

## JUSTICE COMMITTEE

### CHILDREN (SCOTLAND) BILL

#### SUBMISSION FROM THE SCOTTISH CHILD LAW CENTRE

The Scottish Child Law Centre is one of only a few dedicated providers of guidance and information on matters of law concerning children and young people. We provide services throughout the whole of Scotland.

We help children and young people, their families and carers, and professionals working for and with children and young people by providing free expert legal advice and information through our advice line and email.

We also provide a wide range of training on the law and children's rights to organisations and individuals across Scotland and produce a range of publications on various legal issues and do visits to schools and young people's groups.

The Scottish Child Law Centre welcomes the opportunity to respond to the consultation on proposed provisions of the Children (Scotland) Bill.

#### 1. Voice of the child:

*Do you agree with the approach taken in the Bill to remove the presumption that a child aged 12 or over is of sufficient age and maturity to form a view?*

Yes, the presumption has been used in practice as barrier to children being able to give their views in civil court proceedings. All children have the right to participate in decision-making that affects their lives. Many children younger than 12 year of age are capable of forming and expressing a view. Removing the legal presumption will help to ensure that children under 12 are given an opportunity to express their views and for those views to be taken into consideration in all decision-making processes. However, the change in legislation alone is not going to accomplish the necessary change in practice.

*Do you agree that it should be left to the court to decide the most suitable way of obtaining a child's views?*

Yes, as it is supported by the principle of the best interests of the child. However, we have concerns that the same practice may be used by some sheriffs regardless of the new Act provisions. We believe that for the provisions to make practical changes the Bill needs to be supported by change in approaches and ultimately the culture change in the way the Judiciary and legal professionals view participation of children in court proceedings about them.

*How do you think children should be given the opportunity to express their views?*

The child should be advised in a child friendly and age appropriate way of the nature of the court proceedings about them and asked whether they would like to submit their views. If they do wish to do so, the child should be presented with a list of ways in which they can give their views to the court (fill in a form,

write/draw, meet directly with the decision maker, express their views with the assistance of an assigned advocacy worker, appointment of a child welfare reporter). It should be made clear to the child that this is not an exhaustive list of methods by which the child's views can be obtained and any suggestions that the child may have would be welcomed. If the child chooses to provide their views, he/she should be given an opportunity to indicate their preferred method of doing so. We consider this to be crucial to the child's effective and meaningful participation. We do however, appreciate the child's preferred method may not always be practicable.

*Are there other measures that you think should be in the Bill to ensure that the voice of the child is heard?*

We consider the following measures should be included:

Availability of Children's Rights Officers and Advocacy Workers to support the children in preparation for court proceedings about them; including helping the child instruct a solicitor and receive advice on their legal rights if they wish to do so; whether the child chooses to submit his/her views, participate in the process or simply being made aware of the decision made by the court about them (interim or final order).

2. **Child's best interests:** *To what extent does the Bill meet one of its key policy aims of ensuring that the best interests of the child are at the centre of contact and residence cases and Children's Hearings?*

The Bill is a good starting point and we welcome some of the much needed changes in the civil family court proceedings, such as regulation of the contact centres and child welfare reporters and curators ad litem. However, all of the envisaged changes need to be supported by training, obligation to tell the child of the outcome of the court hearing if the child has been made aware of the court process about him/her taking place and robust guidance. The changes would also need to be monitored by collecting and analysing desegregated data to review the effectiveness of the proposed changes.

We consider that it is not only contact and residence cases and children's hearings, but in ALL decision making forums where the child is the subject of the decision. There needs to be a consistent rights based approach across all jurisdictions whether judicial, quasi-judicial, extra-judicial or administrative, including: criminal proceedings, private civil proceedings, Children's Hearings Child Protection looked after and wellbeing forums, ASN Tribunals, Education Appeals Committees, Adoption and Fostering Committees and Panels, Adoption and Permanence Proceedings, Secure Care screening forums, mediation and Family Group Decision Making.

3. **Child welfare reporters and curators ad litem:**

*Do you agree that child welfare reporters and curators ad litem should be regulated?*

Yes

*Do you have any views on how this should work in practice?*

The process of recruitment, training, review and deregistration of the Child Welfare Reporters (CWR) and Curators *ad litem* (Curators) must be done in a transparent and universal way across Scotland. There needs to be a clear process of complaints and review of any feedback provided as to the quality of the reports and other professional skills, such as interviewing child techniques etc. CWR and Curators need to be consistently trained on child development, children's human rights, how to interview/speak with children of all ages and abilities. Consideration must also be made for engagement with professionals already having working relationship with the child in order to ensure the most effective way and most effective overall participation in the process of providing children's views.

**4. Factors to be considered by the court when making contact and residence orders:**

*The Bill would require the court to consider the effect of an order on the involvement of the child's parents in bringing up the child and the effect on the child's important relationships with other people. This is in addition to statutory factors relating to protecting the child from abuse and other factors appearing in case law. Do you agree with this approach? Should any other factors be listed in the Bill?*

Yes we agree. We understand that under-use of the current section 11 (7) (A,B,C,D) may be down to some practical reasons. This would need to be addressed in some other ways such as training to sheriffs and law practitioners on child development, children's human rights, and the effect of physical and psychological trauma. We believe that the proposed changes in the legislation will not accomplish the desired result via statutory amendments alone.

**5. Other requirements on the court:**

*Do you agree that the court should ensure that certain decisions are explained to the child?*

Yes, important decisions should be explained to the child i.e. decisions which establish or amend contact arrangements, for example. We do not consider it necessary or appropriate for all decisions to be explained to the child i.e. procedural decisions. Important decisions need to be explained to a child in a way that they would be able to understand and by someone who is impartial in the family disagreement. The practise of providing a child with the information on the outcome of the hearing about them, where it is appropriate to do so, needs to be supported by appropriate safeguards.

*Do you have any views on the provision in the Bill which would require the court to consider the risk to the child's welfare of any delay in the proceedings?*

We believe the court should strive to resolve civil court family matters as expeditiously as possible and believe that further work to better exercise case

management of family civil court actions is currently underway by the authorised agencies already. We also believe that the court should seek to obtain the child's views at the earliest stage of the proceedings as possible.

6. **Vulnerable witnesses:** *The Bill would prevent a party from personally conducting their case in contact and residence cases and Children's Hearings in certain circumstances, for example, where the witness is a victim or complainer of domestic abuse. A solicitor could be appointed by the court to represent the party who is prevented from conducting their own case. Do you agree with this approach?*

*The Bill would also allow the court to order the use of other special measures, such as the use of a live TV link or screen, in contact and residence cases. Do you have any views on this provision?*

An individual should have a right to conduct their own defence/pursue the matter as a party litigant should they wish to do so. We also believe that civil family court proceedings should seek to protect vulnerable witnesses/participants. A party litigant should be given an option to have an appointed solicitor conduct the questioning of the witness but, should they refuse such assistance, the court must utilise the use of "Commissioner" via whom the questioning of the witness may take place, in addition to other vulnerable witness measures available under the vulnerable witness provisions.

We have concerns that the imposition of the court appointed solicitor may be in contradiction to provisions of article 6 of the ECHR.

7. **Contact centres:**

*What role should child contact centres play in maintaining contact between children and family members they do not live with?*

The role of the Contact Centre(s) has to be very clearly defined and they should only be used if there is no other safe place for children to maintain contact or there are protection concerns which warrant supervision and assessment. They may be appropriate in instances of re-introducing a parent and a child to each other after a prolonged period of non-contact, as well as in instances of suspect neglect, emotional and physical harm.

The Contact Centres should not be used as a long term solution for maintaining adult/child contact.

*Do you agree with the proposal in the Bill to regulate child contact centres and for there to be a system of independent inspections?*

Yes, we believe that the Centres should be subject to the supervision, registration and process of complaints regulated by the Care Inspectorate. We would suggest that views are taken from children attending such Contact Centres as to the use of the best name for such venue, perhaps, re-naming the Contact Centre's to Children's Centres or Family Centres.

*The Bill would only require the use of regulated contact centres where referral is made by the court, although the Family Justice Modernisation Strategy suggests solicitors could also be encouraged to refer to regulated centres. Do you agree with this approach?*

Use of the regulated contact centres should be made available to all those in need of this service, including on self-referral basis, and those families involved in any dispute including in the children's hearings system and the other arena as outlined in the examples in our Answer 2.

*Do you have any views on the practical or resource implications of the regulation of contact centres?*

Those agencies managing the contact centres may be best placed to comment on the feasibility and other practical implications that the above proposed changes may have.

The Care Inspectorate may be best placed to monitor and regulate "Children's Centres" in a similar way to early years and residential care providers. If so, a human rights-based framework of quality assurance consistent with the collection of health and wellbeing indicators could be adopted.

**8. Enforcement of orders:**

*The Bill would require the court to investigate the reasons for a person's failure to comply with a court's order relating to, for example, contact. Do you have any views on this approach? Are there any other options which should be included in the Bill to ensure orders are enforced?*

We welcome the proposed approach. The requirement to investigate the reason for non-compliance would provide an opportunity for a court appointed professional not only to carry out further investigations into the dynamic between the parents/carers but also would allow for recommendations to be made as how to resolve the difficulties for good. We believe that child centred framework, therapeutic and other alternative models of resolving disputes, including the use of the Family Group Decision Making meetings, where it is appropriate to do so, should be considered in instances of non-compliance with court orders.

**9. Contact with siblings:**

*Do you agree that local authorities should be required to promote contact between a child and any siblings or other people with whom the child has a sibling-like relationship?*

We welcome the requirement to promote sibling contact. This needs to be supported by training for members of the local authority whose duty this will become and the Children's Hearing Panel Members to have the confidence to question instances where this was not carried out and to remind local

authorities of their statutory duties to promote and respect the child's rights to respect for family life.

**10. Births registered out with the UK:**

*Do you have any views on the provisions in the Bill that would allow parental rights and responsibilities obtained outwith the UK to be recognised?*

We support the proposed legislative changes. We accept that there may be other implications that may transpire from the recognition of the process of registration of a child's birth outwith the UK. Any such implication would need to be monitored to assess whether further changes or clarification of the legislation need to take place.

**11. Children's Hearings:**

*Some of the Bill's provisions, for example, in relation to ensuring that the voice of the child is heard and protecting vulnerable witnesses would apply to Children's Hearings. The Bill would also make other changes relating to Children's Hearings, for example, giving the Principal Reporter the right to appeal against a sheriff's decision in relation to deemed relevant person status. Do you have any views on these changes?*

We welcome the proposed changes extending the use of the vulnerable witness provisions for the purposes of the children's hearings proceedings. We believe the SCRA are currently working on utilising the technology, such as video links, to improve participation of relevant persons for the purposes of the CH Proceedings.

We also support the proposal to extend the right to appeal against the sheriff's decision in relation to deemed relevant person status to the PR.

**12. Practical, financial or other impacts of the Bill:**

*Do you have any views on the practical, financial or other impacts, such as the equality impacts, of the Bill?*

As we mentioned above, the proposed changes will not necessarily provide for noticeable changes in practice unless they are supported by the extensive training of many professionals dealing with and making decisions about children in the civil court and children's hearings proceedings. The financial implications of changing approaches and culture are difficult to estimate but we suspect may be substantial. What may also be required is a buy-in from the highest members of Justiciary to implement the needed cultural changes in the way family law matters are disposed within Scotland.

**13. Family Justice Modernisation Strategy / issues not covered by the Bill:**

*The Family Justice Modernisation Strategy, published alongside the Bill, sets out other actions the Scottish Government intends to take to improve the operation of family justice. It also sets out the reasons why certain areas that were previously consulted on by the Government are not being taken forward.*

*Do you have any views on the actions set out in the Family Justice Modernisation Strategy? Are there issues which are currently not covered by the Bill which you think should be?*

We believe that anyone working and making decisions about children should have awareness of children's rights and human rights.

The policies supporting this and further legislation should be supported by clear guidance and underpinned by the human rights approach.

The Scottish Child Law Centre  
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