad litem

- 3.38. One of the key aims of establishing the register of curators ad litem is to ensure that there is a child friendly complaints process available. If a child or adult wishes to complain about a curator ad litem they should contact the body appointed to operate and manage the register.
- 3.39. Complaints could be about the service provided by the curator ad litem or about the conduct of the curator ad litem. A complaint could be raised by the child, a person acting for the child or by a party to a case.
- 3.40. On receiving a complaint the body appointed to operate and manage the register would decide whether it has any merit. If there is evidence of failings a decision would be taken on the outcome which could be – more training, a verbal or written warning or being suspended from or removed from the register. The body may approach the relevant sheriff who appointed a curator ad litem to the child.
- 3.41. Any decisions to remove an individual from the register would be made by the Scottish Ministers. The Scottish Government would ensure that children and parties are aware of the complaints process.
- 3.42. The Scottish Government would expect that parties and anyone else could raise a complaint about the conduct of the solicitor to the Scottish Legal Complaints Commission in the usual manner.

Question 27): Do you have any comments on the proposed procedure for complaints by or about curators ad litem?

Yes

No

Please provide your comments

Part 4: Register of solicitors

Background

- 4.1. This section of the consultation focuses on the register of solicitors who can be appointed where an individual is prohibited from personally conducting the remainder of their case themselves under sections 4-5 of the 2020 Act.
- 4.2. This register will be separate to the registers for child welfare reporters and curators ad litem.
- 4.3. The fees and expenses for solicitors on this register would be paid by the Scottish Ministers.
- 4.4. Sections 11A, 11B and 22B of the Vulnerable Witnesses (Scotland) Act 2004 introduce a new special measure prohibiting a party from personally conducting the remainder of their case in certain circumstances. This special measure is available in proceedings where the court is considering making an order under section 11 of the 1995 Act and in Children's Hearings court proceedings.
- 4.5. In order to protect the right to a fair trial under article 6 of the European Convention on Human Rights legal representation must be available for an individual who has been prohibited from personally conducting the remainder of their case
- 4.6. In criminal proceedings where a party has been banned from cross examining another party or witness then where the court is not satisfied that the accused intends to engage a solicitor or, as the case may be, another solicitor for those purposes, it shall, at its own hand, appoint a solicitor for those purposes³⁶. The Scottish Government does not consider it appropriate to use solicitors appointed to this list in family court cases as they may not have experience of family law and also may not wish to represent individuals in these situations.
- 4.7. Section 7 of the 2020 Act places a duty on the Scottish Ministers to establish a register of solicitors from whom a lawyer is to be appointed if a party fails to appoint one themselves where the prohibition applies either in a case under section 11 of the 1995 Act or a Children's Hearing court proceeding. The Scottish Ministers must by regulations specify the requirements that a person must satisfy in order to be included and remain on the register and may also provide for the remuneration (the fee rate) payable to the solicitor. Provision may also be made about outlays such as fees to be paid to Counsel.
- 4.8. This section of the consultation provides information on:

³⁶ <https://www.legislation.gov.uk/ukpga/1995/46/section/288D>

- the fee rates and expenses to be paid
- the requirements that an individual must satisfy in order to be included on the register
- what ongoing training requirements there should be for the individuals
- how the court would appoint a solicitor from the register and
- the complaints process about individuals included on the register

Maintaining the register

- 4.9. Section 7 of the 2020 Act provides that Scottish Ministers must—
- 1.1. (a) establish, and
 - 1.2. (b) (subject to provision made under subsection (2)(c)) maintain,
 - 1.3. a register of solicitors who may be appointed by a court under section 22B(6) of the Vulnerable Witnesses (Scotland) Act 2004.
- 4.10. Therefore, the Scottish Ministers do have the power to confer the duty to maintain the register on another body. The Scottish Government's view is that this register should be managed and operated in the same way as the registers for child welfare reporters and for curators ad litem. Therefore, the Scottish Government proposes that the duty to maintain this register should remain with the Scottish Ministers but the day to day management and operation of the register would be contracted out.

Requirements for solicitors to be included on the register

- 4.11. The Scottish Government would expect that an individual would need to hold a practising certificate from the Law Society of Scotland. As is the case for child welfare reporters and curators ad litem, the Scottish Government considers that certain categories of people would not be eligible to be on this register of solicitors. This means that even if someone holds a practising certificate from the Law Society of Scotland they would not be eligible to be on this register of solicitors if they are:
- an individual directly involved in the establishment, maintenance operation or management of the register of curators ad litem
 - an individual employed by the SCTS
 - a member of the judiciary
 - a member of the Scottish Government or a junior Scottish Minister.
- 4.12. In terms of any conflict of interest we would expect that an individual included on this register who subsequently accepts a post that would make them ineligible to be included on the register would need to resign as a curator ad litem.
- 4.13. The Scottish Government suggests that an individual on the register would also need to demonstrate relevant skills and experience in:
- family law
 - domestic abuse, particularly the dynamic of coercive control
 - family conflict and
 - proofs.

4.14. A solicitor on the register could be subject to an annual appraisal in relation to any work they carry out as a result of being on the register.

Question 28): Do you agree/disagree with the proposed requirements that a person must satisfy in order to be included on the register of solicitors?

Agree
Disagree
Don't know

Why did you select your answer?

Question 29): Are there any other requirements that a person must satisfy in order to be included on the register of solicitors?

Yes
No
Don't know

Please give the additional requirements you feel are necessary and why you feel they are important.

Ongoing training requirements for solicitors on the register

4.15. The Scottish Government would expect anyone included on the register would undergo regular training to ensure that they are aware of the latest developments in family law. Solicitors do, of course, already undergo Continuing Professional Development (CPD). The Scottish Government considers it important that solicitors on this register are up to date in family law (rather than, for example, criminal law) and also domestic abuse, particularly the dynamic of coercive control.

4.16. The number of days training is envisaged to be less than the number of days that curators ad litem and child welfare reporters have to attend as these solicitors are unlikely to be appointed to represent a party as frequently as individuals are likely to be appointed as a child welfare reporter or curator ad litem. In addition, as they are not engaging with the child at the centre of the case a detailed knowledge of how to engage with children is not required. The Scottish Government would expect that training would be provided by experts in the relevant areas and that this training would be organised by the body responsible for the management and operation of the register.

4.17. If a solicitor does not attend the required number of training days without a reasonable excuse then they could be in breach of their terms and conditions and could be recommended for removal from the register.

Question 30) Do solicitors on this register require fewer days training each year than child welfare reporters and curators ad litem, on the basis that they are likely to receive fewer appointments?

Yes

No

Don't know

Why did you select your answer?

Question 31): Are there any other training requirements that you think should be included?

Yes

No

Please give the additional requirements you feel are necessary and why you feel they are important.

How a court would appoint a solicitor from the register

- 4.18. If the court considers an appointment is required, the court would make an order accordingly. It would then approach the body managing and operating the register.
- 4.19. The body would then consult the register and approach the next solicitor on the register who is willing to work in a specific geographic location. As the register is to be used infrequently it is envisaged that a number of solicitors may need to be approached in order to obtain one who would have availability to act for a party and does not have a conflict of interest.
- 4.20. Once a solicitor has been selected, the body would then advise the court accordingly. The court would give them sufficient time to engage with the party and to take instructions from them. The Scottish Government expects that court rules could lay down the minimum time required and, in line with usual practice, the Scottish Government would prepare a policy paper proposing rules to go to the Family Law Committee of the Scottish Civil Justice Council.
- 4.21. If a solicitor has a query that relates to for example expenses or payment then this would be dealt with by the body managing and operating the register. Any queries on the decision by the court to appoint a solicitor in a particular case would be for the court.

Question 32): Do you have any comments on the proposed process for the court appointing a solicitor from the register?

Yes

No

Why did you select your answer?

Appointment of Counsel

4.22. The majority of family court cases are heard in the sheriff court but a limited number are heard in the Court of Session. It is considered very unlikely a party would be unrepresented in the Court of Session. However, if this were the case then the solicitor acting for the party who has been prohibited from conducting their own case would need to employ counsel.

4.23. It would only be expected infrequently that counsel would be appointed in cases in the sheriff court. However, if the appointed solicitor considered it necessary then this would need to be authorised by the body appointed to undertake the operation and management of the register.

Fee rates

4.24. The Scottish Government expects that a per hour fee rate would be set. This would reflect that each case is different and representation in one case may require a significantly different amount to another case.

4.25. It would not be appropriate to set a per representation fee rate as each case would require a different degree of representation and also a different level of preparatory work. In addition, the duration of the appointments will vary.

4.26. We recognise that this may be a challenging role and we would propose to pitch the fee rate accordingly.

Expenses for solicitors

4.27. The Scottish Government expects that solicitors would only be able to claim expenses and allowances if the additional expense is actually incurred to carrying out official work whilst acting on the register. When this occurs all expenses and allowances including actual receipted costs and flat rate mileage payments are payable. Where there are items of expenses where it is not possible to obtain receipts (such as paying for parking by phone) then this should be claimed for with an explanation of why the receipt isn't available.

4.28. The Scottish Government would expect that solicitors seek value for money in terms of travel expenses. For example they would be expected to purchase standard class rail fares. It would be expected that the expenses that a solicitor can claim would be at the levels set by the Scottish Government for its own staff. These are set at Annex E to this consultation.

Question 33): Do you agree/disagree with the proposed procedure for expenses for individuals appointed to this register?

Agree

Disagree

Don't know

Why did you select your answer?

Complaints procedures

4.29. The Scottish Government considers that the complaints process in relation to solicitors on the register would be similar to what is outlined above for curators ad litem.

Not being on the register

4.30. An individual may wish to complain about being unsuccessful in their application to be on this register of solicitors or about being removed from the register. The Scottish Government envisages that any such complaint would initially be handled by the team responsible for appointments. If the individual remains dissatisfied then the complaint would be dealt with by another team which had no role in the original decision.

Grievances held by solicitors on the register

4.31. A person on the register may have a grievance about fees or expenses; or on the quality of the training provided and the subjects covered; or on other points about the way in which the register is run. Any such grievances would be handed by the body appointed to operate and manage the register.

Complaints about a solicitor on the register

4.32. Complaints could be about the service provided by the solicitor or about the conduct of the solicitor. A complaint about the service provided could be raised by the person being represented. A complaint about the conduct of the solicitor could be raised by the person being represented, by another party to the case or by the child.

4.33. On receiving a complaint the body appointed to operate and manage the register would decide whether it has any merit. If there is evidence of

failings a decision would be taken on the outcome which could be – more training, a verbal or written warning or being suspended from or removed from the register. The body may approach the relevant sheriff who appointed a solicitor to represent a party.

4.34. Any decisions to remove an individual from the register would be made by the Scottish Ministers.

4.35. The Scottish Government would expect that parties and anyone else could raise a complaint about the conduct of the solicitor to the Scottish Legal Complaints Commission in the usual manner.

Question 34): Do you have any comments on the proposed procedure for complaints by or about solicitors on this register?

Yes

No

Please provide your comments.

Part 5: Conclusion

Impact Assessments

- 5.1. In accordance with usual practice, the Scottish Government has prepared a number of impact assessments in relation to the development of policy in this area.
- 5.2. The Scottish Government considers that the changes proposed or considered in this consultation have minimal impact on the environment. Accordingly, the Scottish Government has sent a pre-screening exemption from Strategic Environmental Assessment (SEA) to the SEA consultation authorities.³⁷
- 5.3. A draft Business and Regulatory Impact Assessment (BRIA) is attached at Annex F. This provides details of the estimated cost of adopting various options discussed in the consultation.
- 5.4. A draft Child Rights and Wellbeing Impact Assessment (CRWIA) is attached at Annex G. This considers which Articles of the UNCRC are engaged by the proposals and policy options identified for children and young people. The CRWIA also sets out the evidence that the Scottish Government has identified so far as relevant to the assessment of these options.
- 5.5. A draft Data Protection Impact Assessment (DPIA) has also been undertaken and is attached at Annex H.
- 5.6. The changes proposed to the law would have impacts in relation to equalities. A draft Equality Impact Assessment (EQIA) is attached at Annex I.
- 5.7. A draft Fairer Scotland Impact Assessment and a draft Islands Communities Impact Assessment (ICIA) have been undertaken and are available at Annexes J and K.

Question 35) :

Do you have any comments about, or evidence relevant to:

- a) the draft Business And Regulatory Impact Assessment Yes/No
- b) the draft Child Rights and Wellbeing Impact Assessment; Yes/No
- c) the draft Data Protection Impact Assessment; Yes/No
- d) the draft Equality Impact Assessment; Yes/No
- e) the draft Fairer Scotland Impact Assessment Yes/No or
- f) the draft Islands Communities Impact Assessment Yes/No

Please provide your comments

³⁷ The SEA consultation authorities are: the Scottish Environment Protection Agency, Scottish National Heritage, and Historic Environment Scotland.

Any further comments

- 5.8. The Scottish Government recognises that in order to develop well informed policy and legislation, it is important that we receive responses reflecting the range of views held on this subject.
- 5.9. Consultees are welcome to make any other comments relating to this consultation.

Question 36): Do you have any further comments?#

Yes

No

Please provide your comments



RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response if you are replying by post. If you are using Citizen Space to reply to this consultation, these questions about you are contained within Citizen Space.

To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

Individual
Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

Publish response only (without name)

Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No

Annex B Consultation questions

Question 1):

Who should provide the operation and management of the register of child welfare reporters? (please select one answer).

- (a) the Scottish Government
- (b) the Scottish Government should contract this out to a third party
- (c) this should be run by the SCTS on a national level.
- (d) another option
- (e) don't know

Why did you select your answer?

Question 2): Do you agree/disagree with the proposed process for including an individual on the register of child welfare reporters?

- Agree
- Disagree
- Don't Know

Why did you select your answer?

Question 3): Do you agree/disagree that child welfare reporters should be included on the register for a three year period?

- Agree
- Disagree
- Don't know

Why did you select your answer?

Question 4): Do you agree/disagree with the proposed reappointment process for child welfare reporters?

Agree

Disagree

Don't Know

Why did you select your answer?

Question 5):

For each of the following categories of people, should they be ineligible for inclusion on the register of child welfare reporters? Please select yes/no/don't know for each option

an individual directly involved in the establishment, maintenance, operation or management of the register of child welfare reporters

an individual employed by the SCTS

a member of the judiciary

a member of the Scottish Government or junior Scottish Minister

an individual barred from regulated work with children by virtue of the Protection of Vulnerable Groups (Scotland) Act 2007

Why did you select your answers?

Question 6) Is there anyone else who should be ineligible for inclusion on the register of child welfare reporters?

Yes

No

Don't Know

If you answered yes please provide details.

Question 7) Do you agree/disagree with the approach proposed when an individual is removed from the register of child welfare reporters?

- Agree
- Disagree
- Don't know

Why did you select your answer?

Question 8): Do you agree/disagree with the proposed requirements that a person must satisfy in order to be included on the register of child welfare reporters?

- Agree
- Disagree
- Don't know

Why did you select your answer?

Question 9): Are there any other requirements that a person must satisfy in order to be included on the register of child welfare reporters?

- Yes
- No

Please give the additional requirements you feel are necessary and why you feel they are important.

Question 10): Do you agree/disagree that existing child welfare reporters having to apply to be on the new register?

- Agree
- Disagree
- Don't know

Why did you select your answer?

Question 11): Do you agree/disagree with the proposed training requirements for child welfare reporters?

- Agree
- Disagree
- Don't know

Why did you select your answer?

Question 12): Is four days of paid training per year for child welfare reporters appropriate?

- Yes
- No, I believe it should be fewer days
- No, I believe it should be more days
- Don't know

Why did you select your answer?

Question 13): How should fee rates for child welfare reporters be applied?

- Hourly rate
- Per page rate
- Another way
- Don't know

Why did you select your answer?

Question 14): Do you have any comments on the proposed policy in relation to expenses for child welfare reporters?

- Yes
- No

Please provide your comments

Question 15): When a child welfare reporter is selected should this be:

- The next person on the register
- A person with specific areas of expertise requested by the court
- Through another system

Why did you select your answer?

Question 16) Should a child welfare reporter provide recommendations on what is in the best interests of the child in their report?

Yes

No

Don't Know

Why did you select your answer?

Question 17): Do you have any comments on the proposed procedure for complaints from individuals who are unsuccessful when applying to be on the register of child welfare reporters or are removed from the register?

Yes

No

Please provide your comments.

Question 18): Where a child welfare reporter has a grievance about fees or expenses or comments on their appraisal should this be dealt with by the body appointed to operate and manage the register?

Yes

No

Don't Know

Why did you select your answer?

Question 19): Do you have any comments on the proposed procedure for complaints about child welfare reporters?

Yes

No

Please provide your comments

Question 20): Do you agree/disagree with the proposed requirements that a person must satisfy in order to be included on the register of curators ad litem?

Agree

Disagree

Don't know

Why did you select your answer?

Question 21): Should there be any other requirements that a person must satisfy in order to be included on the register of curators ad litem?

Yes

No

Don't know

Please give the additional requirements you feel are necessary and why you feel they are important.

Question 22): Do you have any comments on the proposed training requirements for curators ad litem?

Yes

No

Please provide your comments

Question 23): Do you agree that four days of paid training per year for curators ad litem is appropriate?

Yes

No, I believe it should be fewer days

No, I believe it should be more days

Don't know

Why did you select your answer?

Question 24) Do you have any comments on the proposed process for appointing a curator ad litem in a case under section 11 of the 1995 Act?

Yes

No

Please provide your comments.

Question 25): How should fee rates for curators ad litem be paid?

Hourly rate
Another way
Don't know

Why did you select your answer?

Question 26): Do you have any comments on the proposed approach in relation to expenses for curators ad litem?

Yes
No

Please provide your comments

Question 27): Do you have any comments on the proposed procedure for complaints by or about curators ad litem?

Yes
No

Please provide your comments

Question 28): Do you agree/disagree with the proposed requirements that a person must satisfy in order to be included on the register of solicitors?

- Agree
- Disagree
- Don't know

Why did you select your answer?

Question 29): Are there any other requirements that a person must satisfy in order to be included on the register of solicitors?

- Yes
- No
- Don't know

Please give the additional requirements you feel are necessary and why you feel they are important.

Question 30) Do solicitors on this register require fewer days training each year than child welfare reporters and curators ad litem, on the basis that they are likely to receive fewer appointments?

- Yes
- No
- Don't know

Why did you select your answer?

Question 31): Are there any other training requirements that you think should be included?

Yes

No

Please give the additional requirements you feel are necessary and why you feel they are important.

Question 32): Do you have any comments on the proposed process for the court appointing a solicitor from the register?

Yes

No

Why did you select your answer?

Question 33): Do you agree/disagree with the proposed procedure for expenses for individuals appointed to this register?

Agree

Disagree

Don't know

Why did you select your answer?

Question 34): Do you have any comments on the proposed procedure for complaints by or about solicitors on this register?

Yes

No

Please provide your comments.

Question 35) :

Do you have any comments about, or evidence relevant to:

- a) the draft Business And Regulatory Impact Assessment Yes/No
- b) the draft Child Rights and Wellbeing Impact Assessment; Yes/No
- c) the draft Data Protection Impact Assessment; Yes/No
- d) the draft Equality Impact Assessment; Yes/No
- e) the draft Fairer Scotland Impact Assessment Yes/No or
- f) the draft Islands Communities Impact Assessment Yes/No

Please provide your comments.

Question 36): Do you have any further comments?

Yes

No

Please provide your comments.

Annex C Indicative timetable for implementation of registers

NB these are indicative only and may change.

Timing	Activity
Summer 2021	Analysis of consultation responses and drafting regulations.
Winter 2021	Regulations laid in the Scottish Parliament in relation to: <ul style="list-style-type: none"> • Requirements that a person must satisfy in order to be included on the register and fee rates for child welfare reporters, curators ad litem and solicitors appointed where individual has been prohibited from conducting their own case operational.
By Spring 2022	Contract to manage and operate registers awarded.
Spring 2022 – Spring 2023	Set up time for registers including recruitment of child welfare reporters, curators ad litem and solicitors who can be appointed where an individual has been prohibited from conducting their own case.
Spring 2023	Registers operational

Annex D Operation and management of registers

Background

1. The Financial Memorandum³⁸ which accompanied the 2020 Act when it was introduced into the Scottish Parliament sets out the estimated resources required for both the set up and the ongoing maintenance of the registers.
2. The Financial Memorandum includes costs for a small Scottish Government team to oversee the registers even if the operation and management of the register is delegated to another body.
3. This paper sets out what the Scottish Government expects would be done by an organisation if the operation and management of the registers were to be contracted out and what would be retained by the Scottish Government.

Requirements that a person must satisfy in order to be included in the registers

4. The 2020 Act gives the Scottish Ministers the power to set by regulations the requirements that an individual must satisfy in order to be included in the registers. The Scottish Government will keep the requirements under review and any further changes will be laid down by regulations made by Ministers

Inclusion on register

5. . The application process is likely to consist of a written application; a sift and possibly an interview.
6. Ministers would include the successful individuals on the registers. Successful individuals would be sent terms and conditions which would need to be signed and returned for retention.

Reappointment to register

7. The Act gives the Scottish Ministers the power by regulations to set the appointment period as we would not envisage that inclusion on the registers would be without time limit. We are proposing this would be three years. We would expect the body appointed to engage with individuals in advance of the expiry of that period to establish whether or not they wish to remain on the register they are on. For individuals who wish to be

³⁸ <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/children-scotland-bill/introduced/financial-memorandum-children-scotland-bill.pdf>

reappointed the body would need to confirm that the individual continues to meet the requirements to be on the register.

Removal from the register

8. The Scottish Ministers can set out the process in regulations for including an individual and also removing an individual from the registers.
9. We would expect the body appointed to operate and manage the registers would deal with any initial complaints about an individual appointed to the register. If these were deemed serious enough to warrant removal from the register we would expect the body would then approach the Scottish Government. The process for formally removing someone from the register would be carried out by the Scottish Government. In some cases, a person may be suspended from the register while further inquiries are carried out.

Establishing the process for including a person on the registers

10. The Scottish Ministers would by regulations set out the process for including a person on the registers.
11. Any changes to the process may require an amendment to the regulations. The Scottish Government would consult with the body appointed to manage and operate the register on potential changes to the process.

Maintaining the register

12. Once an individual has been included on the registers, the body would maintain current details for the individual including training they have undertaken. This would entail updating contact information as appropriate, training they have attended and also confirming on a regular basis (possibly yearly) the locations that the individual is willing to operate in and also their contact details.
13. The body would also be responsible for handling any requests from persons on the registers to be removed (eg because they are retiring or doing other work).

Operation of the registers

14. The body would be responsible for dealing with requests from the courts for a child welfare reporter, curator ad litem or a solicitor to represent someone who has been prohibited from representing themselves.
15. The body would also deal with some administrative concerns raised by individuals included on the register. Such concerns may, for example cover the fee and expenses reporters can claim.

16. Any question an individual may have on, for example, who they are being asked to interview for a report would, as now, be for the court.
17. We would also expect the body to report suggested improvements to how the register should operate back to the Scottish Government to inform any amendments that may be necessary to the regulations.

Complaints mechanism

18. The body would be responsible for handling any initial complaints about an individual appointed to one of the registers. This would require them to establish a complaints mechanism. The complaints mechanism would need to be child friendly and accessible.
19. On receiving a complaint the body would decide whether it has any merit. If there is evidence of failings then decision would be taken on the outcome which could be: more training, a verbal or written warning or a recommendation that the person be removed from the register. There would need to be a reporting line to ensure that any decision to issue a verbal or written warning or to recommend someone be removed from the register would be made by a senior member of staff (Grade 7³⁹ or above or equivalent).
20. If the body decides to issue a verbal or written warning this may affect the decision on whether or not to recommend someone for reappointment.
21. If the body considers that someone should be removed from the register then they would need to inform the Scottish Ministers who would consider the removal of that individual.

Remuneration of individuals included on the registers

22. The body would be responsible for the payment of fees for individuals included on the registers in accordance with the fee structure set by the Scottish Ministers. They would also be responsible for the payment of expenses claims again in accordance with the structure set by the Scottish Ministers. We would expect that any expenses claimed would be receipted and a full audit trail would be available.
23. Payment of fees and expenses would require the body to have a robust and secure system for holding the personal data of the individuals on the registers.
24. We would expect the body to send to the Scottish Government on a monthly basis an anonymised report of the fees and expenses claimed. This amount would then be reimbursed to the body. We would expect the body to monitor any unusual fee or expenses claims to ensure value for

³⁹ <https://www.instituteforgovernment.org.uk/explainers/grade-structures-civil-service>

money. Any significant discrepancies which cannot be explained would need to be highlighted to the Scottish Government.

Training

25. We would expect the body managing and operating the registers to organise training for those on the registers. This training could, as appropriate, be carried out by the body itself or by persons the body asks to carry out training.

Appraisals

26. We would expect the body to undertake appraisals of the individuals appointed to the registers of child welfare reporters and of curators ad litem. This would be carried out once a year. The appraiser would need to write a note of this meeting and their findings. This appraisal would form part of the assessment about whether or not to reappoint an individual to the register. An appraisal may be required more frequently than once a year if an individual is newly included on the register or if there are concerns about the quality or standard of the work they are producing.

Recommendation for reappointment/removal from the register

27. We would expect the body to provide recommendations as to whether or not to reappoint an individual to the registers.
28. The body would need to advise the Scottish Government if they consider an individual should be removed from the registers and the reasons for their recommendation.

FAMILY LAW UNIT
MARCH 2021

Annex E Scottish Government expenses – rates

Expenses Type	Limits
Bed and breakfast London (does not cover items such as charges for viewing films or use of a mini bar which are not reclaimable as an expense and require to be met personally)	Receipted up to £100 per night
Bed and breakfast elsewhere (does not cover items such as charges for viewing films or use of a mini bar which are not reclaimable as an expense and require to be met personally)	Receipted up to £75 per night
Car hire (including related fuel)	Receipted, no maximum
Car parking	Receipted, no maximum
Day subsistence over 5 hours	Receipted up to £4.90 per day
Day subsistence over 10 hours	Receipted up to £10.70 per day
Lodging allowance London	Receipted up to £42.25 per night
Lodging allowance elsewhere	Receipted up to £37.40 per night
Meals allowance London	Receipted up to £24.10 per night
Meals allowance elsewhere	Receipted up to £23.50 per night
Motor cycle allowance	£0.24 per mile
Motor mileage rate	£0.45 per mile
Non-standard subsistence rates	Receipted, per night/day - contact the travel and subsistence team before using this
Overnight by train or boat	Receipted up to £24.10 per night
Passenger supplement	£0.05 per mile
Pedal cycle allowance	£0.20 per mile
Personal incidental expenses	Receipted up to £5 per night
Public transport air travel	Receipted, no maximum
Public transport bus	Receipted, no maximum

Public transport ferry	Receipted, no maximum
Public transport rail	Receipted, no maximum
Public transport taxi	Receipted, no maximum
Public transport Tube	Receipted, no maximum
Staying with friends allowance	£36, set rate

Annex F Draft Business and Regulatory Impact Assessment

Title of Proposal

Establishment of registers of child welfare reporters, curators ad litem and solicitors appointed where a party has been prohibited from personally conducting a case themselves.

1. Purpose and intended effect

• Background

1.1 The Children (Scotland) Act 2020 (the 2020 Act) gained Royal Assent on 1 October 2020. Section 7 of the 2020 Act establishes a register of solicitors who can be appointed where a person is prohibited from personally conducting their case. Section 9 of the 2020 Act establishes a register of child welfare reporters. Section 17 of the 2020 Act establishes a register of curators ad litem. In a number of areas, the 2020 Act amends existing legislation, notably the Children (Scotland) Act 1995 (the 1995 Act).

Child welfare reporters

1.2 Child welfare reporters can be appointed by the court either to seek the views of the child and report any views expressed by the child back to the court; or to undertake enquiries and report to the court. Where the court asks a reporter to undertake enquiries, this can include seeking the views of the child and reporting on their best interests. The 2020 Act also extends the functions of child welfare reporters so in future they will also explain court decisions to children and, if requested to do so by the court, will investigate the reasons for failure to comply with an order under section 11 of the 1995 Act on matters such as child contact and residence.

1.3 We understand that currently there are approximately 400 child welfare reporters in Scotland appointed across the six Sheriffdoms. Individuals seeking to be a child welfare reporter may be appointed to lists held by the Court of Session and by the six Sheriffs Principal (for the Sheriff Courts in their respective sheriffdom). The presiding judge or sheriff can then appoint a child welfare reporter on the appropriate list to report on a case.

Curators ad litem

1.4 Curators ad litem are appointed to represent and protect the interests of an individual lacking full capacity, including a child. Curators ad litem are used in cases other than those under section 11 of the 1995 Act such as Mental Health Tribunals, divorce proceedings where it appears to the court that the defender lacks capacity; or to protect the interests of a child who is the subject of proceedings for permanence or adoption orders. The 2020 Act only covers establishing a register of curators for the purposes of orders made under section 11 of the 1995 Act.

1.5 Currently, practice in relation to appointment of curators ad litem varies across Scotland. In some Sheriffdoms, curators are appointed from the list of child welfare reporters held by the Sheriffs Principal. In other areas curators are appointed from the panel of curators held by each local authority for permanence and adoption cases. The number of curators ad litem appointed varies across the country. For example from a survey of Sheriffs Principal, in Lothian and Borders there were four appointments of curators ad litem in the first two months of 2019 whilst in the Sheriffdom of South Strathclyde, Dumfries and Galloway there were six appointments for the whole of 2018/19.

Solicitors appointed where a party has been prohibited from personally conducting a case themselves

1.6 The Programme for Government for 2017-18 committed the Scottish Government to consulting on prohibiting of personal cross examination of domestic abuse victims in child contact cases.

1.7 Sections 4 and 5 of the 2020 Act introduce a new special measure into the Vulnerable Witnesses (Scotland) Act 2004 (the 2004 Act) prohibiting a party from personally conducting the remainder of their case in certain circumstances. This special measure is available in proceedings where the court is considering making an order under section 11 of the 1995 Act and in Children's Hearings court proceedings.

1.8 In order to protect the right to a fair trial under article 6 of the European Convention on Human Rights of an individual who has been prohibited from personally conducting the remainder of their case themselves legal representation must be available.

1.9 Section 6 of the 2020 Act gives the Scottish Ministers the power to establish a register of solicitors from whom a lawyer is to be appointed if a party fails to appoint one themselves where the prohibition applies in either a case under section 11 of the 1995 Act or a Children's Hearing court proceeding.

- **Objective**

1.10 The policy aim of the register of child welfare reporters and curators ad litem is to ensure that the best interests of the child are at the centre of any case under section 11 of the Children (Scotland) Act 1995 (the 1995 Act). Establishing these registers will ensure that child welfare reporters and curators ad litem are subject to suitable and consistent qualifications and training requirements.

1.11 The policy aim of the register of solicitors appointed where a party has been prohibited from personally conducting a case themselves is to support the 2020 Act's protection of vulnerable witnesses . The register will facilitate the appointment of solicitors to parties so prohibited where they are unable or unwilling to instruct one. This ensures that party's right to a fair trial. The prohibition of personal conduct of a case ensures the protection of victims of offences, including victims of domestic abuse, and the protection of vulnerable witnesses in Children's Hearings court proceedings and in cases under section 11 of the 1995 Act

Rationale for Government intervention

1.12 Establishing a register of child welfare reporters and of curators ad litem ensures that the child's best interests are at the centre of any contact or residence case as it will mean all child welfare reporters and curators ad litem are sufficiently trained.

1.13 Establishing a register of solicitors who can be appointed when a person is prohibited from personally conducting a case themselves allows the prohibited party's right to a fair trial to be protected, in turn allowing the courts to protect victims of a range of serious criminal offences from having to be questioned by their abuser.

1.14 The registers contribute to the following National Outcome:
We grow up loved, safe and respected so that we realise our full potential

1.15 The registers aim to help meet this National Outcome by ensuring our children grow up in an atmosphere of happiness, love and understanding and that children are not left worried or isolated.

2. Consultation

2.1 In preparing the consultation, the Scottish Government's Family Law Unit have worked with:

Within Scottish Government

- The Directorate for Children and Families
- Justice Analytical Services

Courts:

- The Scottish Courts and Tribunals Service

2.2 The Scottish Government has also taken on board responses received to the 2018 consultation on the Review of the Children (Scotland) Act 1995 and also the evidence received during the passage of the then Children (Scotland) Bill 2019 through the Parliament.

- **Public Consultation**

2.3 This draft BRIA forms part of a public consultation which will run for 16 weeks. The Scottish Government will seek views from a range of organisations representing children, victims of domestic abuse, parents, lawyers, social workers, existing child welfare reporters and curators ad litem.

3. Options & Impact on Scottish Business

3.1. This section focuses on the key options that are considered in the consultation. The consultation document itself lists all the options we are considering.

Register of child welfare reporters

3.2. Currently the court can appoint a child welfare reporter to either seek the views of the child and to report any views expressed by the child to the court; or to undertake enquiries and report to the court. These functions are set out in court Rules. The existing child welfare reporters are all on lists held by the Court of Session and the six Sheriffs Principal. The court can then appoint a Child Welfare Reporter from the appropriate regional list to produce a report.

3.3. Section 101A of the 1995 Act (inserted by section 9 of the 2020 Act) places a duty on the Scottish Ministers to establish and maintain a register of individuals to act as child welfare reporters. Section 101A gives Scottish Ministers the power by regulations to make provision about:

- the requirements that a person must satisfy in order to be included, and remain, on the register
- the process for including a person on, and removing a person from, the register
- the process for how, and by whom, a registered person is to be selected as the appointed child welfare reporter in a case
- the remuneration of child welfare reporters including expenses and outlays
- the operation and management of the register.

3.4. Section 11(1B) and (1C) of the Matrimonial Proceedings (Children) Act 1958 (inserted by section 19 of the 2020 Act) means that if a local authority employee wishes to continue to act as a child welfare reporter then they would need to apply to be on the register of child welfare reporters and meet the required eligibility standards.

3.5. The 2020 Act also introduces two additional new functions for child welfare reporters. Section 20 of the 2020 Act inserts section 11F into the 1995 Act. This ensures that the outcomes and reasons for decisions are explained to the child concerned in a way that the child can understand. The court is not required to do this if they consider it not in the best interests of the child to do so. An explanation can be provided by either the court or by appointing a child welfare reporter.

3.6. Section 22 of the 2020 Act inserts section 11G into the 1995 Act. This introduces a requirement on the court to investigate the reasons for non-

compliance with an order. The investigation can be by the court or by appointment of a child welfare reporter.

- 3.7.** There are 10 areas being considered in relation to the register of Child Welfare Reporters. These are:
- who should operate and manage the register of child welfare reporters
 - the process for including someone on the register of child welfare reporters
 - the reappointment process for child welfare reporters to the register
 - who would not be eligible to be included on the register of child welfare reporters
 - how a child welfare reporter could be removed from the register
 - the remuneration (fee rates) and expenses to be paid to child welfare reporters
 - the requirements that a person must satisfy in order to be included on the register
 - what ongoing training requirements there should be for child welfare reporters
 - how a child welfare would be selected from the register and
 - what a child friendly complaints mechanism should look like.

Register of curators ad litem

- 3.8.** Currently, practice in relation to appointment of curators ad litem varies across Scotland. In some Sheriffdoms, curators are appointed from the list of child welfare reporters held by the Sheriffs Principal. In other areas curators are appointed from the panel of curators held by each local authority for permanence and adoption cases. The number of curators ad litem appointed varies across the country. For example, from a survey of Sheriffs Principal, in Lothian and Borders there were four appointments of curators ad litem in the first two months of 2019 whilst in the South Strathclyde, Dumfries and Galloway there were six appointments for the whole of 2018/19.
- 3.9.** The Scottish Government understands that the appointment of curators ad litem by the court has a long history and rests in the common law powers of the court. The Scottish Government is not aware of any relevant court rules on the appointment of curators ad litem in family cases other than provisions on fees and outlays.
- 3.10.** Section 9 of the 2020 Act amends the 1995 Act (by inserting a new section 101A) so as to place a duty on the Scottish Ministers to establish and maintain a register of individuals to act as child welfare reporters. Section 101A gives Scottish Ministers the power by regulations to set:
- the requirements that a person must satisfy in order to be included, and remain, on the register
 - the process for including a person on, and removing a person from, the register

- the process for how, and by whom, a registered person is to be selected as the appointed child welfare reporter in a case
- the remuneration of child welfare reporters including expenses and outlays
- the operation and management of the register.

Solicitors appointed where a person has been prohibited from personally conducting a case themselves

- 3.11.** Sections 4 and 5 of the 2020 Act introduce a new special measure into the Vulnerable Witnesses (Scotland) Act 2004 (the 2004 Act) prohibiting a party from personally conducting the remainder of their case in certain circumstances.
- 3.12.** This special measure is available in proceedings where the court is considering making an order under section 11 of the 1995 Act and in Children’s Hearings court proceedings.
- 3.13.** In order to protect the right to a fair trial (under Article 6 of the European Convention on Human Rights) legal representation must be available for an individual who has been prohibited from personally conducting the remainder of their case.
- 3.14.** In criminal proceedings where a party has been banned from cross examining another party or witness then where the court is not satisfied that the accused intends to engage a solicitor or, as the case may be, another solicitor for those purposes, it shall, at its own hand, appoint a solicitor for those purposes. The Scottish Government does not consider it appropriate to use solicitors appointed to this list in family court cases as they may not have experience of family law and also may not wish to represent individuals in these situations.
- 3.15.** Section 7 of the 2020 Act requires the Scottish Ministers to establish a register of solicitors from whom a lawyer is to be appointed if a party fails to appoint one themselves where the prohibition applies either in a case under section 11 of the 1995 Act or in Children’s Hearing court proceeding.
- 3.16.** The Scottish Ministers must by regulations specify the requirements criteria a solicitor must meet to be eligible to be on the register and may also provide for the remuneration (the fee rate) payable to the solicitor. Provision may also be made about outlays such as fees to be paid to Counsel.
- This consultation seeks views on:
 - the fee rates and expenses to be paid
 - the requirements that an individual must satisfy in order to be included on the register
 - what ongoing training requirements there should be for the individuals

- how the court would appoint a solicitor from the register and
- the complaints process about individuals included on the register

Sectors and groups affected

3.17. We consider the following groups or sectors will be affected by the options being considered:

- Child welfare reporters and Curators ad litem;
- Children and young people
- The Courts
- Faculty of Advocates
- Family lawyers
- Grandparents
- Individuals seeking to be declared a parent of a child
- Law Society of Scotland
- Local authorities
- Organisations supporting parents, families and children
- Parents
- Other Family members
- Scottish Children’s Reporter Administration
- Scottish Courts and Tribunals Service
- Scottish Legal Aid Board

Benefits

3.18. The main benefits from establishing registers of child welfare reporters and curators ad litem are that all child welfare reporters and curators ad litem will be subject to suitable and consistent qualification and training requirements. This will in turn ensure that the child’s best interests remain at the centre of any contact or residence case.

3.19. The main benefits from establishing the register of solicitors who can be appointed if a person is prohibited from personally conducting a case themselves will be that vulnerable witnesses in family court cases and children’s hearings court proceedings are protected.

Costs

3.20. The costs associated with establishing the three registers are set out in the Financial Memorandum which accompanied the Children (Scotland) Bill when it was introduced into the Scottish Parliament. The Financial Memorandum is at [Financial Memorandum Children \(Scotland\) Bill \(parliament.scot\)](http://Financial_Memorandum_Children_(Scotland)_Bill_(parliament.scot)). For ease the estimated costs have been replicated below:

	2022/23	2023/24	2024 onwards
Operating and managing the register of child welfare reporters (£m)	1.67 -2.44	2.12-2.44	2.08-2.44

Operating and managing the register of curators ad litem (£m)	0.09 -0.11	0.06 - 0.11	0.06-0.11	
Operating and managing the register of solicitors appointed where a person is prohibited from personally conducting a case themselves (£m)	0.2	0.176	0.176	

4. Scottish Firms Impact Assessment

4.1.To appreciate the impact that the proposed legislation may have on businesses operating in Scotland, as part of the consultation process the Scottish Government will seek views from bodies representing lawyers and bodies representing other professionals.

5. Competition Assessment

5.1.We do not expect the options to have an impact on competition as they will not:

- Limit the number or range of suppliers.
- Limit the ability of suppliers to compete.
- Limit suppliers' incentives to compete vigorously.
- Limit the choice and information available to consumers.

5.2.We would welcome any comments during the consultation as to whether any of the options would have an impact on competition.

6. Test run of business forms

6.1.Generally, we do not envisage that any new forms will be introduced for businesses by Scottish Government as a result of our policies. However, the introduction of the three new registers is likely to require that persons who wish to be on them will need to complete application forms.

7. Legal Aid Impact Test

- 7.1.** Establishment of the three registers will have implications for the Scottish Legal Aid Board (SLAB) as the Scottish Ministers have the power under the 2020 Act to set the fee rates for child welfare reporters, curators ad litem appointed in cases under section 11 of the 1995 Act and also solicitors appointed where a party is prohibited from personally conducting a case themselves. Setting the fee rates centrally may lead to cost savings. It should also ensure consistency of fee rates across Scotland. A report by SLAB to the Family Law Committee of the Scottish Civil Justice Council showed there is a variety across the country in fee rates paid to child welfare reporters currently: The report is at [paper-4-2---report-by-slab---child-welfare-reporters.pdf](https://www.scottishciviljusticecouncil.gov.uk/paper-4-2---report-by-slab---child-welfare-reporters.pdf) ([scottishciviljusticecouncil.gov.uk](https://www.scottishciviljusticecouncil.gov.uk))
- 7.2.** Child Welfare Reporter fees are currently paid either by the parties to a case themselves or by SLAB if parties are eligible for legal aid. With the establishment of the register of child welfare reporters, this cost would no longer fall to SLAB. Instead, the cost of child welfare reports would be met by the Scottish Government, either through the organisation contracted to manage the register or directly if the Scottish Government should run the register in-house. In 2018/19 SLAB paid £3.7m in child welfare reporter fees.
- 7.3.** The register of child welfare reporters will improve access to justice as currently if a party is not eligible for legal aid they may have to pay for a child welfare report themselves. The Scottish Government has heard anecdotally from stakeholders that this can cost up to £10,000. Once these provisions in the Bill are in force then all child welfare reporter fees will be paid by Scottish Government. The Financial Memorandum for the Bill estimated these costs (in table 7) as between £0.14 million and £0.56 million a year.
- 7.4.** The register of solicitors who can be appointed when a person is prohibited from personally conducting a case themselves will have an additional impact on SLAB. Once a person is prohibited from conducting a case themselves then they would have the opportunity to either appoint a lawyer themselves – either privately or through SLAB if they are eligible for legal aid. If a party does not appoint a lawyer themselves then the court will order a lawyer to be appointed from the register. The fees of the lawyers on the list held by Scottish Ministers will be paid by Scottish Government rather than through legal aid.

8. Enforcement, sanctions and monitoring

- 8.1.** The registers does not change the current way a party can complain about the outcome of a case. If a party wishes to complain about the conduct of a sheriff then this is handed by the Judicial Office for Scotland. The usual way of complaining about the outcome of a case is to appeal the decision.
- 8.2.** The registers will introduce new child friendly complaints mechanisms The complaint will be handled by the body undertaking the management and operation of the register. A person may be removed from the register if Scottish Ministers deem the conduct to warrant it.
- 8.3.** In addition, a child welfare reporter or curator ad litem will be subject to a regular reappointment process. If a person fails to meet the required criteria at the reappointment then their appointment may not be continued.
- 8.4.** If a person is not happy with a decision not to appoint them to the register, not to reappoint them to the register or to remove them from the register then they can complain about this.
- 8.5.** The 2020 Act provides that where a solicitor is appointed to represent a party where they have been prohibited from personally conducting a case themselves then the solicitor may not be dismissed by the party for whom they have been appointed to act. This reduces the risk of parties who may not wish to be legally represented dismissing their solicitor without reason.

9. Implementation and delivery plan

9.1. The consultation will influence the Scottish Government's decisions about next steps and the provision which will be made about the registers. This BRIA will be finalised for the regulations, taking account of points made by consultees. The final version of the BRIA will be published on the Scottish Government website.

9.2. It is envisaged that the registers will take time to commence. It is hoped that the Scottish Government will lay regulations early in 2022. This will mean that a contract for the body (if one is appointed) to manage and operate the registers will be let by April 2022. There will then be a year for the recruitment of child welfare reporters, curators ad litem and solicitors. The intention is for the new registers to become operational from April 2023.

Post-implementation review

9.3. The Scottish Government will review the legislation generally to ensure that it is still fit for purpose within 10 years of enactment.

9.4. In addition, Section 31 of the 2020 Act places a duty on the Scottish Ministers to review the effect of the Act on children's participation in the making of various types of decisions which affect them and in relation to which their views are required to be sought and taken into account. The review must, in particular, consider the resources required to ensure effective participation by children in the making of the decisions.

10. Summary and recommendation

10.1. The Scottish Government are seeking views on the three registers. This section will be completed in the final BRIA when we have considered the responses from this consultation.

Annex G Draft Child Rights and Wellbeing Impact Assessment

CRWIA Stage 1
<p>1. Name the policy, and describe its overall aims.</p> <p>Establishment of registers of child welfare reporters, curators ad litem and solicitors appointed where a party has been prohibited from personally conducting a case themselves.</p> <p>The key policy aim of the registers of child welfare reporters and curators ad litem is to ensure that the best interests of the child are at the centre of any case under section 11 of the Children (Scotland) Act 1995 (the 1995 Act). Establishing these registers will ensure that child welfare reporters and curators ad litem are subject to suitable and consistent qualifications and training requirements.</p> <p>The policy aim of the register of solicitors appointed where a party has been prohibited from personally conducting a case themselves is to protect vulnerable parties by introducing a special measure of prohibition of personal conduct. The register ensures the right to a fair trial. The prohibition of personal conduct of a case in certain circumstances protects victims of offences, including victims of domestic abuse, and vulnerable witnesses in Children’s Hearings court proceedings and in cases under section 11 of the 1995 Act.</p>
<p>2. What aspects of the policy/measure will affect children and young people up to the age of 18?</p> <p>The Scottish Government expects that all three registers will affect children and young people as all three registers are applicable in cases under section 11 of the 1995 Act. In relation to the register of solicitors where a person has been prohibited from personally conducting a case themselves Children’s Hearings court proceedings are covered as well.</p>
<p>3. What likely impact – direct or indirect – will the policy/measure have on children and young people?</p> <p>The Scottish Government expects that the registers of child welfare reporters and curators ad litem would have direct impact on children and young people as both child welfare reporters and curators ad litem engage directly with children. The Scottish Government expects there to be a positive impact on children as, for example, establishing the registers will ensure that all child welfare reporters and curators ad litem are fully trained.</p> <p>The register of solicitors appointed where a party has been prohibited from personally conducting a case themselves will have an indirect impact on children and young people. Prohibition of personal conduct of a case will ensure that vulnerable witnesses are able to feel more confident in giving their evidence in cases involving children – both in Children’s Hearings</p>

court cases and in cases under section 11 of the 1995 Act. This could impact on the quality of the evidence that the vulnerable witness is providing.

4. Which groups of children and young people will be affected?

The registers will potentially affect children and young people of all ages and from all backgrounds. The registers are likely to have more of an impact on children who have experienced domestic abuse; those involved in court proceedings about arrangements for their upbringing and children involved in Children’s Hearings court proceedings. Court proceedings about arrangements for the upbringing of children (ie cases under section 11 of the 1995 Act) relate to children under 16.

5. Will this require a CRWIA?

Explain your reasons.

Yes all three of the registers will either directly or indirectly affect children.

CRWIA Declaration

CRWIA required	CRWIA not required
Yes	

Authorisation

<p>Policy lead Name, title, division (or equivalent)</p> <p>To be completed in Final Version</p>	<p>Date</p>
<p>Deputy Director or equivalent Name, title, division (or equivalent)</p> <p>To be completed in Final Version</p>	<p>Date</p>

CRWIA Stage 2
The CRWIA – key questions

1. Which UNCRC Articles are relevant to the policy/measure?

All UNCRC rights are underpinned by the four general principles: non-discrimination; the best interests of the child; the right to life, survival and development; and the child's right to have their views given due weight.

The establishment of registers of child welfare reporters, curators ad litem and solicitors appointed where a party has been prohibited from personally conducting a case themselves will affect children's rights. The Scottish Government has listed below the articles of the UNCRC that the Scottish Government considers are relevant to the registers.

Article 1

Is relevant because the registers of child welfare reporters and curators ad litem directly affects children and young people who are at the centre of a case under section 11 of the Children (Scotland) Act 1995 (the 1995 Act). The 1995 Act provides in relation to parental responsibilities and rights (PRRs) that these generally relate to children under 16 although the parental responsibility to provide guidance, in a manner appropriate to the stage of development of the child, lasts until the age of 18.

Article 3

Is relevant to the register of child welfare reporters and of curators ad litem. One of the key aims of establishing these registers is to ensure that the best interests of the child remain at the heart of every case under section 11 of the 1995 Act.

Establishing registers of child welfare reporters and of curators ad litem will ensure that child welfare reporters and curators ad litem are subject to suitable and consistent qualification and training requirements. The consultation suggests that this should include the impact of domestic abuse on a child, how to obtain the views of the child and the ways in which a parent can influence a child.

Article 6

Is relevant in relation to further protection of children and young people from domestic abuse. One of the proposed eligibility requirements for child welfare reporters and curators ad litem is an understanding of domestic abuse, in particular coercive control. There will also be ongoing training requirements for child welfare reporters and curators ad litem in this area.

Article 7

Is relevant in relation to the register of child welfare reporters and curators ad litem because one of the proposed eligibility requirements and also ongoing training requirements is an understanding the ways adults can influence a child. This understanding could be useful when a child welfare

reporter is preparing a report for the court or a curator ad litem is representing the best interests of the child.

Article 8

Is relevant in relation to the register of child welfare reporters and curators ad litem because one of the proposed eligibility requirements and also ongoing training requirements is an understanding of how an adult can influence a child. This understanding could be useful when a child welfare reporter is preparing a report for the court or a curator ad litem is representing the best interests of the child.

Article 9

Article 9(1) is relevant in relation to the register of child welfare reporters and curators ad litem because two of the proposed eligibility requirements and also ongoing training requirements are an understanding domestic abuse, particularly the dynamic of coercive control and an understanding the ways adults can influence a child.

Article 9(1) is also relevant in relation to the register of solicitors who may be appointed if a person is prohibited from personally conducting a case themselves as this could protect a vulnerable witness and ensure they are able to give full evidence.

Article 9(2) is relevant in relation to the register of child welfare reporters as they can be appointed to obtain the views of the child. One of the proposed eligibility requirements for child welfare reporters is being able to communicate with children. It is also relevant for the register of curators ad litem as a curator ad litem can be appointed to represent the best interests of a child. One of the proposed eligibility requirements for curators ad litem is being able to communicate with children in order to understand what is in their best interests.

Article 9(3) is relevant in relation to the registers of child welfare reporters and curators ad litem because two of the proposed eligibility criteria and also ongoing training requirements are an understanding domestic abuse, particularly the dynamic of coercive control and an understanding the ways adults can influence a child

Article 9(3) is also relevant in relation to the register of solicitors who may be appointed if a person is prohibited from personally conducting a case themselves as this could protect a vulnerable witness and ensure they are able to give full evidence.

Article 12

Article 12 is relevant in relation to the register of child welfare reporters as they can be appointed to obtain the views of the child. One of the proposed eligibility requirements for child welfare reporters is being able to communicate with children. A curator ad litem can be appointed to represent the best interests of a child. One of the proposed eligibility

requirements for curators ad litem is being able to communicate with children in order to understand what is in their best interests. The complaints procedure for both child welfare reporters and curators ad litem are intended to be child friendly.

Article 12 is also relevant in relation to the register of solicitors who can be appointed if a person is prohibited from personally conducting a case themselves. A person would be prohibited from personally conducting a case themselves if there is a vulnerable witness. A child could be a witness in a section 11 case or a Children's Hearing court proceeding. Prohibiting a person from conducting a case themselves could help the vulnerable child witness to give their views.

Article 16

Article 16 is relevant in relation to the register of child welfare reporters because the establishment of eligibility requirements will ensure that child welfare reporters are subject to suitable and consistent qualifications and training requirements. The consultation also sets out a proposed complaints procedure if individuals are unhappy with a child welfare reporter.

Article 19

Article 19 is relevant in relation to the registers of child welfare reporters and curators ad litem because the establishment of eligibility requirements will ensure that child welfare reporters and curators ad litem are subject to suitable and consistent qualifications and training requirements. One of the proposed eligibility requirements and also training requirements is an understanding of domestic abuse, particularly the dynamic of coercive control.

Article 19 is also relevant in relation to the register of solicitors who can be appointed if a person is prohibited from personally conducting a case themselves. A person would be prohibited from personally conducting a case themselves if there is a vulnerable witness. A child could be a witness in a section 11 case or a Children's Hearing court proceeding. Prohibiting a person from conducting a case themselves could help the vulnerable child witness to give their views.

Article 23

Article 23 is relevant in relation to the registers of child welfare reporters and curators ad litem as one of the proposed eligibility requirements and ongoing training requirements for child welfare reporters is an understanding of child development including of learning disabilities.

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

Positive

Establishing registers of child welfare reporters and curators ad litem will have a positive impact on children's rights as it sets out the eligibility

requirements to be on both of these registers. The proposed eligibility requirements include:

- Communicating with children including obtaining the views of children
- an understanding of domestic abuse, particularly the dynamic of coercive control
- report writing
- understanding the ways adults can influence a child
- understanding family conflict
- child development including learning disabilities;
- understanding of child protection issues and the child protection system.

The registers of child welfare reporters and curators ad litem will also mean that there is a child friendly complaints process if a child feels has a complaint about a child welfare reporter or curator ad litem.

Establishing a register of solicitors who can act if a person has been prohibited from personally conducting their case themselves would have a positive impact if a child is a witness in a Children's Hearing court proceeding or in a section 11 case.

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

Which groups of children will be affected by the policy/measure? Are there competing interests between different groups of children and young people, or between children and young people and other groups?

The main impact will be on children under 16 who are at the centre of a court case under section 11 of the 1995 Act on matters such as contact and residence. There will be a particular impact where there has been domestic abuse or where a parent has influenced a child as having an understanding of these two areas are two of the proposed eligibility requirements for child welfare reporters and curators ad litem.

4. If a negative impact is assessed for any area of rights or any group of children and young people, what options have you considered to modify the proposal, or mitigate the impact?

If options to modify the policy/measure are included here, include associated resource implications where relevant.

No negative impacts have been assessed.

5. How will the policy/measure contribute to the wellbeing of children and young people in Scotland?

Outline how the implementation of the policy/measure will support public bodies in Scotland to meet their duties to safeguard, support and promote

the wellbeing of children in their area, with wellbeing defined by eight wellbeing indicators. The indicators are: Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, and Included.

The main aim of the policy is to improve aspects of the process for dealing with cases under section 11 of the 1995 Act on matters such as child contact and residence. These cases are typically between separated parents, rather than involving public bodies. However, improving the process generally helps all concerned when dealing with these cases.

The following wellbeing indicators are relevant:

Safe: Two of the proposed eligibility requirements and ongoing training requirements for child welfare reporters and curators ad litem is an understanding of domestic abuse including an understanding of domestic abuse, particularly the dynamic of coercive control and also an understanding of how an adult can influence a child.

Establishing a register of solicitors who can be appointed if a person has been prohibited from personally conducting a case themselves could protect a child if they are a witness in a Children's Hearing court case or a section 11 case.

Respected: One of the proposed eligibility criteria and ongoing training requirements for child welfare reporters and curators ad litem is communication with children including obtaining the views of children. This should help ensure the views of children are heard in family court cases. In addition, it is proposed that there would be child friendly complaints mechanisms in relation to child welfare reporters and curators ad litem

Included: This indicator is relevant as one of the proposed eligibility requirements and ongoing training requirements for child welfare reporters and curators ad litem is communicating with children. This will help ensure that the views of children and young people are heard in decisions that affect them.

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

This will inform Scottish Ministers' duty to report to Parliament on children's rights under the Children and Young People (Scotland) Act 2014.

As detailed above establishing the three registers will further compliance with the UNCRC.

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

The evidence base may include demographic information, academic research, service monitoring/inspection reports, service evaluation reports, user surveys, etc. In particular, look at what existing evidence tells you

about children and young people's views and experiences of the relevant service(s); and/or what it tells you about children and young people's views of the policy proposal. Identify any gaps in the evidence base, and set out how you will address these.

There is a range of research and statistics in this area.

Background statistics

Number of births and number of children

Data from National Records of Scotland shows that there were 49,863 births registered in Scotland in 2019⁴⁰.

In Mid 2019 there were 921,397 children aged 15 or under in Scotland⁴¹.

Court statistics

According to figures provided by Scottish Courts and Tribunals Service (SCTS) in 2018/19 there were 2,562 cases disposed of in the sheriff courts in relation to parental responsibilities and rights⁴². In 2018/19 there were 3,554 family cases raised which involved children and 15,649 hearings in family cases involving children (excluding adoption and permanence). Of the 15,649 hearings there were 6,655 Child Welfare Hearings, 1,383 proofs called and 239 proofs proceeding.

Children's Hearings statistics

Children and young people and/or their relevant persons can appeal to the sheriff against decisions made by Children's Hearings and Pre-Hearing Panels. In 2018/19, 651 children and young people had 824 appeals concluded⁴³.

Number of children with learning disabilities

⁴⁰ <https://www.nrscotland.gov.uk/files/statistics/vital-events-ref-tables/2019/vital-events-ref-tables-19-publication.pdf>

⁴¹ <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2019>

⁴² <https://www.gov.scot/publications/civil-justice-statistics-scotland-2018-19/pages/12/>

⁴³ <https://www.scra.gov.uk/wp-content/uploads/2019/07/SCRA-full-statistical-analysis-2018-19.pdf>

According to Scotland's Pupil Census 2020 in 2020 there were 226,838 pupils in special schools and those with Additional Support Needs in mainstream schools⁴⁴.

Domestic abuse and cases under section 11 of the 1995 Act

Research undertaken by Kirsteen Mackay in 2013⁴⁵ found that domestic abuse was alleged in half of all court actions over contact. The research also found that when a child was not seeing their non-resident parent this was allegedly due to violence upon the child in 18% of the cases.

Research by CAFCASS and Women's Aid in 2017 found that in England and Wales 62% of applications to the family court about where a child should live or spend time feature allegations of domestic abuse.⁴⁶ Research undertaken by the Ministry of Justice in 2009 showed that 53% of the contact and residence cases in England and Wales involved allegations of domestic abuse or concerns about abduction or harm to children⁴⁷.

According to the Scottish Crime and Justice Survey 2017/18⁴⁸ published in March 2019, 40% of those who experienced partner abuse in the last 12 months said that children were living in their household when the most recent incident took place. In 62% of cases where children were living in the household the children were present during the most recent incident.

Figures on the number of incidents of domestic abuse recorded by the police showed that 88% of domestic abuse incidents were recorded by police to have taken place in a home or dwelling. This can be split into 39% of incidents of domestic abuse that occurred within the victim's own home and 17% that occurred within a joint home⁴⁹.

Register of Child Welfare Reporters

Data

⁴⁴ <https://www.scra.gov.uk/wp-content/uploads/2019/07/SCRA-full-statistical-analysis-2018-19.pdf> (see page 18)

⁴⁵ <https://www.cypcs.org.uk/ufiles/views-of-children-and-domestic-abuse.pdf>

⁴⁶ <https://www.cafcass.gov.uk/2017/07/25/cafcass-womens-aid-collaborate-domestic-abuse-research/>

⁴⁷

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217368/family-justice-childrens-proceedings.pdf

⁴⁸ <https://www.gov.scot/news/scottish-crime-and-justice-survey-2017-18/>

⁴⁹ <https://www.gov.scot/publications/domestic-abuse-scotland-2018-2019-statistics/>

Data from SLAB suggests that the costs of obtaining a Child Welfare Report can vary⁵⁰. The consultation contains information on setting standard fees and also on the Scottish Government funding reports once the register is in place. This would alleviate the pressure on parties to a case who are having to pay for a child welfare report.

Research

The Scottish Government published research in 2010 on the use of child welfare reporters⁵¹.

Obtaining the views of the child

The Scottish Government published a paper during the passage of the Children (Scotland) Act 2020 on the ways in which a child can give their views in contact and residence cases⁵².

Gaps in data

The Scottish Government would welcome information during the course of this consultation on any further data or information available which could be included in the final CRWIA.

When the Children (Scotland) Act was introduced into the Scottish Parliament the Scottish Government published a Family Justice Modernisation Strategy⁵³. This commits the Scottish Government to:

- Develop strategies to report more detailed statistics from SCTS while maintaining statistical rigour and anonymity.
- Continue to engage with a range of external agencies and service providers to determine the extent to which information these parties can provide is appropriate for inclusion in official statistics; and
- Further consider how best to promote existing research into family courts.

⁵⁰ <https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/flc-meeting-files/flc-meeting-papers-23-october-2017/paper-4-2---report-by-slab--child-welfare-reporters.pdf?sfvrsn=2>

⁵¹ Whitecross, R Child Welfare Hearings: A scoping study of the commissioning, preparation and use of bar reports, available at: <https://www.webarchive.org.uk/wayback/archive/20180516111406/http://www.gov.scot/Publications/2011/01/07142042/10>

⁵² [https://www.parliament.scot/S5_JusticeCommittee/Inquiries/Children_\(Scotland\)_Bill_SG_paper_revised_version1.pdf](https://www.parliament.scot/S5_JusticeCommittee/Inquiries/Children_(Scotland)_Bill_SG_paper_revised_version1.pdf)

⁵³ <https://www.gov.scot/publications/family-justice-modernisation-strategy/>

The publication Civil Justice statistics 2018-19 contained information on ancillary craves⁵⁴.

We do not have any data on the number of children at the centre of cases under section 11 of the 1995 Act who have a learning disability.

The register of solicitors who can be appointed where a party has been prohibited from personally conducting a case themselves is a new function and therefore there is no data available on this.

8. Have you consulted with relevant stakeholders?

This would include public or targeted consultations with children and young people, their parents/carers and the children's workforce.

Yes. This draft CRWIA will be published along with a public consultation document seeking views on our proposals. The Scottish Government has regular meetings with a range of organisations, including:

Children 1st
Scottish Courts & Tribunals Service
Scottish Women's Aid
Shared Parenting Scotland

During the consultation process we will seek to arrange engagement events with organisations.

9. Have you involved children and young people in the development of the policy/measure?

Is there enough information on the views of the children and young people who will be affected by the policy/measure that enables you to make an informed assessment of impact?

During the consultation process we will seek to arrange engagement events with children and young people.

⁵⁴ <https://www.gov.scot/publications/civil-justice-statistics-scotland-2018-19/pages/4/> See the discussion at section 2.2

CRWIA – Stage 3

CRWIA title: Establishment of registers of child welfare reporters, curators ad litem and solicitors appointed where a party has been prohibited from personally conducting a case themselves.	
Date of publication: March 2021	
Executive summary	<p>The Children (Scotland) Act 2020 (the 2020 Act) requires the Scottish Ministers to establish registers of child welfare reporters, curators ad litem and solicitors appointed where a party has been prohibited from personally conducting a case themselves.</p> <p>The Scottish Government is now seeking views on these registers including:</p> <ul style="list-style-type: none">• who should manage and operate the three registers,• how individuals are included on the registers;• the reappointment process of individuals to the registers;• who would not be eligible to be included on the registers;• how an individuals could be removed from the registers;• the fee rates and expenses to be paid;• what requirements individuals should meet to be on the registers;• what ongoing training requirements there should be;• how a person would be selected from the registers;• what a child friendly complaints mechanism for child welfare reporters and curators ad litem should look like.

Background	<p>Child welfare reporters</p> <p>Child welfare reporters can be appointed by the court either to seek the views of the child and report any views expressed by the child back to the court; or to undertake enquiries and report to the court. Where the court asks a reporter to undertake enquiries, this can include seeking the views of the child and reporting on their best interests. The 2020 Act will expand the role of child welfare reporters to include explaining court decisions to children and, when requested to do so by the court, investigating reasons for non-compliance with a section 11 order.</p> <p>We understand there are approximately 400 child welfare reporters in Scotland appointed across the six Sheriffdoms. Individuals seeking to be a child welfare reporter may be appointed to lists held by the Court of Session and by the six Sheriffs Principal (for the Sheriff Courts in their respective Sheriffdom). The presiding judge or sheriff can then appoint a child welfare reporter on the appropriate list to report on a case.</p> <p>Curators ad litem</p> <p>Curators ad litem are appointed to represent and protect the interests of an individual lacking full capacity, including a child. Curators ad litem are used in cases other than those under section 11 of the 1995 Act such as Mental Health Tribunals, divorce proceedings where it appears to the court that the defender lacks capacity; or to protect the interests of a child who is the subject of proceedings for permanence or adoption orders. The 2020 Act only covers establishing a register of curators ad litem for the purposes of orders made under section 11 of the 1995 Act.</p> <p>Currently, practice in relation to appointment of curators ad litem varies across Scotland. In some Sheriffdoms, curators ad litem are appointed from the list of child welfare reporters held by the Sheriffs Principal. In other areas curators ad litem are appointed from the panel held by each local authority for permanence and adoption cases. The number of curators ad litem appointed varies across the country for example from a survey of Sheriffs Principal, in Lothian and Borders there were four appointments of curators ad litem in the first two months of 2019 whilst in South Strathclyde, Dumfries and Galloway there were six appointments for the whole of 2018/19.</p> <p>Solicitors appointed where a party has been prohibited from personally conducting a case themselves</p>
-------------------	---

The Programme for Government for 2017-18 committed the Scottish Government to consulting on prohibiting of personal cross examination of domestic abuse victims in child contact cases.

Sections 4 and 5 of the Act introduce a new special measure into the Vulnerable Witnesses (Scotland) Act 2004 (the 2004 Act) prohibiting a party from personally conducting the remainder of their case in certain circumstances. This special measure is available in proceedings where the court is considering making an order under section 11 of the 1995 Act and in Children's Hearings court proceedings.

In order to protect the right to a fair trial under article 6 of the European Convention on Human Rights of an individual who has been prohibited from personally conducting the remainder of their case themselves legal representation must be available.

Section 6 of the 2020 Act gives the Scottish Ministers the power to establish a register of solicitors from whom a lawyer is to be appointed if a party fails to appoint one themselves where the prohibition applies in either a case under section 11 of the 1995 Act or a Children's Hearing court proceeding.

<p>Scope of the CRWIA, identifying the children and young people affected by the policy, and summarising the evidence base</p>	<p>The draft CRWIA considers whether the proposals in relation to the registers of child welfare reporters, curators ad litem and solicitors appointed when a person has been prohibited from personally conducting a case themselves impact on the rights and wellbeing of children and young people in Scotland.</p> <p>The evidence base is contained in the stage 2 of the draft CRWIA.</p> <p>The draft CRWIA should be read in conjunction with the other draft impact assessments published at the same time as the draft CRWIA.</p>			
<p>Children and young people’s views and experiences</p>	<p>The Scottish Government welcomes responses to the consultation from children and young people and will seek to engage further with children and young people during the consultation.</p>			
<p>Key Findings, including an assessment of the impact on children’s rights, and how the measure will contribute to children’s wellbeing</p>	<p>The Scottish Government is of the view that the registers will advance the realisation of children’s rights and wellbeing in Scotland.</p> <p>A full list of how the Scottish Government considers the three registers will meet various articles of the UNCRC is available in the draft CRWIA stage 2 report.</p>			
<p>Monitoring and review</p>	<p>The Scottish Government is seeking views on the draft CRWIA as part of the consultation on the registers. This will help inform the final CRWIA that will be published alongside any regulations that are laid in the Scottish Parliament.</p>			
<p>Registers</p>	<p>Aims of measure</p>	<p>Likely to impact on</p>	<p>Compliance with UNCRC requirements</p>	<p>Contribution to local duties to safeguard, support and promote child wellbeing</p>

<p>Register of child welfare reporters</p>	<p>To ensure that the best interests of the child are at the centre of any case under section 11 of the Children (Scotland) Act 1995 (the 1995 Act).</p> <p>Establishing this register will ensure that child welfare reporters are subject to suitable and consistent qualifications and training requirements.</p>	<p>All children going through a case under section 11 of the 1995 Act.</p> <p>This may in particular affect younger children or those with a learning disability as one of the proposed eligibility criteria and training requirements is child development</p>	<p>Article 1 Article 3 Article 6 Article 7 Article 8 Article 9 Article 12 Article 16 Article 19 Article 23</p>	<p>Establishing this register will meet wellbeing indicators:</p> <p>Safe Respected Included</p>
--	--	---	--	--

<p>Register of curators ad litem</p>	<p>To ensure that the best interests of the child are at the centre of any case under section 11 of the 1995 Act</p> <p>Establishing this register will ensure that curators ad litem are subject to suitable and consistent qualifications and training requirements.</p>	<p>All children going through a case under section 11 of the 1995 Act where a curator ad litem has been appointed</p> <p>This may in particular affect younger children or those with a learning disability as one of the proposed eligibility criteria and training requirements is child development</p>	<p>Article 1</p> <p>Article 3</p> <p>Article 6</p> <p>Article 7</p> <p>Article 8</p> <p>Article 9</p> <p>Article 12</p> <p>Article 19</p> <p>Article 23</p>	<p>Establishing this register will meet wellbeing indicators:</p> <p>Safe</p> <p>Respected</p> <p>Included</p>
--------------------------------------	--	--	---	--

<p>Register of solicitors appointed when a party has been prohibited from personally conducting a case themselves</p>	<p>To protect vulnerable parties by introducing a special measure of prohibition of personal conduct. The register of solicitors ensures the right to a fair trial. The prohibition of personal conduct of a case protects victims of offences including victims of domestic abuse and vulnerable witnesses in either Children’s Hearings court proceedings or in cases under section 11 of the 1995 Act.</p>	<p>All children who are at the centre of a case under section 11 of the 1995 Act or Children’s Hearing court proceeding as protecting a vulnerable party may positively impact on the evidence that they will bring forward.</p> <p>Children who are witnesses in either a section 11 case or a Children’s Hearing court proceeding.</p>	<p>Article 9 Article 12 Article 19</p>	<p>Establishing this register will meet wellbeing indicator:</p> <p>Safe</p>
<p>CRWIA Declaration</p>				
<p>Authorisation – To be completed in final version</p>				

Annex H Draft Data Protection Impact Assessment

1. Introduction

The purpose of this impact assessment is to report on and assess any potential data protection impacts on the establishment of the registers of child welfare reporters, curators ad litem and solicitors appointed where a party has been prohibited from personally conducting a case themselves.

2. Document metadata

3.

3.1 Name of Project: Establishment of registers of child welfare reporters, curators ad litem and solicitors appointed where a party has been prohibited from personally conducting a case themselves.

3.2 Author of report: Family Law Unit, Civil Law & Legal System, Justice Directorate, Scottish Government.

3.3 Date of report: March 2021

3.4 Name of Information Asset Owner (IAO) of relevant business unit: Denise Swanson, Deputy Director, Civil Law & Legal System.

3.5 Date for review of DPIA: This draft DPIA will be reviewed after the public consultation is completed and the Scottish Government has decided on the appropriate next steps.

4. Description of the project

4.1. Description of the work:

The Children (Scotland) Act 2020 (the 2020 Act) gained Royal Assent on 1 October 2020. The 2020 Act builds on the existing Children (Scotland) Act 1995 (the 1995 Act).

Section 101A of the 1995 Act as inserted by section 9 of the 2020 Act places a duty on the Scottish Ministers to establish and maintain a register of individuals to act as child welfare reporters. Section 101B of the 1995 Act (inserted by section 17 of the 2020 Act) places a duty on the Scottish Ministers to establish and maintain a register of individuals to act as curators ad litem in cases under section 11 of the 1995 Act. Section 7 of the 2020 Act places a duty on the Scottish Ministers to establish a register of solicitors from whom a lawyer is to be appointed if a party fails to appoint one themselves where a prohibition on conducting a case themselves applies either in a case under section 11 of the 1995 Act or a Children's Hearing court proceeding.

The policy aim of the register of child welfare reporters and curators ad litem is to ensure that the best interests of the child are at the centre of any case under section 11 of the Children (Scotland) Act 1995 (the 1995 Act). Establishing these registers will ensure that child welfare reporters and curators ad litem are subject to suitable and consistent qualifications and training requirements.

The policy aim of the register of solicitors appointed where a party has been prohibited from personally conducting a case themselves is to support the 2020 Act's protection of vulnerable witnesses. The register will facilitate the appointment of solicitors to parties so prohibited where they are unable or unwilling to instruct one. This ensures that party's right to a fair trial. The prohibition of personal conduct of a case ensures the protection of victims of offences, including victims of domestic abuse, and the protection of vulnerable witnesses in Children's Hearings court proceedings and in cases under section 11 of the 1995 Act.

The Scottish Ministers have not yet decided whether to contract out the operation and management of the registers or retain this work in house. The Scottish Government's initial view, however, is that contracting out the day to day operation and management of the registers may be preferred as this could bring valuable expertise to the role. Any reference in the DPIA to the body appointed to operate and manage the registers includes the Scottish Government.

The current indicative timetable is that the process for recruitment of individuals to the three registers could start from April 2022 with the aim of the registers being operational from April 2023.

4.2. Personal data to be processed.

Variable	Data Source
<p>1. Establishing the three registers will mean that the body appointed to operate and manage the registers may run recruitment rounds to seek individuals who wish to be on any of the registers. This will mean the body receiving application forms which could include personal information such as employment history and also the results of the application process.</p>	<p>The personal information would be provided by applicants during the application process.</p>
<p>2. The operation of the three registers will require the body appointed to operate and manage the registers to hold personal information such a date of birth, bank details, contact information, training records, appraisal history and any records of complaints received about an individual on one of the registers. The appraisals may contain personal data of the person conducting the appraisal.</p>	<p>The personal information would be provided by the individuals included in the registers. Any personal data about the person conducting the appraisal would be provided by the person conducting the appraisal.</p>

<p>3. If a child welfare reporter, curator ad litem or solicitor appointed where a person has been prohibited from personally conducting a case is removed from the register as a result of misconduct the Scottish Government may wish to share this information with the Faculty of Advocates, Law Society of Scotland or the Scottish Social Services Council as they may wish to remove the individual from their registers.</p>	<p>The information would be provided by the Scottish Government to the Faculty of Advocates, Law Society of Scotland or the Scottish Social Services Council. Arrangements would be put in place to facilitate this.</p>
<p>4. The operation of the three registers may involve the body appointed to operate and manage the registers processing data obtained from the court. This could include the names of parties to a case and the name of the child at the centre of the case.</p> <p>Where a child welfare reporter is being appointed to prepare a report for the court or to investigate a person's failure (or alleged failure) to obey a court order, the court may also provide names of individuals who they should speak to as part of their investigations. The information provided could also include the whole interlocutor issued by the court which details who the child welfare reporter should speak to and what they should investigate.</p>	<p>The information would be provided by the Scottish Courts and Tribunals Service (the SCTS).</p>

<p>This process will be clarified further over the coming months.</p>	
<p>5. The operation of the three registers may involve the body appointed to operate and manage the registers passing personal information such as the name and contact details of the individual selected to undertake the work to the Scottish Courts and Tribunals Service. This process will be clarified further over the coming months.</p>	<p>The information would be provided by the body appointed to operate and manage the registers to the SCTS.</p>

4.3. Describe how this data will be processed:

In the first circumstance, the personal information will be in application forms submitted by individuals wishing to be on one of the registers. In the Financial Memorandum which accompanied the Children (Scotland) Bill in 2019 we have estimated that we may require 420 child welfare reporters, 20 curators ad litem and 80 solicitors who can be appointed when a person has been prohibited from personally conducting a case themselves. The applications would only be accessible to the recruitment panel and policy officers handling the management and operation of the appointment process. The information would be held securely and stored in an appropriate manner and disposed of securely when no longer required.

In the second circumstance, the personal data held on individuals included in the three registers will include date of birth, contact information, training records, bank details, appraisals and records of any complaints. The information will only be accessed by the body. The information will be stored in an appropriate manner and disposed of securely when no longer required. The data will be owned by the Scottish Government as data controller. Individuals appointed to the registers will be asked to notify any changes to contact details. It is proposed that individuals will receive regular appraisals. Any complaint is likely to be raised directly with the body appointed to operate and manage the registers.

The third circumstance relates to a situation where an individual has been removed from one of the registers as a result of a complaint. It is envisaged that individuals included in the register of curators ad litem or solicitors appointed where a person has been prohibited from personally conducting a case themselves will all be solicitors holding a current practicing certificate with the Law Society of Scotland or, in the case of the register of curators ad litem, advocates who are members of the Faculty of Advocates. An individual included in the register of child welfare reporters could be a solicitor, advocate, or a social worker or another professional and may be registered with the Law Society of Scotland, Faculty of Advocates or the Scottish Social Services Council.

If a person is removed from one of the registers as a result of the complaint the Scottish Government may wish to alert the Law Society of Scotland, the Faculty of Advocates or the Scottish Social Services Council. The Scottish Government may wish to share the name of the individual and also the top level information about the nature of the complaint that resulted in them being removed from the register. A complaint could be of a nature that it would be in the interests of the general public for the individual to be removed from other appointments. For example, they may have verbally abused a person they were interviewing. The information will be transferred in an appropriate manner.

In the fourth circumstance the body appointed to operate and manage the registers may receive information from the SCTS. This could range from the name of the parties to details of the case. If a child welfare reporter is requested then the request could contain the names and contact details of individuals who a child welfare reporter is to speak to as part of their investigations. The exact level of information to be shared will be determined when the procedure for appointment of an individual from a register is finalised. The information will only be accessed by the body. The information will be stored in an appropriate manner and disposed of securely when no longer required.

In the fifth circumstance, depending on the final decision on the procedure for appointment of an individual from a register, the body appointed to operate and manage the registers may be required to pass personal information such as the name and contact details of the individual selected to undertake the work to the SCTS. This would allow the SCTS to contact the individual directly to set out their remit. The exact level of information to be shared will be determined when the procedure for appointment of an individual from a register is finalised. The information will be transferred in an appropriate manner.

4.4. Explain the legal basis for the sharing with internal or external partners:

It is anticipated that the sharing would take place in accordance with the relevant provisions of the 2020 Act, the 1995 Act as amended by the 2020 Act, and regulations made under relevant provisions of those Acts.

5. Stakeholder analysis and consultation

5.1 List all the groups involved in the project, and state their interest.

The draft DPIA is part of the full public consultation on the establishment of the three registers. We are seeking views from all stakeholders on the draft DPIA as part of this process. The final DPIA will be published on the Scottish Government website.

6. Questions to identify privacy issues

6.1. Involvement of multiple organisations

In the first two circumstances if the Scottish Government decides to contract out the operation and management of the registers then the organisation who won the contract would have access to personal data. Privacy of data would be one of the criteria when awarding the contract.

In the third circumstance, if information about an individual who has been removed from one of the registers is shared with another body such as the Law Society of Scotland, Faculty of Advocates or the Scottish Social Services Council then this will be shared in a secure format.

In the fourth circumstance, the body appointed to operate and manage the registers may receive information about a case, such as, for example, the names of parties from the SCTS. The Scottish Government would work with the SCTS to ensure any personal information is sent in a secure format.

In the fifth circumstance, personal details of the individual appointed from a register may be shared with the SCTS. We would expect this information to be stored securely by the SCTS.

6.2. Anonymity and pseudonymity

Not applicable in any of the situations as the Scottish Government is not planning on combining data from two or more systems.

6.3. Technology

Not applicable

6.4. Identification methods

In the first circumstance, a unique identifier may be assigned to each application form received to ensure that the sift panel can consider the applications.

A spreadsheet of the unique identifiers and the names of the applicants will be created and maintained by the individuals processing the applications. This spreadsheet will be stored safely and disposed of securely when no longer required.

6.5. Sensitive/Special Category personal data

No information on special category personal data is envisaged to be gathered in any of the circumstances.

In the second circumstance as the Scottish Government or its contractor will be responsible for paying individuals on the registers. Therefore, they will require information on bank details for the individuals on the registers.

6.6. Changes to data handling procedures

The Scottish Government would not make the personal data in any of the situations publicly available.

None of the circumstances involve:

- new or changed data collection policies or practices that are unclear or intrusive; or
- changes to data quality assurance, processes and standards that may be unclear or unsatisfactory; or
- new or changed data security access or disclosure arrangements that may be unclear or extensive; or
- new or changed data retention arrangements that may be unclear or extensive; or
- a change in the medium for disclosure of publicly available information such that the data becomes more readily accessible than before.

6.7. Statutory exemptions/protection

None of the circumstances would require statutory exemptions/protections

6.8. Justification

On the third circumstance it may be in the public interest to share the name of an individual who has been removed from one of the registers and the nature of the reason for their removal with the Law Society of Scotland, Faculty of Advocates or the Scottish Social Services Council. For example if an individual has been removed due to serious misconduct.

6.9. Other risks

No other risks have been identified.

7. General Data Protection Regulation (GDPR) Principles

Principle	Compliant – Yes/No	Description of how you have complied
6.1 Principle 1 – fair and lawful, and meeting the conditions for processing	Yes	<p>In circumstances 1 -3 and 5 individuals would be informed about how their personal data will be processed.</p> <p>In circumstance 4 discussions would need to take place with the SCTS about how a party is informed that their personal details may be shared with the body responsible for the operation and management of the register.</p> <p>If the details of a person who has been removed from one of the registers are to be shared with the Law Society of Scotland, the Faculty of Advocates of the Scottish Social Services Council then they would be informed about how their personal data will be processed.</p>
Principle	Compliant – Yes/No	Description of how you have complied

6.2 Principle 2 – purpose limitation	Yes	<p>In circumstances 1-3 and 5 individuals will be informed of the extent and specificity of personal information that is required.</p> <p>In circumstance 4 discussions would need to take place with the SCTS about how a party is informed that their personal details may be shared with the body responsible for the operation and management of the register.</p>
Principle	Compliant – Yes/No	Description of how you have complied
6.3 Principle 3 – adequacy, relevance and data minimisation	Yes	<p>The criteria for collection and storage on the register will be considered further as the policy develops.</p> <p>The aim will be for data to be collected to be kept to the minimum necessary.</p>
Principle	Compliant – Yes/No	Description of how you have complied
6.4 Principle 4 – accurate, kept up to date, deletion	Yes	<p>In circumstances 1-2 and 5 there will be a mechanism in place for personal data to be kept up to date. This may include using the annual appraisal process to ensure that contact details for individuals included on the registers are correct.</p>

Principle	Compliant – Yes/No	Description of how you have complied
6.5 Principle 5 – kept for no longer than necessary, anonymization	Yes	<p>If an individual wishes to be removed from any of the registers then their personal information would be deleted once it is no longer required.</p> <p>The individual included in the registers would be responsible for ensuring that any changes of personal data are submitted. The annual appraisal would be used as an opportunity to check that the main information such as contact details are kept up to date.</p> <p>In the fourth circumstance any information on parties to cases or details of the cases would only be held by the body to organise the selection of a person from the relevant register.</p>
Principle	Compliant – Yes/No	Description of how you have complied
6.6 GDPR Articles 12-22 – data subject rights	Yes	<p>In circumstances 1,2 and 5 a privacy notice will be published for each of the registers. The data collected will not be used for marketing purposes. In circumstance 4 discussions would need to take place with the SCTS about how a party is informed that their personal details may be shared with the body responsible for the operation and management of the register.</p>

		<p>In relation to the right to have inaccurate personal data rectified, or completed if it is incomplete in circumstance 1 this would be dealt with through the recruitment process. In circumstances 2, 3 and 5 this would be dealt with by the annual review process which would give individuals the opportunities to update their personal data. In circumstance 4 the Scottish Government will discuss with the SCTS about how a party can correct inaccurate or incomplete personal data.</p> <p>In line with the rights of access to personal data, in all of the circumstances it is envisaged that an individual would be able to access a copy of the information that is held about them.</p>
Principle	Compliant – Yes/No	Description of how you have complied
6.7 Principle 6 - security	Yes	In circumstances 1-3 and 5, data will be held on secure systems managed and held by either Scottish Government or a contractor's, on secure servers with access only granted to staff deemed to have the training and legitimate need to access such data.

		In circumstance 4 discussions would need to take place with the SCTS about how a party is informed that their personal details may be shared with the body responsible for the operation and management of the register.
Principle	Compliant – Yes/No	Description of how you have complied
6.8 GDPR Article 44 - Personal data shall not be transferred to a country or territory outside the UK		Not Applicable.

8. Risks identified and appropriate solutions or mitigation actions proposed

Is the risk eliminated, reduced or accepted?

Risk	Ref	Solution or mitigation	Result
------	-----	------------------------	--------

Personal data is inadvertently shared between Scottish Government and contractor appointed to operate and manage the registers.	1	This will be mitigated by ensuring there is a data sharing agreement in place.	Eliminate and reduce
Personal data on individuals on the register is stored in a shared folder accessible to more people	2	This will be mitigated by ensuring that there is strict training in place for staff on how to store data securely.	Eliminate
Personal data shared by Scottish Government with another organisation if a person is removed from one of the registers is not shared securely	3	This will be mitigated by ensuring there is a data sharing agreement in place.	Eliminate

Personal data on individuals shared by the body appointed to operate and manage the register with the SCTS in an unsecure manner	4	This will be mitigated by ensuring there is an appropriate protocol in place.	Eliminate
Personal data on parties to a case provided by the SCTS stored by the body appointed to operate and manage the registers in an insecure manner	5	This will be mitigated by ensuring that there is strict training in place for staff on how to store data securely.	Eliminate

9. Incorporating Privacy Risks into planning

Explain how the risks and solutions or mitigation actions will be incorporated into the project/business plan, and how they will be monitored. There must be a named official responsible for addressing and monitoring each risk.

Risk	Ref	How risk will be incorporated into planning	Owner
------	-----	---	-------

Personal data is inadvertently shared between Scottish Government and body appointed to operate and manage any of the registers.	1	This will be considered when planning whether to contract out the operation and management of the registers.	Family Law Unit, Scottish Government
Personal data is stored in a shared folder accessible to more people	2	This will be considered when planning the recruitment of individuals to the registers.	Family Law Unit, Scottish Government.
Personal data shared by Scottish Government with another organisation if a person is removed from one of the registers is not shared appropriately	3	This will be considered when planning the operation and management of the registers	Family Law Unit Scottish Government

Personal data on individuals on the registers is shared by the body appointed to operate and manage the register with the SCTS is shared unsecurely.	4	This will be considered when planning the operation and management of the registers	Family Law Unit Scottish Government
Personal data on parties to a case provided by the SCTS stored by the body appointed to operate and manage the registers in an insecure manner	5	This will be considered when planning the operation and management of the registers	Family Law Unit Scottish Government

10. Data Protection Officer (DPO)

The DPO may give additional advice, please indicate how this has been actioned.

Advice from DPO	Action
To be completed in Final DPIA	

11. Authorisation and publication

To be completed in Final DPIA.

Annex I Draft Equality Impact Assessment Record

Title of policy/ practice/ strategy/ legislation etc.	Establishment of registers of child welfare reporters, curators ad litem and solicitors appointed where a party has been prohibited from personally conducting a case themselves.	
Minister	Minister for Community Safety	
Lead official	Hannah Frodsham	
Officials involved in the EQIA	name	team
		Justice Analytical Services Family Law Unit Violence against Women & Girls Unit
Directorate: Division: Team	Family Law Unit Civil Law & Legal System Division Justice Directorate	
Is this new policy or revision to an existing policy?	New policy	

Screening

Policy Aim

Establishment of registers of child welfare reporters, curators ad litem and solicitors appointed where a party has been prohibited from personally conducting a case themselves.

The key policy aim of the registers of child welfare reporters and curators ad litem is to ensure that the best interests of the child are at the centre of any case under section 11 of the Children (Scotland) Act 1995 (the 1995 Act). Establishing these registers will ensure that child welfare reporters and curators ad litem are subject to suitable and consistent qualifications and training requirements.

The policy aim of the register of solicitors appointed where a party has been prohibited from personally conducting a case themselves is to protect vulnerable parties by introducing a special measure of prohibition of personal conduct. The register ensures the right to a fair trial. The prohibition of personal conduct of a case in certain circumstances protects victims of offences, including victims of domestic abuse, and vulnerable witnesses in Children's Hearings court proceedings and in cases under section 11 of the 1995 Act.

The most relevant National Outcome is:

1. We grow up loved, safe and respected so that we realise our full potential.

Who will it affect?

The registers will affect a wide range of people including:

2. Children and young people at the centre of cases under section 11 of the Children (Scotland) Act 1995 (the 1995 Act) or Children's Hearings court proceedings.
3. Child welfare reporters
4. Curators ad litem appointed in cases under section 11 of the 1995 Act
5. The courts
6. Lawyers
7. Local authorities who are ordered to produce a child welfare report by the court
8. Parents, grandparents, other family members and other adults who are involved in a court case under section 11 of the 1995 Act.
9. Scottish Legal Aid Board
10. Social workers

What might prevent the desired outcomes being achieved?

Establishing the three registers will require significant financial implications on an ongoing basis.

Establishing the three registers requires amendments to court rules. Rules of court are made by Act of Sederunt and are a matter for the Lord President on behalf of the Court of Session and the Scottish Civil Justice Council. If the Lord President and the Scottish Civil Justice Council do not make the required amendments to the rules of court this may affect the operation of the registers.

If the Scottish Ministers contract out the management and operation of the registers then there is a risk of no suitable bids being received.

Stage 1: Framing

Results of framing exercise

The Family Law Unit met with colleagues from Justice Analytical Services and the Violence Against Women & Girls Unit for the purpose of this framing exercise.

The framing exercise suggested that the following groups of people might be affected by the establishment of the three registers:

Age

- The registers will affect children in particular younger children as one of the proposed requirements to be on the register of child welfare reporters is an ability to communicate with children.
- Individuals who are wanting to be on the registers will need to be of a certain age due to the required qualifications and experience.
- Curators ad litem and solicitors appointed where a person has been prohibited from personally conducting a case themselves would need to hold a practising certificate from the Law Society of Scotland or be a member of the Faculty of Advocates. This means retired lawyers are not eligible to be on these two registers.

Disability

- The register of child welfare reporters and curators ad litem will in particular affect children with special educational needs as one of the requirements for an individual to be on these registers is an understanding of child development including learning disabilities.
1. The register of solicitors appointed where a person has been prohibited from personally conducting a case themselves may have an impact on parties who have communication difficulties.

Sex

2. Being included on the three registers may be appealing to people with childcare responsibilities (who may be predominantly women) as the roles to which those registers relate are flexible.
3. Female victims of domestic abuse may not wish a male child welfare reporter to be appointed.

Gender reassignment

4. There may be a need for child welfare reporters and curators ad litem to respect a child's identity.

Sexual orientation

- We would wish to ensure diversity amongst individuals included in the three registers. This information would likely be gathered during the application process.
- Child welfare reporters and curators ad litem would need to have training in same sex parentage and diverse family models.

Race

- We would wish to ensure diversity amongst individuals included in the three registers. This information would likely be gathered during the application process.
- We would need to ensure that information on complaints procedures is accessible to individuals who have English as a second language.

Religion or belief

- In some religions a woman is not allowed to speak to a man.
- We would wish anyone included in the registers to have an understanding of cultural differences.

Extent/Level of EQIA required

Following the framing exercise, the Scottish Government believes that the extent of the EQIA required was high.

A draft Child Rights & Wellbeing Impact Assessment (CRWIA) has been prepared separately and will be cross referred to in this EQIA.

Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
-----------------------	---	---------------	--

<p>Age</p>	<p>1. The draft Child Rights & Wellbeing Impact Assessment (CRWIA) sets out the evidence gathered in relation to children and young people.</p> <p>2. Unpublished data from the Scottish Legal Aid Board (SLAB) suggests that between April 2017 and April 2019 24% of granted legal aid applications were to parties aged between 25 and 29. This figure drops to 20% for 30 – 34 year olds and 15% for 35 to 39 year olds. Therefore, the registers will affect individuals between 25 to 29 year old more as they are party to cases under section 11 of the 1995 Act.</p> <p>3. To be eligible for inclusion in the register of curators ad litem or solicitors appointed where a person has been prohibited from personally conducting a case themselves an individual will need to hold a practising certificate with the Law Society of Scotland (or in relation to curators ad litem be a member of the Faculty of Advocates). The process for obtaining a practising certificate from the Law Society of Scotland can take 7 years from finishing School. Therefore individuals would only be eligible from the age of 24.</p> <p>Register of solicitors appointed where a person has been prohibited from personally conducting a case themselves</p> <p>4. The register of solicitors who are appointed when a person has been prohibited from personally conducting a case themselves is aimed at protecting</p>	<p>2. SLAB</p> <p>Law Society of Scotland</p> <p>4. Data from the Scottish Government (see</p>	<p>2. There is no data available from the Scottish Courts & Tribunals Service (SCTS) on age of pursuers and defenders. Therefore, the Scottish Government is relying on data from SLAB which only covers cases where individuals are granted legal aid.</p> <p>4. There is no data available on the age of the person convicted of</p>
-------------------	---	--	--

	<p>vulnerable parties including victims of domestic abuse. Scottish Government statistics on domestic abuse suggest that in 2018/19 the 26-30 years old age group had the highest incident rate for victims (263 incidents recorded per 10,000 population). The 31-35 years old age group had the highest incident rate for the accused (246 incidents recorded per 10,000 population).</p> <p>5. A party is also expected to be restricted from personally conducting a case themselves where they have committed an other serious criminal offence. Scottish Government statistics on criminal proceedings show that in 2018-19, the highest number of convictions per 1,000 population was for the 31-40 age group overall (34 per 1,000), the 21-30 age group also showing a similar 33 convictions per 1,000 population. Compared to older people, a larger proportion of convictions for people under 21 are for crimes against public justice and common assault.</p> <p>Register of child welfare reporters</p> <p>7. Research from 2013 suggests that over half of children involved in family cases in which there are allegations of domestic abuse were aged six years and under. Only 16 % were aged 12 or over.</p>	<p>https://www.gov.scot/publications/domestic-abuse-scotland-2018-2019-statistics/</p> <p>5. Data from the Scottish Government(see https://www.gov.scot/publications/domestic-abuse-scotland-2018-2019-statistics/).</p> <p>7. Research by Kirsteen Mackay (see https://www.cypcs.org.uk/ufiles/views-of-children-and-domestic-abuse.pdf).</p>	<p>an offence based on who the victim of the offence was.</p> <p>There is no known data gathered on how many children (or adult vulnerable witnesses) are required to give evidence in Children Hearings court cases.</p> <p>6. There is no data on the age of the existing child welfare reporters.</p> <p>7. There is no current data on the age of the child who is speaking to a child welfare reporter.</p>
--	--	---	--

	<p>Register of curators ad litem</p> <p>9. Research from 2013 suggests that a third of children aged 12 or over involved in family cases in which there are allegations of domestic abuse had a curator ad litem appointed to them. This is compared to only 5% of children aged 5 years and youngerⁱ.</p>	<p>9. Research by Kirsteen Mackay (see https://www.cypcs.org.uk/ufiles/views-of-children-and-domestic-abuse.pdf).</p>	<p>8. There is no data on the age of the existing curators ad litem.</p> <p>9. There is no current data on the age of the child who is appointed a curator ad litem.</p>
--	--	--	--

<p>Disability</p>	<p>1. More than half of pursuers reported that they have experienced moderate or severe stress during court action. The register of solicitors appointed where a person has been prohibited from personally conducting a case themselves will help alleviate this stress.</p>	<p>1. Study on Understanding Child Contact Cases in Scottish sheriff courts (see https://www.webarchive.org.uk/wayback/archive/20150219040304/http://www.gov.scot/Publications/2010/12/08145916/0)</p>	
--------------------------	---	---	--

<p>Sex</p>	<p>1. Unpublished statistics from SLAB suggest that 82% of defenders in cases under section 11 of the 1995 Act are female compared to 18% of men. In comparison SLAB data suggests that 32% of pursuers are female compared to 68% of men. Therefore, the registers will affect more women acting as defenders in cases under section 11 of the 1995 Act and more men acting as pursuers in these cases.</p> <p>Register of solicitors appointed when a party is prohibited from personally conducting a case themselves</p> <p>2. This register will protect vulnerable witnesses. This will include victims of domestic abuse and other serious criminal offences.</p> <p>3. Statistics show that in 2018/2019 where this information was recorded, around four out of every five incidents of domestic abuse in 2018-19 had a female victim and a male accused. 16% of domestic abuse incidents involved a male victim and a female accused (where this was recorded).</p> <p>4. A party is also expected to be restricted from personally conducting a case themselves where they have committed another serious criminal offence. Scottish Government statistics on criminal proceedings show that in 2018-19, males accounted for 82% of all convictions in 2018-19, the same</p>	<p>1. SLAB statistics</p> <p>3. Scottish Government statistics (see https://www.gov.scot/publications/domestic-abuse-scotland-2018-2019-statistics/).</p> <p>4. Scottish Government statistics (see https://www.gov.scot/publications/criminal-proceedings-scotland-2018-19/).</p>	<p>1. There is no data from the SCTS on the sex of defenders and pursuers.</p>
-------------------	--	---	--

<p>Pregnancy and maternity</p>	<p>1. Cases under section 11 of the 1995 Act are only likely to be initiated once a child has been born.</p>		
<p>Gender reassignment</p>	<p>1. No robust data on the Scottish trans population currently exists</p>		<p>1. There is no information available on the number of people who have undergone gender reassignment who are applying for an order under section 11 of the 1995 Act.</p>

Sexual Orientation	1. Scottish Government statistics show that in 2018/19 2% of domestic abuse incidents recorded by the police involved both the victim and the accused of the same gender.	1. Scottish Government statistics on Domestic Abuse in Scotland. (See https://www.gov.scot/publications/domestic-abuse-scotland-2018-2019-statistics/).	
---------------------------	---	--	--

Race			<ol style="list-style-type: none">1. There is no data available on the race of child welfare reporters or curators ad litem. This information may be gathered as part of the recruitment process for child welfare reporters and curators ad litem.2. There is no data available on the number of interpreters used when a child welfare reporter is speaking to individuals who do not have English as their first language.3. There is no data available on the number of interpreters used when a curator ad litem is appointed to a child who does not have English as their first language.
-------------	--	--	--

Religion or belief			1. There is no data available on the religion or belief of child welfare reporters or curators ad litem.
Marriage and civil partnership (the Scottish Government does not require assessment against this protected characteristic unless the policy or practice relates to work, for example HR policies and practices - refer to Definitions of Protected Characteristics document for details)	N/A		

Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	The registers are not intended to do this.
Advancing equality of opportunity			X	The registers will benefit children and young people who are at the centre of family court cases as there will be comprehensive training requirements in place for child welfare reporters and curators ad litem in section 11 cases.
Promoting good relations among and between different age groups			X	The registers are not intended to do this.

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision

Eliminating unlawful discrimination, harassment and victimisation			X	The registers are not intended to do this.
Advancing equality of opportunity	X			One of the criteria for individuals to be on the register of child welfare reporters and curators ad litem is an understanding of child development including learning disabilities.
Promoting good relations among and between disabled and non-disabled people			X	The registers are not intended to do this.

Do you think that the policy impacts on men and women in different ways?

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	The registers are not intended to do this.

Advancing equality of opportunity	X			The register of solicitors appointed where a person has been prohibited from personally conducting a case themselves aims to protect vulnerable parties, in particular victims of domestic abuse. The majority of victims of domestic abuse are women.
Promoting good relations between men and women			X	The registers are not intended to do this.

Do you think that the policy impacts on women because of pregnancy and maternity?

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	The registers are not intended to do this.
Advancing equality of opportunity			X	The registers are not intended to do this.
Promoting good relations			X	The registers are not intended to do this.

Do you think your policy impacts on people proposing to undergo, undergoing, or who have undergone a process for the purpose of reassigning their sex? (NB: the Equality Act 2010 uses the term ‘transsexual people’ but ‘trans people’ is more commonly used)

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	The registers are not intended to do this.
Advancing equality of opportunity			X	The registers are not intended to do this.
Promoting good relations			X	The registers are not intended to do this.

Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	The registers are not intended to do this.
Advancing equality of opportunity			X	The registers are not intended to do this.

Promoting good relations			X	The registers are not intended to do this.
--------------------------	--	--	---	--

Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	The registers are not intended to do this.
Advancing equality of opportunity			X	The registers are not intended to do this.
Promoting good race relations			X	The registers are not intended to do this.

Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	The registers are not intended to do this.
Advancing equality of opportunity			X	The registers are not intended to do this.
Promoting good relations			X	The registers are not intended to do this.

Do you think the policy impacts on people because of their marriage or civil partnership?

Marriage and Civil Partnership	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	The registers are not intended to do this.

Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

Have positive or negative impacts been identified for any of the equality groups?	Yes positive impacts in relation to age, disability and sex.
Is the policy directly or indirectly discriminatory under the Equality Act 2010?	No.
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	N/A
If not justified, what mitigating action will be undertaken?	N/A

Describing how Equality Impact analysis has shaped the policy making process

This is a draft EQIA and the Scottish Government is seeking views on this as part of a consultation exercise.

This EQIA has, in line with work carried out elsewhere. It has also usefully highlighted some other issues, such as the need to ensure child welfare reporters and curators ad litem work effectively with children with learning disabilities and children who do not speak English as their first language.”

The EQIA has helped identify areas where further evidence will be useful and we have discussed this with Justice Analytical Services.

The final EQIA will be published alongside any regulations that are introduced into the Scottish Parliament in relation to the three registers.

Monitoring and Review

This is a draft EQIA and will be revised following comments received from stakeholders during the consultation period.

Stage 5 - Authorisation of EQIA – to be completed in final EQIA

Annex J Draft Fairer Scotland Duty Impact Assessment

FAIRER SCOTLAND DUTY

Title of Policy, Strategy, Programme etc	Establishment of registers of child welfare reporters, curators ad litem and solicitors appointed where a party has been prohibited from personally conducting a case themselves.
---	---

Summary of aims and expected outcomes of strategy, proposal, programme or policy

The key policy aim of the registers of child welfare reporters and curators ad litem is to ensure that the best interests of the child are at the centre of any case under section 11 of the Children (Scotland) Act 1995 (the 1995 Act). Establishing these registers will ensure that child welfare reporters and curators ad litem are subject to suitable and consistent qualifications and training requirements.

The policy aim of the register of solicitors appointed where a party has been prohibited from personally conducting a case themselves is to protect vulnerable parties by introducing a special measure of prohibition of personal conduct. The register ensures the right to a fair trial. The prohibition of personal conduct of a case in certain circumstances protects victims of offences, including victims of domestic abuse, and vulnerable witnesses in Children's Hearings court proceedings and in cases under section 11 of the 1995 Act.

A child welfare reporter may be appointed by the court either to undertake enquiries and report to the court or to seek the views of the child and to report any views expressed by the child to the court. In the future, child welfare reporters will also explain court decisions to children and, when requested to do so by the court, investigate reasons for non-compliance with a court order.

Currently, child welfare reporter fees are paid by either the parties in a case themselves or by the Scottish Legal Aid Board (SLAB) if the parties are eligible for legal aid. Once the register of child welfare reporters is operational this cost would be met by the Scottish Government either directly or through the body appointed to operate and manage the register of child welfare reporters.

At present, the cost of a Child Welfare Report can vary significantly from case to case and also in different areas of the country. The Ordinary Cause Rules provide that the cost of a Child Welfare Report should be met in equal share between all the parties unless there is good reason for it to be met in a different allocation.

A curator ad litem is appointed by the court to safeguard and promote the interests of a child in so far as those interests are affected by particular litigation.

Currently, appointment of curators ad litem varies across Scotland. In some Sheriffdoms curators are appointed

from the list of child welfare reporters held by the sheriffs principal. In other areas, curators are appointed from the panel of curators ad litem held by each local authority for permanence and adoption cases. In one Sheriffdom the sheriff principal maintains a separate list.

Establishing a register of child welfare reporters and curators ad litem in section 11 cases will mean their fees would be met by the Scottish Ministers. This means that no individual will have to meet the cost of a Child Welfare Report or curators ad litem fees.

Funding Child Welfare Reports and curators ad litem fees for all parties will remove any access to justice concerns. The Scottish Ministers understand from discussion with stakeholders that parties not in receipt of legal aid may have to incur considerable expenditure to meet the costs of a Child Welfare Report.

The Scottish Government also intends to meet the fees, outlays and expenses of solicitors where a party has been prohibited from personally conducting a case themselves. Overall, costs here are expected to be low as the number of cases where these solicitors are likely to be needed is expected to be low.

Summary of evidence

In 2018/19 there were 3,554 family cases raised and 15,649 hearings in family cases involving children (excluding adoption and permanence). Of the 15,649 there were 6,655 child welfare hearings. A child welfare reporter would not necessarily be appointed in every case.

SLAB have figures on the number of reports that are funded by legal aid, and the table below shows the figures over previous years in relation to child welfare reporter costs:

Year	Estimated number of individual payments made for CWRs Costs	Total cost (£m)	Estimated average cost per report (£m)
2016/17	1,711	3.0	0.028
2017/18	1,983	3.5	0.035
2019/20	2,263	3.7	0.027

Currently the cost of a child welfare report can vary. Figures from a SLAB report to the Family Law Committee of the Scottish Civil Justice Council suggest that in 2016, 10% of reports cost under £500; 18% of cost between £501- £1000; 25% cost between £1001-£2000; 15% cost £2001 - £3000 and 16% cost more than £3000. In legal aid cases where the cost of the report is to be in excess of £3000 then permission is required from SLAB.

Information on the number of privately funded cases where a child welfare report is currently ordered is not currently collected. However, from discussions with stakeholders it is understood that this figure could be 10% of all child welfare reports.

During stakeholder events as part of the consultation on the Review of the Children (Scotland) Act 1995, the Scottish Government heard of privately funded Child Welfare Reports costing upwards of £10,000.

Rethinking Legal Aid, An Independent Strategic Review in February 2018 set out that when child welfare reporters are appointed by the court the outlays can be significant. The review also suggested that a centralised system for child welfare reporters should be considered.

The review found that the system of civil legal aid eligibility, contributions and clawbacks is inconsistent and complicated, in particular that assessment and verification of financial eligibility in civil legal aid cases, where applicants are not in receipt of state benefits, can be complex.

In addition the review referred to evidence that there can be added financial stress to a person in having to pay a large contribution or indeed the whole costs of a case.

For those who are eligible for legal aid, many will still have to pay a contribution towards the cost of the case. This is means tested by assessing the person's financial situation (disposable income and disposable capital).

<p>Summary of assessment findings</p>	<p>Although the proportion of cases in which a party privately funds a child welfare report may be relatively low, the potential costs to those affected individuals could put them under significant financial pressure.</p> <p>Requiring a person who is privately funding their case to pay a considerable sum (perhaps up to £10,000) for a child welfare report could pose access to justice issues.</p> <p>. The additional burden of having to pay for a court ordered child welfare report could add to stress felt by parties to a case under section 11..</p>
<p>Sign off</p>	<p>To be completed for final version of Fairer Scotland Duty Assessment.</p>

Annex K Draft Islands Community Impact Assessment

Step one – develop a clear understanding of your objectives

<p>What are the objectives of the policy, strategy or service? Do you need to consult? How are Islands identified for the purpose of the policy, strategy or service? What are the intended impacts / outcomes and how do these potentially differ in the islands? Is the policy, strategy or service new?</p>	<p>Background</p> <p>The Children (Scotland) Act 2020 (the 2020 Act) gained Royal Assent on 1 October 2020.</p> <p>Section 101A of the 1995 Act (inserted by section 9 of the 2020 Act) places a duty on the Scottish Ministers to establish and maintain a register of individuals to act as child welfare reporters. The 1995 Act gives Scottish Ministers the power by regulations to make provision about:</p> <ul style="list-style-type: none">• the requirements that a person must satisfy in order to be included, and remain, on the register• the process for including a person on, and removing a person from, the register• the process for how, and by whom, a registered person is to be selected as the appointed child welfare reporter in a case• the remuneration of child welfare reporters including expenses and outlays• the operation and management of the register. <p>Section 11(1B) of the Matrimonial Proceedings (Children) Act 1958 as inserted by section 19 of the 2020 Act means that if a local authority employee wishes to continue to act as a child welfare reporter then they would need to apply to be on the register of child welfare reporters and meet the required eligibility standards.</p>
--	---

Section 101B of the 1995 Act (inserted by section 17 of the 2020 Act) places a duty on the Scottish Ministers to establish and maintain a register of individuals to act as curators ad litem. Section 101B gives Scottish Ministers the power by regulations to make provision about:

- the requirements that a person must satisfy in order to be included, and remain, on the register
- the process for including a person on, and removing a person from, the register
- the process for how, and by whom, a registered person is to be selected as the appointed child welfare reporter in a case
- the remuneration of child welfare reporters including expenses and outlays
- the operation and management of the register.

Section 7 of the 2020 Act places a duty on the Scottish Ministers to establish a register of solicitors from whom a lawyer is to be appointed if a party fails to appoint one themselves where the prohibition applies either in a case under section 11 of the 1995 Act or a Children's Hearing court proceeding. The Scottish Ministers must by regulations specify the requirements that a person must satisfy in order to be included and remain on the register and may also provide for the remuneration (the fee rate) payable to the solicitor. Provision may also be made about outlays such as fees to be paid to Counsel.

Policy objectives of establishing the registers

The key policy aim of the registers of child welfare reporters and curators ad litem is to ensure that the best interests of the child are at the centre of any case under section 11 of the Children

(Scotland) Act 1995 (the 1995 Act). Establishing these registers will ensure that child welfare reporters and curators ad litem are subject to suitable and consistent qualifications and training requirements.

The policy aim of the register of solicitors appointed where a party has been prohibited from personally conducting a case themselves is to protect vulnerable parties by introducing a special measure of prohibition of personal conduct. The register ensures the right to a fair trial. The prohibition of personal conduct of a case in certain circumstances protects victims of offences, including victims of domestic abuse, and vulnerable witnesses in Children's Hearings court proceedings and in cases under section 11 of the 1995 Act.

Potential impacts/outcomes

There may be an impact on island communities if, as a result of establishing the three registers, there were fewer Child Welfare Reporters, curators ad litem or solicitors to be appointed to represent a person who is prohibited from personally conducting their own case available in these communities.

We anticipate that advertisements for the role of child welfare reporter, curator ad litem and solicitor representing those who are prohibited from representing themselves would issue in advance of the regulations fully commencing in 2023. We would expect that in future years further recruitment rounds would be undertaken to replace people ceasing to be on the registers or to deal with any upsurge in demand.

The application form would seek evidence of how candidates meet the requirements set down in the regulations. The application form

may also require individuals to indicate the areas of the country that they would be available to work in. This would be used to ensure that there was sufficient coverage across the country.

In terms of how the court orders a child welfare reporter or curator ad litem to be appointed in a case, the Scottish Government's preferred approach is that when a court orders a child welfare reporter or a curator ad litem be appointed the clerk of the court will contact the body appointed to operate and manage the register. The body would then select the next child welfare reporter on the list who is willing to work in the specific geographic location. The body would need to ensure that there was no conflict of interest for the child welfare reporter in that particular case. A child welfare reporter may also turn down the work due to other commitments.

A similar approach is proposed where the court considers the appointment of a solicitor to represent a person prohibited from personally conducting their own case is required. The court would make an order and approach the body managing and operating that register. The body would then consult the register and where possible approach the next solicitor on the list who is willing to work in a specific geographic location. As the register is likely to be used infrequently it is envisaged that a number of solicitors may need to be approached in order to obtain one who would have availability to act for a party and does not have a conflict of interest.

Under the three proposed registers any reasonable travelling expenses incurred by a child welfare reporter, curator ad litem or solicitor appointed to represent a person prohibited from personally conducting their case in the course of their role, can be claimed back centrally at the levels set by the Scottish Government for its own staff.

The consultation will seek views on these proposed approaches, but in the Scottish Government's view these proposals should ensure sufficient availability of child welfare reporters, curators ad litem and solicitors appointed to represent a person prohibited from personally conducting their own case in island communities.

Consultation

This is a draft ICIA and we are seeking views from individuals as part of the consultation on this impact assessment.

Step two – gather your data and identify your stakeholders

What data is available about the current situation in the islands?
 Do you need to consult?
 How does any existing data differ between islands?
 Are there any existing design features or mitigations in place?

We understand there are approximately 400 child welfare reporters in Scotland appointed across the six Sheriffdoms and the Court of Session. Individuals currently seeking to be a child welfare reporter may be appointed to lists held by the Court of Session and by the six Sheriffs Principal (for the Sheriff Courts in their respective Sheriffdom). The presiding judge or sheriff can then appoint a child welfare reporter on the appropriate list to report on a case.

The number of curators ad litem appointed varies across the country. For example, from a survey of Sheriffs Principal, in the Sheriffdom of Lothian and Borders there were four appointments of curators ad litem in the first two months of 2019 whilst in the Sheriffdom of South Strathclyde, Dumfries and Galloway there were six appointments for the whole of 2018/19.

We do not have information on the number of child welfare reporters or curators ad litem based in or operating in the islands.

<p>This draft ICIA is part of the consultation on establishing the three registers. We are seeking views on the ICIA as part of this consultation. The Scottish Government also intends to engage with stakeholders and individuals during the consultation period and to seek further evidence and information.</p>
--

Step three - consultation

<p>Who do you need to consult with? How will you carry out your consultation and in what timescales? What questions will you ask when considering how to address island realities? What information has already been gathered through consultations? What concerns have been raised previously by island communities? Is your consultation robust and meaningful and sufficient to comply with the Section 7 duty?</p>	<p>This draft ICIA forms part of a public consultation which will run for 16 weeks. The consultation contains a section asking for comments specifically on the draft impact assessments.</p> <p>This is a draft ICIA and will be finalised following comments received from respondents and stakeholders during the consultation period.</p> <p>The Scottish Government will seek views from a range of organisations and individuals, including:</p> <ul style="list-style-type: none"> • organisations representing children and young people • organisations representing victims of domestic abuse • family lawyers • social workers • organisations representing family lawyers • organisations representing social workers • organisations representing parents, grandparents and other family members • existing child welfare reporters and curators ad litem • Scottish Courts and Tribunals Service • Scottish Legal Aid Board
---	---

	<ul style="list-style-type: none"> • Scottish Children’s Reporter Administration • Faculty of Advocates • Law Society of Scotland • Family Law Association • Local authorities <p>The Scottish Government also intends to engage with stakeholders, groups and individuals directly during the consultation period by holding events and discussions groups.</p> <p>During the consultation on the review of the Children (Scotland) Act 1995 in 2018, which informed the Children (Scotland) Act 2020, no specific issues regarding the proposed register of Child Welfare Reporters, curators ad litem or solicitors appointed to represent a person prohibited from personally conducting their own case were raised by island communities.</p> <p>During the passage of the Children (Scotland) Bill (now the Children (Scotland) Act 2020), no specific issues regarding the proposed register of Child Welfare Reporters, curators ad litem or solicitors appointed to represent a person prohibited from personally conducting their own case were raised by island communities.</p>
--	--

Step four - assessment

<p>Does your assessment identify any unique impacts on island communities? Does your assessment identify any potential barriers or wider impacts? How will you address these? You must now determine whether in your opinion your policy, strategy or service is likely to have an effect on an island community which is</p>	<p>This draft ICIA forms part of a public consultation on the proposed registers of Child Welfare Reporters, curators ad litem and solicitors appointed to represent a person prohibited from personally conducting their own case. The consultation contains a</p>
--	---

<p>significantly different from its effect on other communities (including other island communities).</p> <p>If your answer is No to the above question, a full ICIA will NOT be required and you can proceed to Step Six.</p> <p>If the answer is Yes, an ICIA must be prepared and you should proceed to Step 5</p> <p>To form your opinion, the following questions should be considered:</p> <p>Does the evidence show different circumstances or different expectations or needs, or different experiences or outcomes (such as different levels of satisfaction, or different rates of participation)?</p> <p>Are these different effects likely?</p> <p>Are these effects significantly different?</p> <p>Could the effect amount to a disadvantage for an island community compared to the mainland or between island groups?</p>	<p>section asking for comments specifically on the draft impact assessments.</p> <p>This draft ICIA will be revised following assessment of the comments received from respondents and stakeholders during the consultation period.</p>
---	---

Step five – preparing your ICIA

<p>In Step Five, you should describe the likely significantly different effect of the policy, strategy or service</p> <p>Assess the extent to which you consider that the policy, strategy or service can be developed or delivered in such a manner as to improve or mitigate, for island communities, the outcomes resulting from it.</p>	<p>This draft ICIA forms part of a public consultation on the proposed registers of Child Welfare Reporters, curators ad litem and solicitors appointed to represent a person prohibited from personally conducting their own case. The consultation contains a section asking for comments specifically on the draft impact assessments.</p>
---	---

<p>Consider alternative delivery mechanisms and whether further consultation is required.</p> <p>Describe how these alternative delivery mechanisms will improve or mitigate outcomes for island communities.</p> <p>Identify resources required to improve or mitigate outcomes for island Communities.</p> <p>An ICIA by Scottish Ministers in regard to legislation must:</p> <p>Describe the likely significantly different effect of the legislation, assess the extent to which the Scottish Ministers consider that the legislation can be developed in such a manner as to improve or mitigate, for island communities, the outcomes resulting from the legislation, and</p> <p>set out the financial implications of steps taken under this subsection to mitigate, for island communities, the outcomes resulting from the legislation.</p>	<p>This draft ICIA and will be revised following assessment of the comments received from respondents and stakeholders during the consultation period.</p>
---	--

Step six – making adjustments to your work

<p>Should delivery mechanisms/mitigations vary in different communities?</p> <p>Do you need to consult with island communities in respect of mechanisms or mitigations?</p> <p>Have island circumstances been factored into the evaluation process?</p>	<p>This draft ICIA forms part of a public consultation on the proposed registers of Child Welfare Reporters, curators ad litem and solicitors appointed to represent a person prohibited from personally conducting their own case. The consultation contains a section asking for comments specifically on the draft impact assessments.</p>
---	---

<p>Have any island-specific indicators/targets been identified that require monitoring?</p> <p>How will outcomes be measured on the islands?</p> <p>How has the policy, strategy or service affected island communities?</p> <p>How will lessons learned in this ICIA inform future policy making and service delivery?</p>	<p>This draft ICIA will be revised following assessment of the comments received from respondents and stakeholders during the consultation period.</p>
---	--

Step seven – publishing your ICIA

<p>Have you presented your ICIA in an Easy Read format?</p> <p>Does it need to be presented in Gaelic or any other language?</p> <p>Where will you publish your ICIA and will relevant stakeholders be able to easily access it?</p> <p>Who will sign-off your final ICIA and why?</p>	<p>This draft ICIA forms part of a public consultation on the proposed registers of Child Welfare Reporters, curators ad litem and solicitors appointed to represent a person prohibited from personally conducting their own case. The consultation contains a section asking for comments specifically on the draft impact assessments.</p> <p>This draft ICIA and will be revised following assessment of the comments received from respondents and stakeholders during the consultation period.</p>
--	--

<p>ICIA Completed by</p>	<p>To be completed in the final version of ICIA</p>
--------------------------	---



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2021

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80004-809-6 (web only)

Published by The Scottish Government, March 2021

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS840846 (03/21)

W W W . g o v . s c o t