

Scottish Government submission of 3 November 2022

PE1968/A: Restrict perpetrators of domestic abuse from using family court proceedings to continue tormenting their victims

The Committee has requested a response from the Scottish Government to Public Petition PE1968, which asks the Scottish Parliament to '*urge the Scottish Government to review existing legislation on family law and seek to stop perpetrators of domestic abuse causing further abuse and distress to partners and children by removing their ability to apply for contact orders under Section 11 of the Children (Scotland) Act 2020*'.

There is no place for domestic abuse in Scotland and [Equally Safe: Scotland's strategy to eradicate violence against women and girls](#) acknowledges the need to strengthen the justice response to victims and perpetrators. The Scottish Government continues to pursue this goal and we fully recognise the concerns raised by the petitioner. However, removing the ability of perpetrators of domestic abuse to apply for contact orders might raise questions about access to justice.

Article 6 of the European Convention on Human Rights establishes an individual's right to a fair hearing in determination of their civil rights and obligations. The right to respect for family life guaranteed by Article 8 also requires court proceedings to be conducted in a way that ensures due respect for the interests safeguarded by that Article. These would need to be taken account of in relation to any proposed provision seeking to limit a person's access to the courts.

Applications to court for contact orders are made under section 11 of the [Children \(Scotland\) Act 1995](#). Section 11(7)(a) provides, in considering whether or not to make an order under section 11, that the court must regard the welfare of the child as its paramount consideration and must not make any order unless it considers it would be better for the child that an order be made than no order be made at all.

A person who has experienced domestic abuse will have genuine concerns for their own wellbeing and for their children's wellbeing if the abuser raises a contact action in the courts. There have been changes to the law in section 11 of the 1995 Act in the past which recognise the

impact of domestic abuse. In particular, the Family Law (Scotland) Act 2006 added relevant provisions. These provide that when carrying out the duties imposed by section 11(7)(a), the court must have regard to the need to protect the child from any abuse or the risk of any abuse which affects, or might affect, the child, and to the effect that any abuse or the risk of any abuse might have on the carrying out of parental responsibilities. The definition of abuse in this context includes domestic abuse.

There are also provisions in the [Children \(Scotland\) Act 2020](#), which are not yet implemented, that will help domestic abuse victims when contact cases are taken to court. In particular, it is common in child contact cases for the court to appoint a Child Welfare Reporter to gather the views of the child or to investigate and report on the child's best interests.

Section 9 of the 2020 Act places a duty on the Scottish Ministers to establish and maintain a register of these Reporters. Once this provision is implemented, a court will only be able to appoint a Reporter who is included on the register. Individuals will be eligible to apply to be on the register if they meet certain requirements in relation to training, qualifications and experience. One of the required skills will be an understanding of domestic abuse.

Sections 4 to 8 of the 2020 Act, which have not yet been implemented, make provision in respect of some family cases, including contact cases, on protections for vulnerable witnesses and parties, including victims of domestic abuse. These protections include the use of special measures such as screens, video links and supporters. In addition, section 4 of the 2020 Act will introduce a new special measure to prohibit a party from personally conducting their case in certain circumstances.

The Scottish Government has recently consulted about the possibility of extending the measures contained in section 4 to 8 of the 2020 Act to civil court cases generally. More information can be found in the consultation paper at: [Chapter Three: Special measures in civil cases - Improving victims' experiences of the justice system](#)

The petitioner mentions that '*mothers and children are repeatedly put through the family court process when section 11 applications are made by former partners*'. In 2018, the Scottish Government consulted on potential reforms to the 1995 Act and the creation of a Family Justice Modernisation Strategy. The consultation, which ultimately led to the development of the 2020 Act, discussed issues around cases where

individuals made repeated attempts to gain a contact order for the same child: please see paragraphs 9.30 to 9.35 of the consultation paper which can be found at: <https://consult.gov.scot/family-law/children-scotland-act/>

Following on from that, paragraph 4.26 of the [Family Justice Modernisation Strategy](#) sets out proposals for the Scottish Ministers to make regulations under section 102 of the [Courts Reform \(Scotland\) Act 2014](#) in relation to family cases under section 11 of the 1995 Act.

Section 102 of the 2014 Act enables the Scottish Ministers, after consultation with the Lord President, to make regulations allowing a court to make an order in relation to a person who has behaved in a vexatious manner in civil proceedings.

The Scottish Government intends to consult the Lord President later this year on whether regulations under section 102 of the 2014 Act should be made.

In addition, the Scottish Government intends to publish a progress update on the Family Justice Modernisation Strategy.

The Lord President has recently made an Act of Sederunt containing rules of court which aim to enhance judicial case management of family actions, such as contact cases. The new rules will come into force on 25 September 2023. More details are available at: [https://www.scottishciviljusticecouncil.gov.uk/news/2022/10/03/act-of-sederunt-\(ordinary-cause-rules-1993-amendment\)-\(case-management-of-defended-family-and-civil-partnership-actions\)-2022](https://www.scottishciviljusticecouncil.gov.uk/news/2022/10/03/act-of-sederunt-(ordinary-cause-rules-1993-amendment)-(case-management-of-defended-family-and-civil-partnership-actions)-2022).

Finally, the Judicial Institute for Scotland conducts training for all sheriffs and judges in Scotland, discharging the Lord President's responsibility to educate and train the Scottish judiciary. The Institute regularly provides such training in family law in a variety of ways, including face-to-face courses and online resources. The Institute responds to all significant legislative developments with judicial training, including on the Domestic Abuse (Scotland) Act 2018. This training includes insight into the impact of the criminal behaviour on victims and children.