

PE2163/A: Develop guidance on child contact domestic abuse

Scottish Government written submission, 13 June 2025

Does the Scottish Government consider the specific asks of the petition to be practical or achievable?

The Scottish Government does not consider the specific ask of the petition to be practical. The petition does not make clear who such guidance would be directed towards, nor what it would be intended to achieve. The Scottish Government does not issue guidance to the courts, given that the courts are independent of the Government.

The question of when and in what circumstances behaviour amounts to an offence under the [Domestic Abuse \(Scotland\) Act 2018](#) is, in the first instance, an operational matter for Police Scotland, and the Scottish Government would not seek to develop guidance in that regard. It is open to individuals to raise a complaint with Police Scotland if they feel that they have not received the standard of service expected.

When parents separate, it is better if they can agree about what is best for their child without the involvement of the courts. However, in some occasions and for many reasons (including in cases of domestic abuse), asking a court to make a decision on what is best for the child when parents separate is unavoidable.

Alternative dispute resolution, such as mediation, can play a valuable role in helping to resolve family disputes out of court. The Scottish Government gives funding to Relationships Scotland who provide family mediation services.

However, mediation may not be appropriate in all cases. Scottish Women's Aid note that mediation should not be used when there has been domestic abuse, given the power imbalance.

The key legislation in relation to contact, residence and Parental Responsibilities and Rights (PRRs) is the [Children \(Scotland\) Act 1995](#) (the 1995 Act), and orders on these issues are made under [section 11](#) of this Act. In deciding whether to make such an order – and if so, what order to make – the welfare of the child must be the court's paramount consideration. It 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. Before making a decision on a contact order, the 1995 Act provides that the court shall have regard to the need to protect the child from abuse (or the risk of abuse).

This includes abuse of a person other than the child, and the effect that any abuse (or risk of any abuse) might have on another individual who has PRRs in discharging their responsibilities. The definition of abuse in this context includes domestic abuse.

What, if any, action the Scottish Government is currently taking to address the issues raised by this petition, and is any further action being considered that will achieve the asks of this petition?

The Scottish Government is not taking action to directly address the ask of the petition. However, there is work being taken forward which may be relevant.

There are provisions in the [Children \(Scotland\) Act 2020](#) (the 2020 Act), which are not yet implemented, that will help domestic abuse victims when child contact cases are taken to court. In particular, it is common in 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 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. The Scottish Government has set up a Working Group on Child Welfare Reporters and one of the key aims of this Group is to consider what needs to be done to implement the register.

The Scottish Government is also preparing guidance for adults and children on what it is like to go to court in family cases. This will cover areas such as the main principles of section 11 of the 1995 Act, special measures to protect vulnerable witnesses, sources of support and alternatives to court.

Family Law Unit