

# Minister for Community Safety submission of 16 March 2023

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

I am grateful to the Committee for your letter of 16 February. You asked for clarification on why provisions included in the Children (Scotland) Act 2020 have not yet been implemented.

The briefing from the Scottish Parliament Information Centre drew particular attention to:

- Section 1, designed to strengthen the importance of the child's views in court decision-making.
- Sections 4–8, which aim to improve the experience of vulnerable people in the courtroom in family cases, including people affected by domestic abuse, by enhancing special measures (eg screens and IT equipment) which can be used in court.
- Section 9, which makes provision for a system of regulation of child welfare reporters and would establish a register of child welfare reporters.
- Sections 10-12, which make provision for the regulation of child contact centres.

As the SPICe briefing notes, there are budgetary pressures here. We estimate that implementing the 2020 Act in full will cost around £15 million a year.

On sections 10 to 12, following the enactment of the 2020 Act, the Scottish Government carried out a consultation on the [Regulation of child contact centre services](#). Since then, we have been discussing the details of the proposed regulation with the Care Inspectorate, who would be the proposed regulator as they have experience in similar areas. We plan to lay SSIs in Parliament later in 2023 on the regulation of child contact centres. Once SSIs are in place, it will still take some time for regulation to be fully in place as both the Care Inspectorate and centres will need some time to gear up.

On sections 4 to 8, the Family Law Committee of the Scottish Civil Justice Council has set up a sub-group on the implementation of these provisions. Please see paragraphs 13 to 15 of the minutes of the Family Law Committee meeting on 27 September 2021: [agreed-20210927-flc-draft-minutes.pdf \(scottishciviljusticecouncil.gov.uk\)](https://www.scottishciviljusticecouncil.gov.uk/agreed-20210927-flc-draft-minutes.pdf)

As matters stand, sections 4 to 8 only apply to some family proceedings as this reflects what the 2020 Act covered. However, abuse and domestic abuse may be a feature in civil proceedings generally. Therefore, the Scottish Government has consulted on whether the protections in sections 4 to 8 should be extended to civil cases generally: please see [Improving victims' experiences of the justice system: consultation - Scottish Government - Citizen Space](#) (the relevant chapter in the consultation is chapter 3). The Scottish Government is considering the results of this consultation.

On section 9, following the enactment of the 2020 Act, the Scottish Government carried out a consultation on [Registers of child welfare reporters, curators ad litem and of solicitors who may be appointed when an individual has been prohibited from conducting their case themselves - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

The Scottish Government sees establishing a register of child welfare reporters as a priority given the need to ensure reporters are qualified, experienced and trained. In addition, the Scottish Government considers that for a number of the provisions of the 2020 Act to work effectively, the register would need to be in place. Therefore, we plan to carry out more work in this area once the SSIs on the regulation of child contact centres have been laid. However, we estimate that establishing a register of Child Welfare Reporters may cost around £5 million a year, which is a significant financial pressure at the current time.

On section 1, this makes a number of amendments to provisions on hearing the views of the child. In particular, one of the amendments is to insert section 11ZB into section 11 of the Children (Scotland) Act 1995 relating to court cases such as child contact and residence. Section 11ZB will make provision on the child being given the opportunity to express views in the manner the child prefers. One of the options may be through a child welfare reporter: as indicated above, the register of child welfare reporters is not yet in place.

However, we will consider when section 1, or aspects of section 1, could be commenced. More generally, the Scottish Government is considering if there is scope to commence further provisions of the 2020 Act. I attach a table outlining the position with all of the provisions in the 2020 Act.

# Attachment

## Commencement of the Children (Scotland) Act 2020

The 2020 Act is at [Children \(Scotland\) Act 2020](#)

Section	Purpose	Commencement status	Comments Potential to commence now?
<i>Regard to be had to child's views</i>			
1	Proceedings under Children (Scotland) Act 1995 [amendments]	Not yet commenced.	<p>Section 1 makes a variety of amendments to the <a href="#">Children (Scotland) Act 1995</a> covering:</p> <ul style="list-style-type: none"> <li>• Views of the child concerned when a person with parental responsibilities and rights reaches a major decision.</li> <li>• Changes to section 11 of the 1995 Act (which covers court actions in areas such as contact and residence) including the regard to be had to the views of the child.</li> <li>• Changes to section 16 of the 1995 Act (on court actions on children involving local authorities and the children's hearings system) on the regard to be had to the views of the child.</li> </ul> <p>The Scottish Government will consider when section 1, or aspects of section 1, could be commenced.</p> <p>On amendments to section 11 of the 1995 Act on hearing the voice of the child in contact and</p>

			residence cases, the register of child welfare reporters is not yet in place.
2	Proceedings under Adoption and Children (Scotland) Act 2007 [amendments]	Not yet commenced.	<p>Section 2 makes amendments to the <a href="#">Adoption and Children (Scotland) Act 2007</a> and the court or adoption agency hearing the voice of the child when coming to a decision on adoption and the court hearing the voice of the child when coming to a decision on making a permanence order.</p> <p>The Scottish Government will consider when this could be commenced.</p>
3	Proceedings under Children's Hearings (Scotland) Act 2011 [amendments]	Not yet commenced.	<p>Section 3 makes amendments to the <a href="#">Children's Hearings (Scotland) Act 2011</a> on children's hearings proceedings and hearing the voice of the child.</p> <p>The Scottish Government will consider when this could be commenced</p>
<i>Vulnerable witnesses and parties</i>			
4	Vulnerable witnesses: prohibition of personal conduct of case	Not yet commenced.	<p>The Family Law Committee of the Scottish Civil Justice Council <a href="#">Family Law Committee (scottishciviljusticecouncil.gov.uk)</a> have established a sub-group to consider how these provisions could be implemented: please see <a href="#">paragraphs 13 to 15 of the minutes of the Family Law Committee meeting of 27 September 2021</a></p>
5	Vulnerable witnesses: requirement to consider special measures without application in certain cases	Not yet commenced.	
6	Hearing to ascertain if case involves vulnerable witnesses	Not yet commenced.	

7	Register of solicitors for section 22B of the Vulnerable Witnesses (Scotland) Act 2004	<ul style="list-style-type: none"> <li>• Section 7(3) and (4) came into force on 25 October 2021 - commenced for purpose of laying regulations: <a href="#">The Children (Scotland) Act 2020 (Commencement No. 2) Regulations 2021 (legislation.gov.uk)</a></li> <li>• Other provisions not yet commenced.</li> <li>• Regulations not yet laid.</li> </ul>	<p>For a ban on personal representation in certain circumstances to be in place, a register of solicitors who may be appointed by the court will need to be in place.</p> <p>The Scottish Government has consulted on whether provisions on vulnerable witnesses and parties along the lines of those in the 2020 Act should be extended to civil cases generally. Please see <a href="#">Improving victims' experiences of the justice system: consultation - Scottish Government - Citizen Space</a> [chapter 3 of the consultation]. The Scottish Government is considering the responses made.</p>
8	Vulnerable parties	Not yet commenced.	
<i>Register for child welfare reporters</i>			
9	Establishment of a register	<p>Commenced for the purpose of making regulations on 25 October 2021. <a href="#">The Children (Scotland) Act 2020 (Commencement No. 2) Regulations 2021 (legislation.gov.uk)</a></p> <p><a href="#">Regulations not yet made</a></p>	<p>The Scottish Government has consulted on the establishment of <a href="#">Registers of child welfare reporters, curators ad litem and of solicitors who may be appointed when an individual has been prohibited from conducting their case themselves - Scottish Government - Citizen Space (consult.gov.scot)</a></p> <p>The regulation of children welfare reporters and the establishment of a register is a priority for the Scottish Government, once work on the regulation of child contact centres has been completed.</p>

			However, there are budgetary constraints as the estimated cost of establishing the register is around £5 million a year:
<i>Contact</i>			
10	Regulation of provision of contact services	<ul style="list-style-type: none"> <li>• Section 10(1) and (3) came into force on 25 October 2021 - commenced for purpose of making regulations. <a href="#">The Children (Scotland) Act 2020 (Commencement No. 2) Regulations 2021 (legislation.gov.uk)</a></li> <li>• Regulations not yet made.</li> </ul>	<p>The Scottish Government has consulted on the regulation of child contact centres: <a href="#">Regulation of child contact centre services - Scottish Government - Citizen Space (consult.gov.scot)</a></p> <p>Section 10(2) depends on a new regulatory system for child contact centres being in place.</p> <p>The Scottish Government expects to lay SSIs before Parliament later in 2023 to introduce the regulation of child contact centres.</p> <p>It will take some time before the regulation of child contact centres to have full effect as both the Care Inspectorate (the proposed regulator) and the centres will need time to gear up.</p>
11	Referrals by solicitors to contact services	Not yet commenced.	Dependent on new regulatory system for child contact centres being in place.
12	Arrangements for contact services	Not yet commenced.	Section 12 provides a statutory basis for the Scottish Ministers to contract for the provision of services to facilitate contact with children. This would enable Scottish Ministers to carry out a tendering exercise for the provision of child contact centre services.

13	Promotion of contact between looked after children and siblings	Came into force on 26 July 2021: <a href="#">The Children (Scotland) Act 2020 (Commencement No. 1 and Saving Provisions) Regulations 2020 (legislation.gov.uk)</a>	In force
14	Duty to consider contact when making etc. compulsory supervision order	Came into force on 26 July 2021: <a href="#">The Children (Scotland) Act 2020 (Commencement No. 1 and Saving Provisions) Regulations 2020 (legislation.gov.uk)</a>	In force
<i>Further provision about orders under section 11(1) of the Children (Scotland) Act 1995</i>			
15	Clarification of order-making power	Came into force on 17 Jan 2021: <a href="#">The Children (Scotland) Act 2020 (Commencement No. 1 and Saving Provisions) Regulations 2020 (legislation.gov.uk)</a>	In force
16	Factors to be considered before making order	Not yet commenced.	Section 16 makes amendments to section 11ZA of the Children (Scotland) Act 1995, which is inserted by section 1(4) of the 2020 Act. Section 1(4) will need to be commenced to enable section 16 to be commenced.
17	Curators ad litem	<ul style="list-style-type: none"> <li>Section 17(1) and (3) commenced for purpose of making regulations - came into</li> </ul>	The Scottish Government has consulted on the establishment of <a href="#">Registers of child welfare reporters, curators ad litem and of solicitors who may be appointed when an individual has been prohibited</a>



		<p>force on 25 October 2021. <a href="#">The Children (Scotland) Act 2020 (Commencement No. 2) Regulations 2021 (legislation.gov.uk)</a></p> <ul style="list-style-type: none"> <li>• Other provisions not yet commenced and regulations not yet made.</li> </ul>	<p><a href="#">from conducting their case themselves - Scottish Government - Citizen Space (consult.gov.scot)</a></p> <p>Work in this area will be taken forward with work on the regulation of children welfare reporters and the establishment of a register of reporters.</p>
18	Duty to consider child's best interests when allowing access to information	Not yet commenced.	<p>This relates to situations where the court is considering making an order under section 11(1) of the 1995 Act.</p> <p>The provision lays down that that when the court has to decide whether a person should have access to anything in which private information relating to a child is recorded, it must regard the best interests of that child as a primary consideration.</p> <p>It also makes provision on hearing the voice of the child which could perhaps be through a child welfare reporter. As indicated above, the new register of child welfare reporters is not yet in place.</p>
19	Local authority reporters	Not yet commenced.	Dependent on new register of child welfare reporters being operational.
20	Explanation of decisions to the child	Not yet commenced.	Dependent on new register of child welfare reporters being operational.

21	Duty to ensure availability of child advocacy services	Not yet commenced.	<p>Following a previous public petition, the Scottish Government committed to consulting in 2023 on the implementation of this provision. Please see <a href="#">PE1838/N Minister for Community Safety submission of 8 October 2021   Scottish Parliament Website</a></p> <p>The Scottish Government has estimated that establishing a child advocacy service for contact and residence cases could cost around £5 million a year: please see <a href="#">Microsoft Word - AccessibleVersion_SPBill52AFMS052020 (parliament.scot)</a> (paragraphs 34 to 43).</p>
22	Failure to obey order	Not yet commenced.	<p>This relates to a duty on the court to establish the reasons for a failure by a person to obey a court order under section 11 of the 1995 Act on matters such as contact and residence</p> <p>The provision includes duties in hearing the voice of the child and on the court being able to appoint a child welfare reporter to investigate a failure or alleged failure to obey an order.</p> <p>Dependent on new register of child welfare reporters being operational.</p>
<i>Alternative dispute resolution</i>			
23	Funding for alternative dispute resolution	Came into force on 17 Jan 2021 to enable reports to Parliament: <a href="#">The Children (Scotland) Act 2020</a>	The Scottish Government is providing regular reports to Parliament in this area. The most recent report is at <a href="#">The Reporting Period - Children (Scotland) Act 2020 - section 23(1) and section 24(1): third report</a>

		<p><a href="#">(Commencement No. 1 and Saving Provisions) Regulations 2020 (legislation.gov.uk)</a></p> <p><a href="#">The funding mechanism itself is not yet in place. It may also be better to design the mechanism following the conclusion of the pilot (section 24).</a></p>	<p><a href="#">on the Scottish Ministers' duties - gov.scot (www.gov.scot)</a></p>
24	Pilot scheme for mandatory alternative dispute resolution meetings	<p>Came into force on 17 Jan 2021 to enable reports to Parliament: <a href="#">The Children (Scotland) Act 2020 (Commencement No. 1 and Saving Provisions) Regulations 2020 (legislation.gov.uk)</a></p> <p><a href="#">The pilot has not yet run, though work has been carried out in preparation (see reports to Parliament).</a></p>	<p>The Scottish Government is providing regular reports to Parliament in this area. The most recent report is at <a href="#">The Reporting Period - Children (Scotland) Act 2020 - section 23(1) and section 24(1): third report on the Scottish Ministers' duties - gov.scot (www.gov.scot)</a></p>
<i>Children's hearings</i>			
25	Opportunity to participate in hearing	<p>Came into force on 26 July 2021: <a href="#">The Children (Scotland) Act 2020 (Commencement No. 1 and Saving Provisions)</a></p>	In force.

		<a href="#">Regulations 2020 (legislation.gov.uk)</a>	
26	Appeal against relevant person decision	Came into force on 26 July 2021: <a href="#">The Children (Scotland) Act 2020 (Commencement No. 1 and Saving Provisions) Regulations 2020 (legislation.gov.uk)</a>	In force.
27	Appeals to Sheriff Appeal Court and Court of Session	Not yet commenced.	<p>Section 27 makes provision so that appeals against the sheriff's decision in a children's hearings case are to the Sheriff Appeal Court.</p> <p>The Scottish Government will consider if this section could be commenced.</p> <p>Commencing this section may require amendments to court rules.</p>
<i>Miscellaneous provisions</i>			
28	Conferral of parental responsibilities and parental rights: births registered outwith UK	Not yet commenced.	<p>This section would allow the Scottish Ministers to make regulations to confer parental responsibilities and rights on fathers and second female parents in Scotland when they have followed a process (e.g. joint birth registration) with the mother outwith the UK.</p> <p>The Scottish Government has carried out some research to help inform what processes outwith the UK could be covered by any regulations</p>

29	Extension to sheriff of enforcement powers under Family Law Act 1986	Not yet commenced.	<p>This provision would allow family law orders made elsewhere in the UK to be enforced in the sheriff court.</p> <p>Court rules may be required.</p> <p>The Scottish Government will consider if this section could be commenced.</p>
30	Delay in proceedings likely to prejudice child's welfare	Not yet commenced.	<p>This requires the court, when considering the child's welfare, to consider whether any delay in proceedings would negatively affect the child's welfare.</p> <p>This could be as part of a decision about an order under section 11 of the 1995 Act; under section 16 of the 1995 Act; in relation to adoption cases under section 14 of the 2007 Act; and for children's hearings or children's hearings court proceedings under section 25 of the 2011 Act.</p> <p>The Scottish Government will consider if section 30, or aspects of section 30, could be commenced.</p> <p>On the provision which relates to section 11 of the 1995 Act, this depends on section 11ZA, inserted by section 1(4) of the 2020 Act, being commenced.</p>
<i>Final provisions</i>			
31	Review of children's ability to participate	Not yet commenced.	This places a duty on the Scottish Ministers to review the effect of the Act on children's participation in the making of various types of decisions which affect

			them and in relation to which their views are required to be sought and taken into account.
32	Power to replace descriptions with actual dates	Came into force the day after Royal Assent.	In force
33	Ancillary provision	Came into force the day after Royal Assent.	In force
34	Commencement	Came into force the day after Royal Assent.	In force
35	Short title	Came into force the day after Royal Assent.	In force

**Scottish Government**

**March 2023**