

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE1968](#): Restrict perpetrators of domestic abuse from using family court proceedings to continue tormenting their victims, lodged by Angela Evans

Brief overview of issues raised by the petition

The current law relevant to this petition is found in the [Children \(Scotland\) Act 1995](#) ('the 1995 Act'), as amended by the [Children \(Scotland\) Act 2020](#) ('the 2020 Act').

The 1995 Act provides for a range of parental responsibilities and rights ('PRRs') in respect of all children living in Scotland.

Section 11 of the 1995 Act (not the 2020 Act, as referred to in the petition) enables a parent (and others) to apply to the court for it to make a court order relating to PRRs. PRRs can be granted, restricted or removed under this provision. The court can also grant a **contact order** under section 11. This sets out future arrangements for contact between a child and a parent with whom a child does not live. One option is that the court can require that contact to take place at [a child contact centre](#) run by the third sector.

In considering whether to grant any court order under section 11 of the 1995 Act, the court will follow three principles (also set out in the 1995 Act):

- the welfare of the child is the paramount consideration
- taking account of the child's age and maturity, the child shall, so far as practicable, be given an opportunity to express his or her views; and
- the court will not make any order unless it considers that to do so would be better than making no order at all.

The [Family Law \(Scotland\) Act 2006](#) also amended section 11 to require the courts to "have regard in particular" to the need to protect the child from actual or possible abuse; the effects of such abuse on children; the ability of the abuser to care for the child; and the effects of abuse on a person's capacity to fulfil PRRs. In this context, abuse is defined as including "abuse of a person other than the child." Accordingly, the situation where one parent is abusing (or has abused) the other is covered.

A high profile petition from Session 5 of the Scottish Parliament ([PE1635](#)) raised serious questions about the courts' approach to contact arrangements where there is a risk of abuse. [Scottish Women's Aid's written submission](#) relating to this petition, [as well as the submission of the Children and Young People's Commissioner](#), were among those raising concerns about how well the statutory provisions are working in practice.

Children (Scotland) Act 2020

The 2020 Act is the latest attempt to reform the 1995 Act. The fundamental features of the 1995 Act remain after the reforms provided for in the 2020 Act. However, the 2020 Act contains various measures designed to improve the position of families affected by domestic abuse. **The relevant provisions are not yet in force.**

Key provisions of the 2020 Act include:

- **Section 1**, which is designed to strengthen the importance of the child's views in court decision-making, especially the views of younger children, traditionally at risk of being marginalised in the decision-making process.
- **Sections 4–8**, which aim to improve the experience of vulnerable people in the courtroom in family cases, including people affected by domestic abuse.
- **Section 9**, which makes provision for a system of statutory regulation of child welfare reporters. Child welfare reporters are court-appointed officials who prepare reports for the court in relation to what is in the best interests of a child or what the views of a child are. Child welfare reporter's recommendations are influential in practice and the lack of statutory regulation of these officials has been a matter of policy controversy.
- **Sections 10-12**, which make provision for the statutory regulation for the first time of child contact centres. Again, the lack of statutory regulation in this area has been controversial.

On 4 October 2022, the Scottish Government provided SPICe with an email update on its target timescales for implementation of these provisions. It appears **the Government is now aiming for 2024** as the year these provisions will be implemented, or the new systems of regulation become operational. The Scottish Government also said that the implementation work is, "subject to the challenging budgetary constraints that we are facing across the Scottish Government."

Sarah Harvie-Clark
Senior Researcher
06/10/2022

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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