

JUSTICE COMMITTEE

CHILDREN (SCOTLAND) BILL

SUBMISSION FROM COSLA

COSLA welcomes the opportunity to respond to the call for views for the Children (Scotland) Bill and we trust our response will be of assistance to the Justice Committee in their considerations.

We welcome the broad principles of the bill to enhance the rights of the child in contact and residence cases, as well as further protecting victims of domestic abuse. The aims of the Bill in protecting and enhancing the rights of children align with the priorities of COSLA and our role in the development of the National Performance Framework and support for the principles of Getting It Right for Every Child. COSLA is satisfied in our opinion that this Bill cooperates with the implementation of the United Nation's Convention on the Rights of the Child as we currently understand it.

COSLA recognises the need for the Scottish Government, Local Government and relevant national agencies to work closely together to prepare and implement the legislation, ensure supporting guidance and practice develops across Scotland appropriately to ensure the overarching principles of Getting It Right For Every Child are front and centre of policy development in this important area.

- 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? 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?**

COSLA agrees that the voice of every children affected by cases must be heard and respected. We welcome the provision of removing the assumption that 12 is the age required to make statements on cases, given that it does not diminish the right of children's and young people's voices, either aged below or over 12, being heard. However, COSLA also recognises that children should never be pressurised or coerced into providing views or information to inform decisions being made about important matters in their lives. Adequate child friendly, inclusive, accessible information and protections must be in place to ensure that children understand their rights (including their right not to participate); have access to appropriate, and where necessary trauma informed and ethically sensitive advocacy support to enable their safe participation in due process, and that they are protected from undue pressures or coercive, controlling behaviours. Further guidance must be provided on what mechanisms will be used to assess the maturity and capacity of a child to have their views heard and taken account of, how those mechanisms will take account of and support additional vulnerabilities, how they will avoid the re-traumatisation of children living with difficult or abusive circumstances and behaviours, and how the additional skills, time and resources required to achieve meaningful engagement will be resourced.

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?

COSLA is concerned that the best interests of the child will not be achieved through the provisions of the Bill unless Civil Justice processes and decision making are better and more robustly informed by Criminal Justice processes. COSLA is concerned that contact and residence decisions made must be informed by evidence of domestic abuse/coercive control and related criminal convictions, and that the harmful impacts on and danger to the wellbeing of children of domestic abuse must be considered in the context of contact and residency decisions made. Current presumption in Civil processes of parental rights to contact over the child's right to protection from abuse is not being addressed. Without remedial action the child's right to make their views known and for those to be taken account of, where the child may be the victim of abuse, coercion and controlling behaviour, places responsibility for the child's protection from further harm on the child itself.

Were this to be addressed, COSLA may then be satisfied that the provisions being proposed would further enhance the rights of children and better ensure the best interests of the child are considered in contact and residence cases and Children's Hearings. Unless the deficits outlined above are dealt with COSLA will not be confident that the Bills Provisions will deliver against the principles and values of GIRFEC and children's additional human rights protections under Article 12 of the CRC.

COSLA agrees that it is important that the rights of the child to have their views heard is considered throughout appropriately informed decision-making processes in respect to contact and residency decisions, where the child has access to appropriate support, where the approach taken is trauma informed and where the child chooses to do so. Children's views should subsequently also be sought to inform any further review of the impact of decisions taken.

3. 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?

COSLA recognises that Child Welfare Reporters (CWRs) can play an important role in ensuring the best interests of the child are reported to the court. COSLA agrees that this role should be regulated and accountable, with a set of minimum standards to ensure a consistent level of service for Children across Scotland. The person occupying this role will have extended contact with the child during the case, and it is important that minimum standards are maintained in ensuring the best environment and outcome for the child.

COSLA would expect for further consultation to be brought forward to guide Scottish Ministers on the eligibility criteria for the role and what are the exact standards that are to be maintained. While the Financial Memorandum clearly states that this registration and training will be fully funded by the Scottish Government, COSLA would express concerns that the training and regulation could mean a reduction in the number of CWRs and curators ad litem, especially in the short-term. This is especially important across the Scottish Islands and rural communities.

The option for training and qualification to meet the minimum standards and being added to the register should be made available to all current CWRs. This training should coincide with the timetable on Page 3 of the Financial Memorandum to ensure training is complete by the proposed “New regime operational” date of April 2023. This includes Local Authority employees who at present act at CWRs. COSLA reinforces the view given by SOLAR in point 166 in the Policy Memorandum.

COSLA welcomes that the Bill looks to enable more non-solicitors, such as social workers and child psychologists, to train to be a CWR, however have concerns on the resource implications on Local Authority social work departments whose staff undertake this training and role. COSLA further recommends that the Government should explore how those from other appropriately professionally qualified groups might bring additional value and capacity to this role if provided with training where required.

COSLA broadly agrees the same guidelines and principles for the regulation of CWRs should be the same for curators ad litem, and again stress the need for the costs of maintaining a register and training to be fully funded. It is important that training is informed by GIRFEC principles, a child rights, child centred approach, including the appropriate participation of children with lived experience in its development, and that it is designed and delivered by those with appropriate skills, knowledge and experience. It is important that individuals who would usually carry out this role are given every opportunity to retrain and prepare for changes in respect to the role as well as ensuring that other appropriate professionals are also considered as potential curators ad litem, to ensure there are no shortages, and therefore gaps in provision of support. Further clarification and guidance should be provided as to when a CWR or a curator ad litem is required. For both CWRs and curators ad litem, it is essential they are fully trained in understanding the complexities of domestic abuse including coercive and controlling behaviour.

COSLA expects that there needs to be full clarity over the role of Local Authorities in future relationships with CWRs and curators ad litem.

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?

COSLA agrees that a range of aspects of a child’s life should be looked at when making decisions in these cases, however, we remain concerned at the prospect of a definitive list of factors. This could set an unnecessary rigidity to individual cases, where time may be spent on factors irrelevant to individual cases. This could also perhaps lead to a ‘box ticking’ element being applied to each case. GIRFEC is the appropriate framework to apply, ensuring that it is child and the child’s wellbeing that sits at the centre of decision making over all other considerations.

It is important that the right to family life is maintained if it is in the child's best interest and does not cause harm to the child. COSLA is supportive of children retaining close relationships with their family members. COSLA would however note that increasing cuts and savings in Local Government budgets are putting an unacceptable pressure on capacity, and this needs to be addressed to ensure additional capacity to support this notion is available. It is critical the views of children with experience of contact decisions contribute to an ongoing review of the impact and appropriateness of such decisions.

5. 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?

COSLA supports that decisions made and the reasons for those decisions, should be explained directly to the child involved in age appropriate, accessible and respectful ways and environments, ensuring that care is taken to support the child's emotional wellbeing. Children should have access to the information being supplied in more than one medium, allowing the child to also have access to a record of decisions made and reasons why they have made, in a format that they can understand and refer to on an ongoing basis.

It is important that the delivery of decisions made and the reasons for those decisions, including the provision of supportive information is part of a formal, impartial and established role for an identified individual, as it ensures an unbiased overview of the decisions made throughout the case. That individual should already have a relationship with the child that has been developed through the decision informing process, as is it important to ensure trust, and consistency in the professional relationships supporting any child, particularly those in challenging and vulnerable circumstances. If a Child Welfare Reporter or curator ad litem has been appointed to the case, it would be preferable this individual would provide an explanation of decisions. It is important that whoever gives the explanation is fully trained and regulated, especially if there are cultural/language barriers, the child has difficulties understanding situations or if the decision goes against the views they had given. Guidance should also be provided to the child on how, if they can, appeal a decision and how they can be helped in doing so.

It is also important there is a responsibility to ensure that the child understands the decision that has been explained to them. It must be recognised that some children will not want to engage in this, and this must be respected, however if the decision of the court will cause a significant change in the child's life, then they should be made fully aware of the situation in a sensitive way that does not traumatise a vulnerable child. COSLA is broadly content on which decisions should be explained to the child. Accountability in relation to the quality of and any ongoing child protection measures put in place requires that the views of the child in respect to decisions made are recorded and reviewed. The approach and process should be informed and underpinned by the [Seven Golden Rules of Participation](#) that are directly informed by the CRC General Comment 12 on Article 12.

- 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?**

COSLA believes that if the Bill wishes to legislate that the best interests of the child are represented then prevention of self-representation should cover all cases where there is evidence of domestic abuse. This will allow victims to have confidence in giving high quality evidence without the threat of intimidation or re-traumatisation with the accuser present.

COSLA is content on the provisions to use existing technologies to facilitate the case, however it is important to ensure this does not impact upon the quality of their contribution.

- 7. Contact centres: What role should child contact centres play in maintaining contact between children and family members 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?**

COSLA believes the regulation of child contact centres is a sensible idea that further aligns with COSLA's view that the best interests of the child must be met and that children are kept safe. It is important that minimum standards and guidelines are developed across all contact centres in Scotland. This Bill should be used as an opportunity to ensure that all centres used in Scotland are fully funded to achieve any national and consistent standard, noting that local factors must be considered. COSLA believes there should be further explanation on the role of Relationship Scotland as a membership body for 41 of the 44 contact centres in Scotland.

Funding will be essential, particularly in moving from volunteers to paid staff. It is important that to accommodate children and their families who use contact centres that there is no reduction in staff numbers or the number of centres. COSLA would expect full support and funding to be provided to contact centres who would be impacted by the Bill to ensure they meet the minimum standards by any timeframe. This cost would need to be accounted for, as it is crucial families across the country do not lose access to contact centres, particularly in Island and rural areas.

There must also be child-friendly and accessible complaints policies across all centres. COSLA would welcome provisions within this Bill that impacted the three independent centres. COSLA suggests Scottish Government should consider work to determine the number of other locations used by Local Authorities and how the standards and regulations might apply to these locations.

COSLA welcomes the feasibility study being undertaken by the Care Inspectorate and believes they would be a suitable candidate at regulating and inspecting contact centres. It would be expected that the whichever organisation is given this role receives full funding and staffing resources. COSLA would expect further consultation to be brought forward to guide Scottish Ministers on the eligibility criteria for the standards that are to be maintained in relation to accommodation and staff training.

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?

COSLA is broadly content with the provisions in the bill, however, would stress there needs to be consideration on getting decisions for the child correct beforehand to avoid these situations. COSLA has concerns that non-compliance of parents or of children can indicate severe safety concerns, particularly in respect to the potential of domestic abuse and coercive controlling behaviours being an undisclosed, undetected or minimised factor in decision making.

Enforcement should be highly sensitive to the nature and hidden dynamics of domestic abuse and coercive controlling behaviour. Where there is evidence of non-compliance the courts original decision should be robustly reviewed and reassessed before any enforcement measures are considered, to ensure the protection primary and secondary victims of domestic abuse. This requires additional resources to be invested to ensure that the hidden and complex nature of domestic abuse/coercive control and any associated perpetrator attempts to manipulate authorities is well understood and considered.

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?

While COSLA recognises the rights to and the benefits of sibling relationships and other 'like sibling' relationships, where it is the best interest of the child/children involved, COSLA is concerned about Local Government capacity to ensure the practical and resources element of the provision.

Any new provisions placed by the Bill have the capacity to increase the workload and resource implications for Local Authority departments that are already suffering from cuts to their core funding, specifically around staff time and carer placement costs. Recruitment can be challenging for Local Authorities, and facilitation of contact has the potential to affect all areas of Scotland. Facilitating contact between siblings in

opposite ends of the country, or even in different authorities, could prove costly and come from the “unprotected” part of council budgets that are already under significant pressure.

We would also expect further clarity to be given to the definition of “sibling-like relationships”, as this broad definition further compounds the difficulties mentioned. It is critical that ‘sibling’ or ‘sibling like’ contact is not allowed to be utilised by perpetrators of domestic abuse to continue harm.

COSLA is broadly supportive of siblings being able to give a view to Local Authorities. Views should be sought and considered through the same processes and to the same standards as we have outlined previously but there are clear resourcing implications which must be addressed. COSLA insists that any additional duties placed on Local Authorities in relation to promoting contact and personal relations between children in care and their siblings must be fully funded.

10. Births registered outwith 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?

COSLA are broadly content with the provisions within the Bill.

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?

COSLA is cautiously supportive of the elements in the Bill in relation to Children’s Hearings. We are however concerned that the belief within the Bill and corresponding documents is that changes would have minimal impact on Local Authorities. There is scope for further workloads for Local Authority staff, particularly around social workers having to include their work in ensuring sibling contact in their reporting. This creates additional resource burden on Local Authority staff at a time when their core funding is being cut and staff numbers are at risk. There will also be concerns for Local Authorities if Children’s Panel’s make decisions that they cannot fulfil.

While COSLA is supportive of the principles of removing the age 12 provision in ensuring children’s views are heard, there has already been significant work done within Children’s Hearings to ensure this through their “Better Hearings” report. It is important that the provisions within the Bill compliment and do not interfere negatively with the work already done. COSLA is broadly supportive of the provisions suggested in furthering the powers of the Principal Reporter to appeal against a sheriff’s decision to appeal in relation to deemed relevant person status, as this can have a positive influence in safeguarding the best interests of the child.

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?

COSLA fully maintains the position that all new commitments brought forward from this Bill, that place a burden on Local Authorities, should be fully funded by the Scottish Government. As core funding to Local Authorities continue to reduce, this becomes ever more challenging. COSLA believes this Bill covers areas where demands and responsibilities could increase for Local Authorities

The presentation of savings within the Financial Memorandum does not clarify questions Local Government may have on funding and responsibilities. Therefore, COSLA is keen to engage further with Scottish Government on the proposed costings and savings outlined in the Bill and the Financial Memorandum, to ensure there are no unintended financial consequences from the Bill. Scottish Government must at this stage commit to meeting any cost, unintended or not, that Local Authorities may encounter. While it is possible that as practice changes, outcomes can improve over the longer term and costs may come down, this would not be expected for several years. With ongoing financial uncertainty caused by single year budgets, this would be wholly unsustainable in the short-medium term.

The Financial Memorandum for the Bill estimates that the impact on Local Authorities will be relatively small, with cost savings being proposed. We would expect Scottish Government to have considered a range of possible knock-on effects from the policies in the Bill that COSLA has identified will have a financial impact on Local Authorities, and would expect Scottish Government, at this stage, to commit any additional resources that are required for Local Authorities to operate as a result of provisions in the Bill. Whilst there are no costs identified for Local Authorities in the Financial Memorandum, any unintended costs must be set against the significant ongoing financial constraints which Councils are currently working within, especially in relation to reductions in core funding and increased protections within budgets as a whole.

While COSLA is supportive of the principles of the Bill and welcomes any efforts that seek to enhance the rights and safety of children, these commitments must be matched with adequate funding.

COSLA refers the Committee to the COSLA Pre-Budget Scrutiny submission (https://www.parliament.scot/S5_Equal_Opps/COSLA_Response_to_Local_Gov_and_Communities_Committee_Budget_Scrutiny_2019.pdf) made to the Local Government and Communities Committee, which effectively sets out the current financial position of Scottish Local Government, what is needed from the next Scottish Budget, as well as showing the impact of Scottish Government policy priorities on Local Authorities.

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?

COSLA believes the proposed amendments to the Looked After Children (Scotland) Regulations 2009 could provide additional responsibilities to Local Authorities. This will create an additional resource burden which must be fully funded by the Scottish Government. COSLA would expect further explanation of the provision, particularly how this will impact Local Government and their current practices and finances.

Siblings should be cared for and supported together unless there are strong safety or best interest considerations. If siblings have to be separated, there should be immediate consideration about how to promote and maintain relationships, subject to best interests and safety concerns.

This provision needs to be examined as reductions to Local Authority core budgets mean it may be unsustainable for Local Authority staff to be asked to carry out any additional responsibility. There may be a disproportionate effect on island and rural communities and their Local Authorities through the Bill if siblings are to be placed together and there are lower number of carers. Consideration needs to be given to the best interests of each child and the immediate resources available.

COSLA
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