

**Child Rights and Wellbeing
Impact Assessment (CRWIA)**

**Children (Scotland)
Bill**

September 2019



Scottish Government
Riaghaltas na h-Alba
gov.scot

CRWIA Stage 1
Screening - key questions

1. Name the policy, and describe its overall aims.

Children (Scotland) Bill.

The key policy aims of the Bill are to:

- Ensure that the child's best interests are at the centre of any contact and residence case or Children's Hearing;
- Ensure that the views of the child are heard;
- Further compliance with the principles of the United Nations Convention on the Rights of the Child (UNCRC); and
- Further protect victims of domestic abuse and their children.

2. What aspects of the policy/measure will affect children and young people up to the age of 18?

The Articles of the UNCRC and the child wellbeing indicators under the Children and Young People (Scotland) Act 2014 apply to all children and young people up to the age of 18, including non-citizen and undocumented children and young people.

The Scottish Government expects that all aspects of the Bill will affect children and young people as the Bill covers cases under section 11 of the Children (Scotland) Act 1995 and Children's Hearings. The 1995 Act is centred on the needs of children and their families. It defines parental responsibilities and rights (PRRs) in relation to children, as well as who has those responsibilities and rights. It also sets out duties and powers available to public authorities to support children and their families and to intervene when the child's welfare requires it. Part 1 of the 1995 Act covers parental responsibilities and rights and contact and residence cases relating to children when parents are separated or not together.

3. What likely impact – direct or indirect – will the policy/measure have on children and young people?

'Direct' impact refers to policies/measures where children and young people are directly affected by the proposed changes, e.g. in early years, education, child protection or looked after children (children in care). 'Indirect' impact refers to policies/measures that are not directly aimed at children but will have an impact on them. Examples include: welfare reforms, parental leave, housing supply, or local transport schemes.

The Scottish Government expects that a large number of the provisions in the Bill will have a direct impact on children and young people. Those areas that do not have a direct impact are likely to have an indirect impact on children and young people.

4. Which groups of children and young people will be affected?

Under the UNCRC, 'children' can refer to: individual children, groups of children, or children in general. Some groups of children will relate to the groups with protected

characteristics under the Equality Act 2010: disability, race, religion or belief, sex, sexual orientation. 'Groups' can also refer to children by age band or setting, or those who are eligible for special protection or assistance: e.g. pre-school children, children in hospital, children in rural areas, looked after children, young people who offend, victims of abuse or exploitation, child migrants, or children living in poverty.

The Bill is likely to potentially affect children and young people of all ages and from all backgrounds. However, in particular, the provisions removing the presumption that a child aged 12 or over is considered mature enough to give their views will have an impact on younger children. The Bill is also likely to have more of an impact on children who have experienced domestic abuse; those involved in court proceedings about the arrangements for their upbringing; looked after children and those who are involved in the Children's Hearings System.

5. Will this require a CRWIA?

Explain your reasons.

Yes, as all the provisions either directly or indirectly affect children.

CRWIA Declaration

Tick relevant section, and complete the form.

CRWIA required

CRWIA not required

Yes

Authorisation

Policy lead

Hannah Frodsham,
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Civil Law & Legal System
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Date

23.08.19

Deputy Director or equivalent

Date

Gavin Henderson
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23.08.19

CRWIA Stage 2 The CRWIA – key questions

1. Which UNCRC Articles are relevant to the policy/measure? List all relevant Articles of the UNCRC and Optional Protocols.

UNCRC rights are underpinned by the four general principles: non-discrimination; the best interests of the child; the right to life; survival and development; and the right to have children's views given due weight.

The Children (Scotland) Bill contains a range of provisions that will affect children's rights. The Scottish Government has listed below the articles of the UNCRC that the Scottish Government think are relevant to the provisions being introduced.

Article 1

Is relevant because the Children (Scotland) Act 1995 (the 1995 Act) defines "child" in relation to parental responsibilities and rights (PRRs) as a person under the age of 16 for directions and a person under the age of 18 for guidance.

Article 1 is also relevant to placing a duty on local authorities in relation to looked after children up to the age of 18 to promote contact with their siblings.

Article 2

Being married may be classified as an "other status" under Article 2(1) and this is relevant to the provision in the Bill giving the Scottish Ministers the power to make regulations in relation to the conferral of PRRs on unmarried fathers and second female parents where the birth of the child is registered overseas and the parent has obtained overseas parental duties, rights or responsibilities in a similar way to obtaining PRRs in Scotland.

Article 3

Article 3 is key to the policy intention of the Bill that the child's best interests are at the centre of any contact and residence case under section 11 of the 1995 Act and in Children's Hearings under the Children's Hearings (Scotland) Act 2011 (the 2011 Act).

Article 3 is relevant in relation to the provisions in the Bill:

- introducing a presumption that when considering the welfare of the child in a section 11 case, a Children's Hearing or an adoption case, the court or Children's Hearing is to have regard to any risk of prejudice to the child's welfare that delay in proceedings would pose;
- providing that where an order under section 11(1) of the 1995 Act has not been complied with the court has a duty to seek the reasons behind this;
- removing the presumption that a child aged 12 or over is mature enough to give their views in cases under sections 6, 11 and 16 of the 1995 Act, sections 14 and 84 of the Adoption and Children (Scotland) Act 2007 (the 2007 Act) and section 27 of the 2011 Act;
- establishing registers of Child Welfare Reporters and curators ad litem in cases under section 11 of the 1995 Act;

- introducing factors to be considered by the court before making an order under section 11(1) of the 1995 Act, including the effect the order may have on the involvement of the child's parents in bringing the child up;
- amending section 11 of the Matrimonial Proceedings (Children) Act 1958 to require any Child Welfare Reports produced by a local authority to be done by a Child Welfare Reporter;
- placing a duty on local authorities in relation to looked after children to promote contact with their siblings;
- prohibition of personal conduct of a case involving vulnerable parties including victims of certain offences in cases under section 11 of the 1995 Act and Children's Hearings court proceedings; and
- regulating child contact centres to ensure they comply with standards of accommodation, staff training and service, and appointing a body to undertake inspections.

Article 5

This article is relevant in relation to the provisions in the Bill:

- giving the Scottish Ministers the power to make regulations in relation to the conferral of PRRs on unmarried fathers and second female parents where the birth of the child is registered overseas and the parent has obtained overseas parental duties, rights or responsibilities in a similar way to obtaining PRRs in Scotland;
- introducing factors to be considered by the court before making an order under section 11(1) of the 1995 Act; and
- clarifying that orders under section 11(1) of the 1995 Act apart from residence orders do not automatically grant PRRs.

Article 6

Article 6 is relevant in relation to further protecting children from domestic abuse, in particular establishing a register of Child Welfare Reporters, which will require them to have training on domestic abuse and coercive control.

Article 7

Article 7(1) is relevant in relation to the provisions in the Bill:

- introducing factors to be considered by the court before making an order under section 11(1) of the 1995 Act, including the effect the order may have on the involvement of the child's parents in bringing the child up;
- giving the Scottish Ministers the power to make regulations in relation to the conferral of PRRs on unmarried fathers and second female parents where the birth of the child is registered overseas and the parent has obtained overseas parental duties, rights or responsibilities in a similar way to obtaining PRRs in Scotland; and
- placing a duty on the court to investigate failure to comply with an order under section 11(1) of the 1995 Act.

Article 8

This article is relevant in relation to a child's relationship with grandparents and siblings, who are considered family relations in the implementation handbook for the Convention¹, published by UNICEF.

Article 8 is relevant in relation to the provisions in the Bill:

- placing a duty on local authorities in relation to looked after children up to promote contact with their siblings; and
- introducing factors to be considered by the court before making an order under section 11(1) of the 1995 Act, including the effect the order may have on the involvement of the child's parents in bringing the child up and the child's important relations with other people.

Article 9

Article 9 is key as the Bill covers contact and residence cases relating to children, PRRs, and ensuring that the views of the child are heard.

Article 9(1) is relevant in relation to provisions in the Bill:

- establishing registers of Child Welfare Reporters and curators ad litem under section 11 of the 1995 Act; and
- placing a duty on the court to investigate failure to comply with an order under section 11(1) of the 1995 Act.

Article 9(2) will have relevance in relation to provisions in the Bill:

- removing the presumption that a child aged 12 or over is mature enough to give their views in cases under sections 6, 11 and 16 of the 1995 Act, sections 14 and 84 of the 2007 Act and section 27 of the 2011 Act;
- providing that the Principal Reporter should be given the right to appeal a sheriff's decision in relation to deemed relevant person status;
- introducing a prohibition of personal conduct of a case involving vulnerable parties or victims of certain offences when the court is considering making an order under section 11(1) of the 1995 Act and in Children's Hearings court proceedings.

Article 9(3) will have relevance in relation to provisions in the Bill:

- providing that where a court becomes aware that an order under section 11(1) of the 1995 Act has not been complied with the court has a duty to seek the reasons behind this;
- regulation of child contact centres to ensure they comply with standards of accommodation, staff training, and appointing a regulatory body; and
- introducing factors to be considered by the court before making an order under section 11(1) of the 1995 Act.

Article 12

Article 12 is key to the policy intention that the views of the child are considered in proceedings and decisions that affect them.

¹ https://www.unicef.org/publications/index_43110.html

In particular Article 12 is relevant to provisions in the Bill:

- removing the presumption that a child aged 12 or over is mature enough to give their views in cases under sections 6, 11 and 16 of the 1995 Act, sections 14 and 84 of the 2007 Act and section 27 of the 2011 Act and ensuring that any views are taken in a suitable manner;
- establishing a register of Child Welfare Reporters;
- establishing a register of curators ad litem in cases under section 11 of the 1995 Act;
- introducing a prohibition of personal conduct of a case involving vulnerable parties or victims of certain offences in cases under section 11 of the 1995 Act and Children's Hearings court proceedings as a child may be called as a witness; and
- introducing a duty for local authorities to take the views of siblings including child siblings when making a decision to promote personal relations and contact between a looked after child and their siblings.

Article 13

Article 13 is relevant in relation to the provisions in the Bill:

- removing the presumption that a child aged 12 or over is mature enough to give their views in cases under sections 6, 11 and 16 of the 1995 Act, sections 14 and 84 of the 2007 Act and section 27 of the 2011 Act and ensuring that any views are taken in a suitable manner; and
- ensuring that the outcome and reasons for certain decisions are explained to the child in an impartial manner if the court considers it in the best interests of the child.

Article 14

Article 14 has relevance in relation to provisions in the Bill giving the Scottish Ministers the power to make regulations in relation to the conferral of PRRs on unmarried fathers and second female parents where the birth of the child is registered overseas and the parent has obtained overseas parental duties, rights or responsibilities in a similar way to obtaining PRRs in Scotland.

Article 15

Article 15(1) is relevant to the provisions in the Bill protecting children from domestic abuse where they may be coercively controlled, in particular in relation to establishing a register of Child Welfare Reporters.

Article 16

Article 16 is relevant in relation to the provisions in the Bill:

- placing a duty on local authorities in relation to looked after children up to promote contact with their siblings; and
- establishing a register of Child Welfare Reporters.

Article 18

Article 18 is relevant in relation to the provisions in the Bill:

- introducing factors to be considered by the court before making an order under section 11(1) of the 1995 Act, including the effect the order may have on the involvement of the child's parents in bringing the child up;

- giving the Scottish Ministers the power to make regulations in relation to the conferral of PRRs on unmarried fathers and second female parents where the birth of the child is registered overseas and the parent has obtained overseas parental duties, rights or responsibilities in a similar way to obtaining PRRs in Scotland; and
- regulating child contact centres to ensure they comply with standards of accommodation, staff training and service, and appointing a body to undertake inspections.

Article 19

Article 19 is relevant in relation to the provisions in the Bill:

- giving courts the power to authorise special measures to protect vulnerable parties in proceedings where the court is considering an order under section 11(1) of the 1995 Act;
- introducing a prohibition of personal conduct of a case involving vulnerable parties or victims of certain offences in cases under section 11 of the 1995 Act and Children's Hearings court proceedings;
- providing that where a court becomes aware that an order under section 11(1) of the 1995 Act has not been complied with then the court has a duty to seek the reasons behind this;
- regulating child contact centres to ensure they comply with standards of accommodation, staff training and service, and appointing a body to undertake inspections;
- establishing a register of Child Welfare Reporters; and
- establishing a register of curators ad litem in section 11 cases under section 11.

Article 20

Article 20 is relevant in relation to the provisions in the Bill:

- placing a duty on local authorities in relation to looked after children up to promote contact with their siblings; and
- providing that the Principal Reporter should be given the right to appeal a sheriff's decision in relation to deemed relevant person status.

Article 21

Article 21 is relevant in relation to provisions in the Bill introducing a presumption that when considering the welfare of the child in a Children's Hearing or an adoption case, the court or Children's Hearing is to have regard to any risk of prejudice to the child's welfare that delay in proceedings would pose.

Article 23

Article 23 is key to the policy intention that the welfare of the child is paramount in consideration.

Article 23 is relevant in relation to the provisions in the Bill:

- ensuring that the outcome and reasons for certain decisions are explained to the child in an impartial manner if the court considers it in the best interests of the child;
- removing the presumption that a child aged 12 or over is mature enough to give their views in cases under sections 6, 11 and 16 of the 1995 Act, sections 14 and

84 of the 2007 Act and section 27 of the 2011 Act and ensuring that any views are taken in a suitable manner;

- establishing a register of Child Welfare Reporters;
- establishing a register of curators ad litem in cases under section 11 of the 1995 Act; and
- regulating child contact centres to ensure they comply with standards of accommodation, staff training and service, and appointing a body to undertake inspections.

Article 30

Article 30 is relevant in relation to the provisions in the Bill establishing a register of Child Welfare Reporters.

Article 31

Article 31 is relevant in relation to the provisions in the Bill establishing a register of Child Welfare Reporters, as this could help ensure the best interests of the child are reflected to the court.

Article 39

Article 39 is relevant in relation to the provisions in the Bill:

- establishing a register of Child Welfare Reporters; and
- providing that where a court becomes aware that an order under section 11(1) of the 1995 Act has not been complied with the court has a duty to seek the reasons behind this.

2. What impact will the policy/measure will have on children's rights?

Positive

The policies and measures in the Children (Scotland) Bill will have a positive impact on children's rights as the key policy aims of the Bill are:

- ensuring that the child's best interests are at the centre of any contact and residence case or Children's Hearing;
- ensuring that the views of the child are heard; and
- further compliance with the principles of the United Nations Convention on the Rights of the Child (UNCRC).

3. Will there be different impacts on different groups of children and young people?

Which groups of children will be affected by the policy/measure? Are there competing interests between different groups of children and young people, or between children and young people and other groups?

Children and young people of all ages will be impacted, in particular those who are victims of domestic abuse, those involved in court proceedings about the arrangements for their upbringing, and those involved in the Children's Hearings System.

The Scottish Government considers that certain policies are more likely to affect younger children. In particular, the removal of the presumption that a child aged 12 or over is mature enough to give their views (in contact and residence cases and in permanence

and adoption cases and Children's Hearings) will have a positive impact on children younger than 12 in relation to being able to give their views in proceedings and decisions that affect them.

Regulation of contact centres will have a positive impact on younger children more than older children, because there tends to be a higher number of families with younger children using contact centre services and also a higher number of younger parents using these services. In 2018-19 Relationships Scotland Annual Statistics confirmed that 83% of children at their child contact centres in that year were aged 8 or under.

4. If a negative impact is assessed for any area of rights or any group of children and young people, what options have you considered to modify the proposal, or mitigate the impact?

If options to modify the policy/measure are included here, include associated resource implications where relevant.

None of the provisions in the Bill have been identified as having a negative impact on any areas of rights of children and young people.

5. How will the policy/measure contribute to the wellbeing of children and young people in Scotland?

Outline how the implementation of the policy/measure will support public bodies in Scotland to meet their duties to safeguard, support and promote the wellbeing of children in their area, with wellbeing defined by eight wellbeing indicators. The indicators are: Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, and Included.

The following wellbeing indicators are relevant:

Safe: The Bill aims to further protect children from domestic abuse in particular through: regulating child contact centres, establishing a register of Child Welfare Reporters, who will be trained in domestic abuse and coercive control, establishing a register of curators ad litem, introducing a new special measure prohibiting a party from personally conducting a case, giving the court power to order special measures in Child Welfare Hearings, and placing a duty on the court to investigate reasons for non-compliance with an order under section 11(1) of the 1995 Act. The Bill also requires the court to have regard to the risk of prejudice to the child's welfare that any delay in proceedings would pose.

Achieving: The Scottish Government considers that both parents should be fully involved in their child's life as long as this is in the child's best interests. The Bill introduces factors to be considered by the court before making an order under section 11(1) of the 1995 Act, including the effect the order may have on the involvement of the child's parents in bringing the child up and the child's important relations with other people. The Bill also gives the Scottish Ministers the power to make regulations in relation to the conferral of PRRs on unmarried fathers and second female parents where the birth of the child is registered overseas and the parent has obtained overseas parental duties, rights or responsibilities in a similar way to obtaining PRRs in Scotland. The Bill also allows orders from elsewhere in the UK that are registered in the Court of Session to be enforced in the sheriff court.

Nurtured: As noted above, the Scottish Government considers that both parents should be fully involved in their child's life as long as this is in the child's best interests. The Bill introduces factors to be considered by the court before making an order under section 11(1) of the 1995 Act, including the effect the order may have on the involvement of the child's parents in bringing the child up and the child's important relations with other people. The Bill also places a duty on local authorities to promote sibling personal relations and puts beyond doubt that that a person under the age of 16 can seek and obtain a contact order.

The Bill gives the Scottish Ministers the power to make regulations in relation to the conferral of PRRs on unmarried fathers and second female parents where the birth of the child is registered overseas and the parent has obtained overseas parental duties, rights or responsibilities in a similar way to obtaining PRRs in Scotland. The Bill also allows orders from elsewhere in the UK that are registered in the Court of Session to be enforced in the sheriff court.

Respected: The Scottish Government believes that children who are capable and wish to do so should be able to give their views in family court cases, Children's Hearings and permanence and adoption cases. This also applies when a person with PRRs is making a major decision about the child. The Bill removes the presumption that a child aged 12 or over is mature enough to give their views in cases under sections 6, 11 and 16 of the 1995 Act, sections 14 and 84 of the 2007 Act and section 27 of the 2011 Act. The Bill also ensures that any views are taken in a suitable manner and that the outcome and reasons for certain decisions are explained to the child in an impartial manner if the court considers it in the best interests of the child.

This indicator is also met through establishing a register of Child Welfare Reporters who will be trained in domestic abuse and coercive control, and establishing a register of curators ad litem. The Bill also places a duty on the court to investigate reasons for non-compliance with an order under section 11(1) of the 1995 Act.

The Bill also places a duty on local authorities to promote sibling personal relations and puts beyond doubt that that a person under the age of 16 can seek and obtain a contact order.

Responsible: This indicator is relevant to the Bill provisions which place a duty on the court to give a child suitable opportunity to express their views in family court cases, Children's Hearings and permanence and adoption cases. This also applies when a person with PRRs is making a major decision about the child. The Bill gives the Scottish Ministers the power to make regulations in relation to the conferral of PRRs on unmarried fathers and second female parents where the birth of the child is registered overseas and the parent has obtained overseas parental duties, rights or responsibilities in a similar way to obtaining PRRs in Scotland. The Bill also allows orders from elsewhere in the UK that are registered in the Court of Session to be enforced in the sheriff court.

In addition, the Bill ensures that the outcome and reasons for certain decisions are explained to the child in an impartial manner if the court considers it in the best interests

of the child. The Bill also requires the court to have regard to the risk of prejudice to the child's welfare that any delay in certain proceedings would pose.

The Bill also establishes a register of Child Welfare Reporters, a register of curators ad litem, and regulates child contact centres.

Included: This indicator is relevant to the Bill provisions which place a duty on the court to give a child suitable opportunity to express their views in family court cases, Children's Hearings and permanence and adoption cases.

In addition, the Bill ensures that the outcome and reasons for certain decisions are explained to the child in an impartial manner if the court considers it in the best interests of the child.

The Bill also places a duty on local authorities to promote sibling personal relations.

6. How will the policy/measure give better or further effect to the implementation of the UNCRC in Scotland?

This will inform the Scottish Ministers' duty to report to Parliament on children's rights under the Children and Young People (Scotland) Act 2014.

One of the key policy aims of the Children (Scotland) Bill is to further compliance with the UNCRC.

7. What evidence have you used to inform your assessment? What does it tell you?

The evidence base may include demographic information, academic research, service monitoring/inspection reports, service evaluation reports, user surveys, etc. In particular, look at what existing evidence tells you about children and young people's views and experiences of the relevant service(s); and/or what it tells you about children and young people's views of the policy proposal. Identify any gaps in the evidence base, and set out how you will address these.

This section of the CRWIA will cover each of the key provisions in the Bill that impact on children and young people. A range of research was used to justify the policies. There is a list of research into Family Law on the Scottish Government's Family Law Research Page:

<https://www2.gov.scot/Topics/Justice/law/17867/familylawresearch>

Background statistics

Number of births and number of children

Data from National Records of Scotland shows that there were 51,308 births registered in Scotland in 2018².

² <https://www.nrscotland.gov.uk/files//statistics/vital-events-ref-tables/2018/vital-events-ref-tables-18-publication.pdf>

In Mid 2018 there were 924,477 children aged 15 or under in Scotland³.

Court statistics

According to figures provided by Scottish Courts and Tribunals Service (SCTS) in 2018/19 there were 2,639 cases disposed of in the sheriff courts in relation to parental responsibilities and rights. In 2018/19 there were 3,554 family cases raised which involved children and 15,649 hearings in family cases involving children (excluding adoption and permanence). Of the 15,649 hearings there were 6,655 Child Welfare Hearings, 1,383 proofs called and 239 proofs proceeding.

Clan Childlaw's latest Annual Report⁴ shows that in 2016-17, 45 of the 237 cases they dealt with involved contact and residence disputes, and 105 out of the 403 enquiries they dealt with were in relation to contact and residence disputes. In 2017 Citizens Advice Scotland provided advice on 1,861 new issues related to parental contact with children. These figures give an indication as to the number of children that may be affected by options regarding who a child has contact with.

Looked after Children

At 31 July 2018 there were an estimated 14,738 looked after children in Scotland.⁵

Children's Hearings statistics

In 2018/19, 31,653 Children's Hearings were held for 13,667 children and young people.⁶ If the child or young person and/or their relevant persons do not accept some or all of the statement of grounds for referral which form the basis of the Children's Hearing, or the child or young person does not or cannot understand the grounds, the Children's Hearing may direct the Reporter to apply to the sheriff to establish the statement of grounds for referral (sections 93 and 94 of the Children's Hearings (Scotland) Act 2011). Overall, 2,837 applications were determined for 2,802 children and young people in 2018/19.

Children and young people and/or their relevant persons can appeal to the sheriff against decisions made by Children's Hearings and Pre-Hearing Panels. In 2018/19, 651 children and young people had 824 appeals concluded.

³ <https://www.nrscotland.gov.uk/files/statistics/population-estimates/mid-18/mid-year-pop-est-18-pub.pdf>

⁴ <https://www.clanchildlaw.org/Handlers/Download.ashx?IDMF=25e48701-f9b9-439d-a4b1-91ef68af5ca3>

⁵ <https://www.gov.scot/publications/childrens-social-work-statistics-2017-2018/pages/3/>

⁶ <https://www.scra.gov.uk/wp-content/uploads/2019/07/SCRA-full-statistical-analysis-2018-19.pdf>

Domestic abuse and cases under section 11 of the 1995 Act

Research undertaken by Kirsteen Mackay in 2013⁷ shows that domestic abuse was alleged in half of all court actions over contact. When a child was not seeing their non-resident parent this was allegedly due to violence upon the child in 18% of the cases.

Research by CAFCASS and Women's Aid in 2017 shows that in England and Wales domestic abuse was alleged in 62% of cases with fathers more likely to be the subject of allegations than mothers. Cases featuring allegations of domestic abuse were more likely to result in an order for no direct contact than cases without⁸. Research undertaken by the Ministry of Justice in 2009 showed that 53% of the contact and residence cases in England and Wales involved allegations of domestic abuse or concerns about abduction or harm to children⁹.

According to the Scottish Crime and Justice Survey 2017/18¹⁰ published in March 2019, 40% of those who experienced partner abuse in the last 12 months said that children were living in their household when the most recent incident took place. In addition, in 62% of cases where children were living in the household the children were present during the most recent incident.

Figures on the number of incidents of domestic abuse recorded by the police showed that 40% of domestic abuse incidents were recorded by police to have taken place in the victim's home and 19% were recorded in a joint home¹¹. It is likely that children may have been present in a number of such cases.

Establishing a register of Child Welfare Reporters

Data

Data from SLAB suggests that the costs of obtaining a child welfare report can vary¹². The Bill will allow the Scottish Ministers to set standard fees to address this and also to alleviate the pressure on individuals who are not eligible for Legal Aid and find it hard to fund a child welfare report.

Research

The Scottish Government published research in 2010 on the use of child welfare reporters¹³.

⁷ <https://www.cypcs.org.uk/ufiles/views-of-children-and-domestic-abuse.pdf>

⁸ <https://www.cafcass.gov.uk/2017/07/25/cafcass-womens-aid-collaborate-domestic-abuse-research/>

⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217368/family-justice-childrens-proceedings.pdf

¹⁰ <https://www.gov.scot/news/scottish-crime-and-justice-survey-2017-18/>

¹¹ <https://www.gov.scot/publications/domestic-abuse-recorded-police-scotland-2017-18/>

¹² <https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/flc-meeting-files/flc-meeting-papers-23-october-2017/paper-4-2---report-by-slab---child-welfare-reporters.pdf?stvrn=2>

¹³ Whitecross, R Child Welfare Hearings: A scoping study: commissioning, preparation and use of bar reports:

https://www.webarchive.org.uk/wayback/archive/20180517234526mp_/http://www.gov.scot/Resource/Doc/336942/0110393.pdf

There has been criticism in relation to the current role played by curators ad litem in contact and residence cases¹⁴.

Removing the presumption that a child aged 12 or over is considered mature enough to give their views and ensuring that a child is given a suitable opportunity to give their views

Data

There is limited data available on the number of children whose views have been sought by the courts.

SLAB data shows that between 2015 and 2017 they funded 32 applications from children for legal aid to appear directly before the court. 30 out of the 32 applications came from children aged 12 or over.

Research published in 2013¹⁵ by Scotland's Commissioner for Children and Young People, on the treatment of the views of children in private law child contact disputes where there is a history of domestic abuse, found that in the cases studied:

- 20% of children were sent a form (F9) to give them the opportunity to express a view. Children sent this form were significantly more likely to express a view.
- 55% of children in total had their views on contact taken.
- From the age of five years, at least 71% of children had their views taken.
- 72% of children whose views were taken, had their views taken by a solicitor or social worker appointed to undertake a court report.
- Only 1% of children spoke to a sheriff and only one child had their own solicitor.

Research

There is research available on how the courts consider the views of the child in other countries¹⁶.

The Power Up Power Down project¹⁷ undertaken by Scottish Women's Aid and the Children and Young People's Commissioner Scotland in relation to children who have experienced domestic abuse made a number of suggestions which have helped inform a number of options including:

- Removing the presumption that only children aged 12 or above are of sufficient age and maturity to form a view in a case;
- Requiring the court to actively consider what is in the best interests of a child; and
- Requiring the court to provide feedback to the child on the outcome of cases.

¹⁴ <http://www.journalonline.co.uk/Magazine/63-8/1026143.aspx#.XMGO4rpFxNN> and <https://www.supremecourt.uk/cases/docs/uksc-2011-0173-judgment.pdf>

¹⁵ <https://www.cypcs.org.uk/ufiles/views-of-children-and-domestic-abuse.pdf>

¹⁶ Kay, E, Tisdall, M, Bray, R, Marshall K and Cleland A Children's participation in family law proceedings: a step too far or a step too small? (2004) Journal of Social Welfare and Family Law 26(1) p17-33.

¹⁷ <https://www.cypcs.org.uk/policy/past-work/power-uppower-down/>

The Scottish Government published research in 2000 on the use of the form F9 in contact and residence cases¹⁸, following concerns that it is not child friendly and that a child could be coached when completing the form. The Scottish Government issued a policy paper on the voice of the child in December 2015¹⁹, and the Family Law Committee of the Scottish Civil Justice Council have revised the form F9 to make it more child friendly²⁰.

There is evidence to suggest that allowing children to express their views in court cases can lead to better outcomes for the child and can lead to higher rates of satisfaction amongst children of the outcomes²¹.

The Scottish Government has provided grant funding to a research project on voice of the child in contact and residence cases.

Regulation of contact centres

Child contact centres are safe venues for conflict-free contact between children, parents, and other people in the child's life. Establishing minimum standards in relation to training and accommodation will help ensure that all contact centres are safe locations.

There are currently 41 contact centres across Scotland who are members of Relationships Scotland. In addition, the Scottish Government are aware of three independent centres in Aberdeen, Inverclyde and Glasgow.

On 9 January 2017 petition PE1635²² was lodged with the Public Petitions Committee of the Scottish Parliament asking for a review the current system and operation of child contact centres and the procedure under section 11 of the Children (Scotland) Act 1995 so that the rights, safety and welfare of children are paramount in relation to child contact arrangements where domestic abuse is an issue, and to ensure that section 11 of the Act is consistently implemented across Scotland. A number of written submissions were received from key stakeholder organisations.

The Committee agreed to close the petition²³ on 27 June 2019 the basis that the issues that were highlighted by it have been recognised by the Scottish Government. In particular, that the Bill provides for contact centres to be regulated, helping ensure that the interests of children are at the heart of the system and that their views are heard.

¹⁸ Scottish Government (2000) Monitoring the Children (Scotland) Act 1995: Pilot Study: https://www.webarchive.org.uk/wayback/archive/20180519012719mp_/http://www.gov.scot/Resource/Doc/156495/0042016.pdf

¹⁹ Paper 5.1 at <http://www.scottishciviljusticecouncil.gov.uk/committees/family-law-committee/07-december-2015-papers>.

²⁰ [https://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/forms/sheriff-court-forms/ordinary-cause-forms/form-f09\(actions-or-minutes-to-vary-lodged-on-or-after-24-june-2019\).doc?sfvrsn=10](https://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/forms/sheriff-court-forms/ordinary-cause-forms/form-f09(actions-or-minutes-to-vary-lodged-on-or-after-24-june-2019).doc?sfvrsn=10)

²¹ Holt.S (2016) The voice of the child in family law: a discussion paper. Children and Youth Services Review (68)

²² <http://www.parliament.scot/GettingInvolved/Petitions/PE01635>

²³ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12222&mode=pdf> (see columns 23 -24)

Data

Figures from Relationships Scotland show that in 2017 1,427 children used contact centres managed by Relationships Scotland. 39% of the children were 0-4 years old, 34% were 5-8 years old and 18% were 13-16 years old. Only 1% of children using contact centres were over 16.

In 2018/19, 2,572 children were able to maintain contact with a non-resident parent by using Relationships Scotland contact centres.

The 2015/16 Annual Report from the independent centre in Aberdeen shows that 23 families received contact through their organisation.

The Inverclyde Child (Family) Contact Centre dealt with 60 children from 53 families in 2016 and 76 children from 58 families in 2017. 25 of these children were 3 and under, 20 were 4-6, 17 were 7-10 and 6 were aged 11 and over.

Placing a duty on the court to investigate reasons for non-compliance with an order under section 11(1) of the 1995 Act

Research undertaken by the Centre for Research on Families and Relationships in 2006 suggests that non-compliance with contact orders was very low²⁴.

Conferring PRRs on unmarried fathers and second female parents where the birth of the child is registered overseas and the parent has obtained overseas parental duties, rights or responsibilities in a similar way to obtaining PRRs in Scotland.

Statistics from NRS show there were 17,531 men who moved to Scotland in 2016/17 from outwith the UK²⁵. However, we do not have any information on how many of them were fathers, were unmarried and who came from a country which grants fathers parental duties, rights and responsibilities similar to PRRs in Scotland.

Delay in court proceedings likely to prejudice child's welfare

Data

Recent data from the SLAB shows that cases where parties received legal aid last the following length of time:

	Contact (%)	Residence (%)	Total (%)
Up to 6 months	15	21	17
6-12 months	24	30	26
12-18 months	17	17	17
18-24 months	13	10	12
2-3 years	17	12	15

²⁴ A survey of sheriff clerks' perspective on child contact enforcement in Scottish sheriff courts 2006: <https://www.webarchive.org.uk/wayback/archive/20160122131607mp/http://www.gov.scot/Resource/Doc/151628/0040738.pdf>

²⁵ <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/migration/migration-statistics/migration-flows/total-migration-to-or-from-scotland>

3-4 years	7	5	7
4-5 years	4	2	3
Over 5 years	3	2	3

The SLAB data only covers those cases where individuals are granted Legal Aid. The figures cover the period from the date of the grant to the date of the final account. Therefore, the actual court time may be slightly less.

Research

Research published by Scottish Government in 2010 shows that there was considerable variation in the length of contact cases examined. 71 of the 182 cases that were examined were still active after 18 months, but only 42 of those had been heard in court within the preceding six months²⁶. Most of the individuals that were surveyed for this research felt that their cases had gone on much longer than they had expected.

The Scottish Civil Justice Council have consulted on improving case management in family actions²⁷. This follows both a policy paper by the Scottish Government and research by the Family Law Committee of the Scottish Civil Justice Council.

Factors to be considered by the court before making an order under section 11(1) of the 1995 Act

Factors to be considered by the court include:

- the effect that the order the court is deciding might have on the involvement of the child's parents in bringing the child up; and
- the effect that the order might have on the child's important relationships with other people.

Child's important relationships with other people

There is evidence to suggest that children benefit from contact with grandparents particularly in times of a family crisis²⁸. There is also research that shows a close relationship with grandparents can reduce the level of socio-emotional adjustment for a child after a divorce²⁹.

According to figures from Growing Up in Scotland, close to 99% of children aged six in the survey had a least one living grandparent and 80% of children at age six had three or more living grandparents³⁰.

²⁶ Understanding Child Contact Cases in Scottish Sheriff Courts. K.Laing & G.Wilson, Newcastle University 2010. <https://www.gov.scot/Publications/2010/12/08145916/0>

²⁷ <http://www.scottishciviljusticecouncil.gov.uk/consultations/scjc-consultations/consultation-on-the-case-management-of-family-and-civil-partnership-actions-in-the-sheriff-court>

²⁸ Jappens, M and Van Bavel J Parental divorce, residence arrangements and contact between grandchildren and grandparents Journal of Marriage and Family vol 78(2) p 451-467

²⁹ Lussier, G, Deater-Deckard, K, Dunn J and Davies L (2002) Support across two generations: children's closeness to grandparents following parental divorce and remarriage Journal of Family Psychology vol 16(3) p363-376.

³⁰ https://www.webarchive.org.uk/wayback/archive/20160121040130mp_/http://www.gov.scot/Resource/0039/00392449.pdf

CLAN Childlaw has produced a report which highlights the importance of child contact with siblings³¹.

Involvement of the child's parents in bringing the child up

There is a significant amount of research into whether a child benefits from contact with both parents. There is largely consensus that shared parenting benefits children if parents cooperate and have a low level of conflict.

Research includes a detailed literature review on children's and parents' well-being in joint physical custody³².

Some research suggests that children benefit from both parents being involved in their lives. For example Edward Kruk³³ has produced 16 arguments in support of equal parental responsibility. These include:

- Preserving of parents' relationships with their children;
- Decreasing parental conflict and preventing family violence;
- Enhancing the quality of parent-child relationships and reducing litigation; and
- Reducing the risk of parental alienation.

Research also shows that more frequent and regular contact is associated with closer relationships with non-resident parents and fewer adjustment problems in children³⁴.

There is also research to suggest that children benefit from their father being involved in their upbringing. For example, the Scottish Government's Growing Up in Scotland study found that children with poor father-child relationships are more likely to have higher levels of behavioural and emotional problems and poor school adjustment³⁵.

However, research is divided as to whether children benefit from contact with both parents in situation of conflict. If parents reach the stage of court proceedings then they are unlikely to be cooperating.

Research suggests that domestic abuse occurs in half of all sheriff court cases in relation to contact and residence. Research by the Nuffield Foundation in 2013 also found that children often feel responsible for their parents' happiness and therefore are unwilling to raise the possibility of changing shared parenting arrangements³⁶.

³¹ <https://www.clanchildlaw.org/Handlers/Download.ashx?IDMF=6be66e0e-4216-4bad-979b-e5cee781c320>

³² Steinbach A 2018 Children's and Parents' well-being in joint physical custody: a literature review *Family Process*

³³ Kruk E 2012 Arguments for an equal parental responsibility presumption in contested child custody *The American Journal of Family Therapy*

³⁴ See for example Bauserman, R 2002 Child Adjustment in joint-custody versus sole custody arrangements: a meta-analytical review *Journal of Family Psychology* 16(1) 91-102.

³⁵ Growing up in Scotland: Father –child relationships and child socio-emotional wellbeing. 2017. Available at: <https://www.gov.scot/publications/growing-up-scotland-father-child-relationships-child-socio-emotional-wellbeing/>

³⁶ [https://www.nuffieldfoundation.org/sites/default/files/files/bp%208%20v6\(1\).pdf](https://www.nuffieldfoundation.org/sites/default/files/files/bp%208%20v6(1).pdf)

There is also research from Belgium that says there has been little evidence that children's well-being in shared residence is higher than children living with one parent³⁷. There is research that found that if parental conflict is high and ongoing then shared parenting can be associated with lower child wellbeing compared with sole residence³⁸.

One parent turning a child against another parent

Research is also available which highlights the negative impact, on a child, of one parent turning the child against another parent³⁹.

Placing a duty on Local Authorities to promote sibling personal relations

Data

In the 2015 cohort of the Growing up in Scotland study⁴⁰, which was a study representative of the general population, a question was asked in relation to siblings of children who were approaching 5 years of age. The question did not differentiate between birth, half- and step-siblings. At that point around 14% of the children (aged around 5 at the time) had a brother or sister (including half- and step-brothers and sisters) who were living in another household. If we take into account the age of the siblings, around 9% of 5 year olds had a sibling aged 16 or younger living in another household. In the remaining cases we either do not know the age of the sibling or they were over 16.

Research

The literature available on sibling care placements highlights recurring themes; predominantly that maintaining and developing sibling relationships and making joint placements, where appropriate, in a care setting are in the best interests of the child. It also shows that there is evidence that joint sibling placements are at least as stable as placement of single children or separate placements and that some studies show that children will do as well or better when placed with their brothers and sisters. Co-placement is also protective of placement stability.

The literature also shows that joint sibling care placements can be a protective factor for children's resilience and the stability of the placement. It also shows that 'warm' sibling relationships in particular have a positive impact on personal resilience. Sibling relationships in care are also noted to have a positive impact on how trauma is internalised.

³⁷ Sodermans AK, Matthijs K Joint physical custody and adolescents' subjective well-being: a personality x environment interaction 2014 Journal of Family Psychology vol 28(3) p346-356.

³⁸ Vanassche S. Alternating residence for children after parental separation: recent findings from Belgium 2017 Family Court Review vol 55(4)

³⁹ Harman, J, Leder-Elder, S and Biringen Z Prevalence of parental alienation drawn from a representative poll 2016 Children and Youth Services Review vol 66. P62-66.

⁴⁰ <https://growingupinscotland.org.uk>

8. Have you consulted with relevant stakeholders?

This would include public or targeted consultations with children and young people, their parents/carers and the children's workforce.

In addition to the public consultation on the 1995 Act the Scottish Government also ran a young person friendly survey available on SurveyMonkey. There were approximately 250 responses to the main consultation and 300 responses to the young person survey. An analysis of the consultation responses are available online⁴¹.

In late 2017 the Scottish Government conducted interviews with representatives from the following organisations to prepare for the draft BRIA which formed part of the consultation on the Review of the 1995 Act:

- CALM Scotland Mediation
- Children and Young People's Commissioner
- Children 1st
- Clan Child Law
- Faculty of Advocates
- Families need Fathers
- Family Law Association
- Grandparents Apart UK
- Law Society of Scotland
- Relationships Scotland
- Scottish Child Law Centre
- Scottish Legal Aid Board
- Scottish Women's Aid
- Scottish Courts and Tribunals Service

During the consultation period the Scottish Government met with the following organisations:

- Abused Men in Scotland
- Adoption and Fostering Alliance Scotland
- Celcis
- Canongate Youth Groups
- Children's Parliament
- Citizens Advice Scotland
- COSLA
- East Lothian Champions Board
- Families need Fathers Scotland
- Grandparents Apart UK
- Independent Care Review
- Inverclyde Child Contact Centre
- Kinship carers networks, East Lothian, Edinburgh, Kilmarnock
- Life Changes Trust
- Paisley Child Contact Centre
- Parent Network Scotland
- Perth, Stirling, Aberdeen City and Aberdeenshire Youth Rights groups

⁴¹ <https://www.gov.scot/publications/analysis-consultation-responses-consultation-review-children-scotland-act-1995>

- Promoting Positive Contact
- Relationships Scotland
- Scottish Children's Reporters Administration (SCRA)
- Scottish Women's Aid
- Scottish Youth Parliament
- Social Work Scotland
- Society of Local Authority Lawyers and Administrators
- Who Cares? Scotland
- Young Scot

The Scottish Government also held a roundtable with family law academics in July 2018.

Since the consultation closed the Scottish Government has met with the following organisations in relation to proposals in the Children (Scotland) Bill:

- Adoption and Fostering Alliance Scotland
- Adoption Task Force
- Children 1st
- Children and Young People's Commissioner
- Children's Hearings Scotland
- Celcis
- ClanChildlaw
- COSLA
- Family Law Association
- Families need Fathers Scotland
- Grandparents Apart UK
- Independent Care Review
- Law Society of Scotland
- Maisie's Children's Centre
- Promoting Positive Contact
- Relationships Scotland
- Scottish Children's Reporters Administration (SCRA)
- Scottish Courts and Tribunals Service
- Scottish Legal Aid Board
- Scottish Women's Aid
- Scottish Youth Parliament
- Social Work Scotland
- Who Cares? Scotland

9. Have you involved children and young people in the development of the policy/measure?

Is there enough information on the views of the children and young people who will be affected by the policy/measure that enables you to make an informed assessment of impact?

In addition to the main public consultation there was a young person friendly survey available via SurveyMonkey. The purpose was to target young people who would not normally respond to 'traditional' Scottish Government consultation exercises. There were 295 responses to this survey, and the majority of respondents said they were between 13-16 years old.

The specific questions were tested by the Children's Parliament, Young Scot and a class of 11 year old children to ensure they were suitably child friendly. The Scottish Government also discussed with stakeholders the best platforms through which the SurveyMonkey link could be shared with and promoted to a wide range of children and young people, including harder to reach groups.

The Bill takes into account the outcomes of the *Power Up; Power Down* project, run by Scottish Women's Aid and the Children and Young People's Commissioner on domestic abuse and contact. It also reflected points raised in an exercise carried out by the Children's Parliament when reviewing the current court form used to obtain children's views in contact cases. The Scottish Government engaged with the children and young people who worked on the *Power Up; Power Down* project as a consultative exercise while the consultation was live. This allowed for specific engagement with children and young people of various ages with direct experience of child contact issues, particularly in the context of domestic abuse.

The Scottish Government also took part in a consultative exercise with the Children's Parliament while the consultation was live, engaging with children to explore their views and ideas on themes raised⁴². This exercise used creative arts activities and group discussions to support children to express their views and experiences relative to issues covered by the consultation. 34 members of Children's Parliament between the ages of 8 and 15 years took part in four settings across Edinburgh, Fife, Midlothian and Dundee (20 boys and 14 girls). The children were from diverse backgrounds, needs and experiences so that a range of views would be reflected in this report.

In July 2018, the Scottish Government engaged on an activity based session with 12 children attending Big Hearts Kinship summer camp, aged between 7 and 11 looking at topics such as contact between family members, what age a child should be able to give their views, and how best to take their views.

In September 2019 Perth Youth Rights group (aged 16-21) hosted a joint session with the Scottish Government and Stirling, Aberdeen City and Aberdeenshire rights groups sharing their views of the main consultations topics such as parental responsibilities, and rights, contact and the views of the child.

A group of young people aged 10-14 from the Recharge Centre Tranent shared their thoughts with Scottish Government based on the child friendly question.

The Scottish Government ran a workshop at the June 2018 sitting of the Scottish Youth Parliament. The session focussed on a limited number of key questions from the consultation, starting from a children's rights perspective. MSYPs aged 14-25 from across all geographical areas of Scotland took part.

⁴² <https://www.childrensparliament.org.uk/our-work/past-work/children-scotland-act-1995/>

The Scottish Government also attended the Scottish Youth Parliament's 68th National Sitting of the Justice Committee on policy development around family law in March 2019 to provide an update on the outcomes of the consultation.

In June 2018 the Scottish Government also met with a group of young people aged between 7 and 20 years at a session arranged by Scottish Women's Aid. The views of the children were sought on the following topics, which fed into the consultation:

- The information children need for going to court;
- The best ways for child to receive information;
- The views of the child; and
- Giving feedback to the child.

In August 2018 the Minister for Community Safety met with young people from the Citadel Youth Centre regarding the forthcoming consultation to hear views on some of the topics to be consulted on.

CRWIA – Stage 3

[CRWIA for legislation](#)

CRWIA title: Children (Scotland) Bill 2019	
Date of publication:	
Executive summary	<p>The Children (Scotland) Bill resulted from a consultation on the Review of the Children (Scotland) Act 1995 (the 1995 Act) which is the key legislation in relation to parental responsibilities and rights and cases on where a child should live and who should see the child if the parents are separated or not together (contact and residence cases).</p> <p>Primary legislation is only part of the action necessary to improve the operation of family justice. A Family Justice Modernisation Strategy (FJMS) was published when the Bill was introduced. This sets out work that is ongoing by Scottish Government and others; work that can be done via secondary legislation or by improved guidance; areas covered by the Bill; and areas that are for longer term work.</p> <p>The 1995 Act is centred on the needs of children and their families. It defines parental responsibilities and rights (PRRs) in relation to children, as well as who has those responsibilities and rights. It also sets out duties and powers available to public authorities to support children and their families and to intervene when the child's welfare requires it. Part 1 of the 1995 Act covers parental responsibilities and rights and contact and residence cases relating to children when parents are not together.</p> <p>At the time, the 1995 Act was seen as ground-breaking. However, the Scottish Government is aware that many children, parents and organisations are expressing concerns about how Part 1 of the 1995 Act works in practice. The Bill aims to improve the court process in contact and residence cases.</p> <p>Contact and residence disputes can be heard in both the sheriff court and the Court of Session. However, Scottish Courts and Tribunals Service (SCTS) statistics show that the vast majority are heard in the sheriff court. In 2017/18, only two cases initiated in the Court of Session involved seeking PRRs as the primary crave (the main order sought from the court), as opposed to 2,414 cases initiated in the sheriff court.</p> <p>When contact and residence disputes reach the sheriff court they are usually heard by the sheriff at Child Welfare Hearings. Child Welfare Hearings are normally held in</p>

	<p>private with both parties present. They are intended to allow the sheriff to speak to the parties directly, identify the issues and establish how the issues are to be dealt with. Child Welfare Hearings are generally informal procedures. The procedure for them is set out in Chapter 33 of the Ordinary Cause Rules for the sheriff court.</p> <p>The Scottish Government and others such as the Family Law Committee of the Scottish Civil Justice Council have been doing work to improve the family courts over the last few years. For example the Scottish Government chaired a working group between 2013 and 2015 on Child Welfare Reporters, who provide advice to the court in contact and residence cases. This led to a number of changes and in particular to rules clarifying the remit of Child Welfare Reporters⁴³.</p> <p>The Bill also covers changes to aspects of the Children’s Hearings System. The Children’s Hearings System deals with children and young people in Scotland under the age of 18 who are in need of help. The Children’s Hearings System can help a child or young person who is in need of care and protection or who has got into trouble with the police.</p> <p>The key policy aims of the Bill are to:</p> <ul style="list-style-type: none"> • ensure that the child’s best interests are at the centre of any contact and residence case or Children’s Hearing; • ensure that the views of the child are heard; and • further compliance with the principles of the United Nations Convention on the Rights of the Child (UNCRC); <p>The aim of this Child Rights and Wellbeing Impact Assessment (CRWIA) is to identify, consider and record the anticipated impact of the Bill on children’s rights and wellbeing in Scotland.</p>
Background	The background to the Bill is set out in the Policy Memorandum published alongside the Bill on the Scottish Parliament website.
Scope of the CRWIA, identifying the children and young people	The CRWIA considers whether any of the Bill’s provisions impact on the rights and wellbeing of children and young people in Scotland.

⁴³ <https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/flc-meeting-files/flc-19-october-2015-meeting-papers/paper-5-3a--child-welfare-reporters--sg-paper.pdf?sfvrsn=2>

<p>affected by the policy, and summarising the evidence base</p>	<p>The Scottish Government considered a range of evidence when considering the policies to be included in the Bill. This included data from the Scottish Courts and Tribunals Service, Scottish Legal Aid Board, children’s organisations and also academic research.</p> <p>The full list of data and research is available in the CRWIA Stage 2 report which forms part of this document.</p> <p>The Scottish Government are of the view that the provisions will advance the realisation of children’s rights and wellbeing in Scotland.</p> <p>The CRWIA should be read in conjunction with the other impact assessments conducted for the Bill.</p>
<p>Children and young people’s views and experiences</p>	<p>The proposals for the Bill were developed and their likely effect assessed using a range of evidence, including a full public consultation⁴⁴. The Scottish Government also ran a young person friendly survey which was available on SurveyMonkey.</p> <p>During the consultation period, the Scottish Government engaged with a range of children and young people. A full list of engagement events with children and young people is in the CRWIA Stage 2 report which forms part of this document.</p>
<p>Key Findings, including an assessment of the impact on children’s rights, and how the measure will contribute to children’s wellbeing</p>	<p>The Scottish Government has found that a number of the proposals further compliance with the Articles of the UNCRC and that the Bill will have a positive impact on children and young people.</p> <p>A full list of how the Scottish Government considers the Bill will meet various articles of the UNCRC is available in the CRWIA Stage 2 report.</p>
<p>Monitoring and review</p>	<p>The policy will be monitored throughout the parliamentary passage of the Bill and continuing through the implementation of the Bill by continued engagement with relevant justice sector partners and key third sector organisations representing children and young people.</p>

⁴⁴ <https://www2.gov.scot/Topics/Justice/law/17867/review-of-children-scotland-act-1995>

Bill - section	Aims of measure	Likely to impact on...	Compliance with UNCRC requirements	Contribution to local duties to safeguard, support and promote child wellbeing
1 - 3	Sections 1 to 3 of the Bill remove the legal presumption that a child aged 12 or over is considered mature enough to give their views in sections 6, 11 and 16 of the 1995 Act, as well as to sections 14 and 84 of the Adoption and Children (Scotland) Act 2007 and section 27 of the Children's Hearings (Scotland) Act 2011.	<p>Younger children as they will be able to give their views.</p> <p>In addition, it will impact on all children as the decision maker is under a duty to offer the child a suitable opportunity to give their views.</p>	<p>Article 3</p> <p>Article 9</p> <p>Article 12</p> <p>Article 23</p>	<p>These provisions meet wellbeing indicators:</p> <p>Responsible</p> <p>Respected</p> <p>Included</p>
4 - 6	Sections 4 and 5 of the Bill introduce a new special measure into the Vulnerable Witnesses (Scotland) Act 2004 prohibiting a party from personally conducting the remainder of their case in certain circumstances. Section 6 establishes a	<p>Direct impact on children who are called as witnesses in either a court case under section 11 of the 1995 Act or a Children's Hearing proof.</p> <p>Indirect impact on children who are at the</p>	<p>Article 9</p> <p>Article 12</p> <p>Article 19</p>	<p>These provisions meet wellbeing indicators:</p> <p>Safe</p>

	<p>register of solicitors who may be appointed by a court.</p> <p>This special measure is available in proceedings where the court is considering making an order under section 11(1) of the 1995 Act and in Children's Hearings court proceedings.</p> <p>The special measure can be authorised by an order made under section 12 or 13 of the Vulnerable Witnesses (Scotland) Act 2014.</p>	<p>centre of either the court case under section 11 of the 1995 Act or Children's Hearing court case. These provisions will give courts additional measures to protect vulnerable witnesses, enabling them to give their evidence without being cross examined by a party. This could improve the quality of the evidence they give.</p>		
Section 7	<p>This provision gives the court the power to order a range of special measures if attending or participating in hearings is likely to cause a party distress which could be alleviated by use of a special measure. The court may order that the proceedings be conducted with the use of video link, with the</p>	<p>This provision will directly affect vulnerable adults who are parties to cases under section 11 of the 1995 Act.</p> <p>It will also indirectly affect children and young people as the provision is likely to encourage better participation in court</p>	None	<p>These provisions meet wellbeing indicators:</p> <p>Safe</p>

	use of screens or with a supporter. The measures in the Bill are similar to existing special measures used in the different context of assisting vulnerable witnesses when giving evidence in other civil and criminal proceedings.	cases. This could help ensure that the court is aware of all factors when making its decision.		
Section 8	This section establishes a register of Child Welfare Reporters held by the Scottish Ministers and provides that a court may only appoint as a Child Welfare Reporter a person who is included on the register. Individuals would be eligible to apply to be on the register if they meet the minimum standards in relation to training and qualifications or experience set down in regulations.	This section will have a positive impact on children who are giving their views to a Child Welfare Reporter and also adults who are parties to the case.	Article 3 Article 6 Article 9 Article 12 Article 15 Article 16 Article 23 Article 30 Article 31 Article 39	These provisions meet wellbeing indicators: Respected Responsible Safe
Section 9	This section gives the Scottish Ministers the	This section will have an impact on children and	Article 3 Article 18	These provisions meet

	<p>power to set by regulations minimum standards in relation to training of staff and accommodation for child contact centres.</p> <p>The Bill also gives the Scottish Ministers power to appoint a body to oversee the standards and report on the standards on a regular basis.</p>	adults who are using contact centres.	Article 23	<p>wellbeing indicators:</p> <p>Safe</p> <p>Responsible</p>
Section 10	<p>The Bill places a duty on local authorities to promote sibling personal relations in the same way as they are required to promote personal relations and direct contact with a child and their parent where this is practicable and appropriate.</p> <p>The Bill clarifies that local authorities must take the views of siblings into consideration when making</p>	This provision will affect looked after children and those identified as siblings of the child.	<p>Article 1</p> <p>Article 3</p> <p>Article 8</p> <p>Article 12</p> <p>Article 16</p> <p>Article 20</p>	<p>These provisions meet wellbeing indicators:</p> <p>Nurtured</p> <p>Respected</p> <p>Included</p> <p>Safe</p>

	<p>their assessment of their duties.</p>			
Section 11	<p>The provisions aim to clarify the current law to put beyond doubt that that a person under the age of 16 can seek and obtain a contact order under section 11(2)(d) of the 1995 Act.</p> <p>It will remain the case, under section 11(2)(b) of the 1995 Act, that a person under 16 cannot obtain an order granting them parental responsibilities and rights (PRRs), unless the person is a parent of the child.</p> <p>Section 11 also aims to make it clear that a person over the age of 16 may seek and obtain a contact order without obtaining PRRs.</p>	<p>This provision will have an impact on young people who are at the centre of cases under section 11 of the 1995 Act.</p> <p>It will also impact on individuals who are seeking an order under section 11(1) of the 1995 Act</p>	Article 5	<p>These provisions meet wellbeing indicators:</p> <p>Nurtured</p> <p>Respected</p>
Section 12	<p>The Bill includes factors to be considered by the court before making an order under section</p>	<p>This provision will have an impact on parties to a case. It will also have an</p>	<p>Article 5</p> <p>Article 7</p> <p>Article 8</p>	<p>These provisions meet wellbeing indicators:</p>

	<p>11(1) of the 1995 Act covering:- The effect that the order the court is deciding whether or not to make might have on – the involvement of the child’s parents in bringing the child up, and the child’s important relationships with other people.</p>	<p>impact on children who are at the centre of cases under section 11 of the 1995 Act.</p> <p>This provision may also impact on other individuals who are considered to be important to the child.</p>	<p>Article 9</p> <p>Article 18</p> <p>Article 19</p>	<p>Nurtured</p> <p>Safe</p> <p>Achieving</p>
Section 13	<p>This provision gives the Scottish Ministers power to establish and maintain a register of curators ad litem who may be appointed in cases under section 11 of the 1995 Act and provides that a court in such cases may only appoint as curator a person included on the register.</p> <p>Individuals would be eligible to apply to be on the register if they meet the minimum</p>	<p>This will have an impact on children whose interests are being safeguarded by curators ad litem</p>	<p>Article 3</p> <p>Article 9</p> <p>Article 12</p> <p>Article 19</p> <p>Article 23</p>	<p>These provisions meet wellbeing indicators:</p> <p>Respected</p> <p>Responsible</p> <p>Safe</p>

	standards in relation to training and qualifications or experience set down in regulations.			
Section 14	<p>This section amends section 11 of the Matrimonial Proceedings (Children) Act 1958 as it applies to cases under section 11 of the 1995 Act.</p> <p>This amendment means that if a local authority employee wishes to continue to act as a Child Welfare Reporter they would need to apply to be on the register of Child Welfare Reporters and meet the required eligibility criteria.</p>	<p>This will have an impact on children who are giving their views to Child Welfare Reporters.</p> <p>In addition, it will impact on adults who are parties to cases under section 11 of the 1995 Act.</p>	Article 3	<p>These provisions meet wellbeing indicators:</p> <p>Respected</p> <p>Responsible</p> <p>Safe</p>
Section 15	<p>This provision in the Bill ensures that the outcomes and reasons for decisions are explained to the child concerned in an impartial manner if the</p>	<p>This will have an impact on the child who will receive an impartial explanation of a decision.</p> <p>In addition, this provision</p>	<p>Article 13</p> <p>Article 23</p>	<p>These provisions meet wellbeing indicators:</p> <p>Respected</p> <p>Responsible</p>

	<p>court considers it in the best interests of the child.</p> <p>Feedback can be provided by either the court or by appointing a Child Welfare Reporter. This reflects current practice within Children's Hearings where children receive notes of decisions and reasons from the Children's Reporter.</p>	<p>will have an impact on adults who have currently be explaining decisions to a children.</p>		Included
Section 16	<p>This section introduces a requirement on the court to investigate non-compliance with an order. The investigation can either be by the court themselves or in more complex cases by appointment of a Child Welfare Reporter.</p>	<p>This will affect adults who are parties to cases.</p> <p>This section will also impact on children who are subject of an order that has not been complied with.</p>	<p>Article 3</p> <p>Article 7</p> <p>Article 9</p> <p>Article 19</p> <p>Article 39</p>	<p>These provisions meet wellbeing indicators:</p> <p>Respected</p> <p>Safe</p>
Sections 17 - 18	<p>This section gives the Principal Reporter the right to appeal the decision of a sheriff in an appeal where deemed relevant person</p>	<p>Adults and children who are affected by decisions made by Children's Hearings.</p>	<p>Article 20</p>	<p>These provisions meet wellbeing indicators:</p> <p>Safe</p> <p>Respected</p>

	<p>status is the issue.</p> <p>The Bill also amends section 164(1) of the 2011 Act to clarify that determinations in respect of appeals under section 160(1)(a)(ii) and 160(1)(b) in relation to a decision to deem, continue to deem or to no longer deem a person as 'relevant' are included. It also replaces references to sheriff principal with Sheriff Appeal Court to reflect changes brought in by the Court Reform (Scotland) Act 2014.</p>			
Section 19	<p>This provision gives the Scottish Ministers the power to make regulations in relation to the conferral of PRRs on unmarried fathers and second female parents where the birth of the</p>	<p>This will affect unmarried fathers and second female parents of children whose birth is registered overseas.</p> <p>It will also affect other individuals with PRRs.</p>	<p>Article 2</p> <p>Article 5</p> <p>Article 7</p> <p>Article 14</p> <p>Article 18</p>	<p>These provisions meet wellbeing indicators:</p> <p>Nurtured</p> <p>Responsible</p> <p>Achieving</p>

	registered overseas and the parent has obtained overseas parental duties, rights or responsibilities in a similar way to obtaining PRRs in Scotland.	It will also affect children whose fathers and second female parents would have their PRRs recognised.		
Section 20	The provisions allows orders from elsewhere in the UK that are registered in the Court of Session to be enforced in the sheriff court.	This will affect individuals who have court orders from elsewhere in the UK. The provision will also affect children who are the subject of the court orders.	None	These provisions meet wellbeing indicators: Nurtured Responsible Achieving
Section 21	The Bill requires the court to have regard to any risk of prejudice to the child's welfare that any delay in proceedings would pose. This provision would apply in proceedings where the court is required to treat the child's welfare as the paramount consideration, and would cover cases under section 11 of the 1995 Act, adoption cases	This will have an impact on the individuals who are party to the case. In addition, this will have an impact on the child at the centre of the case	Article 3	These provisions meet wellbeing indicators: Safe Healthy

	under section 14 of the 20017 Act and Children's Hearings court proceedings.			
CRWIA Declaration				
Authorisation				
Policy lead Hannah Frodsham Family Law Unit Civil Law & Legal System Justice Directorate		Date 23.08.19		
Deputy Director or equivalent Gavin Henderson Civil Law & Legal System		Date 23.08.19		



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