

Children (Scotland) Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 25

Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Ash Denham

1 In section 1, page 1, line 19, at end insert—

<(1CA)In considering whether the child is capable of forming a view, the person is to start with the presumption that the child is.>

Rhoda Grant

60 In section 1, page 1, line 24, leave out <(7C)> and insert <(7D)>

Rhoda Grant

61 In section 1, page 2, line 12, after first <abuse,> insert <any continuing abuse>

Rhoda Grant

62 In section 1, page 2, line 21, at end insert—

<(e) the effect of the fact that two or more persons would be required to co-operate with one another with regard to matters affecting the child.>

Jeremy Balfour

45 In section 1, page 2, line 21, at end insert—

<(3A) In deciding whether or not to make an order under section 11(1), the court must take into account the child's right to maintain a relationship with the child's grandparents.>

Jeremy Balfour

46 In section 1, page 2, line 31, at end insert—

<() The meaning of “grandparents” for the purposes of subsection (3A) is to be defined by the Scottish Ministers by regulations subject to the affirmative procedure.>

Rhoda Grant

63 In section 1, page 2, line 31, insert at end—

- <() For the purposes of subsection (3)(e) (but, for the avoidance of doubt, not for the purposes of any other provision in this section), “person” means—
- (a) a person having parental responsibilities or parental rights in respect of the child or
 - (b) a person who has a relationship with a child with the character of a parent but does not have parental responsibilities or parental rights in respect of the child.>

James Kelly

47 In section 1, page 2, leave out lines 35 and 36 and insert—

- <(a) seek to make reasonable arrangement for the child to express the child’s views in a manner that the child has indicated the child prefers, and>

Ash Denham

2 In section 1, page 2, line 35, after <child> insert <concerned>

Ash Denham

3 In section 1, page 2, line 41, at end insert—

- <(2A) The child is to be presumed to be capable of forming a view unless the contrary is shown.>

Ash Denham

4 In section 1, page 3, leave out lines 4 and 5

James Kelly

48 In section 1, page 3, leave out lines 11 and 12 and insert—

- <(a) seek to make reasonable arrangements for the child to express the child’s views in a manner that the child has indicated the child prefers, and>

Ash Denham

5 In section 1, page 3, line 17, at end insert—

- <(2B) The child is to be presumed to be capable of forming a view unless the contrary is shown.”.>

After section 1

Liam McArthur

Supported by: John Finnie

64 After section 1, insert—

<Disclosure of information

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) After section 11ZB (which is inserted by section 1(4) of this Act) insert—

“11ZC Disclosure of information: consideration of the child’s welfare and best interests

- (1) This section applies in proceedings for an order under section 11(1) where a request has been received by the court for the disclosure of any information relating to the child, including the disclosure of a child welfare report.
- (2) In deciding whether to allow a disclosure of information under subsection (1)—
 - (a) the court must, as its paramount consideration have regard to the welfare of the child concerned,
 - (b) the information must be disclosed only where the court considers that—
 - (i) the likely benefit to the welfare of the child arising in consequence of disclosing the information outweighs any likely adverse effect on any other person arising from disclosure, and
 - (ii) disclosure is in the child’s best interests, and
 - (c) the court, taking account of the child’s age and maturity and proportionate to the child’s best interests, shall as far as practicable—
 - (i) give the child an opportunity to indicate whether the child wishes to express views about disclosure of the information in a manner suitable to the child,
 - (ii) where the child wishes to express views, ensure that the child is given an opportunity to express those views in a manner suitable to the child, and
 - (iii) have regard to any views expressed by the child.”.>

Section 2

Ash Denham

- 6 In section 2, page 3, line 25, leave out <“(4B)”> and insert <“(4C)”>

James Kelly

- 49 In section 2, page 3, leave out lines 29 and 30 and insert—
<(a) seek to make reasonable arrangements for the child to express the child’s views in a manner that the child has indicated the child prefers, and>

Ash Denham

- 7 In section 2, page 3, line 34, at end insert—
<(4C) The child is to be presumed to be capable of forming a view unless the contrary is shown.”.>

Ash Denham

- 8 In section 2, page 3, line 35, leave out <“(4B)”> and insert <“(4C)”>

James Kelly

50* In section 2, page 4, leave out lines 3 and 4 and insert—

<“(a) seek to make reasonable arrangements for the child to express the child’s views in a manner that the child has indicated the child prefers,”>

Ash Denham

9 In section 2, page 4, line 10, at end insert—

<(5B) The child is to be presumed to be capable of forming a view unless the contrary is shown.”>

Section 3

James Kelly

51 In section 3, page 4, leave out lines 16 and 17 and insert—

<(a) seek to make reasonable arrangements for the child to express the child’s views in a manner that the child has indicated the child prefers, and>

Ash Denham

10* In section 3, page 4, line 23, at end insert—

<(4A) The child is to be presumed to be capable of forming a view unless the contrary is shown.”>

Section 4

Ash Denham

11 In section 4, page 6, line 6, at end insert—

<() an offence under section 1(1) of the Prohibition of Female Genital Mutilation (Scotland) Act 2005,
() an offence under section 3(1) of that Act,>

Ash Denham

12 In section 4, page 6, line 6, at end insert—

<() an offence under section 39 of the Criminal Justice and Licensing (Scotland) Act 2010,>

Ash Denham

13 In section 4, page 6, line 6, at end insert—

<() an offence under section 122(1) of the Anti-social Behaviour, Crime and Policing Act 2014,
() an offence under section 122(3) of that Act,>

Ash Denham

14 In section 4, page 6, line 25, at end insert—

<() In section 12 (orders authorising the use of special measures for vulnerable witnesses), after subsection (3), insert—

“(3A) The court may not make an order under subsection (1)(b) above in relevant proceedings if it is required by section 22C or 22D to consider the special measure described by section 22B to be the most appropriate for the purpose of taking the child witness’s evidence (or one of them if the court considers other special measures to be appropriate too).”>

Section 8

Liam McArthur

65 In section 8, page 15, line 9, at end insert—

<() Only a social worker registered with the Scottish Social Services Council may be appointed as a child welfare reporter.>

Neil Findlay

66 In section 8, page 15, line 21, at end insert—

<() For the purposes of subsection (3)(a), persons may be included in the register where they have obtained the necessary professional qualifications if they know the child to which the child welfare report relates in a professional capacity.>

Neil Findlay

67 In section 8, page 15, line 21, at end insert—

<() Before making, revising or revoking regulations under subsection (3), the Scottish Ministers must consult persons with lived experience of—
(a) domestic abuse,
(b) court-ordered contact.>

Section 9

Neil Findlay

68 In section 9, page 15, line 30, after <centre> insert <—

(a)>

Ash Denham

15 In section 9, page 15, line 31, leave out from <at> to end of line 33 and insert <through a regulated contact service as defined in section 101C.”.>

Neil Findlay

69 In section 9, page 15, line 31, at end insert <, and

- (b) the child to whom the contact order relates is the responsibility of the contact centre for the duration of that child's time in the contact centre.>

James Kelly

- 52 In section 9, page 15, line 31, at end insert—

<(14A)Where any person, in connected with proceedings to which this section relates, makes a referral to a contact centre or otherwise requires contact to take place at a contact centre in Scotland, that contact must take place at a contact centre operated by a regulated contact service provider.>

James Kelly

- 53 In section 9, page 15, line 32, leave out <subsection (14)> and insert <subsections (14) and (14A)>

Ash Denham

- 16 In section 9, page 15, line 37, leave out <contact services> and insert <a contact service>

Ash Denham

- 17 In section 9, page 16, line 3, leave out <and minimum standards for accommodation at contact centres>

Neil Findlay

- 70 In section 9, page 16, line 4, at end insert—

<(aa) make provision for staff referred to in paragraph (a) to be trained and to hold recognised professional qualifications in relation to issues concerning children,>

Ash Denham

- 18 In section 9, page 16, line 6, leave out <the refusal or revocation of registration of contact service providers that do not> and insert <, for those that do not, the refusal of registration or removal from the register>

Ash Denham

- 19 In section 9, page 16, line 7, at end insert—

<(ba) make provision for minimum standards to be met by contact centres (including standards in respect of accommodation),

(bb) make provision for the registration of contact centres that meet those minimum standards and, for those that do not, the refusal of registration or removal from the register (including appeal rights),

(bc) make provision about the conditions on which a regulated contact service provider may, in accordance with the regulations, provide a contact service at a place that is not registered as a contact centre (including conditions about the minimum standards for accommodation at a place if it is to be used for that purpose),>

Ash Denham

20 In section 9, page 16, line 9, after <providers> insert <and contact centres>

Ash Denham

21 In section 9, page 16, line 12, after <provider> insert <or contact centre>

Bob Doris

71 In section 9, page 16, line 12, at end insert—

<(2A) Minimum standards under subsection (2)(a) must make provision for the relevant adjustments necessary for a disabled child to access a contact centre and use its facilities including toilets.

(2B) In subsection (2A)—

“relevant adjustments” means, in relation to a disabled child, alterations or additions which are likely to avoid a substantial disadvantage to which the disabled child is put in using the contact centre in comparison with children who are not disabled, and

“disabled child” means a child with a disability within the meaning of section 6 of the Equality Act 2010.>

Ash Denham

22 In section 9, page 16, line 13, leave out <(2)(d)> insert <(2)(g)>

Neil Findlay

72 In section 9, page 16, line 15, at end insert—

<() undertaking risk assessments of contact centres to be carried out by staff trained in undertaking such assessments,>

Ash Denham

23 In section 9, page 16, line 18, after <providers> insert <and contact centres>

Ash Denham

24 In section 9, page 16, line 18, leave out <the> and insert <a>

Ash Denham

25 In section 9, page 16, line 19, leave out <, who> and insert <and contact centres, that>

Neil Findlay

73 In section 9, page 16, line 20, at end insert—

<() The Scottish Ministers must consult persons with lived experience of—

(a) domestic abuse, and

(b) court-ordered contact,

before making, implementing or reviewing regulations under subsection (1).>

Ash Denham

- 26 In section 9, page 16, line 27, leave out <contact services> and insert <a contact service>

Ash Denham

- 27 In section 9, page 16, line 29, leave out <services> and insert <service>

Ash Denham

- 28 In section 9, page 16, line 31, at end insert—

“regulated contact service” means a contact service that—

- (a) is provided by a regulated contact service provider, and
- (b) is either—
 - (i) provided at a place that is registered as a contact centre in accordance with regulations under subsection (1), or
 - (ii) provided in circumstances in which the provider may, in accordance with regulations under subsection (1), provide the service at a place that is not registered as a contact centre,>

Neil Findlay

- 74 In section 9, page 16, line 32, after <organisation> insert <that is publicly provided and accountable to the Scottish Ministers and>

Ash Denham

- 29 In section 9, page 16, line 33, leave out <made>

After section 9

Ash Denham

- 30 After section 9, insert—

<Arrangements for contact services

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) After section 101C (which is inserted by section 9(3) of this Act) insert—

“101D Arrangements for child contact services

The Scottish Ministers may enter into an arrangement with a person for the provision of services to facilitate contact between children and other individuals.”>

Fulton MacGregor

- 75 After section 9, insert—

<Renaming residence and contact orders

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) In section 11 (court orders relating to parental responsibilities etc.)—
 - (a) in subsection (2)(c), the words “(any such order being known as a “residence order”)” are repealed,
 - (b) in subsection (2)(d), the words “(any such order being known as a “contact order”)” are repealed,
 - (c) in subsection (2)(e), the words “(any such order being known as a “residence order”)” are repealed,
 - (d) in subsection (3)(aa), for “contact” substitute “section 11”,
 - (e) in subsection (12), the word “residence” is repealed.>

Section 10

Ash Denham

- 54 In section 10, page 17, line 3, leave out <, having regard to their duty to the child under paragraph (a), both practicable and appropriate> and insert <appropriate having regard to their duty to the child under paragraph (a)>

Alex Cole-Hamilton

- 76 In section 10, page 17, line 6, at end insert—
<() the child’s lineal ancestors,>

Rona Mackay

- 77 In section 10, page 17, line 8, leave out <of the half-blood or of the whole-blood> and insert <biological or non-biological>

Ash Denham

- 55 In section 10, page 17, line 10, leave out <or is living>

Liam McArthur

Supported by: Jeremy Balfour and Fulton MacGregor

- 78 In section 10, page 17, line 12, at end insert <, and
() a former foster carer of the child.”.>

After section 10

Ash Denham

- 31 After section 10, insert—
<**Duty to consider contact when making etc. compulsory supervision order**
(1) The Children’s Hearings (Scotland) Act 2011 is modified as follows.

- (2) In section 29A (duty to consider including contact direction), after subsection (2), insert—
- “(3) In considering whether to include a measure of the type mentioned in section 83(2)(g), the children’s hearing or, as the case may be, the sheriff must in particular consider the inclusion of a measure regulating contact between the child and—
- (a) any relevant person in relation to the child with whom the child does not reside, and
 - (b) any sibling of the child with whom the child does not reside.
- (4) In subsection (3), “sibling” includes—
- (a) a sibling by virtue of adoption, marriage or civil partnership and whether of the half-blood or of the whole-blood,
 - (b) any other person with whom the child has resided and with whom the child has an ongoing relationship with the character of a relationship between siblings.”>

Alex Cole-Hamilton

79* After section 10, insert—

<Promotion of contact between children and lineal ancestors

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) After section 11ZA (which is inserted by section 1(4) of this Act) insert—

“11ZAA The child’s right to contact with lineal ancestors

- (1) In deciding whether or not to make an order under section 11ZA and what order (if any) to make, the court must have regard to the child’s right to maintain contact with the child’s lineal ancestors.
- (2) For the avoidance of doubt, the child’s right to maintain contact with the child’s lineal ancestors is independent of any other familial relationship.”>

After section 11

Margaret Mitchell

57* After section 11, insert—

<Alternative methods of dispute resolution

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) After section 11ZB (which is inserted by section 1(4) of this Act) insert—

“11ZC Alternative methods of dispute resolution

- (1) The Scottish Ministers must by regulations make provision for legal aid to be available to the parties in dispute to enable the parties to participate in alternative methods of dispute resolution for the time being set out in subsection (3).
- (2) Regulations under subsection (1) must make provision to secure that—
 - (a) legal aid is available for the purpose of undertaking alternative methods of dispute resolution, and

- (b) the applicant is enabled to secure appropriate legal advice to engage in alternative methods of dispute resolution—
 - (i) before, or instead of, commencing court proceedings, or
 - (ii) as directed by the court.
- (3) A draft of regulations under subsection (1) must be laid before the Parliament no later than 6 months after Royal Assent.
- (4) The alternative methods of dispute resolution under this section to which legal aid is to be available by virtue of this section are to include—
 - (a) mediation
 - (b) arbitration,
 - (c) collaborative law,
 - (d) family group conferencing.
- (5) The Scottish Ministers may by regulations modify the list of alternative methods of dispute resolution for the time being set out in subsection (3).
- (6) Regulations under this section are subject to the affirmative procedure.
- (7) In this section—

“alternative methods of dispute resolution” means methods by which the parties involved in a family dispute may resolve that dispute without recourse to legal action through the court process,

“legal aid” has the same meaning as “civil legal aid” in the Legal Aid (Scotland) Act 1986,

“advice and assistance” has the same meaning as in the Legal Aid (Scotland) Act 1986.”.>

Margaret Mitchell

58 After section 11, insert—

<Mandatory mediation information meeting

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) After section 11ZC (which is inserted by section (*Alternative methods of dispute resolution*) of this Act) insert—

“11ZD Mandatory mediation information meeting

- (1) The Scottish Ministers must, by regulations, make provision for a pilot scheme for the purpose set out in subsection (2).
- (2) The purpose is to enable the court, before an order is made under section 11, to require the parties in dispute to attend a mediation information meeting on the options available to resolve the dispute, except where the dispute involves domestic abuse.
- (3) For the avoidance of doubt, subsection (2) does not apply where a dispute involves domestic abuse.
- (4) The regulations under subsection (1) may provide for judicial discretion to allow the parties in dispute not attend a mediation information meeting under subsection (2) where reasonable mitigating factors have been given.

- (5) A draft of regulations under subsection (1) must be laid before the Parliament no later than 6 months after Royal Assent.
- (6) Regulations under subsection (1) are subject to the affirmative procedure.”.>

Liam McArthur

80 After section 11, insert—

<Legal aid for alternative methods of dispute resolution

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) After section 11ZB (which is inserted by section 1(4) of this Act) insert—

“11ZC Legal aid for alternative methods of dispute resolution

- (1) The Scottish Ministers must, by regulations, make provision for legal aid to be made available for alternative methods of dispute resolution in respect of orders made under section 11(1) within 12 months of Royal Assent.
- (2) A draft of regulations under subsection (1) must be laid before the Scottish Parliament before the end of the period of 12 months beginning with the day of Royal Assent.
- (3) Before making the regulations referred to in subsection (1), the Scottish Ministers must consult the Scottish Legal Aid Board.
- (4) In this section, alternative methods of dispute resolution may include—
 - (a) arbitration,
 - (b) collaborative law,
 - (c) family group conferencing.
- (5) The Scottish Ministers may by regulations modify the list of alternative methods of dispute resolution for the time being set out in subsection (4).
- (6) Regulations under this section are subject to the affirmative procedure.”.>

Section 12

Alex Cole-Hamilton

81 In section 12, page 17, line 32, at end insert—

- <() the involvement of the child’s lineal ancestors in the child’s life as an important familial relationship including in situations where the child is not able to maintain contact with the child’s lineal ancestors,>

Alex Cole-Hamilton

82 In section 12, page 17, line 33, at end insert—

- <() the child’s right to maintain personal relations with the child’s lineal ancestors.”.>

Liam McArthur

83 In section 12, page 17, line 33, at end insert—

<() in the absence of an agreement on the pattern of residence of a child and at the request of at least one of the child’s parents, the possibility of ordering that the child should reside on an approximately equal basis with each of the child’s parents.”.>

Section 13

Ash Denham

32 In section 13, page 18, leave out lines 6 to 10 and insert—

- <(2) Where, in the course of considering making an order under section 11(1), a court has appointed a curator ad litem, the court must—
- (a) decide whether to continue the appointment every 6 months, and
 - (b) if it decides to continue the appointment, give reasons for the decision.
- (3) Subsection (2) does not apply in relation to a curator ad litem appointed before section 13 of the Children (Scotland) Act 2020 comes into force.>

After section 13

Ash Denham

33 After section 13, insert—

<Duty to consider child welfare when allowing access to information

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) After section 11D (which is inserted by section 13(2) of this Act) insert—

5 **“11DA Duty to consider child welfare when allowing access to information**

Where the court—

- (a) is considering making an order under section 11(1), and
- (b) has to decide whether a person should have access to anything in which information relating to a child is recorded,

10 in making that decision, it must regard the welfare of that child as a primary consideration.”.>

Rona Mackay

33A As an amendment to amendment 33, line 11, after <consideration> insert <and must, where the court considers it appropriate, seek the consent of the child to the person having access to the information>

Section 15

Ash Denham

34 In section 15, page 19, line 14, after <child> insert <concerned>

Ash Denham

35 In section 15, page 19, line 15, after <child> insert <concerned>

Ash Denham

36 In section 15, page 19, line 31, leave out <made>

After section 15

Liam McArthur

84 After section 15, insert—

<Duty to ensure availability of child advocacy services

- (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) After section 11E (which is inserted by section 15(2) of this Act) insert—

“11EA Duty to ensure availability of child advocacy services

- (1) The Scottish Ministers must make such provision as they consider necessary and sufficient to ensure that all children concerned in proceedings for an order under section 11(1) have access to appropriate child advocacy services.
- (2) In this section, “child advocacy services” means services of support and representation provided for the purposes of assisting a child in relation to the child’s involvement in proceedings under section 11(1).”>

Section 16

Ash Denham

37 In section 16, page 20, line 5, after <must> insert <—
(a)>

Ash Denham

38 In section 16, page 20, line 6, at end insert <, and
(b) in so doing—
(i) give the child concerned an opportunity to express the child’s views in a manner suitable to the child, and
(ii) have regard to any views expressed by the child, taking into account the child’s age and maturity.
(2A) But the court is not required to comply with subsection (2)(b) if satisfied that—
(a) the child is not capable of forming a view, or
(b) the location of the child is not known.
(2B) The child is to be presumed to be capable of forming a view unless the contrary is shown.>

Ash Denham

39 In section 16, page 20, line 10, at end insert—

- <(5) The Scottish Ministers may by regulations modify subsection (3) to—
 - (a) add a description of person,
 - (b) vary a description of person,
 - (c) remove a description of person.
- (6) Regulations under subsection (5) are subject to the affirmative procedure.”.>

After section 16

Jeremy Balfour

59 After section 16, insert—

<Specialist judiciary: cases, designation and allocation

- (1) The Lord President of the Court of Session may, by direction, determine that cases brought under section 11 of the Children (Scotland) Act 1995 are suited to being dealt with by judicial officers that specialise in that category of case.
- (2) The Lord President may vary or revoke any direction made under subsection (1).
- (3) The sheriff principal of a sheriffdom may designate one or more judicial officers of the sheriffdom as specialists in the category of cases determined under subsection (1).
- (4) The Lord President may, by direction, determine in consultation with the relevant sheriff principal, that a case determined under subsection (1) may be allocated to a judicial officer outwith the sheriffdom within which the case would otherwise be heard.
- (5) In this section “judicial officer” means—
 - (a) a sheriff,
 - (b) a summary sheriff,
 - (c) a part-time sheriff,
 - (d) a part-time summary sheriff.>

Section 21

Ash Denham

40 In section 21, page 24, line 17, leave out <a> and insert <the>

Fulton MacGregor

85 In section 21, page 24, line 17, leave out from <is> to end of line 18 and insert <must resolve disputes about contact as soon as practicable and in any event no later than 60 days after the commencement of proceedings.”.>

Ash Denham

41 In section 21, page 24, line 21, leave out <a> and insert <the>

Ash Denham

42 In section 21, page 24, line 26, leave out <a> and insert <the>

Before section 22

Liam McArthur

86 Before section 22, insert—

<Review of effect of Act

- (1) The Scottish Ministers must conduct a review of the effect of this Act on a child's participation in court processes to which the Act applies.
- (2) The review must, in particular, consider the resources required to ensure effective participation by children in those processes.
- (3) The review must be completed no later than 3 years after the date of Royal Assent.
- (4) As soon as practicable after completing the review, the Scottish Ministers must—
 - (a) publish, in such manner as they consider appropriate, a report of the review, and
 - (b) lay a copy of the report before the Scottish Parliament.
- (5) The report of the review must include the steps, if any, the Scottish Ministers propose to take to further improve the participation of children in court processes.>

Section 22

Ash Denham

43 In section 22, page 24, line 36, leave out <11D(2)> and insert <11D(3)>

Ash Denham

44 In section 22, page 25, line 3, leave out <11D(2)> and insert <11D(3)>

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