JUSTICE COMMITTEE

CHILDREN (SCOTLAND) BILL

SUBMISSION FROM THE SCOTTISH COURTS AND TRIBUNAL SERVICE

I refer to the above call for views to which I respond on behalf of the Scottish Courts and Tribunals Service (SCTS). The response is submitted by the SCTS acting in its role to provide efficient and effective administration to the courts and does not include the views of the Judiciary.

The SCTS supports measures which ensure that the best interests of the child are at the centre of contact and residence cases and Children's Hearings. Whilst the SCTS does not provide comment on the specific questions raised in the call for views, we do have the following comments to make on some of the provisions contained within the Bill.

Regard to be had to the child's view

Sections 1-3 of the Bill make provision in relation to obtaining the child's view. Section 11 of the Children (S) Act 1995 already requires the court to give the child the opportunity to indicate whether they wish to express their views, taking account of a child's age and maturity, and then to have regard to any views they express. This is done through the issuing of a Form F9 to the child.

A new version of the Form F9 was produced by the Scottish Civil Justice Council for use in cases raised on or after 24 June 2019. The new Form F9 was designed with the assistance of a graphic designer with a view to being sent to children as young as 5 years old. There has been insufficient time since its introduction to assess the impact that there has been on the volume of Form F9s that have been received by the court. However, views on how it has been received may be of interest as regards the provisions of this Bill.

The Bill extends the current requirement regarding the child's views by providing that the court must give the child an opportunity to express their views in a manner suitable to the child, and then have regard to any views expressed by the child. It is unclear how this will work in practice, in particular how the court will ascertain what the most suitable manner for the child to provide their views would be. For example, it may be envisaged that the pursuer or defender will include a view on the most appropriate method in their averments contained in the initiating writ/ application. Alternatively, it may be that the child is asked how they would prefer to provide their views. The practicalities of the latter will have to be properly considered, including whether an equivalent of the Form F9 be sent for this purpose. The costs to the SCTS in ensuring that this requirement is fulfilled would be dependent on the way in which the information is obtained.

The SCTS agree that in order to ensure flexibility it is best not to include an exhaustive list of ways in which a child can provide their views to the court in the Bill. However, it is unclear to the SCTS what additional options would be available for use by the courts. The policy memorandum lists:

- speaking directly to the decision maker,
- by completing a form,
- through submitting a drawing, or letter, or
- the views of the child being taken by a child welfare reporter.

These options are already available, therefore there are no new methods suggested, including any that may be seen as being more familiar to a child, for example the use of technology.

However, should the use of technology be seen as appropriate, research would need to be undertaken with children and others. This would need to take account of cognitive capability, language skills, digital literacy and many other areas of human cognitive capability and development given the wide age range of the children who may provide their views. The research would also have to consider those with access needs or other impairments to ensure that any solution would be suitable for use by them. This would all have to be appropriately funded.

Additionally, the SCTS consider that the change in the point at which the age and maturity of the child are considered, is likely to result in an increase in the number of cases in which the views of the child are obtained. Costs for the SCTS will be dependent on the methods available for children to provide their views, the methods most frequently chosen and the volume of cases in which views of the child are to be obtained. Therefore costs incurred by the SCTS may be higher than those which are stated in the Financial Memorandum.

Further, the Financial Memorandum does not appear to take account of the additional costs that will be incurred by the judiciary considering the views of the child that have been obtained by methods other than the child speaking directly to them. For example, they will need to read and consider any reports produced by a child welfare reporter or the views or pictures received directly from the child. These costs are currently incurred, but will be more substantial as a result of the increase in views we anticipate will be provided.

Vulnerable witnesses and parties

The Financial Memorandum notes that there will be no costs to the SCTS as a result of the provision which authorise the use of special measures in proceedings such as child welfare hearings and evidential hearings. This is noted as being due to the fact the courts should already have access to facilities such as live links and screens as they are used in criminal proceedings. Whilst courts do have access to these, their use has, and is likely to continue to increase. Additionally, in a number of courts child welfare hearings take place in chambers, jury rooms and other rooms within court buildings. Facilities may therefore not always be available for use in these proceedings. Whilst the frequency in which this equipment would be used in child welfare hearings etc. is currently unclear, if its use was to be frequent, it could result in delays in the progress of cases as they may be continued to await availability of the

equipment. The alternative would be to provide sufficient funding to enable additional special measures equipment to be made available in the courts.

The SCTS would also highlight a practical difficulty that is likely to be encountered as a result of special measures being applied to appeals under section 154 of the Children's Hearings (Scotland) Act 2011. Appeals under section 154, in some circumstances, have to be heard and disposed of within 3 days, beginning the day after the appeal is lodged (the calculation includes weekends and public holidays). Therefore, if an application was lodged on a Friday, even if lodged at 5pm, and there was a Monday public holiday, the appeal would have to be heard that day. This would be problematic if the court did not have immediate access to the equipment required to fulfil any order allowing special measures to be used.

Contact

Section 9 of the Bill relates to the regulation of child contact centres. The SCTS would simply note, as it did at consultation stage, that should regulation result in a lack of facilities being available for use, delay in court proceedings may result. This would be due to continuation of cases to await the availability of a place at a contact centre to enable contact to take place.

Curators ad litem

Section 13 of the Bill requires the court to reassess the appointment of curators ad litem every 6 months. It also applies this provision to appointments made prior to the provision coming into force. The SCTS would experience significant difficulties in identifying cases in which a curator ad litem has already been appointed in a case. The SCTS uses a live operational case management system for the processing of court business. As a result, the SCTS could not identify cases in which a curator ad litem had been appointed, without having to manually search court papers, which would require significant staff resource. For cases in which there are hearings assigned, this will be less of an issue, but for cases which are, for example sisted, this requirement would be problematic and costly to the SCTS.

The SCTS was unaware that this provision would be included in the Bill, therefore cost estimates have not been included as part of the Financial Memorandum. It is difficult to know how many such cases are currently sisted.

Explanation of decisions to child

Section 15 amends the 1995 Act by making provision for an explanation of the decision of the court to be given to the child in certain circumstances, in a manner they will understand. The explanation can be given to the child by the court itself, or it can be given by a child welfare reporter. The SCTS would make similar comments to those it has made in relation to the views of the child, noted above.

It is the SCTS view that it would be appropriate to consider whether there are other ways in which children may prefer to receive this information. For example, if the court is to provide the explanation, a child may not want to speak directly with the judge, and they may not find it helpful to receive a written explanation. In relation to the child

welfare reporter providing views, there may not have been a child welfare reporter involved in the case. It may be difficult to introduce someone new to the child at the point of providing an explanation of the court's decision.

If it is viewed appropriate to explore possible technical solutions for obtaining the child's views, these could also be used to assist in providing an explanation of the court's decision to the child. As noted however, this would have to be properly scoped out with sufficient funding being made available. It is also unclear what emotional support or otherwise would be made available to the child on receiving the explanation.

Scottish Courts and Tribunals Service
15 November 2019