JUSTICE COMMITTEE

CHILDREN (SCOTLAND) BILL

SUBMISSION FROM THE SHERIFFS' ASSOCIATION

1. If the **presumption that a child aged 12 is the guideline age for taking views** is to be removed, then sheriffs will require to be much more mindful of when and how to take a child's views. The introduction of this change will place an greater emphasis on the use of Child Welfare Reporters and Curators as the new F9 forms are not always the most appropriate means of obtaining views e.g. where the child is younger, where the context in which the F9 is completed is unknown, where there are language or communication issues, where the issues are complex or where there is averred to be parental alienation. The new Form 9 may not be best suited to some older children. Even where an F9 form is appropriate, it might be helpful for sheriffs to have the power to regulate the circumstances in which it is completed in some cases (e.g. with the assistance of a school guidance teacher or other appropriate neutral adult; so long as that was suitable for all concerned.)

2. We are puzzled by this question as the welfare test is not altered by the bill – but are happy to comment further if we are missing something?

3. **Section 3 – Child Welfare Reporters**. The Bar Reporters Working Group recommended that Sheriffs Principal continue to manage the lists of Child Welfare Reporters. This allows for regional diversity (some courts use non-lawyer reporters as there simply isn't the cover otherwise and others do not) and the fact that the Sheriffs Principal and local sheriffs are well placed to know the suitability of the applicants. Sheriffs are concerned that this recommendation may result in the introduction of a panel (such as that in place for safeguarders with a cab rank system and fixed fees). We would strongly oppose that. A Sheriff's discretion to appoint the right reporter to a case with the right remit is vital to the resolution of many cases without proof and if this resource is diluted then many more cases will go to proof. As per the work done by the Bar Reporters Working Group, the quality and consistency of reports would be best achieved by providing a training package for reporters which could be delivered perhaps with assistance from appropriate assistance. We would be happy to help with devising and delivering training.

4. **Curators** – We welcome the introduction of a statutory basis for the appointment of curators. Curators are worth their weight in gold to family courts where a very large and increasing number of cases are conducted by party litigants. In such cases, the parents rarely present their case in a child-centred way or give the court the relevant information needed to resolve matters in the best interests of the child. It is vital that those interests are protected and that decisions are made in in a child centred way. Curators also speak to children, explain the process to them, see them in their home and at school, support contact and mediate outcomes. The suggestion that we review the requirement to have curators every 6 months is arbitrary and pointless. Unless they have entered the process they carry out bespoke work as ordered by the court. If they are a party to the case then this section would not apply in any event. Curators only enter the process where they have a separate and distinct position to that of either of the parties. The Scottish

Legal Aid Board ordinarily will not grant legal aid otherwise. There is no considered basis or evidence to support the proposed 6 month review – an arbitrary period which will just introduce unnecessary administration and will serve no useful purpose either in focussing the issues in the case or in cost saving, in our view. There is already a general duty on sheriffs to keep the appointment of any curator under review.

5. **Factors to be considered by the court** – as an Association we do not ordinarily comment on policy matters, save in this case to say that any list of factors in this context would always yield to the paramount welfare principle.

6. **Vulnerable witnesses** - the prohibition on a party conducting their own case in section 11 order cases and CH hearings where there is background of domestic abuse can only be welcomed. However, there must be properly resourced alternatives. The increased emphasis on support for vulnerable parties and witnesses may have resource implications for the SCTS estate – many courts have inadequate separate waiting areas and are not well set up for screens /remote links etc. Even for larger courts making special measures more readily available in family cases is likely to have delay and cost implications – the available facilities are not sitting idle all the time. The following is from the SCTS response on this point "*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.*"

7. **Contact Centres** – Regulation of contact centres is welcomed in principle. They are a valued and essential resource. Family Mediation is by far the biggest provider. Contact centres are often the only viable option in high conflict cases/those with a background in domestic abuse. There are real issues with funding of these centres which is very worrying. There are also long waiting lists in many parts of the country**.**

8. **Enforcement of orders** – Sheriffs would welcome a statutory scheme for simpler regulation of contempt cases –a fast track minute and answers, a framework for a social work report and sentence. Consideration of sentencing powers for contempt of court would also be welcome – *e.g.* a community payback order with the requirement to engage with Children & Families Social Work, or a requirement to attend parenting classes or a deferral of sentence for good behaviour to allow contact to take place. The majority of these cases involve party litigants or parties who do not accept legal advice to obtemper court orders which have already been carefully considered by the family court after hearing their submissions. The need for further investigation suggested may in fact, undermine sheriffs in taking a robust approach to the enforcement of contact orders. Some of our members, particularly those working near to the border with England, encounter major problems with enforcement due to the defaulting party moving with the child to England. Perhaps some thought could be put into how such problems could be overcome by appropriate cross-border legislative changes.

9. **Sibling contact** – this is a matter of policy which it is inappropriate for us to comment on.

10. **Births Registered outwith the UK** – We agree with this suggestion.

11. **Children's Hearings** – We agree with the suggestion that Reporters should be able to appeal decisions on relevant person status. However it should be noted that some of these proposals may lead to more appeals - which means more SCTS resource and sheriffs' time. Children's hearing appeals are on the increase year on year and they must be determined within very strict legislative time limits. We would welcome a review of the requirement for a referral cases to call before the sheriff simply because of the child's age – where there are no disputed factual issues. We also wonder whether the arbitrary period of 22 days for ICSOs could be considered and whether sheriffs could be given discretion to grant interim ICSOs for a particular period suited to the circumstances of a particular case to avoid unnecessary callings in some cases and allow for more urgent review without appeal in others.

12. **Financial Implications** - In Scotland, we don't have CAFCAS – the funding of child welfare reports, curators and contact centres underpin the successful operation of child centred family courts.

13. **Other issues**
    - **Mediation–**also requires t be funded and readily available. Could in-court mediation projects be piloted in larger family courts?
    - **Case management** – better rules for all family actions and simplified pleadings and rules for financial disclosure are long overdue.
    - **Timescales for appeals.** We would like to see rationalisation and simplification of the current timescales for both lodging and disposing of the various types of appeals. As an example, it is very difficult to understand why appeals under sections 160 and 161 (relevant person determination/ contact direction relating to someone other than a relevant person) both have to be disposed of within 3 calendar days beginning with the date of appeal, when neither could be classed as a matter of high urgency. This extremely tight timescale is even less intelligible in comparison to the 3 working days from the day after the application allowed for disposal of an application to vary or terminate a child protection order (which, by definition, can only last 8 working days at most). The timescales for lodging are equally inexplicable. A timescale as short as 3 calendar days beginning with the date of lodging should apply only in the most urgent of situations.

14. **Explanation of decisions to children -** section 15 of the Bill appears to suggest that the court must ensure that each interim decision varying contact requires to be explained to the child (unless the decision is to decline to change the order). We are strongly of the view that such a duty would be unrealistic, unduly onerous and may lead to communication fatigue and stress to the child concerned. We are at risk of getting the child too closely involved with the minutiae of proceedings. We firmly believe that the court or court officials should not have such a burden placed on them. The Bill provides that the court is not required to give an explanation "where it is not in

best interests of the child to do so". We are strongly of the view that it would be better to express this simply as a discretion for the sheriff to communicate any decision to the child (interim or final) if it is considered to be in the child's best interests to do so.

The Sheriffs' Association
22 November 2019