

## **PE1635/A**

Scottish Government submission of 26 April 2017

1. Thank you for your letter of 3 April 2017 to my colleague Neil Robertson. I am replying on behalf of the Scottish Government.

### Background

2. You ask about the Scottish Government's views on the action called for in the petition and about progress in developing the Family Justice Modernisation Strategy. The Scottish Government is also committed to reviewing Part 1 of the Children (Scotland) Act 1995, which is the key primary legislation on matters such as contact. This review is relevant to a number of the points made in the petition. We expect a public consultation on the review of Part 1 of the 1995 Act to be issued in the early part of 2018. The review will reflect the key point that the child must be at the centre of contact cases.

### Contact and domestic abuse

3. The petition raises concerns about contact and domestic abuse. The Scottish Government is aware that this is a major issue. As part of the Family Justice Modernisation Strategy, we are preparing a paper for the Family Law Committee of the Scottish Civil Justice Council (which advises on court rules and procedures) on case management in family actions. One of the points in that paper, following correspondence received by the Scottish Government, is a recommendation that when the court is aware of domestic abuse or violent conduct being alleged or proved in a case, the rules should lay down that the court must take steps to protect the parties at any child welfare hearing. (Child welfare hearings are a type of hearing in contact cases).

4. More generally, the Scottish Government will consider issues on contact and domestic abuse in our review of Part 1 of the 1995 Act.

5. The petition mentions section 11(7A) to (7E) of the 1995 Act. These provisions were added to section 11 by the Family Law (Scotland) Act 2006. In relation to individual decisions and approaches by the court in section 11 cases, you will appreciate that the judiciary are independent and the Scottish Government cannot interfere with judicial decisions. The Scottish Government is aware that Dr Richard Whitecross of Napier University has been carrying out research on section 11(7A) to (7E). We understand a short summary of preliminary findings is being published in the Edinburgh Law Review in May and a short non-technical piece will be available in late May.

### Contact centres

6. The petition makes a number of points about child contact centres. The Scottish Government values the role played by child contact centres. The forthcoming review of the 1995 Act will consider the role of child contact centres and whether any regulation is needed. Most child contact centres in Scotland form part of the Relationships Scotland network and follow national standards laid down by Relationships Scotland. I understand Relationships Scotland are writing to the Committee and are providing the Committee with information on these standards.

## Judicial training

7. The petition also raises points on judicial training. The Lord President of the Court of Session is statutorily responsible for judicial training. That responsibility is discharged through the Judicial Institute for Scotland<sup>1</sup> which is the body responsible for all aspects of the professional development of judicial office holders in Scotland.

## Voice of the child

8. Another issue raised is the voice of the child in contact cases. As the SPICe briefing outlines, section 11 of the 1995 Act contains a number of key principles. The welfare of the child is the court's paramount consideration. A further principle is that taking account of the child's age and maturity, the child shall, so far as practicable, be given an opportunity to express his or her views.

9. The Scottish Government is aware of concerns about how children's views are heard. The Scottish Government sent a policy paper to the Family Law Committee of the Scottish Civil Justice Council on hearing the voice of the child in family cases for its meeting in December 2015<sup>2</sup>. Since then, the Family Law Committee has been reviewing F9, a court form used in contact and residence cases to obtain the views of the child (the current form is heavily criticised as not being child-friendly)<sup>3</sup>. We hope that a revised F9 will be in place later this year and the Committee will then be able to turn to other points in the December 2015 policy paper.

10. The Scottish Government will further consider points on voice of the child in its review of the 1995 Act.

## Progress with the Family Justice Modernisation Strategy

11. You asked about progress with the Family Justice Modernisation Strategy:

- As indicated above, we sent a policy paper to the Family Law Committee on the voice of the child in family cases for its meeting in December 2015.
- We held a summit in March 2016 and have published the responses from that summit<sup>4</sup>.
- As indicated above, we are preparing a policy paper for the Family Law Committee on case management in family actions.
- We intend to publish later this year a summary of work currently being undertaken to improve how family actions are dealt with by the courts. [A summary of this nature was tabled at the summit and this will be an updated version].
- We intend to consult early in 2018 on the review of the 1995 Act and aspects of the Family Justice Modernisation Strategy.
- Following this consultation, we will publish a final version of the Strategy.

---

<sup>1</sup> The Judicial Institute's website is at <http://www.scotland-judiciary.org.uk/59/0/Judicial-Training>

<sup>2</sup> The policy paper on the voice of the child is at <http://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/flc-meeting-files/flc-07-december-2015-meeting-papers/paper-5-1a-hearing-the-voice-of-the-child-in-family-cases---sg-paper.pdf?sfrsn=2>

<sup>3</sup> Rules have also been made on children not being sent the initial writ in family cases:

<http://www.scottishciviljusticecouncil.gov.uk/news/2016/09/06/new-rules-on-family-law>

<sup>4</sup> The responses from the summit are at <http://www.gov.scot/Resource/0050/00507357.pdf>

## Committee's round table

12. The Committee has indicated that it intends to organise a round table to consider further the issues raised by the petition. The Scottish Government is happy to participate in this round table, as required.

Yours sincerely