

Family Justice Modernisation Strategy

September 2019

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Ministerial Foreword

The Family Justice Modernisation Strategy results from the consultation last year on potential changes to Part 1 of the Children (Scotland) Act 1995 (the 1995 Act) and related matters. Part 1 of the 1995 Act covers parental responsibilities and rights. It also covers contact and residence cases relating to children when parents are separated or are not together.

I would like to thank all the individuals and organisations, including many children and young people, who took time to respond to the consultation and to take part in events that we ran last summer. The information that we gathered has helped us develop our next steps.

The Children (Scotland) Bill was introduced to the Scottish Parliament on 2 September 2019. The key policy aims of the Bill are to:

- ensure that the child's best interests are at the centre of any contact and residence case or Children's Hearing;
- ensure that the views of the child are heard;
- further protect victims of domestic abuse and their children in family court proceedings; and
- ensure further compliance with the principles of the United Nations Convention on the Rights of the Child (UNCRC).

Primary legislation is only part of the work needed to improve the operation of family justice. The Family Justice Modernisation Strategy sets out:

- work that is ongoing by the Scottish Government and others;
- work that can be done through secondary legislation or by improved guidance;
- areas covered by the Bill; and
- areas that are for longer-term work.

I look forward to engaging with people, including children and young people, during the passage of the Children (Scotland) Bill and on the Family Justice Modernisation Strategy.

Ash Denham
Minister for Community Safety

Glossary of Terms

Note: On-line access to legislation is available at legislation.gov.uk.¹

“1965 Act” – The Registration of Births, Deaths and Marriages (Scotland) Act 1965

“1986 Act” – The Family Law Act 1986

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

“2006 Act” – The Family Law (Scotland) Act 2006

“2011 Act” – The Children’s Hearings (Scotland) Act 2011

“Child” – defined in section 1(2) of the 1995 Act as a person under the age of 16 for the purposes of parental responsibilities and rights apart from in relation to parents providing guidance where a child covers a person under the age of 18.

“Child Welfare Hearing” – when contact disputes reach court they are usually heard in Child Welfare Hearings. 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 people who prepare reports on the best interests of the child or seek the views of the child.

“Children’s Hearing” – this is a legal meeting (often just called a Hearing), that children and young people are sometimes required to go to with their families or carers if there are concerns about the child or young person.

“Children’s Hearings Scotland” – Children’s Hearings Scotland is a public body with a role of recruiting, training and supporting around 2,500 skilled volunteer Panel Members who sit on Children’s Hearings.

“Children’s Hearings System” – the Children’s Hearings System deals with children and young people in Scotland under the age of 18 who are in need of help. The two main reasons why the Children’s Hearings System will help a child or young person are because they are in need of care and protection or because they have got into trouble with the police.

“Contact and residence cases” – used generally to refer to any proceedings where the court is considering whether to make an order for contact or residence under section 11(1) of the 1995 Act.

“Contact centre” – venue for facilitating contact between children, parents and other people in the child’s life.

¹ <http://www.legislation.gov.uk/>

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

“ECHR” – European Convention on Human Rights.² An international treaty which protects human rights and fundamental freedoms in Europe. The Scottish Ministers are required to act compatibly with the terms of the ECHR.

“FLC” – the Family Law Committee of the Scottish Civil Justice Council. 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
- report to the Scottish Civil Justice Council with its recommendations and, where applicable, draft rules of court.³

“Legal Aid” – publicly funded legal assistance allowing people 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 court judiciary.

“Principal Reporter” – an independent official within the Children’s Hearings System with powers to delegate functions to other officers in particular Children’s Reporters.

“primary legislation” – Acts of Parliament.

“proof” – final stage of court proceedings at which a sheriff determines a case after hearing evidence.

“PRRs” – parental responsibilities and rights as defined in the 1995 Act.

“Relevant Person” – someone who has the right to attend a Children’s Hearing and get information about it. A Relevant Person can be a parent (biological or adoptive) of the child, or someone with parental responsibilities. In addition, a hearing or pre-hearing panel can decide that someone should be treated as a Relevant Person because they have or recently have had, significant involvement in a child or young person’s upbringing. This is called “deeming” someone to be a Relevant Person. Someone with deemed Relevant Person status can have this reviewed at a later date if they no longer have significant involvement with the child or young person.

² https://www.echr.coe.int/Documents/Convention_ENG.pdf

³ <https://www.scottishciviljusticecouncil.gov.uk/committees/family-law-committee>

“SCJC” – the Scottish Civil Justice Council 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.

“SCRA” – the Scottish Children’s Reporter Administration is a national body focused on children and young people most at risk. Its main responsibilities are to facilitate the work of Children’s Reporters, to deploy and manage staff to carry out that work and to provide suitable accommodation for Children’s Hearings.

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

“Secondary legislation” – forms of law that are not primary legislation. This includes statutory instruments.

“Section 11 Order” – an order made by either the Court of Session or the sheriff court under section 11(1) of the 1995 Act in relation to parental responsibilities and rights, guardianship, the administration of a child’s property, who a child lives with or who a child should maintain personal relations and direct contact with.

“Sheriff” – a judge in the sheriff court. Sheriffs deal with the majority of civil and criminal court cases in Scotland. Sheriffs hear almost all family cases including divorce, child welfare, adoptions and Children’s Hearings’ cases.

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

“UNCRC” – the United Nations Convention on the Rights of the Child.⁴ An international treaty which covers all aspects of a child’s life and sets out the civil, political, economic, social and cultural rights that all children are entitled to and how adults and governments must work together to make sure all children can enjoy their rights. The Scottish Ministers have duties under the Children and Young People (Scotland) Act 2014 to keep under consideration whether there are any steps which they could take to give better or further effect to the UNCRC requirements. The Scottish Government has consulted on incorporating the UNCRC into Scots Law.⁵

⁴ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

⁵ <https://www.gov.scot/publications/childrens-rights-consultation-incorporating-uncrc-rights-child-domestic-law-scotland/>

Part 1: Introduction

1.1 The 1995 Act is centred on the needs of children and their families. It defines parental responsibilities and rights in relation to children. It also sets out the duties and powers available to public authorities to support children and their families and to intervene when the child's welfare requires it.

1.2 The Scottish Government sought views last year on reforming Part 1 of the 1995 Act and on creating a Family Justice Modernisation Strategy.

1.3 In addition to the full consultation, the Scottish Government produced child friendly questions which were available via SurveyMonkey. The Scottish Government received approximately 250 responses to the main consultation and 300 to the child friendly survey. The consultation document, the responses, where the Scottish Government have permission to publish them, and an analysis report are available online.⁶

1.4 During the consultation period the Scottish Government met with a range of individuals to hear their experiences of the family justice system. This included a number of events with children and young people.

1.5 The Scottish Government also asked the Children's Parliament to engage with children to explore their views and ideas on themes raised in the consultation. The Children's Parliament published a report on their findings.⁷

Next steps following consultation

1.6 The Scottish Government has continued to meet with organisations and individuals since the consultation closed. This includes meeting with children and young people. These meetings have helped to develop ideas on next steps.

1.7 The Children (Scotland) Bill was introduced in the Scottish Parliament on 2 September 2019. The key policy aims of the Bill are to:

- ensure that the child's best interests are at the centre of any contact and residence case or Children's Hearing;
- ensure that the views of the child are heard;
- ensure further compliance with the principles of the United Nations Convention on the Rights of the Child (UNCRC) in the family courts.

1.8 In cases involving domestic abuse, the Scottish Government wants to ensure that victims and children are protected appropriately during the family court process.

⁶ <https://www2.gov.scot/Topics/Justice/law/17867/review-of-children-scotland-act-1995>

⁷ <https://www.childrensparliament.org.uk/our-work/past-work/children-scotland-act-1995/>

1.9 The Scottish Government recognises that primary legislation is only part of the action necessary to improve how family justice works. This strategy sets out work that is ongoing by Scottish Government and others; work that can be done via secondary legislation or by improved guidance; areas covered by the Bill; and areas that are for longer term work.

1.10 The strategy also sets out the reasons why certain areas that were in the consultation last year on the review of the 1995 Act are not being taken forward.

1.11 Each chapter of the strategy provides background to issues that were consulted upon or are of relevance then covers the aims of the Scottish Government in each area and the actions that are proposed by the Scottish Government.

Comments

1.12 If you have any comments about the Family Justice Modernisation Strategy please send them by email to family.law@gov.scot or by hard copy to:

Family Law Team
Room GW-15
St. Andrew's House
Regent Road
Edinburgh
EH1 3DG

Part 2: Views of the child

Background

2.1 The consultation on the review of the 1995 Act sought views on a number of areas in relation to obtaining the views of the child:

- removing the presumption that a child aged 12 or over is mature enough to give their views;
- ensuring there are a variety of ways for a child to give their views;
- providing feedback to a child; and
- regulating Child Welfare Reporters and curators ad litem.

Removing the presumption that a child aged 12 or over is mature enough to give their views

2.2 Part 1 of the 1995 Act requires the court, taking into account the child's age and maturity, to give a child the opportunity to express their views. Part 1 also provides that a child who is aged 12 or over is presumed to be mature enough to form a view. When the 1995 Act was drafted the intention was not for this provision to limit children under the age of 12 from giving their views.

2.3 However, the Scottish Government has heard from stakeholders that the current presumption is meaning in some circumstances that the views of younger children are not being heard.

Ensuring there are a variety of ways to obtain the views of the child

2.4 Currently, in general, children themselves do not appear in person in section 11 cases. The views of a child currently can be taken in a range of ways. These include:

- a form (F9) to be completed by children,⁸ outlining their views;
- court ordered reports, prepared by Child Welfare Reporters;
- speaking directly and in private to sheriffs; and
- representation by a solicitor.

2.5 The FLC has recently revised the form F9 that is used to obtain the views of the child to make it more child friendly. The revised form has been in use since 24 June 2019.

⁸ [https://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/forms/sheriff-court-forms/ordinary-cause-forms/form-f09\(actions-or-minutes-to-vary-lodged-on-or-after-24-june-2019\).doc?sfvrsn=10](https://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/forms/sheriff-court-forms/ordinary-cause-forms/form-f09(actions-or-minutes-to-vary-lodged-on-or-after-24-june-2019).doc?sfvrsn=10)

Providing feedback to a child

2.6 There is no specific requirement at present for the court's decision to be explained to the child at the centre of the case. Feedback may be provided through a parent or parents. This can place additional pressure on parents. It could also mean that the information provided to a child in some cases is not impartial.

Regulation of Child Welfare Reporters and curators ad litem

2.7 A Child Welfare Reporter can be appointed by the court either to seek the views of the child and report any views expressed by the child to the court, or to undertake enquiries into the best interests of the child and report to the court.

2.8 The existing Child Welfare Reporters are on lists held by the Court of Session and the six sheriffs principal. There are no formal training or qualification requirements for Child Welfare Reporters and their appointment to the list is not time limited.

2.9 The Scottish Government chaired a Working Group on Child Welfare Reporters between 2013 and 2016.⁹ This led to a number of outputs including a guide to the child welfare report, instructions to Child Welfare Reporters, changes to court rules (more on this below), a change in the name from Bar Reporters to Child Welfare Reporters and proposed training requirements.

2.10 In October 2015, changes were made to the Ordinary Cause Rules for family cases in the sheriff court in relation to the use of Child Welfare Reporters. A new form of interim order or decision (interlocutor) was introduced for sheriffs to complete when requesting a child welfare report. In the interlocutor making the appointment, the sheriff must specify exactly what the Child Welfare Reporter will do and what their report should contain. At the same time the Ordinary Cause Rules were also amended to create a presumption that, so far as meeting the costs of a child welfare report were concerned, parties would share this equally in the first instance unless cause could be shown to do otherwise.

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

⁹ <http://www.gov.scot/Topics/Justice/law/17867/reporters>

Aim

Presumption that a child aged 12 or over is mature enough to give their views

2.12 The Scottish Government believes that with the appropriate support and by offering a number of ways of communicating, children, even young children, are able to give their views on who they should live with or have contact with. The Scottish Government appreciates that there may be cases where, for example, a very young child is not able to give their views.

2.13 A child who is capable of forming their view being given the opportunity to do so is supported by Article 12 of the UNCRC which provides that: “States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”¹⁰

2.14 Ensuring the child’s views are heard does not mean that the views of the child have to be followed in all cases. The court might decide, after considering all relevant factors, that the best interests of the child are met by an outcome that goes against the views of the child.

Variety of ways for a child to give their views

2.15 The Scottish Government considers that when seeking the views of a child the decision maker should allow the views to be given in a manner suitable to the child.

Feedback of decisions to a child

2.16 Following on from the recommendations in Power Up/Power Down¹¹ the Scottish Government recognises the need for important decisions to be explained to a child, in a way that they would be able to understand, by an impartial individual.

Regulation of Child Welfare Reporters and curators ad litem

2.17 The Scottish Government considers that to ensure the best interests of the child are at the centre of any case under section 11 of the 1995 Act, Child Welfare Reporters and curators ad litem should have suitable and consistent training. This will ensure awareness of relevant matters, such as the impact of domestic abuse and coercive control.

¹⁰ <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>

¹¹ <https://www.cypcs.org.uk/policy/past-work/power-uppower-down/>

Actions

Removing the presumption that a child aged 12 or over is mature enough to give their views

2.18 Sections 1 to 3 of the Children (Scotland) Bill remove the legal presumption that a child aged 12 or over is considered mature enough to give their views in sections 6, 11 and 16 of the 1995 Act, as well as in sections 14 and 84 of the Adoption and Children (Scotland) Act 2007 and section 27 of the 2011 Act.

Ensuring there are a variety of ways to obtain the views of the child

2.19 The Bill requires decision makers to give the child a suitable opportunity to express their views. This requires the individual or organisation obtaining the views of the child to consider a range of options on how the views are provided.

2.20 A number of the respondents to the consultation on the Review of the 1995 Act were in favour of a child support workers scheme being set up. This is supported by the outcomes of Power Up/Power Down. The Scottish Government is aware that in certain areas of the country there are already child support workers but this is not consistent across Scotland.

2.21 The Scottish Government considers that child support workers may be useful in supporting children to give their views or to explain the outcome of decisions to children. However, to ensure the best interests of the child are met there would need to be minimum standards of training and experience set out in legislation.

2.22 There is currently work being undertaken by various parts of the Scottish Government in relation to child support workers. For example the 2011 Act allows the Scottish Ministers to make provision in relation to children's advocacy services in the Children's Hearings system.

2.23 The Scottish Government is concerned that establishing a system of child support workers at the present time may result in children who are involved in Children's Hearings, a case under section 11 of the 1995 Act and a criminal case having multiple child support workers appointed. This would not be in the best interests of the child. In addition, it may require individuals who wish to be on the list of child support workers to be registered multiple times.

2.24 Therefore, the Scottish Government proposes to consider further whether to introduce child support workers to ensure that any new system would work with existing systems and other proposed work.

Requiring the court to explain decisions to a child

2.25 Section 15 of the Bill requires the court to consider whether it is in the best interests of the child to receive an impartial explanation of certain decisions in cases under section 11 of the 1995 Act.

2.26 Where the court considers it in the best interests of the child to provide an explanation then they must arrange for this to either be done by the court itself or by appointing a Child Welfare Reporter. Not all decisions would need to be explained as there are often a number of Child Welfare Hearings which may only be procedural.

Regulation of Child Welfare Reporters and curators ad litem

2.27 Section 8 of the Bill establishes a register of Child Welfare Reporters which will be maintained by the Scottish Ministers. Only a registered Child Welfare Reporter will be able to be appointed by a court.

2.28 Section 13 of the Bill also establishes a register of curators ad litem to be appointed in cases under section 11 of the 1995 Act. This will be a similar register to that of Child Welfare Reporters.

Implications for court rules

2.29 The Scottish Government will produce a paper for the FLC in 2020 on implications of the Bill in relation to matters such as rules of court.

Part 3: Contact

Background

3.1 The consultation on the review of the 1995 Act sought views on a number of areas in relation to contact between children and various individuals who are important to them, in particular:

- the use of child contact centres to maintain relationships with an individual a child does not live with;
- a child's relationship with grandparents; and
- ensuring that orders under section 11(1) of the 1995 Act are complied with.

Child contact centres

3.2 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. Supported contact is where there is no significant risk to the child and therefore contact centres only record that the contact took place and not details of how it went. Supervised contact is where contact takes place in the constant presence of an independent person who observes and ensures the safety of those involved. Contact centres also provide a handover service where one parent drops the child off to be picked up by the other parent. This means that the parents don't have to see each other during the handover.

3.3 There are currently 41 contact centres across Scotland who are members of Relationships Scotland. In addition, the Scottish Government are aware of three independent centres (i.e. not part of the Relationships Scotland network) in Aberdeen, Inverclyde and Glasgow.

3.4 Contact centres are not currently subject to any regulation in relation to the standard of accommodation or training of staff.

Child contact with grandparents

3.5 The Scottish Government recognises the important role that grandparents can play in many families in relation to bringing up children. Research shows that grandparents may be an important source of support for their grandchildren particularly at times of family crisis, such as parental divorce.¹²

3.6 Section 11(3)(a)(i) of the 1995 Act allows any person who does not have (and has never had) parental responsibilities or rights but who 'claims an interest' in a child to apply to the court to seek an order in relation to contact. This provision could allow a grandparent to apply to the court to seek contact with their grandchild.

¹² Jappens M. Van Bavel J. 2015 Parental divorce, residence arrangements, and contact between grandchildren and grandparents Journal of Marriage and Family volume 78 issue 2 p451-467.

3.7 In 2006 the Scottish Government introduced the Charter for Grandchildren.¹³ This highlights the role of the wider family and it sets out that grandchildren can expect, amongst other things, to know and maintain contact with their wider family except in very exceptional circumstances.

3.8 In April 2018 the Scottish Government published *Your Parenting Plan*,¹⁴ providing a comprehensive guide for parents who live apart or who are separating on agreeing practical arrangements for the care and wellbeing of their children. Included in this was a republication of the 2006 Charter for Grandchildren, further promoting the importance of grandparents and the wider family in a child's life. The guide also contains useful information on sources of specialist support and advice for parents and others with parental responsibilities and rights.

Ensuring that orders under section 11(1) of the 1995 Act are complied with

3.9 Currently, if someone believes an order under section 11(1) of the 1995 Act has not been complied with, the person can go back to court and:-

- seek a further order (such as a variation of the order or a switch in residence); and/or
- ask the court to hold the person breaching the contact order in contempt of court.

3.10 An application to vary a section 11 order is made to the court that originally granted the order. This can be done by a minute which details the changed circumstances and asks the court to vary the order. The other party is allowed to reply to this application. The court can either make an interim variation based upon written submission by parties or can require a hearing.

3.11 Concerns have been raised by some stakeholders that resident parents are deliberately not complying with orders, whilst other stakeholders argue that orders have not been complied with due to safety concerns for the child in question.

¹³ <https://www.gov.scot/publications/parenting-plan-charter-grandchildren/>

¹⁴ <https://www.mygov.scot/parentingplan/>

Aim

Child contact centres

3.12 The Scottish Government believes that establishing minimum standards for contact centres and their staff in relation to training and accommodation will help ensure that all contact centres are safe locations.

3.13 The Scottish Government considers that all referrals by courts in section 11 cases and by lawyers should be to a regulated centre.

Child contact with grandparents

3.14 The Scottish Government wants to make Scotland the best place in the world for children and young people to grow up. The 2012 National Parenting Strategy highlights the importance of creating and maintaining healthy relationships within families and communities. The Scottish Government recognises the importance of parents and the wider family, including grandparents, in a child's life and wants to ensure that grandchildren can expect, amongst other things to know and maintain contact with their wider family, except in very exceptional circumstances.

Ensuring that orders under section 11(1) of the 1995 Act are complied with

3.15 The Scottish Government considers that it is in the best interests of the child involved for orders under section 11(1) of the 1995 Act to be complied with.

3.16 Where an order is not complied with there may be in some cases a simple explanation, for example the child was unwell. In other cases, the situation may be more complex, for example, where concerns are raised about the safety of the child in question. The Scottish Government considers that understanding the reasons behind non-compliance could help the court to ensure the order remains in the child's best interest.

Actions

Child contact centres

3.17 Section 9 of the Children (Scotland) Bill gives the Scottish Ministers the power to regulate the provision of contact services including minimum standards in relation to training of staff and accommodation for contact centres. The Bill also gives the Scottish Ministers the power to appoint a body to oversee the standards and report on the standards on a regular basis. The Bill provides that where a court in a section 11 case orders contact at a contact centre, this must be at a regulated centre.

3.18 The Scottish Government has been meeting with Relationships Scotland and also the three independent centres. These discussions include how contact centres can improve in advance of legislation. The Scottish Government will continue to meet regularly with contact centres.

3.19 The Scottish Government will write to the Law Society of Scotland and Faculty of Advocates to seek their views on issuing guidance encouraging lawyers when referring clients to a contact centre to refer them to a regulated centre.

Contact with grandparents

3.20 The Scottish Government has not included a specific provision in the Bill on the relationships between a grandparent and a child as the Scottish Government believes that such a provision could cut across the key principle in the legislation that the welfare of the child is the court's paramount consideration. In addition, making specific provision in respect of grandparents would also raise questions on whether there should be specific provision for other family members.

3.21 However, the factors to be considered before making an order in section 12 of the Bill requires the court to consider, when deciding whether or not to make an order, the effect that the order might have on the child's important relationships with other people. This could include the child's relationship with their grandparents.

3.22 The Scottish Government proposes to continue to promote the Charter for Grandchildren.

Non – compliance with orders under section 11(1) of the 1995 Act

3.23 The Scottish Government considered whether to amend the existing procedure for when an order has not been complied with. The Scottish Government does not consider the option of making a breach of a contact order a criminal offence to be a useful option as this could mean more family cases would be dealt with in the criminal court. In addition, it may be disproportionate to introduce criminal offences in this area given that the person would receive a criminal record.

3.24 The Scottish Government also considered whether to create a new enforcement route outwith contempt of court. This could allow the court to order an individual to attend a parenting class, mediation or unpaid work. The Scottish Government is aware of concerns about the use of mediation in circumstances where there has been domestic abuse. There are also concerns that requiring a person to attend a parenting class or do unpaid work may take a parent away from a child and could have a negative impact on the child.

3.25 Therefore, the Scottish Government has not amended the contempt of court route but has included in section 16 of the Bill provision that places a duty on the court to investigate the reasons for non-compliance with an order. This can be done either by the court itself or by the court appointing a Child Welfare Reporter. This option was supported by consultation responses.

Part 4: Protecting victims of domestic abuse

Background

4.1 The consultation on the review of the 1995 Act sought views on a number of areas in relation to protecting victims of domestic abuse and their children in family court cases including:

- banning of personal cross examination of domestic abuse victims in family court cases and Children’s Hearings court proceedings;
- protection of victims and vulnerable parties in Child Welfare Hearings;
- preventing repeated litigation;
- ensuring the civil courts are provided with information on domestic abuse in actions under section 11 of the 1995 Act; and
- improving interaction between criminal and civil courts in the context of domestic abuse.

4.2 In addition to the consultation on the 1995 Act, work in this area is being led by the Scottish Government’s Violence Against Women and Girls & Barnahus Justice Unit in relation to trauma training for professionals.

4.3 The Scottish Government also consulted from December 2018 – March 2019 on protective orders for people at risk of domestic abuse.¹⁵ This consultation sought views on creating new protective orders to keep people at risk of domestic abuse safe by banning perpetrators from their homes.

Banning of personal questioning of domestic abuse victims

4.4 Currently, there is no ban on individuals who have been convicted of domestic abuse or who have allegations of domestic abuse against them personally questioning their victim or alleged victim or their children during a contact and residence case. This could put vulnerable adults and children at risk of continuing abuse.

4.5 At present, not many contact and residence cases go to proof (the stage of court proceedings at which the court determines question of fact after hearing evidence).¹⁶ Instead, such cases tend to go through a series of Child Welfare Hearings.

4.6 As the consultation on the 1995 Act indicated, a number of other jurisdictions have introduced provisions restricting personal cross examination of domestic abuse victims for family court cases including New Zealand. In England and Wales the Domestic Abuse Bill which was introduced to the House of Commons on 16 July

¹⁵ <https://www.gov.scot/publications/consultation-protective-orders-people-risk-domestic-abuse/>

¹⁶ Statistics from SCTS suggest that in 2018/19 there were 3,554 family cases raised which involved children. During the same period there were 239 cases that proceeded to proof.

2019 includes provisions restricting cross examination in person in family proceedings.¹⁷

4.7 The Domestic Abuse (Scotland) Act 2018¹⁸ prohibits someone accused of domestic abuse from personally conducting their own defence. Similar prohibitions already exist for some other types of offences (for example those involving certain sexual offences). Where the prohibition applies, the defence must be conducted by a lawyer.

Protection of victims and vulnerable parties in Child Welfare Hearings

4.8 Concerns were raised by domestic abuse victims during stakeholder events and consultation responses that in Child Welfare Hearings they have to sit at the same table as their abusers. This matter was discussed at the FLC's sub-committee on case management in family actions which reported in October 2017.¹⁹

4.9 As part of the work by the FLC, the SCTS conducted a short survey of 15 courts of various sizes throughout Scotland.²⁰ A third of the courts surveyed indicated that there was an automatic separation of parties at all Child Welfare Hearings, whilst the remainder said that suitable arrangements could be made if advised by solicitors or parties in advance of the hearing. The courts rely on parties bringing to their attention possible issues in relation to domestic abuse. More than half the courts surveyed did not receive any formal applications by parties for excusal on the basis of a domestic abuse context. Only two of the 15 courts surveyed had received applications from individuals to use a live television link to avoid being in the same room as the other individual.

Preventing repeated litigation

4.10 During stakeholder meetings as part of the consultation on the 1995 Act, the Scottish Government heard that domestic abusers can seek to continue their abuse by introducing repeated court actions without merit. However, others noted that an order can only be varied on a relevant change in circumstances. In some situations, varying an order may be in the best interests of the child as circumstances may have changed.

¹⁷ See clause 75 <https://services.parliament.uk/Bills/2017-19/domesticabuse.html>

¹⁸ <http://www.legislation.gov.uk/asp/2018/5/contents>

¹⁹ <http://www.scottishciviljusticecouncil.gov.uk/committees/family-law-committee/23-october-2017-papers>

²⁰ <https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/flc-meeting-files/05-february-2018/paper-2-1a---scts-report-on-steps-taken-in-child-welfare-hearings-where-there-is-an-allegation-of-domestic-abuse---private.pdf?sfvrsn=2>

Ensuring the civil courts are provided with information on domestic abuse in actions under section 11 of the 1995 Act

4.11 The Scottish Government is aware that research has shown that domestic abuse is alleged in half of all court actions over contact raised by a parent in Scotland.²¹

4.12 Parties may indicate in their initial pleadings or defences that they have been subjected to domestic abuse. In addition, a child welfare report may note any allegations of domestic abuse. However, there is no guarantee that information on domestic abuse is available to the court when they are dealing with a case under section 11 of the 1995 Act.

Improving interaction between criminal and civil courts in the context of domestic abuse

4.13 As noted in the consultation on the review of the 1995 Act the Scottish Government is aware that integrated domestic abuse courts exist in some other jurisdictions.

4.14 Different models of Integrated Domestic Abuse Courts are in operation in a number of other jurisdictions.

Trauma training for professionals

4.15 In Programme for Government 2018-19 the Scottish Government committed to developing an adversity and trauma informed workforce that are able to respond to the needs of everyone affected by psychological trauma, including victims of domestic abuse.

4.16 The National Trauma Training Programme was launched in 2018 to support the Scottish workforce to respond to psychological trauma. The programme is led by NHS Education for Scotland and is consistent with “*Transforming Psychological Trauma*”, the first Knowledge and Skills Framework for the Scottish workforce (2017) and the Scottish Psychological Trauma Training Plan (2019), which offers practical guidance to employers on how to develop, commission and embed the use of high quality trauma training to support the development of a trauma-informed workforce.

²¹ Mackay K. 2013. The treatment of the views of children in private law child contact disputes where there is a history of domestic abuse. <https://www.cypcs.org.uk/ufiles/views-of-children-and-domestic-abuse.pdf>

Consultation on protective orders for people at risk of domestic abuse

4.17 Research by Scottish Women's Aid highlights that domestic abuse is a significant cause of homelessness in Scotland.²² It was also noted during the passage of the Domestic Abuse (Scotland) Bill through Parliament that it can be very difficult for those suffering or at risk of suffering from domestic abuse, the majority of whom are women often with caring responsibilities for children, to remain in their own home when attempting to leave an abusive partner.

4.18 The 2018 Programme for Government committed the Scottish Government to consult on the creation of new protective orders in this area and on whether any changes are needed to the existing provisions on exclusion orders.

Aim

4.19 A key aim is to ensure that vulnerable parties, especially individuals who have experienced domestic abuse and their children, are protected in cases under section 11 of the 1995 Act. The Scottish Government is aware that attending court can be a stressful experience and recognises there is a need to reduce the stress of attending court and ensure that parties are able to participate fully in the court proceedings.

4.20 A further aim is to ensure that the civil courts are aware of any allegations or convictions for domestic abuse when considering whether to make an order under section 11(1) of the 1995 Act.

4.21 The aim of the consultation on protective orders for people at risk of domestic abuse and the trauma informed training is to further protect victims of domestic abuse.

Actions

Banning of personal cross examination of domestic abuse victims

4.22 Section 4 of the Children (Scotland) Bill introduces a new special measure into the Vulnerable Witnesses (Scotland) Act 2004 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(1) of the 1995 Act and in Children's Hearings court proceedings.

4.23 If a party has been prohibited from personally conducting the remainder of their case they may appoint a lawyer themselves (either privately funded or through applying in the usual way for legal aid). If the party fails to appoint a lawyer themselves the court has a duty to appoint a lawyer. The party will not bear the cost of this legal representation.

²² <https://womensaid.scot/wp-content/uploads/2017/07/Change-Justice-Fairness.pdf>

4.24 Section 6 of the Bill also gives the Scottish Ministers the power to establish a register of lawyers from whom a lawyer is to be appointed if a party fails to appoint one. The Scottish Ministers may by regulations specify the criteria a lawyer must meet to be eligible to be on the register and may also make provision about other matters, such as the fee rates payable.

Protection of victims and vulnerable parties in Child Welfare Hearings

4.25 Section 7 of the Bill gives the court the power to order a range of special measures in relation to a party if attending or participating in hearings is likely to cause the party distress which could be alleviated by use of a special measure. The court may order that the proceedings be conducted with the use of video link, with the use of screens or with a supporter. The measures in the Bill are similar to existing special measures used in the different context of assisting vulnerable witnesses when giving evidence in other civil and criminal proceedings.

Preventing repeated litigation in family cases

4.26 The Scottish Government proposes to make regulations under section 102 of the Courts Reform (Scotland) Act 2014 (the 2014 Act) in relation to family cases under section 11 of the 1995 Act. Section 102 of the 2014 Act enables the Scottish Ministers, after consultation with the Lord President, to make regulations allowing the Court of Session, the sheriff court or the Sheriff Appeal Court to make an order in relation to a person who has behaved in a vexatious manner in civil proceedings.

Ensuring the civil courts are provided with information on domestic abuse in actions under section 11 of the 1995 Act

4.27 The Scottish Government proposes to submit a policy paper to the next meeting of the FLC which will include discussion of this issue. The Scottish Government will then consider next steps based on the outcome of the FLC meeting.

Improving interaction between criminal and civil courts in the context of domestic abuse

4.28 The Scottish Government has conducted research into the operation of integrated domestic abuse courts in other jurisdictions. This research has been published alongside this strategy.

4.29 The research found that there are a variety of different court models which share the desired outcomes of improving interaction between the criminal and civil justice system.

4.30 The process of scheduling criminal and family court matters together to be heard by one judge in Scotland entails a number of practical considerations. There are issues of legal prejudice, rights of audience, consent and information sharing. The Scottish Government considers that these issues need to be considered further.

4.31 As indicated in paragraph 4.27 above the Scottish Government will produce a policy paper for the FLC covering domestic abuse. In due course the Scottish Government will also prepare a general discussion paper for key stakeholders on improving interaction between criminal and civil courts.

Trauma training

4.32 The Judicial Institute for Scotland has launched training for all sheriffs and judges to support the implementation of the new domestic abuse legislation which came into force in April this year. All judges in Scotland will also be allocated to one of eight face-to-face domestic abuse courses taking place in the Institute's purpose-built judicial learning suite over the course of 2019.

4.33 The face-to-face courses will build on online learning, and focus on the practicalities and issues arising for the judiciary, from investigation and prosecution to conviction and sentencing.

4.34 A number of external contributors, including representatives from Healthcare Improvement Scotland (who produced the Trauma Training Framework), Scottish Women's Aid and the Caledonian System, will be involved in the face-to-face training to assist judges in understanding how the new offence will be investigated and prosecuted, as well as gaining an insight into the impact of the criminal behaviour on victims and children.

4.35 A bespoke, on-line, trauma-informed training resource for solicitors and other key legal professionals is in development. Drawing on a broad range of key stakeholders, this resource will provide a short insight via animation of the scenarios that solicitors may face in domestic abuse cases within a civil context. Such training will also assist technical understanding of the new provisions in the Domestic Abuse (Scotland) Act 2018 and most importantly promote a common understanding the impact of trauma on victims who have been subject to coercive and controlling behaviours. The Scottish Women's Rights Centre have developed a face-to-face training package to complement this on-line resource, and the Law Society of Scotland will support its promotion through the requirement on solicitors to complete CPD and through road show events.

4.36 The Crown Office and Procurator Fiscal Service, who prosecute criminal cases, has developed an in-house package of training for prosecutors, including workshop training and self-completion e-learning.

Consultation on protective orders for people at risk of domestic abuse

4.37 The Scottish Government will publish the responses to the consultation in this area²³ where we have permission to do so and also an analysis of responses in due course.

4.38 Initial consideration of the responses received to the consultation indicates that there is widespread support for the creation of protective orders which a third party, such as the police, can apply for to bar a suspected perpetrator of domestic abuse from a home that they share with a person at risk of abuse.

4.39 However, initial consideration of those responses also reveals that there is a wide range of differing views on a number of practical questions concerning how such a scheme should be put in place. Some of the key questions include:

- how long such orders should have effect for, both before and after being approved by a court; and the test to be applied in deciding whether to make a protective order;
- which bodies or individuals should be able to apply for such an order on behalf of a person at risk; and
- what safeguards may be required to protect the rights of a person against whom an order is sought, in view of the fact that such a person may not have been convicted of any domestic abuse-related offence.

4.40 The Scottish Government is still considering if more or new legislation is required in relation to exclusion orders. However, one clear point emerging from the consultation is that 84% of respondents were in favour of the Scottish Government providing further information on exclusion orders.

4.41 At the launch of domestic abuse good practice guidance for social landlords on 26 August 2019, the Cabinet Secretary for Communities and Local Government announced that the Scottish Government will take steps to raise awareness of exclusion orders. The precise steps to be taken will be discussed with the Chartered Institute of Housing and Scottish Women's Aid. The Scottish Government's aim is to issue material either later in 2019 or in 2020.

²³ <https://consult.gov.scot/justice/people-at-risk-of-domestic-abuse/>

Part 5: Parental responsibilities and rights

Background

5.1 The consultation on the review of the 1995 Act sought views on a number of areas in relation to parental responsibilities and rights (PRRs), including:

- recognising joint registration of births overseas;
- clarifying that not all section 11 orders grant PRRs;
- supporting the involvement of non-resident parents in their child's learning; and
- supporting the involvement of non-resident parents in their child's health decisions.

5.2 Section 1 of the 1995 Act provides that parents have a responsibility to:

- safeguard and promote the child's health, development and welfare;
- provide direction and guidance to the child;
- maintain personal relationships and direct contact with the child on a regular basis if a child is not living with their parent; and
- act as the child's legal representative.

5.3 In order to meet their responsibilities towards their children, section 2 of the 1995 Act provides that parental rights are to:

- have the child living with them or otherwise regulate the child's residence;
- control, direct or guide the child's upbringing;
- maintain personal relations and direct contact with the child on a regular basis if a child is not living with their parent; and
- act as the child's legal representative.

Recognising joint registration of births overseas

5.4 All mothers automatically get PRRs for their child. However, not all fathers or second female parents get PRRs. A father gets PRRs if they are married to the mother at the time of the child's conception or subsequently. If a father is not married to the mother, then he can obtain PRRs by:

- jointly registering the birth with the mother after the 2006 Act came into force on 4 May 2006; or
- completing and registering a Parental Responsibilities and Rights Agreement²⁴ with the mother; or
- obtaining a court order.

5.5 The provision in the 2006 Act covers joint birth registration in Scotland, England and Wales and Northern Ireland but not overseas.

²⁴ <https://www2.gov.scot/Publications/2008/06/16155526/1>

5.6 In relation to same sex parents, the child’s mother receives PRRs as does any second female parent if she:

- was married or in a civil partnership with the mother at the time of the insemination/fertility treatment; or
- is named as the other parent on the child’s birth certificate; or
- completes and registers a Parental Responsibilities and Rights Agreement with the mother; or
- obtains a court order.

Clarifying that not all section 11 orders grant PRRs

5.7 The Court of Session and sheriff court may make a variety of orders under section 11(1) of the 1995 Act including orders to grant a person PRRs; deprive a person of some or all of their PRRs; regulate residence arrangements; regulate contact arrangements; or regulate any specific question that has arisen.

5.8 The Scottish Government is aware that there may be confusion as to whether certain section 11 orders (such as, for example, contact orders) automatically grant PRRs to individuals. While some section 11 orders may grant PRRs, this is not the position with all section 11 orders. An order granting contact does not automatically confer PRRs.

Supporting the involvement of non-resident parents in education decisions

5.9 The Scottish Schools (Parental Involvement) Act 2006²⁵ (the Schools Act) established a framework for parental involvement in state schools. There is also accompanying statutory guidance²⁶ which states that:

“Everyone who is a parent, as defined in terms of the 1980 Act, has rights under the Act. This includes the right to receive advice and information about their child’s education, general information about the school, to be told about meetings involving their child, and to participate in activities, such as taking part in decisions relating to a Parent Council. Education authorities and schools should treat parents equally, the exception to this general requirement being where there is a court order limiting an individual’s exercise of parental rights and responsibilities. It is for education authorities to advise schools on the application of these rights in individual cases.”

5.10 The Schools Act applies the definition of “parent” that is set out in the Education (Scotland) Act 1980²⁷ which includes “guardian and any person who is liable to maintain or has parental responsibilities (within the meaning of section 1(3) of the 1995 Act) in relation to, or has care of a child or young person”.

²⁵ <http://www.legislation.gov.uk/asp/2006/8/contents>

²⁶ <https://www.gov.scot/publications/guidance-scottish-schools-parental-involvement-act-2006/>

²⁷ <http://www.legislation.gov.uk/ukpga/1980/44/contents>

5.11 This definition includes non-resident parents who have PRRs and also people who have no PRRs but fall within one of the other aspects of the definition such as “care of a child or young person”.

5.12 Non-resident parents have the same rights as resident parents to access their child’s educational record. Regulation 5(2) of the Pupils’ Educational Records (Scotland) Regulations 2003²⁸ provides that upon the request by a parent for disclosure of their child’s education records, the school must do so. These regulations cover all schools in Scotland. The regulations provide for exceptions for sensitive personal data or if the school believes that the disclosure of the educational records would likely cause significant distress or harm to the pupil or any other person.

5.13 The Scottish Government have heard concerns that the way local authorities capture pupil and parent information at the school enrolment stage could exclude non-resident parents from involvement in their child’s school life. Each local authority has a different pupil enrolment form and some local authorities do not request details of the non-resident parent.

5.14 In addition the Scottish Government understands that the annual update form may be only sent to one parent. This parent would then have responsibility for deciding whether to enter the contact details of the other parent if they no longer live together.

5.15 Some of the issues which have created electronic barriers to the smooth communication with both parents have been explored with the SEEMiS Group, the Education Management Information System provider for local authority education services across Scotland. The SEEMiS Group has taken steps to improve their systems and make it easier for schools to electronically capture and automatically send information to multiple contacts registered.

²⁸ <http://www.legislation.gov.uk/ssi/2003/581/contents/made>

Involvement of non-resident parents in their child's health decisions

5.16 The British Medical Association has produced guidance on confidentiality and the disclosure of health records.²⁹ This explains that children who are aged 12 or over are generally expected to have capacity to give or withhold their consent to the release of information.

5.17 If the child has the capacity to give or withhold consent to a treatment or to the release of information from their health records, health professionals should respect their wishes. In order to fulfil their parental responsibilities anyone with PRRs has the right to ask for and to access their child's records. However, a child with capacity can refuse access. Access can also be refused when it is not in the child's best interests.

5.18 The Scottish Government is aware of concerns on how best to ensure that non-resident parents are kept informed by health boards and GP surgeries.

5.19 The General Medical Council has produce guidance for all doctors in the UK on working with young people under the age of 18.³⁰ Paragraph 54 of the guidance specifies that a doctor should let parents access their child's medical records if the child consents or lacks capacity and it does not go against the child's best interests. If the record contains information given by the child or young person in confidence then this should not normally be disclosed without their consent.

5.20 The guidance goes on to state that divorce or separation does not affect parental responsibility and that both parents should be allowed reasonable access to their child's health records.

²⁹ <https://www.bma.org.uk/advice/employment/ethics/confidentiality-and-health-records/access-to-health-records>

³⁰ https://www.gmc-uk.org/-/media/documents/0_18_years_english_0418pdf_48903188.pdf

Aim

Recognising joint registration of births overseas

5.21 The Scottish Government believes that it is in the best interests of children for unmarried fathers and second female parents who have obtained overseas parental duties, rights and responsibilities through a process comparable to how unmarried fathers and second female parents can obtain PRRs in Scotland to have PRRs in Scotland.

Clarifying that not all section 11 orders grant PRRs

5.22 The Scottish Government considers that to ensure the best interests of the child are at the centre of the case the law should be clarified to make clear that a court can make an order under section 11(1) for contact (for example) in cases where it may not be possible to award PRRs or where the court does not consider it is in the child's best interests for the person being granted contact to be granted PRRs.

Involvement of non-resident parents in education decisions

5.23 The Scottish Government wants to ensure that non-resident parents are involved in education decisions and are provided with appropriate information to engage with their children's learning and progress through school.

5.24 The Scottish Government accepts that there may be cases where it is not in the best interests of the child for schools to share information with non-resident parents. An example might be where domestic abuse has occurred.

Involvement of non-resident parents in their child's health decisions

5.25 The Scottish Government wants to ensure that non-resident parents are kept informed by health boards and GP surgeries of decisions as long as a child with capacity consents and it is in the child's best interests.

Actions

Recognising joint registration of births overseas

5.26 Section 19 of the Children (Scotland) Bill gives the Scottish Ministers the power to make regulations in relation to the conferral of PRRs on unmarried fathers or second female parents where the child's birth is registered overseas and the parent has obtained overseas parental duties, rights or responsibilities in a similar way to obtaining PRRs in Scotland, and to which the mother consented. The regulations will list jurisdictions and processes which the Scottish Ministers consider have similar ways of obtaining PRRs as in Scotland.

Clarification of the law regarding PRRs

5.27 Section 11 of the Bill aims to clarify that a person under the age of 16 can seek and obtain a contact order under section 11 of the 1995 Act despite the fact that, under section 11(2)(b) of the 1995 Act, a person under 16 cannot obtain an order granting them PRRs (unless the person is a parent of the child). The Bill also aims to clarify that a person over the age of 16 may seek and obtain a contact order without also obtaining PRRs.

Involvement of non-resident parents in education decisions

5.28 The Scottish Government is currently revising the statutory guidance that accompanies the Schools Act. Consultation on draft revised guidance which will address the involvement of non-resident parents will take place during the 2019/20 academic year.

5.29 The work to revise the statutory guidance is an action within the Learning Together national action plan³¹ which the Scottish Government published on 21 August 2018. This is a three year plan that sets out a vision for parental involvement, engagement, family learning and learning at home. It is a joint plan between the Scottish Government and COSLA and it has benefited from detailed input from Scotland's National Parent Forum. This forms part of the wider National Improvement Framework Improvement Plan.³²

5.30 The Scottish Government has set up a working group to discuss the statutory guidance and training and support materials. Meetings of the group were held in November 2018, January 2019 and April 2019, with a further meeting scheduled for September 2019. It is anticipated that the group will continue to meet during the consultation on the statutory guidance.

³¹ <https://www.gov.scot/publications/learning-together-scotlands-national-action-plan-parental-involvement-parental-engagement/pages/5/>

³² <https://www.gov.scot/publications/2019-national-improvement-framework-improvement-plan/pages/9/>

5.31 The Scottish Government is in contact with the Association of Directors of Education in Scotland to find ways of bringing the concerns regarding the pupil enrolment form to the attention to all local authorities. The Scottish Government will consider ways to promote the good practice that exists in many areas and removing unnecessary barriers to the recording of the contact details of both parents.

5.32 The Scottish Government will continue to engage with the Association of Directors of Education in Scotland and the SEEMiS Group. The SEEMiS group are currently piloting new software known as 'Parent Portal' with one local authority, which will allow each parent to 'link' to their child within the SEEMiS system so that they can see information specific to their child's school. It is understood that additional functionality will be added to Parent Portal such as 'update my details' to allow each parent to carry this out independently.

5.33 The Scottish Government will continue to engage with key organisations on relevant guidance and training materials relating to parental involvement and engagement.

Involvement of non-resident parent in health decisions relating to their child

5.34 The Scottish Government will work with health professionals to ensure that non-resident parents are involved in health decisions in relation to their child where this is in the best interests of the child and a child with capacity consents. In particular, the Scottish Government will draw attention to existing guidance in this area.

Part 6: Court procedure

Background

6.1 The consultation on the review of the 1995 Act sought views on a number of topics in relation to court procedure including:

- amendments to the law in relation to commission and diligence;
- the impact of delay in a court case on the welfare of the child;
- factors for the court to consider when deciding whether to make an order about a child, and if so, what order to make; and
- guidance for adults and children on attending court.

6.2 The Family Law Committee (FLC) is currently undertaking work in relation to case management in family court cases. This work followed a policy paper by the Scottish Government³³ and research carried out by the FLC.³⁴ The FLC have established a subcommittee and consulted in 2018 on recommendations.³⁵

6.3 At the meeting of the FLC on 8 July 2019 the FLC considered and provided views on the outline of the proposed new rules³⁶ and agreed a number of points including that:

- an Initial Case Management Hearing will replace the Options hearing;
- the timing of hearings including a Full Case Management Hearing will be set out in court rules;
- the rules will allow for a further Full Case Management Hearing where necessary, to be fixed for no more than 6 months later;
- the sheriff will still have the option to send cases to proof (a hearing at which evidence is heard) at an early stage;
- there will be a checklist of matters to be considered at both the Initial Case Management Hearing and the Full Case Management Hearing;
- sists (pausing a case) will be for a finite period of time. Where the court grants a sist, it will have to say why the case is being sisted and allocate a hearing to be held after the sist ends; and
- one of the points which should be considered at an early stage of court proceedings is whether the case may be suitable for another form of dispute resolution.

³³ <http://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/flc-meeting-files/flc-meeting-papers-08-may-2017/paper-5-1a-case-management-in-family-actions---policy-paper-by-the-scottish-government.pdf?sfvrsn=2>

³⁴ <http://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/flc-meeting-files/flc-meeting-papers-08-may-2017/paper-4-2a-case-management-in-family-actions---research-report-by-dr-richard-whitecross-and-dr-claire-lindsay.pdf?sfvrsn=2>

³⁵ <http://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/flc-meeting-files/flc-08-october-2018/paper-6-1-consultation-report---case-management-of-family-and-civil-partnership-actions.pdf?sfvrsn=2>

³⁶ <http://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/flc-meeting-files/08-july-2019-meeting-papers/20190708-flc-approved-minutes---july-2019.pdf?sfvrsn=4>

Commission and diligence

6.5. Local authorities and other organisations – including the NHS and voluntary sector bodies – may provide confidential services to children. Information provided in confidence can, in theory, be ordered to be produced as evidence in a civil court case.

6.6. When the court is deciding whether to disclose confidential information the child's interest in privacy must be balanced with other interests. This can include the welfare of other children. The competing interests of the different parties are protected by the ECHR, in the form of protections for the right to respect for private and family life (Article 8), the right to a fair trial (Article 6) and the right to freedom from inhuman and degrading treatment (Article 3).

The impact of delay in a court case on the welfare of the child

6.7. Research published by Scottish Government in 2010 shows that there was considerable variation in the length of contact cases examined. 71 of the 182 cases that were examined were still active after 18 months, but only 42 of those had been heard in court within the preceding six months.³⁷ In addition, at stakeholder events as part of the consultation on review of the 1995 Act the Scottish Government heard of cases taking a significant length of time.

Factors for the court to consider

6.8. The Scottish Law Commission Report in 1992³⁸ on Family Law noted that the Children Act 1989 introduced a checklist of factors.

6.9. Paragraphs 50 and 51 of General Comment 14 of the UNCRC state that:

“50. The Committee considers it useful to draw up a non-exhaustive and non-hierarchical list of elements that could be included in a best-interests assessment by any decision-maker having to determine a child's best interests. The non-exhaustive nature of the elements in the list implies that it is possible to go beyond those and consider other factors relevant in the specific circumstances of the individual child or group of children. All the elements of the list must be taken into consideration and balanced in light of each situation. The list should provide concrete guidance, yet flexibility.

51. Drawing up such a list of elements would provide guidance for the State or decision maker in regulating specific areas affecting children, such as family, adoption and juvenile justice laws, and if necessary, other elements deemed appropriate in accordance with its legal tradition may be added. The Committee would like to point out that, when adding elements to the list, the ultimate purpose

³⁷ Understanding Child Contact Cases in Scottish Sheriff Courts. K.Laing & G.Wilson Newcastle University 2010: <https://www.gov.scot/Publications/2010/12/08145916/0>.

³⁸ <https://www.scotlawcom.gov.uk/files/5912/8015/2668/Report%20on%20family%20law%20Report%20135.pdf>

of the child's best interests should be to ensure the full and effective enjoyment of the rights recognized in the Convention and the holistic development of the child. Consequently, elements that are contrary to the rights enshrined in the Convention or that would have an effect contrary to the rights under the Convention cannot be considered as valid in assessing what is best for a child or children.”³⁹

6.10 General Comment 14 goes on to say that the Committee considers that the following elements should be taken into account when assessing and determining the child's best interests:

- the child's views;
- the child's identity;
- preservation of the family environment and maintaining relations. This includes an assessment and determination of the child's best interests in the context of potential separation of a child from their parents. The Committee suggest that separation should only occur as a last resort when the child is in danger of experiencing imminent harm;
- care protection and safety of the child. This includes the child's right to protection from all forms of physical or mental violence, injury or abuse;
- situation of vulnerability; and
- the child's right to health and education.

Guidance for adults and children on attending court

6.11 As noted in the consultation the Scottish Government is aware that there is already some guidance available on court procedure. However, there was strong support from consultation respondents for the Scottish Government to produce guidance for adults and children on attending court.

6.12 Respondents suggested that the guidance could cover:

- what it is like to go to court;
- alternatives to court; and
- how the views of the child can be expressed in court proceedings.

Aim

Commission and diligence

6.13 There may be cases where the disclosure of information is not in the best interests of the child concerned. The Scottish Government's aim is to clarify that the best interests of the child should be a primary consideration in cases under section 11 of the 1995 Act when considering disclosing confidential documents. The Scottish Government recognises that the rights of other persons, which may be protected in law by the ECHR, are also important to consider.

The impact of delay in a court case on the welfare of the child

³⁹ https://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf

6.14 The Scottish Government considers that delay in court proceedings under section 11 of the 1995 Act, Children's Hearings proceedings or adoption cases will usually not be in the best interests of the child. Lengthy court proceedings can lead to a significant period of uncertainty for a child which may not be in the child's best interests.

6.15 The Scottish Government appreciates that complex cases may not be resolved quickly in court and that the courts will have to continue to consider all factors when making a decision.

Factors for the court to consider

6.16 The Scottish Government considers that stipulating certain factors which must be taken into account when making an order under section 11(1) of the 1995 Act could further the best interests of the child as this could improve consistency in the matters which are taken into account.

Guidance for adults and children on attending court

6.17 The Scottish Government considers that it is important for parties to have clear and accessible information on the court procedure.

Actions

Amendments to the law in relation to commission and diligence

6.18 The Scottish Government intends to issue guidance to family law practitioners that reiterates that the best interests of the child should be a primary consideration in cases under section 11 of the 1995 Act when disclosing confidential documents.

The impact of delay in a court case on the welfare of the child

6.19 Section 21 of the Children (Scotland) Bill requires the court to have regard to any risk of prejudice to the child's welfare that delay in proceedings would pose. This provision would apply in proceedings where the court is required to treat the child's welfare as the paramount consideration, and would cover cases under section 11 of the 1995 Act, Children's Hearings' court proceedings, cases under section 16 of the 1995 Act and cases under section 14 of the Adoption and Children (Scotland) Act 2007.

Factors for the court to consider

6.20 The Bill includes factors such as:

- the effect that the order the court is deciding whether or not to make might have on the involvement of the child's parents in bringing the child up; and
- the effect that the order might have on the child's important relationships with other people.

Guidance for adults and children on attending court

6.21 The Scottish Government intends to issue guidance in 2020 on what it is like to go to court. We will produce a child friendly version for children who attend court to take part in a case about them or to give views to a sheriff or judge. The guidance will also cover alternatives to court. The Scottish Government proposes to work with key stakeholders when developing the guidance.

6.22 The Scottish Government will produce guidance for children about when their views are being sought in a family court case.

Proposed extension of simplified divorce and dissolution procedures

6.23 The Scottish Government will consult in due course on proposals to extend the simplified divorce and dissolution procedures to cases where the spouses or civil partners have agreed about the upbringing of any children of the family under 16 years of age. Currently, the simplified procedures cannot be used if there are children of the family under 16 years of age, even if the family are in agreement about the upbringing of those children.

Language used by courts

6.24 The Scottish Government intends to prepare a policy paper for the FLC on simplifying and clarifying the language used in family courts, including in interlocutors, to help litigants and children.

Part 7: Alternatives to court

Background

7.1 In the consultation on the review of the 1995 Act the Scottish Government sought views on alternatives to court.

7.2 The Scottish Government also sought views on the confidentiality of mediation in international child abduction cases.

Alternatives to court

7.3 Evidence suggests that court procedure can be costly, lengthy and stressful.⁴⁰ In many cases, parties are able to settle contact and residence issues themselves without going to court.

7.4 There are various forms of dispute resolution other than court that are available for family cases. The main types are mediation, arbitration, collaborative law, family group conferencing and family group therapy.

7.5 The Parenting Plan⁴¹ is an informal agreement designed to help parents discuss what is best for their children. As well as informal agreements on how to bring a child up, it is also possible in Scotland to make and register legally binding agreements known as minutes of agreement⁴².

7.6 Rule 33.22 of the Ordinary Cause rules provides that: "In any family action in which an order in relation to parental responsibilities or parental rights is in issue, the sheriff may, at any stage of the action, where he considers it appropriate to do so, refer that issue to a mediator accredited to a specified family mediation organisation."⁴³ There is a similar provision in the Court of Session Rules.⁴⁴

7.7 The Scottish Government recognises that mediation is an underused means of resolving disputes and that is why we have been supporting Scottish Mediation over the past 10 months to undertake an independent evidence-based review led by an Expert Group on the use of Mediation in the Civil Justice System in Scotland.

7.8 The Scottish Government recognises that mediation, and other forms of dispute resolution outwith court, can play a valuable role in helping to resolve family disputes and we will continue to support the use of mediation and other forms of dispute resolution in appropriate cases. The Scottish Government fully recognises

⁴⁰ See for example Understanding Child Contact Cases in Scottish Sheriff Courts. K.Laing & G.Wilson Newcastle University 2010. Available at: <https://www.webarchive.org.uk/wayback/archive/20180516111417/http://www.gov.scot/Publications/2010/12/08145916/15>

⁴¹ <https://www.mygov.scot/parentingplan/>

⁴² <https://kb.ros.gov.uk/other-registration-types/register-of-deeds>

⁴³ <https://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/sheriff-court---civil-procedure-rules/ordinary-cause-rules>

⁴⁴ <https://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/rules-of-court/court-of-session/chap49.pdf?sfvrsn=24> (see rule 49.23)

the concerns that mediation should not be used when there has been domestic abuse, sexual violence or gender based violence.

7.9 Scottish Mediation published the report of the conclusions of the independent review by the Expert Group in June 2019. The report titled “Bringing Mediation in the Mainstream in Civil Justice in Scotland” suggests mandatory referrals to mediation but with an exemption for disputes where there is a risk of domestic abuse, sexual violence or any other gender-based violence.⁴⁵

7.10 A proposal for a Member’s Bill on Mediation was published in draft form on 28 May 2019 by Margaret Mitchell MSP and the consultation period on the draft proposals ended on 20 August 2019. The aim of this Member’s Bill would be to increase the use and consistency of mediation services for certain civil cases by establishing a new process of court-initiated mediation that includes an initial mandatory process involving a statutory duty mediator.⁴⁶

Confidentiality of mediation in international child abduction cases

7.11 In the consultation on the review of the 1995 Act the Scottish Government sought views on whether to make regulations to clarify that confidentiality of mediation extends to cases involving cross border abduction of children.

7.12 Section 1 of the Civil Evidence (Family Mediation) (Scotland) Act 1995⁴⁷ makes provision so that no information, as to what occurred during family mediation conducted by a person accredited as a mediator in family mediation to an organisation approved for the purposes of that Act by the Lord President, is admissible as evidence in any civil proceedings.

7.13 In June 2015, there was an international child abduction case in the Outer House of the Court of Session⁴⁸. In paragraph 17 of his opinion, the Lord Ordinary said: “In my view the arguments for the proposition that the 1995 Act (the Civil Evidence (Family Mediation) (Scotland) Act 1995) does not apply to mediations about cross-border abductions have the edge.”

7.14 Section 1 of the Civil Evidence (Family Mediation) (Scotland) Act 1995 also makes provision on the descriptions of family mediation to which it applies. Under section 1(2)(e), the Scottish Ministers may make regulations to lay down other descriptions of family meditation which the Civil Evidence (Family Mediation) (Scotland) Act 1995 should apply to.

⁴⁵ <https://www.scottishmediation.org.uk/wp-content/uploads/2019/06/Bringing-Mediation-into-the-Mainstream-in-Civil-Justice-in-Scotland.pdf>

⁴⁶ https://www.parliament.scot/S5MembersBills/Mediation_consultation_document.pdf

⁴⁷ <http://www.legislation.gov.uk/ukpga/1995/6/contents>

⁴⁸ FJM v CGM [2015] CSOH 130 (<https://www.scotcourts.gov.uk/search-judgments/judgment?id=5ea1eea6-8980-69d2-b500-ff0000d74aa7>)

Aim

Alternatives to court

7.15 The Scottish Government considers that there can be advantages in resolving cases outwith court. The main advantages are that it can be more flexible, solve the issue faster, be less stressful, provide a longer lasting solution and be less costly than attending court.

7.16 However, the Scottish Government understands that there are cases where dispute resolution other than court is not appropriate most notably where there is evidence of domestic abuse. The Scottish Government is also aware of research which suggests that domestic abuse is alleged in half of all court actions over contact raised by a parent in Scotland.⁴⁹

7.17 The Scottish Government's general aim is to ensure the views of the child are heard in family cases.

Confidentiality of mediation in international child abduction cases

7.18 The Scottish Government considers that, in policy terms, mediation in relation to international child abduction cases should have the same confidentiality in civil proceedings as family mediation does generally.

Actions

Alternatives to court

7.19 The Scottish Government proposes to produce guidance for individuals, who are considering seeking a court order under section 11(1) of the 1995 Act, on alternatives to court such as the Parenting Plan, minutes of agreement and other forms of dispute resolution. The Scottish Government will consult with key stakeholders on the draft guidance and the best ways to distribute that guidance.

7.20 The Scottish Government will produce a policy paper for the FLC on the implications of extending Ordinary Cause Rule 33.22 in relation to mediation to all family and civil partnership actions. This will take account of domestic abuse as outlined in paragraph 4.27 of this strategy.

7.21 The Scottish Government will consider carefully the proposals by the Expert Group and will respond formally by the end of 2019.

⁴⁹ Mackay K. 2013. The treatment of the views of children in private law child contact disputes where there is a history of domestic abuse: <https://www.cypcs.org.uk/ufiles/views-of-children-and-domestic-abuse.pdf>.

Confidentiality of mediation in international child abduction cases

7.22 The Scottish Government will make regulations under section 1(2)(e) of the Civil Evidence (Family Mediation) (Scotland) Act 1995 to ensure that parties are able to rely on the confidentiality of mediation in international child abduction cases in any subsequent civil proceedings.

Template of minutes of agreement

7.23 The Scottish Government intends to write to the Law Society of Scotland and the Family Law Association to suggest that templates for minutes of agreement drawn up by parents, which affect a child's rights, should record what steps the parents have taken to obtain the child's views.

Part 8: Birth registration processes

Background

8.1 The consultation on the review of the 1995 Act sought views on the following areas in relation to registration of births, and asked whether:

- a child with capacity should be able to apply for a change of name on their birth certificate themselves;
- a person with parental responsibilities who is applying to change a child's name should seek the views of the child; and
- secondary legislation should be amended to allow a father who has a declarator of parentage and PRRs to re-register a child's birth to show him on the birth certificate.

8.2 The consultation also noted that amendments would be required to the Births, Deaths and Marriages (Scotland) Act 1965 (the 1965 Act) to reflect that a second female parent may be married to the mother of the child.

Applying for change of name on a child's birth certificate

8.3 A parent may ask for a child to be known by another name and does not need to apply to National Records of Scotland (NRS) for this to be changed officially (i.e. change of name, while statutory, is not mandatory). However, in some circumstances a parent may be asked for official documentation noting the change in name.

8.4 Currently, any person whose birth is registered in Scotland or who is the subject of an entry in the Adopted Children Register, the Parental Order Register or the Gender Recognition Register can apply to NRS to have a change of name recorded.⁵⁰ There is no requirement in Scotland for a person to record a name change on their birth entry to be able to use or go by a new name.

8.5 Currently a person under the age of 16 cannot apply for a change to their own name. The application must be made by a person with parental responsibilities for that child. This person is known as the "qualified applicant" and is defined in section 43(9A) of the 1965 Act as where:

- only one parent has parental responsibilities in relation to the child, that parent; or
- both parents have such responsibilities in relation to the child, both parents; or
- neither parent has such responsibilities, any other person who has such responsibilities.

8.6 The form that is currently used for applications to record a change of name for a person under the age of 16 does not ask the applicants whether they have sought the views of the young person.

⁵⁰ <https://www.nrscotland.gov.uk/registration/recording-change-of-forename-and-surname-in-scotland>

Registration of birth by unmarried fathers

8.7 Where the name and surname of the father of a child has not been entered into the birth register, the Registrar General may record that name and surname by causing an appropriate entry to be made in the Register of Corrections Etc. in relation to the person:

- a court has granted a decree of paternity; or
- the mother has produced a declaration saying that the person is the father and the person has produced a statutory declaration acknowledging himself to be the father; or
- the person has produced a declaration saying that he is the father and a statutory declaration by the mother acknowledging that the person is the father; or
- if the mother is dead or cannot be found or is not capable of making the necessary declaration or statutory declaration, the sheriff orders the Registrar General to make an appropriate entry in the Register of Corrections Etc.

8.8 Where an unmarried father has a declarator of parentage that can be entered in the Register of Corrections Etc. This will result in an annotation on the birth register entry.

8.9 Section 20 of the 1965 Act also allows re-registration in the birth register if the unmarried father has PRRs (S.S.I. 2007/54 reg. 2(4)⁵¹). However, S.I. 1965/1838 requires an informant as defined in section 14 of the 1965 Act to sign the re-registration entry. This excludes unmarried fathers. Therefore, S.I. 1965/1838 may need to be amended so that a father who has a declarator of parentage and has PRRs can re-register the birth showing him on the birth certificate.

Re-registration: reference to second female parents

8.10 Section 20(1)(d) of the 1965 Act provides: “the entry relating to the child in the register of births has been made so as to imply that the person, other than the mother, recorded as a parent of the child is so by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 and the mother and that person have subsequently become parties to a civil partnership with each other ...”

8.11 The Marriage and Civil Partnership (Scotland) Act 2014 allows same sex couples to marry.

Aim

Applying for change of name on a child's birth certificate

8.12 The Scottish Government considers that changing a child's name is a major decision and therefore, under section 6(1) of the 1995 Act, the child's views should be sought.

⁵¹ <http://www.legislation.gov.uk/ssi/2007/54/contents/made>

8.13 This view is supported by Article 12 of the UNCRC which provides that:

“States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”⁵²

8.14 The Scottish Government considers that a child with capacity should be able to apply to change their name themselves.

Registration of birth by unmarried fathers

8.15 The Scottish Government believes that where an unmarried father who has a declarator of parentage and has PRRs they should be able to re-register the birth showing him on the birth certificate.

8.16 This view is supported by Article 7 of the UNCRC which states that:

“The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.”

Re-registration: reference to second female parents

8.17 Where an entry in the Register of Births shows a woman as being the other parent by virtue of the Human Fertilisation and Embryology Act 2008, and where they have since entered into a civil partnership, section 20(1)(c) of the 1965 Act allows the birth to be re-registered. This appears not to take account of the introduction of same sex marriage under which the other parent may subsequently have married the woman who bore the child.

Actions

Applying for change of name on a child's birth certificate

8.18 The Registrar General will make regulations amending the form used to apply for a child's name to be changed to require the individual with PRRs to tick a box saying that they have sought and taken into account the views of the child.

8.19 The Scottish Government accepts that there may be circumstances where the child is too young to give a view, or may have a severe learning disability and therefore is not able to give a view. This would be reflected in the wording of the box to be ticked. An option may be to introduce a caveat similar to that in section 1(2) of the Children (Scotland) Bill that a child's views need not be sought if the child is not capable of forming a view.

8.20 If a parent ticked this box without having sought and taken into account the views of the child, or without applying the exemption, they would be liable to

⁵² <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>

prosecution in the same way as if they provided any other false information on the form.

8.21 Allowing a child with capacity to apply themselves to change their name on their birth certificate would require significant further thinking on how the capacity of the child could be measured. It is not currently clear whether assessing capacity could be done by a medical practitioner or a lawyer, especially as the involvement of the medical practitioner or lawyer with the child is likely to be brief and so it may be difficult to assess capacity. Any change would require primary legislation. The Scottish Government consider that more time is required to carry out significant further thinking on this.

Registration of birth by unmarried fathers

8.22 The Registrar General will consider making regulations that will amend the Registration of Births, Deaths and Marriages (Miscellaneous Provisions) (Scotland) Regulations 1965 to reflect that an informant may be an unmarried father with PRRs.

Re-registration: reference to second female parents

8.23 The Scottish Government proposes to use section 35 of the Marriage and Civil Partnership (Scotland) Act 2014 to make regulations adding a reference to a second female parent being married to the mother of a child (as well as in a civil partnership with the mother) in section 20(1)(d) of the 1965 Act.

Part 9: Cross UK and international cases and international child abduction

Background

9.1 The consultation on the review of the 1995 Act sought views on a number of areas in relation to cross UK and international cases and international child abduction including:

- registration of orders from elsewhere in the UK;
- cross UK border jurisdiction; and
- international child abduction.

Registration of orders from elsewhere in the UK

9.2 Under the current law, certain kinds of court order (“Part I orders” – a reference to Part 1 of the Family Law Act 1986 (the 1986 Act)) on family matters from England and Wales or Northern Ireland, can be registered in the Court of Session and must also be enforced in that court. Data from SCTS suggests that in 2017, 24 orders were registered in the Court of Session.

Cross UK border cases

9.3 Section 41 of the 1986 Act makes provision on jurisdiction for the purposes of Part 1 of the 1986 Act. Section 41 provides that a child under the age of 16 who is habitually resident in a part of the UK and becomes habitually resident in another part of the UK without the agreement of all persons who have the right to determine where the child is to reside, or in contravention of a court order, is to be treated as continuing to be habitually resident in the original part of the UK for one year.

International child abduction

9.4 In Scotland, there is a common law offence (one not defined in statute) of plagium. This is a crime of child stealing which may be committed against children below the age of puberty. It is also a crime (abduction) to carry off or confine any person against their will without lawful authority.

9.5 There are also specific statutory offences in the Child Abduction Act 1984 (the 1984 Act). This extends to England and Wales and Scotland, but makes different provision for Scotland.

9.6 Section 1 of the 1984 Act makes it a criminal offence in the law of England and Wales for a person connected with a child under the age of 16, such as a parent, to take or send the child out of the United Kingdom without the appropriate consent.

9.7 Section 6 of the 1984 Act makes it a criminal offence in the law of Scotland for a person connected with a child under 16 to take or send the child out of the United Kingdom without the appropriate consent, but only where there is a court order from a court in the UK on custody or from a court in England, Wales or Northern Ireland making the child a ward of court. In addition, under section 6 of the

1984 Act, it is a criminal offence in Scotland to take a child out of the United Kingdom if there is an order from a court in the UK prohibiting the removal of the child from the UK or any part of it.

9.8 The 1984 Act was initially intended to only cover England and Wales. However, its remit was extended during the Committee stages and it became apparent that the provisions relating to the removal of a child abroad would be ineffective if a parent was able to simply move the child to Scotland. The provisions relating to Scotland were added at a later stage and were not consulted upon.

Aim

Registration of orders from elsewhere in the UK

9.9 The Scottish Government believes that parties should be able to enforce any Part 1 order in the sheriff court as well as in the Court of Session, because enforcement in the sheriff court will be less costly to parties.

Cross UK border cases

9.10 The Scottish Government aims to clarify section 41 of the 1986 Act in relation to jurisdiction of family court cases.

International child abduction

9.11 The Scottish Government considers that further work needs to be done on international child abduction to consider the implications of changing the criminal offence.

Actions

Registration of orders from elsewhere in the UK

9.12 Section 20 of the Children (Scotland) Bill allows orders from elsewhere in the UK that are registered in the Court of Session to be enforced in the sheriff court (as well as in the Court of Session). If a person wishes to enforce a Part 1 order in a sheriff court, the court will have jurisdiction if the child is habitually resident in the sheriffdom or the child is physically present in Scotland and is not habitually resident elsewhere in the UK and either the pursuer or the defender is habitually resident in the sheriffdom.

Cross UK border cases

9.13 The Scottish Government will produce guidance in 2020 on section 41 of the 1986 Act. The Scottish Government will seek input from stakeholders on the draft guidance. The guidance will be shared with stakeholders and published on the Scottish Government website.

International child abduction

9.14 When identifying areas for inclusion in the Bill the Scottish Government considered whether to amend the 1984 Act to specify that it is a criminal offence for a person with PRRs or a contact order to remove that child without the appropriate consent of anyone else with PRRs whether or not there is a court order in place. This would reflect the position in England & Wales.

9.15 After further consideration of stakeholder concerns raised during the consultation, the Scottish Government believe that significant further work is required in this area. In particular, consideration is needed in relation to the procedure for obtaining formal consent, proving consent and corroboration of evidence. This work will be taken forward and further consideration will be undertaken as to whether amendments are required to the 1984 Act.

Part 10: Prioritising sibling relationships for children in care

Background

10.1 The consultation on the review of the 1995 Act sought views on:

- strengthening existing guidance to help a looked after child to keep in touch with other children they have shared family life with; and
- steps that should be taken by the Scottish Government to help ensure children continue to have relationships with family members, other than their parents, who are important to them.

10.2 There was an overwhelming consensus from consultation responses in favour of strengthening the law to maintain sibling relationships. The Scottish Government is aware of a growing bank of evidence that keeping siblings together and maintaining contact is beneficial for a child's wellbeing.⁵³

10.3 There are provisions in the Looked After Children (Scotland) Regulations 2009⁵⁴ which require local authorities to assess sibling relationships and to ensure that brothers and sisters are placed together or as near to each other as possible where practicable and appropriate. There is no duty on legal authorities to promote contact between siblings when they are taken into care. Research shows that siblings are frequently separated when they are taken into care.⁵⁵

Aim

10.4 The Scottish Government wishes all looked after children to be supported to maintain contact with each other, where this is appropriate and practicable.

10.5 The Scottish Government aims to ensure that siblings who need to be looked after by local authorities are placed together when it is in their best interests to do so.

10.6 The Scottish Government recognises the importance of 'sibling like' relationships to children who are in care.

⁵³ Wojciak, A.S., McWey, L.M. & Waid, J. 2018. Sibling relationships of youth in foster care: A predictor of resilience. *Children and Youth Services Review*, 84, pp.247-254. Kosonen, M. 1996. Maintaining Sibling Relationships – Neglected Dimension in Child Care Practice. *British Journal of Social Work*, 26, pp.809-22. Albert, V. & King, W. 2008. Survival analyses of the dynamics of sibling experiences in foster care. *Families in Society: The Journal of Contemporary Social Services*, 89(4), pp.533-541.

⁵⁴ <http://www.legislation.gov.uk/ssi/2009/210/contents/made>

⁵⁵ <https://www.standupforsiblings.co.uk/home/resources/> Jones, C. & Henderson, G. 2017. Supporting Sibling Relationships of Children in Permanent Fostering and Adoptive Families: Research Briefing. Glasgow: University of Strathclyde.

Actions

Duties on local authorities

10.7 Section 10 of the Children (Scotland) Bill introduces a duty on local authorities to promote direct contact and personal relations between a child and their siblings, where this is both practicable and appropriate and in the interests of the child. Siblings are defined to include individuals with whom a child has an ongoing relationship with the character of a sibling relationship.

10.8 Section 10 of the Bill also requires local authorities to seek the views of the child's sibling in relation to contact when it is reasonably practicable for the local authority to do so.

Amendments to Looked After Children (Scotland) Regulations 2009

10.9 The Scottish Government will introduce amendments to the Looked After Children (Scotland) Regulations 2009 to put a duty on local authorities to place siblings under 18 years of age together when they are looked after away from home when it is in their best interests to do so. These regulations will come into force at the same time as the section in the Bill placing duties on local authorities.

Practice

10.10 In recognition that legislative changes alone may not meet the policy aims, the Scottish Government will engage with the Stand up for Siblings Partners⁵⁶, corporate parents and key organisations to assist implementation and share good practice across Scotland.

Independent Care Review

10.11 The Independent Care Review⁵⁷ has, in engaging with infants, children, young people and adults with experience of care and their families, identified at an early stage in the review that siblings must be kept together, or supported to maintain relationships, to ensure the best outcomes for looked after children. These actions are intended to support those aims. The Scottish Government will take further action, as required, to take forward the Review's recommendations on this issue when it reports in Spring 2020.

⁵⁶ <https://www.standupforsiblings.co.uk/about/our-members/>

⁵⁷ <https://www.carereview.scot/>

Part 11 Children's Hearings

Background

11.1 The consultation on the review of the 1995 Act sought views on a number of areas in relation to Children's Hearings including:

- whether changes should be made to allow further modernisation of the Children's Hearing System through enhanced use of available technology; and
- local authorities as recipient of certain papers.

Modernisation of the Children's Hearing System

11.2 Children's Hearings take place every day across the country and usually involve children and their parents attending their local hearing centre in person and receiving information in paper form.

11.3 Due to advances in technology, it may in future be possible for young people and their families to be able to better participate in hearings using tools such as remote-link and sharing digitally pre-recorded views.

11.4 The responses to the consultation were supportive of the use of technology to ensure that the hearing process is responding to the evolving opportunities this offers.

Local authorities as recipient of certain papers

11.5 The consultation asked if safeguarder reports and other independent reports should be provided to local authorities in advance of Children's Hearings in line with other participants.

11.6 Currently in Children's Hearings, a local authority will provide a report to the hearing setting out a summary of the child's circumstances taking account of information known to them.

11.7 Children's Hearings, but not local authorities, may also receive reports from others that will include information that could be relevant and material to their decision about the child including safeguarder reports and other independent reports.

11.8 This means that a child's social worker may only learn of new information, assessments and recommendations made by other professionals as the hearing takes place. This can lead to deferred hearings and delay to decisions for a child.

11.9 Consultation responses were overwhelmingly in favour of local authorities receiving reports to allow local authorities to be fully informed of all the information available to the hearing.

Aim

Modernisation of the Children's Hearing System

11.10 The Scottish Government wants to maximise the use of technology where this is beneficial for children and their families whilst keeping the child at the centre of the decision making.

Local authorities as recipient of certain papers

11.11 The Scottish Government wants to ensure that local authority recommendations to hearings are based on all available relevant information and assessments.

Actions

Modernisation of the Children's Hearing System

11.12 The Children's Hearings System Digital Strategy⁵⁸ is being taken forward by the SCRA and Children's Hearings Scotland (CHS). The strategy aims to improve meaningful participation at and around Children's Hearings and to transform how we think, engage and interact with those involved in Children's Hearings through the use of digital tools.

11.13 The Scottish Government, through the Children's Hearing Improvement Partnership, is funding Our Hearings Our Voice⁵⁹, a board of children and young people with user experience of the hearing system, to ensure any improvements are beneficial for young people.

11.14 SCRA and CHS also aim to reduce the timescales for the administration of Children's Hearing decisions by using electronic signatures in this process.

11.15 Scottish Government will introduce the necessary secondary legislation to amend the procedural rules to ensure the digital developments are managed appropriately.

11.16 In addition, in supporting developments, the Scottish Government will ensure policies are in place to safeguard data protection, information security, information retention and confidentiality.

Local authorities as recipient of certain papers

11.17 The Scottish Government intends to amend the procedural rules for Children's Hearings to give the relevant local authority in a child's case an entitlement to receive the reports shared with the hearing and parties, which includes reports by safeguarders and any other independent professionals. This would be subject to parliamentary approval.

⁵⁸ <http://www.scra.gov.uk/wp-content/uploads/2016/06/The-Digital-Strategy-2016.pdf>

⁵⁹ <https://www.chip-partnership.co.uk/our-hearings-our-voice/>

Annex A: Actions not in Children (Scotland) Bill

Number	Topic	Paragraph	Action
1	Views of the child	2.24	Further consideration of whether child support workers could be introduced in cases under section 11 of the 1995 Act.
2	Views of the child	2.29	The Scottish Government will produce a policy paper for the Family Law Committee in 2020 on implications of the Bill for court rules.
3	Contact	3.18	Continued engagement with Relationships Scotland and independent contact centres both in the lead-up to regulation and in relation to regulation.
4	Contact	3.19	Write to the Law Society of Scotland and Faculty of Advocates in 2020 to seek their views on issuing guidance encouraging lawyers when referring clients to a contact centre to refer them to a regulated centre.
5	Contact	3.22	Continued promotion of the Charter for Grandchildren.
6	Protecting victims of domestic abuse	4.26	Propose making regulations under section 102 of the Courts Reform (Scotland) Act 2014, after consultation with the Lord President, in relation to vexatious behaviour in cases under section 11 of the 1995 Act.
7	Protecting victims of domestic abuse	4.27	Submit paper to the next meeting of the Family Law Committee of the Scottish Civil Justice Council covering domestic abuse.
8	Protecting victims of domestic abuse	4.31	Prepare a general discussion paper for key stakeholders on improving interaction between criminal and civil courts.
9	Protecting victims of domestic abuse	4.37	Publish responses and analysis of consultation on protective orders for people at risk of domestic abuse by Autumn 2019.
10	Protecting victims of domestic abuse	4.41	Produce further guidance on exclusion orders.

Number	Topic	Paragraph	Action
11	Protecting victims of domestic abuse	4.35	Develop bespoke, on-line, trauma-informed training resource for solicitors and other key legal professionals.
12	Parental responsibilities and rights	5.28	Consult on draft guidance which will support the involvement of non-resident parents in education decisions during the 2019/20 academic year.
13	Parental responsibilities and rights	5.33	Consider ways to promote the good practice that exists in many areas of Scotland in relation to the pupil enrolment form and remove unnecessary barriers to the recording of the contact details of both parents. Engage with the Association of Directors of Education in Scotland and SEEMiS Group re the piloting of new software which will allow each parent to link to their child within the SEEMiS portal.
14	Parental responsibilities and rights	5.34	Work with health professionals to ensure that non-resident parents are involved in health decisions in relation to their child where this is in the best interests of the child and a child with capacity consents. In particular Scottish Government will draw attention to relevant guidance.
15	Court procedure	6.18	Issue guidance to family law practitioners reiterating that the best interests of the child should be a primary consideration in cases under section 11 of the 1995 Act when disclosing confidential information.
16	Court procedure	6.21	Issue guidance in 2020 for children and adults about what it is like to attend court.
17	Court procedure	6.23	Consultation on proposals to extend the simplified divorce and dissolution procedures to cases where the spouses or civil partners have agreed about the upbringing of any children in the family under 16 years of age.
18	Court procedure	6.24	The Scottish Government proposes to prepare a policy paper for the Family Law Committee on the use of plain English in the family courts, including the language used in interlocutors.

Number	Topic	Paragraph	Action
19	Alternatives to court	7.19	Issue guidance for individuals on alternatives to court.
20	Alternatives to court	7.20	Produce a policy paper for the Family Law Committee on the implications of extending Ordinary Cause Rule 33.22 in relation to mediation to all family and civil partnership actions (see action 7 above).
21	Alternatives to court	7.21	Respond to the proposals by the Expert Group on Mediation.
22	Alternatives to court	7.22	Consider making regulations under section 1(2)(e) of the Civil Evidence (Family Mediation) (Scotland) Act 1995 to clarify that confidentiality of mediation extends to international child abduction cases.
23	Minutes of agreement	7.23	The Scottish Government will write to the Law Society of Scotland and the Family Law Association to suggest that templates for minutes of agreement drawn up by parents which affect a child's rights should record what steps the parents have taken to obtain the child's views.
24	Birth registration processes	8.18	The Registrar General will make regulations amending the form used to apply for a child's name to be changed to require the individual with PRRs to tick a box saying that they have sought and taken into account the views of the child.
25	Birth registration processes	8.21	Further consideration of allowing a child with capacity to apply themselves to change their name on their birth certificate.
26	Birth registration processes	8.22	The Registrar General will make regulations amending the Registration of Births, Deaths and Marriages (Miscellaneous Provisions) (Scotland) Regulations 1965 to reflect that an informant may be an unmarried father with PRRs.
27	Birth registration processes	8.23	Consider making regulations adding a reference to a second female parent being married to the mother of a child as well as being in a civil partnership with the mother in section 20(1)(d) of the Births, Deaths and Marriages (Scotland) Act 1965.

Number	Topic	Paragraph	Action
28	Cross UK and international cases and international child abduction	9.13	Produce guidance in 2020 on section 41 of the Family Law Act 1986.
29	Cross UK and international cases and international child abduction	9.14	Further work on whether amendments to the Child Abduction Act 1984 are required.
30	Prioritising sibling relationships for children in care	10.9	Introduce amendments to the Looked After Children (Scotland) Regulations 2009 to put a duty on local authorities to place siblings under 18 years of age together when they are looked after away from home, when it is in all of their best interests.
31	Prioritising sibling relationships for children in care	10.10	Issue guidance to encourage local authorities to exercise their corporate parenting responsibilities to maintain sibling relationships and share good practice across Scotland.
32	Prioritising sibling relationships for children in care	10.11	Consider further actions following the recommendations of the Independent Care Review.
33	Children's Hearings	11.15	Introduce the necessary secondary legislation to amend the procedural rules to ensure the digital developments are managed appropriately.
34	Children's Hearings	11.16	Ensure policies are in place to safeguard data protection, information security, information retention and confidentiality.
35	Children's Hearings	11.17	Amend the procedural rules relating to Children's Hearings to give the relevant local authority in a child's case an entitlement to receive the reports shared with the hearing and parties, which includes reports by safeguarders and any other independent professionals

Number	Topic	Paragraph	Action
36	Civil Justice Statistics	Annex C	Develop strategies to report more detailed statistics from SCTS while maintaining statistical rigour and anonymity.
37	Civil Justice Statistics	Annex C	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.
38	Research into family courts	Annex D	Further consider how best to promote existing research into family courts.

Annex B: List of areas consulted on but not taken forward

Contact

Area	Consideration
<p>Introducing a presumption that children benefit from contact with their grandparents.</p>	<p>Opinion in the consultation was strongly divided on this.</p> <p>The Scottish Government considers that any provision could cut across the key principle in the legislation that the welfare of the child is the court's paramount consideration. In addition, making specific provision in respect of grandparents, would also raise questions on whether there should be specific provision for other family members.</p> <p>However, one of the factors included in the Children's (Scotland) Bill that the court must consider, when making an order under section 11(1) of the 1995 Act, is the effect that the order might have on the child's important relationships with other people.</p>
<p>Replacing the term "contact" and "residence" with a new term such as "child's order".</p>	<p>In response to the consultation some argued that the current terms could suggest that one parent has a better relationship with the child than the other. In England and Wales, the terms "contact" and "residence" were replaced in 2014 with the term "Child Arrangements Order". The rationale for this was to encourage parents to focus on their child's needs, rather than their own rights. In New Zealand and Australia, the term "parenting order" is used.</p> <p>The Scottish Government consider the terms "contact" and "residence" have been in use for some time, have gradually gained acceptance and are useful descriptors of the orders in question. Therefore, the Scottish Government is not proposing any changes.</p>

Area	Consideration
<p>Legislative presumption in favour of shared parenting or specifying that the court should not presume that a child benefits from both parents being involved in their lives.</p>	<p>There were very mixed views on this area.</p> <p>The Scottish Government's view is that both parents should be fully involved in their child's upbringing as long as that is in the best interests of the child. The Scottish Government appreciates there are cases where it is not in the child's best interests for both parents to be fully involved, or involved at all, in their upbringing.</p> <p>Any presumption may cut across the fact that the welfare of the child is the paramount consideration. As a result, the Scottish Government considered no legislative presumption on shared parenting should be made.</p> <p>One of the factors included in the Children (Scotland) Bill that the court must consider when making an order under section 11(1) of the 1995 Act, is the effect that the order might have on the involvement of the child's parents in the child's upbringing.</p>

Parental Responsibilities and Rights

Area	Consideration
Step parents parental responsibilities and rights agreement.	<p>The proposal here is that a step parent could obtain PRRs by registering an agreement with the parent(s), without the need to go to court. The proposal reflects the fluid nature of some families. There is an agreement of this nature in England and Wales.</p> <p>The Scottish Government are not proposing to introduce a step parents parental responsibilities and rights agreement for a number of reasons:</p> <ul style="list-style-type: none">• the proposal may not take full account of the views of the child on whether the step parent should have PRRs;• a PRRs agreement for step parents could mean both parents as well as a step parent having PRRs. This may not be in the best interests of the child;• there would need to be a clear definition of who would be regarded as “step parents” for the purpose of being eligible to complete and register an agreement (e.g. whether the step parent would have to be married or in a civil partnership with a biological parent to obtain PRRs in this way or whether cohabitants could do so too); and• a step parent can already apply to the court to obtain PRRs.

Area	Consideration
<p>Removing the term “parental right” from the legislation.</p>	<p>The term used in Scotland is “parental responsibilities and rights”. Under section 2 of the 1995 Act, a person has some parental rights to enable them to fulfil their parental responsibilities. The consultation noted that the term used in England and Wales and in EU legislation is “parental responsibility.”</p> <p>The response by the Children and Young People’s Commissioner to this question is of particular interest. He said on the question of whether the term “parental rights” should be removed from the 1995 Act:</p> <p>“No. Parents are given rights to enable them to meet their parental responsibilities and help them exercise their children’s rights on their behalf, as outlined in Article 5 of the UNCRC. Every child has the right to their parents being involved in their upbringing, where it is safe for them to do so and states have an obligation to provide parents with support in doing this, as outlined in Article 18 of the UNCRC. The term parental rights can be important to ensure some vulnerable parents receive the support they need to fully participate in their child’s upbringing.</p> <p>The concept of parental rights can be important in ensuring that parents have access to the support they are entitled to. An important example is parents with learning disabilities, whose rights to support when raising their child are outlined in the UN Convention on the Rights of Disabled People Article 18. There is significant case law that highlights the importance of the concept of parental rights in these situations.”</p> <p>Other consultation responses also noted that the term “rights” may be helpful for parents and others when dealing with an emanation of the state.</p>

Area	Consideration
	<p>The Scottish Government considers that the concept of parental rights can be important in ensuring parents have access to the support they are entitled to.</p>
<p>Backdating the legislation allowing a father to be given parental responsibilities and rights by jointly registering a birth with the mother to pre 2006.</p>	<p>In the Family Law (Scotland) Act 2006, the law was changed so that fathers who jointly register the birth obtain PRRs. This change was not made retrospective. Therefore, it is possible that an unmarried father can have PRRs for one child (born after the law was changed) and not for another (born before the law was changed) even though he jointly registered the birth of both of them.</p> <p>The Scottish Government considers it would be inappropriate for parents who had registered the birth of their child on the basis of one set of legal circumstances then to find that subsequent legislation had materially changed those legal consequences.</p> <p>In addition from 2022 all fathers who have jointly registered the birth of a child with the mother will have PRRs since this is 16 years from the 2006 legislation.</p>
<p>Removing PRRs by the criminal court of a person convicted of a serious criminal offence.</p>	<p>The Scottish Government is not taking this forward as there are a number of potential drawbacks to the proposal, including:</p> <ul style="list-style-type: none"> • there may be cases where a child wishes a parent to still be involved in the child's life, despite any conviction for a serious criminal offence; • the criminal court is unlikely to be in a good position to obtain the views of the child; • if the child had to appear in a criminal court, this could have a negative impact on the child; and

Area	Consideration
	<ul style="list-style-type: none"> • it is not clear who would ask the criminal court to remove PRRs.
Parental responsibilities and rights for all fathers.	<p>Currently all mothers automatically get PRRs but this is not the case for all biological unmarried fathers or for second female parents. Responses were divided on this topic.</p> <p>The Scottish Government is not proposing to give all fathers PRRs for a number of reasons:</p> <ul style="list-style-type: none"> • a small percentage of unmarried fathers don't already get PRRs automatically, where the father is not registered as such at birth. There may be good reasons why a mother decides not to jointly register the birth of a child such as having been the victim of domestic abuse or violence at the hands of the father or where the father has shown no interest in helping to bring up the child. Where a father believes that it is in his child's best interests for him to have PRRs, he can ask the court to give them to him. This means a vulnerable mother does not have to go through a court process to remove the father's PRRs. • retaining the current position means that a disinterested father who is not married to the mother of the child would not have to consent to a registered change in the child's name. Currently, any person whose birth is registered in Scotland can apply to NRS to have a change of name recorded. If the person is under 16 years of age, the application must be made by a person with parental responsibilities for that child, namely: <ul style="list-style-type: none"> • where only one parent has parental responsibilities in relation to the child, that parent; or • where both parents have such responsibilities in relation to the child, both parents; or

Area	Consideration
	<ul style="list-style-type: none"> • where neither parent has such responsibilities, any other person who does. • if a child was conceived as a result of rape or incest then the mother could choose not to name the father on the birth certificate and he would then not get PRRs. This could benefit both the mother and the child concerned. • there could be practical difficulties for registration purposes if a mother does not wish to say who the father of the child is. • a father who has not previously been involved in a child's upbringing may wish to become involved when they otherwise would not have done. This could affect the welfare of the mother and may not be in the best

Birth registration

Area	Consideration
Compulsory joint birth registration.	<p>The consultation sought views on whether joint birth registration should be made compulsory so that the person registering the birth would be obliged to name both parents. Provision of this nature has been made in England and Wales but has not been commenced. Other countries such as New Zealand and Australia have introduced compulsory joint birth registration.</p> <p>The Scottish Government is not proposing to introduce compulsory joint birth registration for a number of reasons:</p> <ul style="list-style-type: none">• some stakeholders noted in their consultation responses that joint birth registration could be potentially unworkable in some instances, for example where the father is not known or is uncontactable, or in cases of rape.• it could present a barrier to registration which would be a breach of children’s rights under UNCRC Article 7 to be registered immediately after birth.• there are already mechanisms for the other parent to add their name at a later date either by completing a form⁶⁰ or seeking a court order.

⁶⁰ <https://www.nrscotland.gov.uk/registration/re-registration-of-birth-or-stillbirth>

Other

Area	Consideration
Amending section 22 of the Family Law (Scotland) Act 2006 which provides where a child is deemed to be domiciled.	<p>This question was included after written evidence was submitted to the Justice Committee when the Committee carried out post-legislative scrutiny of the 2006 Act.</p> <p>This is a technical area where consultees did not express a strong desire for change.</p>
Compulsory DNA testing in parentage disputes.	<p>Section 70 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 already provides that the court may draw from a refusal or failure to consent to the taking of a DNA sample from a child such adverse conclusions as it seems to it to be appropriate. This seems sufficient.</p>
Removing the presumption that the husband of the mother is the father of the child.	<p>Opinion was very evenly split on this.</p> <p>The Scottish Government has decided not to remove this provision as:</p> <ul style="list-style-type: none">• no major concerns about this presumption have been raised; and• removing this presumption may have unintended consequences on other areas in relation to children and families such as succession.

Area	Consideration
Changes to section 11(7A) to (7E) of the 1995 Act.	<p>The consultation sought views on whether changes are needed to these sub-sections. These sub-sections provide that the court must have regard to the need to protect the child from abuse when considering a case under section 11.</p> <p>The Scottish Government considers it important to retain these provisions to protect victims of domestic abuse.</p>
Cases under section 11 of the 1995 Act only being heard by the sheriff court (and not by the Court of Session as well).	<p>This was included in the consultation as a way of reducing costs and making justice more local. However, the Scottish Government considers that:</p> <ul style="list-style-type: none"> • the vast majority of contact cases are now heard in the sheriff court; • if a person on legal aid seeks to raise a case in the Court of Session, SLAB would ask why it was being raised there and not in the sheriff court; and • some cases (e.g. if the exact whereabouts of the child is not known) may have to be raised in the Court of Session.

Annex C: Further information on statistics

1. Scottish Government analysts are now embedded at SCTS with access to the new integrated case management system (ICMS). The system contains richer data about court processes and litigants, which enables better insight on cases than previously possible. The Scottish Government is developing strategies to report this more detailed information while maintaining statistical rigour and anonymity. Some of this more detailed analysis, including data on ancillary craves in family law cases, is in development for inclusion in the next civil justice statistics bulletin.
2. The Scottish Government are engaging with a range of external agencies and service providers (e.g. SLAB, advice agencies, and mediation bodies) to determine the extent to which information these parties can provide is appropriate for inclusion in official statistics. Data held by such agencies are both specific and complex and their compatibility with existing frameworks is currently unclear.
3. The annual civil justice statistics bulletin in Scotland has been revised to better reflect the coverage of the existing data.⁶¹ The statistics reflect functional changes in the pursuit of civil justice in Scotland and these trends are explored in greater depth and with clearer focus, leading to an overall quality improvement. As the available data expands and develops, the Scottish Government will continue to review the most effective means of communicating this new information.

⁶¹ <https://www.gov.scot/publications/civil-justice-statistics-scotland-2017-18/pages/3/>

Annex D: Research on family law

1. The Scottish Government launched a call for research proposals on people's experiences of the justice system in Scotland in autumn 2017. Two projects were funded that will add to the Scottish Government's evidence and understanding of how families and children experience the criminal and civil justice systems. The first research is due to report later in 2019. The second research is likely to report in 2020.
2. **'Children's Participation in Family Actions: Probing Compliance with Children's Human Rights'**. This project is looking at the current position of children's participation in family actions and draw on empirical evidence from other jurisdictions internationally where improvements have been adopted. (Lead – Dr Fiona Morrison, University of Stirling).
3. **'Domestic abuse and child contact: the interface between criminal and civil justice'**. This project is examining the interrelationship between the investigation and prosecution of domestic abuse in criminal justice and parallel child contact proceeding through civil justice processes, and produce recommendations concerning possible measures to encourage and support a closer articulation. (Lead – Professor Jane Mair, University of Glasgow).
4. Scottish Government Justice Analytical Services have conducted an international evidence review exploring the effectiveness of Integrated Domestic Abuse Courts (IDACs) that use a system of 'one family, one judge': **'Evidence on the Effectiveness of Integrated Domestic Abuse Courts'**.
5. This paper presents the findings from the small scale research project on IDACs that was carried out. This research reviews the evidence of this approach to improving engagement between civil and criminal justice processes in the context of domestic abuse. This paper will shortly be published.
6. The Scottish Government will consider further how best to promote existing research on family law.

Annex E: Judicial Training

The text below was provided by the Judicial Institute for Scotland.

1. The education and training of the Scottish judiciary is the responsibility of the Lord President. In 2013, the Lord President established the Judicial Institute for Scotland ('the Institute') to discharge this responsibility.
2. The Institute regularly provides judicial training in family law in a variety of ways. This includes face to face courses and online briefing papers.
3. The Institute responds to all significant legislative developments with carefully tailored judicial training, and this will include the Children (Scotland) Bill as enacted.



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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: 978-1-83960-114-9 (web only)

Published by The Scottish Government, September 2019

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS619850 (09/19)

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