

JUSTICE COMMITTEE

CHILDREN (SCOTLAND) BILL

SUBMISSION FROM EARLY YEARS SCOTLAND

About Early Years Scotland

Early Years Scotland (EYS) is committed to providing the very best start in life for every child in Scotland. We are the leading national third sector organisation for children birth to 5. Early Years Scotland's remit is broad, but with a strong focus on the professionals and families who care for the youngest members of our community.

There are four strands to our work. These are:

- **Delivery of services working with children and families together**
- **Delivery of services for providers of Early Learning and Childcare**
- **Delivery of high quality, relevant professional learning services for the workforce**
- **Delivery of advocacy and advisory services relating to legislation, policy and practice.**

Our Response

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? Do you agree that it should be left to the court to decide the most suitable way of obtaining a child's views? How do you think children should be given the opportunity to express their views? Are there other measures that you think should be in the Bill to ensure that the voice of the child is heard?

Early Years Scotland supports 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. At present younger children are unable to fully participate in proceedings, which means that their opinions and experiences (valid as they may be) are excluded. EYS believes that, broadly, this should no longer be the case.

There is undoubtedly a place for the voices of under-5's to be heard in cases that will have a direct impact on them, their family and their lives overall. EYS welcomes the proposals within the Policy Memorandum accompanying the Bill, one of which is that children's views could be taken into account by them drawing a picture and submitting that to the court. This would be a particularly beneficial way for younger children to participate in proceedings and have their voices heard.

There are concerted efforts being made, through current funded early learning and childcare (ELC) provision and the planned expansion from 600 to 1140 hours, to ensure that Scotland's children are given the best start in life. Access to high quality

ELC not only enhances, amongst other things, children's socialisation and learning, but it also serves to empower children to be confident and capable. It does, therefore, seem to be a logical step to allow these children to be heard by the courts in situations which are ultimately about them.

EYS understands that there are circumstances in which it will not be appropriate for a child's views to be heard, for example where they are very young. It is, however, important to ensure that children are given the appropriate advice and support so that their views can be fully and accurately represented.

Child Welfare Reporters and Curators Ad Litem

Do you agree that child welfare reporters and curators ad litem should be regulated? Do you have any views on how this should work in practice?

EYS support the proposal to regulate child welfare reporters (CWRs) and curators ad litem. As with any worker who comes into regular contact with children and young people, it is essential that CWRs and curators ad litem are provided with across-the-board training and development opportunities. This would mean that each and every one is able to fully and accurately understand and support the needs of the child or young person they are working with. This is particularly pertinent in cases where domestic abuse is involved. It is also right that these individuals are also subject to a level of scrutiny and accountability in carrying out these extremely important roles.

CWRs can be appointed to obtain the views of a child. It is, therefore, important that children and young people are able to build strong, positive and trusting relationships with these individuals. Often the child or young person will share intimate, personal details with a CWR, who should be able to respond to the information in an appropriate, sensitive way.

EYS notes that, at present, the vast majority of CWRs are lawyers, and that one of the aims of the Bill is to encourage more non-lawyers to apply to become CWRs. With this in mind, perhaps this could be encouraged for current members of the early years' workforce, or those with experience of working in it. These individuals would have significant experience of working with under 5's in particular, and as such could use this to be able to ensure not only that younger children are properly supported, but that their voices are heard in a way which is appropriate for both them and for the courts.

Other requirements on the court

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

It is extremely positive that s.15 of the Bill ensures that the outcomes and reasons for decisions will be explained to the child, impartially, if the court considers it to be in the best interests of the child. Where this happens, decisions must be explained in a manner which is age, development and capacity appropriate for each individual child.

This policy is positive for a number of reasons. If a decision is not impartially explained to a child or young person and instead they are given the information by, for example,

a family member, then they may be less likely to ask questions or talk about the decision, often for fear of upsetting the person telling giving them the explanation or another person within the family. If, however, they are told from the outset that upon conclusion of proceedings, they will have the opportunity to talk about the decision with someone who may be known to them, for example a CWR, but who is not an immediate family member. They may then be more likely to ask questions about the impact of the decision on them and the family overall.

Vulnerable witnesses

The Bill would prevent a third 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 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?

Attending court for this type of hearing can be a difficult experience for all involved. It can be even more traumatic when families are affected by domestic abuse. This is especially true where the abuser, in conducting their own case and cross-examining witnesses, is able to continue to attempt to exert power and control over both the victim and their children. Children who have lived in homes where abuse has occurred will, sadly, already have Adverse Childhood Experiences (ACEs), which can potentially be extremely damaging. It is essential that they are not re-traumatised by being cross-examined by one of their parents within a court setting. EYS believes this is grossly unfair and extremely confusing for children and, as such, this proposal is an extremely welcome one. The appointment of a solicitor will make the process much fairer and more impartial.

Similarly, the use of special measures such as a live TV link or screen, are a positive step forward in ensuring the best interests of the child in this type of court hearing. Removing a child or young person from a court setting and allowing them to be heard in a more comfortable, relaxed environment, would be extremely beneficial. It is often the case that the formality of a courtroom is not conducive to obtaining relevant information from an adult, let alone a child. Not only can the setting be intimidating, but there can be individuals within the court who make it difficult for those providing evidence. This is particularly the case where domestic abuse is a factor, and the perpetrator is in the same room as a victim or their children. It would, therefore, be fairer and more beneficial for special measures to be implemented.

Contact centres

What role should child contact centres play in maintaining contact between children and family members who they do not live with? Do you agree with the proposal in the Bill to regulate child contact centres and for there to be a system of independent inspections? 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? Do you have any views on the practical or resource implications of the regulation of contact centres?

EYS supports the Scottish Government's proposal to establish minimum standards in relation to training and accommodation to help ensure that all contact centres are safe locations. Contact centres play a vital role within family justice and they are a resource which could and should be used in the most positive way possible. It is concerning that, at present, they are not subject to any regulation in relation to the standard of accommodation or training of staff. EYS would, therefore, welcome moves to ensure that those working with children in young people, in what are often difficult circumstances, have proper training across a range of issues that they may encounter. Improved regulation is also important. Those who access contact centres often do so in what are challenging familial circumstances – for many children they are the only place they see a parent, therefore it is vital they are able to have a positive experience. Centres should create consistent, comfortable, safe environments for families so that this can happen, however if there is no regulation then this cannot be guaranteed for all who access them. Regulation is, therefore, a logical step in ensuring that the best interest of the child are protected.

Contact with siblings

Do you agree that the 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?

EYS supports the duty in the Bill placed on Local Authorities to promote sibling personal relations in the same way as they are required to promote personal relations and direct contact with a child and their parent where this is practicable and appropriate. Maintaining these links and relationships are so important, particularly for younger children, for whom we understand the importance of strong bonds from an early age. Being removed from the family home and put into local authority care can be an extremely upsetting experience. To then further traumatise children by taking them away from what may be the only other family they have is both unfair and unacceptable. The duty contained in the Bill is a welcome and overdue step, which will mean that these relationships will have to be taken into consideration.

The policy memorandum states that “local authorities must take the views of siblings into consideration when making their assessment of their duties”. It is important that siblings are supported through the process of making their voices heard through appropriate advocacy.

This duty will further compliance with the UNCRC. EYS welcomes any measure which allows for this to happen, as it will make overall incorporation much easier.

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?

EYS would fully support the provision of guidance for adults and children on attending court (point 6.11 of the Strategy). A court can be a daunting place for anyone to attend

and it can be difficult to fully “take in” and understand what happens before, during and after proceedings. This is particularly the case for children. It is, therefore, important that age-appropriate guidance is created in order to hopefully make the experience of children and their families less intimidating and more positive overall.

EYS notes that the Strategy suggests what such guidance may cover, but not the manner in which it would be presented. If younger children are to have their voices heard in proceedings, then they need to have information in a manner suitable to them. A video/animation or a series of pictures with fewer words may be the most appropriate way to convey this guidance and, as such, should be considered as a viable option as the Strategy is developed and implemented.

Early Years Scotland
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