

JUSTICE COMMITTEE

CHILDREN (SCOTLAND) BILL

SUBMISSION FROM PARENTING ACROSS SCOTLAND

Parenting across Scotland submitted a detailed response to the consultation in 2010 on the reform of Part 1 of the Children (Scotland) Act 1995 and refers the Justice Committee to this.

1. Voice of the child:

We agree with this approach. It is absolutely crucial that children should be enabled to give their views about how and where they should live in the future. It is both a human rights and a children's rights issue: with the UNCRC being incorporated into domestic law by the end of this Parliament Article 12 will require the voice of the child to be heard in matters pertaining to them; the proposed Children (Scotland) Act needs to comply with this.

Given skillful facilitation children of any age can give their views. This is a highly emotionally charged time for the whole family, and cases which come to court are by definition ones that have not been resolved outwith the judicial system and involve high levels of conflict; consequently the views of all involved both adults and children should be skillfully sought and interpreted. Particular care and attention needs to be given where domestic abuse is involved: perpetrators may use contact hearings as a way of regaining contact and may be very plausible in their attempts to do so; we would draw the Committee's attention to the Power Up, Power Down report by Scotland's Commissioner for Children and Young People and Women's Aid.

Children should be able to put their views forward in whichever way suits them best; they should be given options and should be able to choose what suits them best including making their own suggestions of how they wish to provide their views. Courts should be given guidance on ensuring that the voice of the child is heard in proceedings so that this is done in the best and most child friendly way possible. It should be made clear to children how their voice will be heard and considered and how the decision on where they should live and how they have contact with their parents will be made.

While we welcome removing the presumption of capacity at twelve years old and widening the age at which children can express a view, we are concerned that capacity should continue to restrict children's rights to give their views. With well mediated assistance most children are capable of expressing a view. To be compliant with the UNCRC, the Bill must be inclusive of children's rights as expressed in the General Comment on Article 12 which explicitly state that all children have the right to express their views and that children experiencing difficulties should be assisted to express their views.

Where children do not wish to give a view this should be respected.

2. Child's best interests:

The Bill meets its one of its key policy objectives of ensuring that the best interests of the child are at the centre of contact and residence cases and Children's Hearings. However, there are areas in which it could do more, namely it could:

- Ensure that there is more specialist risk assessment, particularly where there is alleged or proven domestic abuse
- Promote more preventative measures to stop disputes ending up in court in the first place such as mediation
- Provide more resources for other preventative or conciliatory mechanisms such as relationship counselling and courses on how to parent after separation
- Ensure that definitions of abuse are consistent with other legislation, particularly the Domestic Abuse (Scotland) Act 2018 and include coercive control.

Given that so many contested child contact cases involve allegations of domestic abuse and other child welfare concerns, the Committee should pay particular attention to this and at how a non adversarial approach can be employed to minimise conflict and ensure that children's welfare is firmly at the centre of the process.

3. Child welfare reporters and curators ad litem:

In principle, we agree that child welfare reporters and curators ad litem should be regulated, particularly as it appears from the Bill and from the Family Justice Modernisation Strategy that they may be involved in a wider range of functions than they currently are. However, we do not have practical experience of the child welfare reporter system and therefore are unable to comment in more detail.

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

It is important that the welfare of the child remains paramount; part of this is that it is desirable for a child to know both parents where it is possible and safe to do so. Knowing other family members is also important. This checklist of factors to be considered should help in this so that courts consider these matters but should not become a checklist or mechanical exercise.

5. Other requirements on the court:

It is important that children should have any decisions made by the court relating to them. This is particularly important given that the Bill allows for the voice of the child to be heard: it may be that although the views of the child are heard in the light of other considerations a decision is made that is not in line with the child's views; in these instances particularly it is important that the child understands that his/her views have been taken into account but also understands why a different decision has been made. This letter from a Judge to a young person is an example of this <https://flip.co.uk/dear-sam-high-court-judge-delivers-judgment-form-letter/>

Where possible the decision should be given by a professional with whom the child or young person already has a trusted relationship; it could be the person who has been involved in taking and transmitting their views. It may be that this could be a Child Welfare Reporter. Where this is a member of the court there should be specialist training to ensure that this is done sensitively and in line with best practice.

It is welcome that the court should consider any risk to the child's welfare in delays to the child's welfare. However, this should not preclude comprehensive risk assessment and investigation of any risk to safety.

7. Contact centres:

We welcome the regulation of Child Contact Centres as long this is proportionate and adequately funded. Initially it should be ensured that Child Contact Centres' themselves are adequately and sustainably funded; once this is in place a level of regulation and funding proportionate to this should be put in place. Any additional costs on contact centres of meeting the costs of complying with a regulatory framework should be covered.

Where it is safe and possible, the child has the right to know both parents (UNCRC article ?). For a minority of children in high-conflict cases, this will be determined by the court making a condition under section 11 of the Children (Scotland) Act 1995 that contact should take place in a contact centre. It is important that contact is facilitated safely and in the best interests of all the participants. Child contact centres play an important part in facilitating this.

However, courts are not the only source of referrals - solicitors and mediators also refer clients to child contact centres; clients can also self refer. The majority of clients are not from courts. Similarly not all contact takes place in child contact centres (for example, in rural areas there may not be a contact centre within viable travelling distance and contact may take place in another suitable venue) and where other settings are used they are also generally used for a range of purposes and often by other organisations. Regulating all settings where contact takes place may not be viable; similarly regulating all facilitated contact. The Committee needs to consider the purpose of regulation, what it wants to achieve by regulation and what exactly needs to be regulated - centre, service or both.

Regulation should not reduce the number of children and families who are enabled to have safe and secure contact. It should not concentrate exclusively on the physical centres but more on the process and what is beneficial for children and families. There may be ways of facilitating contact that are community based and allow for more relaxed and natural family time; it should be considered how regulating process might facilitate more varied family time.

We refer the Justice Committee to our member, Relationships Scotland's more detailed answer: as the organisation which represents and supports the vast majority of contact centres in Scotland they have the most expertise in this area. We also refer the Committee to the Care Inspectorate's response (https://consult.gov.scot/family-law/children-scotland-act/consultation/view_respondent?b_index=60&uuld=886872199) to the Scottish Government's consultation on the Review of Part 1 of the Children (Scotland) Act 1995

which expertly considers the implications of the complexity of regulating child contact centres.

8. Enforcement of orders:

This is an extremely difficult area. Where possible and safe it is in the interests of the child to know both parents. By definition those cases where parents have gone to court to resolve residence and contact difficulties are high conflict cases and therefore even with the intercession of the courts hostility will continue. However criminal charges and custodial sentences would not be helpful in reducing any hostility, in upholding the child's welfare nor in enabling parents and children to maintain contact and should be avoided.

The report, Power Up, Power Down, takes account of the views of children in disputed contact cases where there have been allegations of domestic abuse: in 97 cases relating to 155 children where there were allegations of abuse, 45% of children had a contact outcome that was consistent with their views, 20% had an outcome partially accommodating their views, and 34% had a contact outcome which bore no resemblance to their views.

Children's and young people's views should always be taken into account prior to making a contact order. To some extent this may reduce the incidences of breaches.

We are not of the opinion that parenting classes would be helpful for this. Parenting classes are of most benefit where parents are resident or at least in very frequent contact with their children, and where both parents are in accord with each other on this. However, parenting apart classes that specifically look at how parents can work together for the benefit and welfare of the child when they are separated might be more appropriate.

Investigation of the reasons for breaches should be sensitively undertaken, distinguishing between cases and attempts to ensure that where contact is in the best interests of the child it is established.

9. Contact with siblings: This is extremely important. The bonds that we have with siblings are the ones which are for most people the ones which continue for the longest duration in our lives. Where possible this should be enabled. Given the increasing diversity of family life contact should be enabled where there is a sibling like relationship. As with any other contact risk assessments should be undertaken and the welfare of the child should be paramount. The Stand Up For Siblings report makes the case for this comprehensively <https://www.standupforsiblings.co.uk/wp-content/uploads/2018/01/SWSPresearchbriefing.pdf>

10. Births registered outwith the UK: Where compatible with UK granting of Parental Rights and Responsibilities and where permission has been given by both parents then this would facilitate parenting responsibilities and remove unnecessary bureaucracy.