

Islands Communities Screening Assessment

Children (Scotland) Bill

September 2019



Scottish Government
Riaghaltas na h-Alba
gov.scot

Children (Scotland) Bill

Introduction

1. The importance of island-proofing was recognised in the “*Empowering Scotland’s Island Communities prospectus*¹” published in June 2014. The principle of island-proofing is one of building a broad-based islands awareness into the decision making process of all parts of the public sector.
2. The Islands (Scotland) Act 2018² places a duty on the Scottish Ministers and other relevant authorities, including a number of public authorities, to have regard to island communities in exercising their functions. For the Scottish Ministers, this will also include the development of legislation. This duty is often referred to as ‘island-proofing’.
3. The Scottish Government recognises the importance of island-proofing and committed to island-proofing its Children (Scotland) Bill (the Bill) in advance of the 2018 Act placing a formal requirement.

Background

4. The Bill has been informed by the outcomes of a consultation on the Review of Part 1 of the Children (Scotland) Act 1995 (the 1995 Act)³. The 1995 Act is centred on the needs of children and their families. Part 1 of the 1995 Act covers parental responsibilities and rights and contact and residence cases relating to children when parents are separated or not together.
5. The Bill aims to improve the court process in contact and residence cases and also covers changes to aspects of the Children’s Hearings System. The key policy aims of the Bill are to:
 - ensure the best interests of the child are at the centre of any contact and residence case or Children’s Hearing;
 - ensure that the views of the child are heard in contact and residence cases;
 - in cases involving domestic abuse, to ensure that victims and children are protected appropriately during the family court process; and
 - further compliance with the principles of the United Nations Convention on the Rights of the Child in family court cases.
6. The Bill is an important step in improving the family courts. However, this is only part of a wider programme of work to improve the court process. Primary legislation is only part of the action necessary to improve the operation of family justice. A Family Justice Modernisation Strategy was published when the Bill was introduced. This sets out work that is ongoing by the Scottish Government and others, work that can be done via secondary legislation or by improved

¹ <https://www2.gov.scot/Resource/0045/00452796.pdf>

² <http://www.legislation.gov.uk/asp/2018/12/enacted>

³ <https://consult.gov.scot/family-law/children-scotland-act/>

guidance and areas for longer term consideration.

Consultation process

7. The consultation that informed the Bill ran between 15 May and 28 September 2018. The Scottish Government produced child friendly questions which were available via SurveyMonkey. The child friendly consultation ran for the same period.

8. The Scottish Government received approximately 250 responses to the main consultation and 300 to the child friendly questionnaire. The Scottish Government held a number of meetings with a range of stakeholders across the country during the consultation period, including with children and young people. The responses to the main consultation have been published⁴ where the Scottish Government has permission to do so. In addition an analysis report has been published⁵.

9. During the consultation period the Scottish Government officials met with Scottish Women's Aid Orkney and Relationships Scotland Orkney. In addition, officials sought views from other stakeholders on the impact for island communities. No specific issues relating to the impact of the proposals on island communities were raised by respondents. However, the Scottish Government is aware that there could be potential impacts in relation to the following provisions:

- establishing a register of Child Welfare Reporters;
- amending the procedure in relation to local authority reporters appointed in cases under section 11 of the 1995 Act;
- regulation of child contact centres;
- prohibiting personal conduct of a case in proceedings involving vulnerable parties or victims of offences; and
- placing a duty on local authorities to promote contact between looked after children and siblings.

Child Welfare Reporters

10. Child Welfare Reporters (CWR) are appointed by the court in cases under section 11 of the 1995 Act, either to seek the views of the child and report any views expressed by the child to the court; or to undertake enquiries and report to the court. Current CWRs are on lists held by each sheriff principal or the Court of Session. The court can then appoint a CWR on the appropriate regional lists to produce a report.

11. The Bill requires the Scottish Ministers to establish and maintain a register of CWRs and provides a power to set eligibility criteria, training requirements and fee rates, to ensure standards of quality and consistency are

⁴ https://consult.gov.scot/family-law/children-scotland-act/consultation/published_select_respondent

⁵ <https://www.gov.scot/publications/analysis-consultation-responses-consultation-review-children-scotland-act-1995/>

in place. The Bill provides that a court may only appoint as a CWR a person who is included on the register.

12. The Scottish Government are aware that there may be an impact on island communities if, as a result of regulation, there were fewer CWRs available in a specific location. However, the Scottish Government considers that as the list is to be held at a national level this could mean that a CWR who is not based within a specific region could be appointed to produce a report on the best interests of a child living on a Scottish island. Since, under the new provisions, the cost of all child welfare reports will be met by the Scottish Government, including any travelling expenses incurred by the CWR in the course of making their enquiries, this should not have an effect on island communities.

13. In addition, establishing a register of CWRs will ensure that all CWRs are sufficiently trained in areas such as domestic abuse. This will promote the best interests of the child.

Local authority reports

14. In cases under section 11 of the 1995 Act, the court may appoint a local authority to report on a child. This power is set out in section 11 of the Matrimonial Proceedings (Children) Act 1958. The Scottish Government understands that in certain areas of Scotland the courts use these provisions to order child welfare reports from local authority social work departments. For example, it is understood that this is the case in the Comhairle nan Eilean Siar. Figures from Comhairle nan Eilean Siar show that in 2018 they produced 25 child welfare reports.

15. Under the new scheme, a local authority employee who wishes to continue to act as a CWR would need to apply to be on the register and meet the required eligibility criteria.

16. The Scottish Government are aware that there may be an impact on island communities if the new regulations were to result in a reduction in the number of people eligible in that area to provide a child welfare report.

17. However, the Scottish Government considers that this should not have a negative impact on island communities as a CWR appointed to produce a report on a child living in an island community could live elsewhere in Scotland. There would be no cost implications to the parties as the Scottish Government will fund all CWR costs including travel expenses. In addition, eligibility criteria for CWRs would not be limited to lawyers and the Scottish Government would plan to encourage more social workers and other professionals to apply to be on the list of CWRs. Therefore, if a social worker wished to continue to produce child welfare reports they would be eligible to apply to be added to the register if they can demonstrate that they meet the required standards.

18. These provisions are aimed at ensuring that all individuals appointed to undertake a report on the best interests of the child are sufficiently trained.

Therefore, this provision could benefit children living in island communities.

19. There is also likely to be savings to local authorities in island communities under the new scheme, since child welfare reports will be funded by the Scottish Government. Currently any reports carried out by social work departments are funded by local authorities.

Child contact centres

20. Child contact centres are safe venues for conflict-free contact between children, parents, and other people in the child's life. Contact centres offer a mixture of supported and supervised contact. Regulation of child contact centres will include setting minimum standards that services must meet on matters such as accommodation and staff training. There will also be a body appointed to oversee regulation, carry out inspections and deal with complaints.

21. There is currently a contact centre service in Orkney which is a member of the Relationships Scotland (RS) network. The RS network includes 41 of the 44 child contact centre services in Scotland. In consultation with RS there is no concern that the centre in Orkney would have any difficulty in continuing its service once regulation is introduced since all RS contact services already operate to national policies and guidelines.

22. The Bill also places a requirement on courts, when making an order for contact to take place at a contact centre, to order that contact must take place at a regulated centre. The Scottish Government are aware that there may be an impact on island communities where there are currently no child contact services. For example, there is currently no child contact centre service in the Western Isles or Shetland.

23. Court ordered contact in the Western Isles and certain other islands where there is no child contact centre service currently takes place on mainland Scotland, and the new provisions will not change this. Therefore, the Scottish Government do not consider that these provisions will cause any further impact on island communities in this regard.

Prohibition of personal conduct of case

24. The Bill introduces a new special measure into the Vulnerable Witnesses (Scotland) Act 2004 prohibiting a party from personally conducting 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. If a party has been prohibited from personally conducting the remainder of their case then they may appoint a lawyer themselves (either privately funded or through applying in the usual way for legal aid), or if they fail to do so the court has a duty to appoint a lawyer. The party will not bear the cost of this legal representation.

25. The Bill also gives the Scottish Ministers the power to establish a list of lawyers from which a lawyer can be appointed if a party fails to appoint one

themselves. The regulations will specify the criteria a lawyer must meet to be eligible to be on the list.

26. The Scottish Government are aware that they may be an impact on island communities in relation to ensuring there are a sufficient number of lawyers appointed to the list to cover those areas. When the Scottish Government undertake a recruitment round they will ensure that there are a sufficient number of lawyers on the list who would be able to act for parties who are based on Scottish Islands.

27. The Scottish Government consider that the number of cases across Scotland in which these special measures will apply will be very low. Firstly, the provisions only apply to evidential hearings and very few section 11 cases proceed to proof⁶. Secondly, in the majority of cases parties will be eligible for legal aid and will already have legal representation⁷. The Scottish Government consider that this will also be the position in island communities.

Placing a duty on local authorities to promote contact between looked after children and siblings

28. The Bill places a duty on local authorities to promote contact between looked after children and siblings. The policy is to ensure that priority is given to the child/sibling relationship at the earliest point when children are being taken into care.

29. The Scottish Government consider that this may have an impact on island communities as a local authority may have to fund travel for a sibling who is living on an island to visit another sibling. The costs of this may be more significant than if both siblings lived in mainland Scotland. However promotion of contact can take various forms and need not always be in person, depending on the welfare needs of the child.

Conclusion

30. The Scottish Government has ensured that there will be no new unique impacts on islands communities as a result of the Bill provisions. Likewise, from consultation with relevant stakeholders the Bill provisions are not considered to have a significantly different effect on island communities as compared to other communities. Similarly there will be no financial impact for island communities in isolation resulting from the provisions.

⁶ Based on figures from Scottish Courts and Tribunals Service in 2018/19 there were 239 cases for parental responsibilities and rights for which proof proceeded.

⁷ The Scottish Government does not have hard figures on the number of party litigants but from speaking to stakeholders it is estimated that around 10% - 15% of litigants in family cases represent themselves.



© Crown copyright 2019

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: 978-1-83960-112-5 (web only)

Published by The Scottish Government, September 2019

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA PPDAS619710 (09/19)

w w w . g o v . s c o t