

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE2069](#): Ensure accuracy of statements informing Child Welfare Reports, lodged by Nicole MacDonald

An overview of issues raised by the petition

The Children (Scotland) Act 1995: background

Part 1 of the [Children \(Scotland\) Act 1995](#) ('the 1995 Act') sets out a range of parental responsibilities and rights ('PRRs') in respect of all children living in Scotland. These exist where practicable and in the best interests of the child.

Section 11 of the 1995 Act enables a court to make a range of court orders relating to PRRs, in the event of a dispute. For example, a court can make a **residence order**, setting out where the child is to live. It can make a **contact order** which sets out the arrangements for a child to have contact with a person they do not live with, for example, a parent or grandparent.

Most cases under section 11 are heard in [the local sheriff courts](#) but the [Court of Session](#) in Edinburgh can also hear and decide such cases.

In considering whether to grant any court order under section 11 of the 1995 Act, the court will have regard to various principles. The **welfare of the child** is the paramount consideration, that is, the most important and overriding one.

Taking account of the child's age and maturity, the child shall, so far as practicable, be given an opportunity **to express their views**. The court must consider, although not necessarily follow, any views expressed.

Few court cases relating to section 11 get as far as a **proof**, that is, a full hearing where witnesses give evidence and are cross-examined. Instead, most are resolved (by court order) at a **child welfare hearing** or several such hearings. These hearings are relatively informal proceedings, held in private.

The role of the child welfare reporter

In practice, an important role is played in section 11 cases by **child welfare reporters** (previously called 'bar reporters').

There are thought to be around 400 child welfare reporters in Scotland.

Child welfare reporters are court-appointed individuals who report to the court (via a **child welfare report**) on what the views of the child might be and/or what is in the best interests of the child.

The Scottish Government's [2016 Guide to the Child Welfare Report](#), aimed at parents, contains some more detail on this topic:

“The court which appointed the reporter will have set out what the court wants the reporter to do and who the reporter should interview. Your solicitor should receive a copy of this information from the court. The reporter may ask your solicitor for other information which has been given to the court.

In some cases, the court will ask the reporter to speak to a third party such as your child's GP, health visitor, or school. The reporter may also wish to speak to your GP or another professional who has information which will help the court to make a decision. The reporter should only ask for information relevant to the remit...

The report will often include recommendations. It is the sheriff or judge who will decide whether to make an order and if so what order to make.”

A child welfare report is one in a range of ways the views of the child can be taken by the court, but it is a common way in practice.

Who acts as a child welfare reporter?

Individuals seeking to be a child welfare reporter may be appointed to lists held by the [Court of Session](#) and, for [the local sheriff courts](#), by the six sheriffs principal (for the sheriff courts in their respective sheriffdoms). The presiding judge or sheriff can then appoint a child welfare reporter on the appropriate list to report on a case.

At present, child welfare reporters are usually solicitors, often specialising in family law. These solicitors typically come from private practice and charge a fee for their services. They are independent in the case they are appointed to report on and are separate from the solicitors representing the litigants in the case.

What if someone doesn't agree with something in a child welfare report?

The current rules applying to the courts say that the child welfare reporter should normally give a litigant's solicitor a copy of their report three working days before the court hearing where the report is to be considered.

If someone does not agree with something in the report, the Scottish Government's [2016 Guide to the Child Welfare Report](#) has this advice:

“You should read the report as soon as possible...If you disagree with something in the report, your solicitor should raise this with the court.”

Policy issues associated with child welfare reporters

[In 2009 and then in 2011](#), there were influential reports highlighting a variety of policy issues associated with child welfare reporters. These included:

- a lack of standardised requirements relating to their suitability for appointment (for example, the years of experience required)
- that there are no formal training requirements, either initial or ongoing ones
- the use of child welfare reporters across Scotland varies considerably and there is no consistent pattern to their use; and
- there is marked variability in the fees charged.

From 2013–2015, the Scottish Government chaired a working group to examine the role of child welfare reporters.

The Children (Scotland) Act 2020: reforms to the system

The [Children \(Scotland\) Act 2020](#), most of which is **not yet in force**, [contains a wide range of reforms to the 1995 Act](#).

The 2020 Act will expand the role of child welfare reporters to include explaining court decisions to children (section 20) and, when requested to do so by the court, investigating reasons for non-compliance with a court order (section 22).

Crucially, the 2020 Act also provides for a system of statutory regulation of child welfare reporters (section 9). However, this is a high-level policy commitment only, the important detail around the system must be fleshed out in secondary legislation. [The Scottish Government's original policy intention was to have the regulatory regime operational by 2023](#) but this has been delayed.

The Scottish Government [consulted on the regulation of child welfare reporters in 2021](#), publishing an [analysis of responses](#) in 2022.

Sarah Harvie-Clark

12/12/23

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

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Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH99 1SP