

SIAA Response

Review of Part 1 of the Children (Scotland) Act 1995 and creation of a Family Justice Modernisation Strategy

September 2018

We welcome this opportunity to respond to this consultation on Part 1 of the Children (Scotland) Act 1995 and the creation of a Family Justice Modernisation Strategy. The Scottish Independent Advocacy Alliance (SIAA) is Scotland's national membership body for advocacy organisations. The SIAA promotes, supports and defends independent advocacy in Scotland. It aims to ensure that independent advocacy is available to any person who needs it in Scotland.

Q1: Should the presumption that a child aged 12 or over is of sufficient age and maturity to form a view be removed from sections 11 (10) and 6 (1) of the 1995 Act and section 27 of the Children's Hearing (Scotland) Act 2011?

Yes. We would like to see the presumption that a child aged 12 or over is of sufficient age and maturity to form a view be removed from the legislation. We believe that all children's views should be heard

Q2: How can we best ensure children's views are heard in court cases?

We believe it is fundamental that children's voices are heard in court cases as well as at all other points throughout various family justice processes. We would support Clan Childlaw's view that a fundamental reform of the court process is required and that currently, the system does not place the child at the centre. We would like to see a strategic, child-rights based approach to reform. Collective advocacy for children who have experience of the court system would be an effective vehicle for gathering experiences and views from groups of young people who could be involved as partners in helping shape a new inclusive, participative and human rights focussed system. We would also like to see increased provision of independent advocacy available to any child who wishes to access it prior to court cases or at any other stage of family justice processes. Independent advocacy helps people:

- Be understood and heard by professionals and services who make decisions that affect their lives
- Better understand and navigate systems
- Understand their rights, and what to do when those rights are not met
- Think through their choices and make informed decisions
- Influence the design and delivery of systems and services
- Access services that they would otherwise be unable to engage with.

Advocacy is not:

- Mediation
- Giving advice
- Making decisions for someone
- Speaking for someone when they can express themselves.

Q3: How should the court's decision best be explained to a child?

We believe a number of different approaches may be needed when explaining court decisions to children depending on specific circumstances and differing children's needs. Again, we would like to see increased provision of independent advocacy available to any child who wishes to have an advocate present for these discussions.

Q4: What are the best arrangements for child welfare reporters and curators *ad litem*?

B) A new set of arrangements should be put in place that would manage and provide training for child welfare reporters

We agree that new arrangements are required to provide some structure, training, checks and consistency. However, the system in place for safeguarders in the children's hearings system is too complex and onerous. A much lighter touch set of arrangements is needed.

Overall we believe there needs to be better systems of quality assurance, access and consistency of service for welfare reporters and curator *ad litem*.

Q5: Should the law be changed to specify that confidential documents should only be disclosed when in the best interest of the child and after the views of the child have been taken into account?

Yes, the law should allow children access to confidential documents about themselves.

Q6: Should child contact centres be regulated?

Yes

Q7: What steps should be taken to help ensure children continue to have relationships with family members, other than their parents, who are important to them?

We support Clan Childlaw's view that changes should be made to legislation to give children and young people enforceable rights to maintain their sibling relationships, as long as it is safe for them to do so:

1. Clarifying section 11 of the Children (Scotland) Act 1995 to make it clear that court orders under that section may relate to sibling contact and that siblings, including those under the age of 16, can apply for contact (see our answer to Question 9).
2. Introducing duties on courts in family actions to: (a) consider a child's sibling relationships, as identified by the child; (b) seek and have regard to the views of the child in respect of those relationships; and (c) intimate to such persons, and seek and have regard to such views as they express.

The introduction of such duties would minimise the risk of important sibling relationships being overlooked in the court process.

Q8: Should there be a presumption in law that children benefit from contact with their grandparents?

No. Whilst we acknowledge that many grandparents play a crucial role in the lives of their grandchildren, we are of the view that it is inappropriate to introduce a presumption along the lines suggested. We do however believe that if the child indicates a positive relationship with grandparents then there should be contact with the usual safeguards in place.

Q9: Should the 1995 Act be clarified to make it clear that siblings, including those aged under 16, can apply for contact without being granted PRRs?

Yes

Q10: What do you think would strengthen the existing guidance to help a looked after child to keep in touch with other children they have shared family life with?

Not sure. However, we welcome the idea that steps should be taken to ensure children are able to keep in touch with other children. We also welcome the broad definition of sibling used and the inclusion of half sibling and step siblings.

Q11: How should contact orders be enforced?

Not sure

Q12: Should the definition of “appropriate court” in the Family Law Act 1986 be changed to include the Sheriff Court as well as the Court of Session?

Yes

Q13: Are there any other steps the Scottish Government should be taking to jurisdictional issues in cross-UK border family cases?

Not sure

Q14: Should the presumption that the husband of a mother is the father of her child be retained in Scots law?

No

Q15: Should DNA testing be compulsory in parentage disputes?

Not sure

Q16: Should a step parent’s parental responsibilities and rights agreement be established to that step parents could obtain PRRs without having to go to court?

Not sure. If yes there would be a need for a clear definition of what would be regarded as a ‘step parent’.

Q17: Should the term ‘parental rights’ be removed from the 1995 Act?

Not sure

Q18: should the terms ‘contact’ and ‘residence’ be replaced by a new term such as ‘child’s order’?

Yes. We believe this term to be more child-centred

Q19: Should all fathers be granted PRRs?

Not sure

Q20: Should the law allowing a father to be given PRRs by jointly registering a birth with the mother be backdated to pre 2006?

Not sure

Q21: Should joint birth registrations be compulsory?

Not sure

Q22: Should fathers who jointly register the birth of a child in a country where joint registrations leads to PRRs have their PRRs recognised in Scotland?

Not sure

Q23: Should there be a presumption in law that a child benefits from both parents bring involved in their life?

No

Q24: Should legislation be made laying down that courts should not presume that a child benefits from both parents being involved in their life?

Not sure

Q25: Should the Scottish Government do more to encourage schools to involve non-resident parents in education decisions?

Yes – issue guidance on the enrolment for and annual update form.

Q26: Should the Scottish Government do more to encourage health practitioners to share information with non-resident parents if it is in the child's best interests?

Yes – guidance

Q27: Does section 11 of the 1995 Act need to be clarified to provide that orders, except for residence orders, or orders on PRRs themselves, do not automatically grant PRRs?

Not sure

Q28: Should the Scottish Government take action to try and stop children being put under pressure by one parent to reject the other parent?

Not sure

Q29: Should a person convicted of a serious criminal offence have their PRRs removed by the criminal court?

No – leave as a matter for the civil courts

Q30: Should the reference in section 2 of the 1995 Act to ‘exercising’ parental rights be changed to reflect that a person may not be exercising these rights because the child is now outwith the UK?

Not sure

Q31: Should section 6 of the Child Abduction Act 1984 be amended so that it is a criminal offence for a parent or guardian of a child to remove that child from the UK without appropriate consent?

Not sure

Q32: Should personal cross examination of domestic abuse victims be banned in court cases concerning contact and residence?

Yes

Q33: Should section 11 of the 1995 Act be amended to provide that the court can, if it sees fit, give directions to protect domestic abuse victims and other vulnerable parties at any hearings heard as a result of an application under section 11?

Yes

Q34: should subsections (7A)-(7E) of section 11 of the 1995 Act containing a list of matters that a court shall have regard to be kept?

Not sure

Q35: Should section 11 of the 1995 Act be amended to lay down that no further application under section 11 in respect of the child concerned may be made without leave of the court?

Not sure

Q36: should action be taken to ensure the civil courts have information on domestic abuse when considering a case under section 11 of the 1995 Act?

Not sure

Q37: Should the Scottish Government do more to promote domestic abuse risk assessments?

Yes

Q38: Should the Scottish Government explore ways to improve interaction between criminal and civil courts where there has been an allegation of domestic abuse?

Not sure

Q39: Should the Scottish Government introduce a provision in primary legislation which specifies that any delay in a court case relating to the upbringing of a child is likely to affect the welfare of the child?

Yes

Q40: Should cases under section 11 of the 1995 Act be heard exclusively by the Sheriff Court?

Not sure

Q41: Should a checklist of factors for courts to consider when dealing with a case be added to section 11 of the 1995 Act?

Yes

Q42: Should the Scottish Government do more to encourage Alternative Dispute Resolution in family cases?

Yes. We would also support more access and information to Alternative Dispute Resolution in family cases and note the importance of any such dispute resolution

process being adequately resourced to ensure their effectiveness. In particular, we believe there are strong benefits of Family Group Conferencing as a model as it supports families to realise the options and possibilities available to them, children feel listened to and valued. This model ensure that children are involved and at the centre of any decisions being made about their lives.

Q43: Should Scottish Government make regulations to clarify that confidentiality of mediation extends to cases involving cross border abduction of children?

Not sure

Q44: Should Scottish Government produce guidance for litigants and children in relation to contact and residence?

Yes

Q45: Should a person under 16 with capacity be able to apply to record a change of their name in the birth register?

Yes

Q46: Should a person who is applying to record a change of name for a young person under the age of 16 be required to seek the views of the young person

Yes

Q47: Should S.I 1965/1838 be amended so that a father who has a declaratory of parentage and has PRRs can re-register the birth showing him on the birth certificate

Not sure

Q48: Do you think the Principal Reporter should be given the right to appeal against a sheriff's decision in relation to deemed relevant person status?

Not sure

Q49: Should changes be made which will allow further modernisation of the Children's Hearing System through enhanced use of technology?

Yes. We believe that the use of technology in the Children's Hearing System will make it more accessible for children, particularly children with additional support needs.

Q50: Should safeguarder reports and other independent reports be provided to local authorities in advance of Children’s Hearings in line with other participants?

Yes

Q51: Should personal cross examination of vulnerable witnesses, including children be banned in certain Children’s Hearings (Scotland) Act 2011 proceedings?

Yes

Q52: Should section 22 of the Family Law (Scotland) Act 2006 which prescribes where a child is deemed to be domiciled be amended?

Not sure

Q53: Do you have any comments about, or relevant to:

- A) The partial and regulatory impact assessment**
- B) The partial child rights and wellbeing impact assessment**
- C) The partial data protection impact assessment; or**
- D) The partial equality impact assessment?**

No

Q54: Do you have any further comments?

We believe that as well as taking the specific measures mentioned to ensure children’s views are heard in court, there should be additional steps taken to ensure that children’s views are heard outwith court too.

The Scottish Independent Advocacy Alliance (SIAA) is Scotland’s national membership body for advocacy organisations. The SIAA promotes, supports and defends independent advocacy in Scotland. It aims to ensure that independent advocacy is available to any person who needs it in Scotland.

SIAA is a Scottish Charitable Incorporated Organisation Charity number SC033576

Mansfield Traquair Centre, 15 Mansfield Place, Edinburgh, EH3 6BB

enquiry@siaa.org.uk www.siaa.org.uk