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Equalities, Human Rights and Civil Justice Committee
The Scottish Parliament
Edinburgh
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Via: ehrcj.committee@parliament.scot

Our ref: A38287803

29 June 2022

Dear Convener

CHILDREN'S PARTICIPATION IN COURT DECISION-MAKING

Introduction

Thank you for your letter dated 12 May 2022 following the two witness panel sessions held on children's participation in court decision-making on 19 April 2022.

Implementation timescale

You asked for a general update on progress and anticipated timescales for full implementation of the 2020 Act.

Commencement regulations already made

So far we have made two sets of Commencement Regulations. These are at: [The Children \(Scotland\) Act 2020 \(Commencement No. 1 and Saving Provisions\) Regulations 2020 \(legislation.gov.uk\)](#) and [The Children \(Scotland\) Act 2020 \(Commencement No. 2\) Regulations 2021 \(legislation.gov.uk\)](#).

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Last year's consultations

We held two public consultations last year. These covered:

- The [Regulation of child contact centre services - Scottish Government - Citizen Space \(consult.gov.scot\)](#) and
- The [Registers of child welfare reporters, curators ad litem and of solicitors who may be appointed when an individual has been prohibited from conducting their case themselves - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

Both consultations ran for 16 weeks and closed in July 2021. We have published independent analyses of the responses to both consultations:

- [Regulation of child contact centre services consultation: analysis - gov.scot \(www.gov.scot\)](#)
- [Registers of child welfare reporters, curators ad litem and solicitors appointed when an individual is prohibited from conducting their own case: consultation analysis - gov.scot \(www.gov.scot\)](#)

The regulation of child contact centres

On child contact centres, my officials have been meeting with the Care Inspectorate (CI) with a view to the CI undertaking the regulatory role in this area. I hope to lay the secondary legislation relating to child contact centre regulation in late 2022/early 2023. The CI will then need up to 18 months to carry out preparatory work, conduct initial assessments and register child contact centre services.

Child welfare reporters

I hope to be in a position to lay secondary legislation in relation to the register of child welfare reporters next year. Should the operation and management of the new register be contracted out to a third party body, we will also need time to carry out a tendering exercise and for the successful body to gear up.

Implementation of a number of other 2020 Act provisions depends on the new register of child welfare reporters being operational. Reporters will also have two new functions under the 2020 Act: namely, explaining important decisions to the child [see the amendments made by section 20 of the 2020 Act] and investigating the reasons behind any purported failure to comply with a contact order, if asked to do so by the court [see the amendments made by section 22 of the 2020 Act].

Special measures

Sections 4 to 8 of the 2020 Act make provision on special measures to be used to assist vulnerable witnesses and parties in family cases. The Family Law Committee of the Scottish

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Civil Justice Council has set up a working group to consider implementation of these provisions¹.

The current consultation on improving victims' experiences of the justice system includes a chapter on enhancing special measures in civil cases more generally, and not just in family cases².

Alternative Dispute Resolution

In my previous letter I provided an update on the work to implement sections 23 and 24 of the 2020 Act in relation to Alternative Dispute Resolution in family cases. Section 23 relates to funding and section 24 relates to a pilot scheme for information meetings on ADR. I am laying six-monthly reports in Parliament on our progress in these areas and publishing these reports once they are laid³. We are preparing the next six-monthly report and will lay this in Parliament shortly.

Conferral of parental responsibilities and rights on fathers and second female parents where the birth was registered outwith the UK.

Section 28 of the 2020 Act makes provision on the conferral of parental responsibilities and rights on fathers and second female parents where the birth was registered outwith the UK. We have carried out some in-house research on this issue to help implement section 28. I hope to publish this research in the next few months.

Child advocacy

You asked about children's advocacy services and consistency of practice across the court system.

As noted in my previous response to the Committee, I have committed to carry out a public consultation in 2023 on the implementation of section 21 of the 2020 Act, which introduces a duty on the Scottish Ministers to ensure the availability of child advocacy services in cases such as contact and residence.

I note the panel's comments that the provision of child advocacy services in these cases needs the appropriate infrastructure to support it. I agree that this is important and I will consider this, including how child advocacy fits with existing court and non-court systems, as part of the planned consultation.

¹ Please see the minutes of the meeting on 5 April 2022 of the Family Law Committee of the Scottish Civil Justice Council at [20220405---flc-minutes.pdf \(scottishciviljusticecouncil.gov.uk\)](https://www.scottishciviljusticecouncil.gov.uk/20220405---flc-minutes.pdf) [paragraphs 11 to 14 refer].

² The consultation is at [Improving victims' experiences of the justice system: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/improving-victims-experiences-of-the-justice-system-consultation-2022/pages/1-3-referers.aspx) [chapter 3 refers].

³ First report: [Children \(Scotland\) Act 2020 - alternatives to court and funding of alternative dispute resolution pilots: report - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/children-scotland-act-2020-alternatives-to-court-and-funding-of-alternative-dispute-resolution-pilots-report/pages/1-3-referers.aspx), second report: [Scheme for funding for alternative dispute resolution \(section 23 of the 2020 Act\) - Children \(Scotland\) Act 2020 - section 23\(1\) and section 24\(1\): second report on the Scottish Ministers' duties - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scheme-for-funding-for-alternative-dispute-resolution-section-23-of-the-2020-act-children-scotland-act-2020-section-23(1)-and-section-24(1)-second-report-on-the-scottish-ministers-duties/pages/1-3-referers.aspx)

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A child may need advocacy support in a court setting (eg if a child is speaking directly to the sheriff) but may also need support in non-court settings, such as when speaking to a child welfare reporter or giving their views in another way (e.g. completing the F9 form or writing to the sheriff). At these times the child may be in their own home, at school or in another neutral setting like a café.

What is required to be a child welfare reporter

You asked in your letter about the Scottish Government's view on what is required of an individual to be a child welfare reporter. The Scottish Government does not intend to specify that a child welfare reporter must come from a specific professional background. This will open the role to any individual who can demonstrate the required skills and experience, regardless of whether they are a member of a certain profession. These types of issues were discussed in last year's [consultation](#) (please see paragraphs 2.47 to 2.58).

Consistency of service in child welfare reporting

You also asked for a view on the consistency of service in child welfare reporting across Scotland. The need for a consistent service is one of the reasons I plan to introduce a register of child welfare reporters under the 2020 Act. As paragraph 2.22 of last year's consultation noted, "one of the key aims of establishing a register of child welfare reporters is to increase consistency. We consider that a centralised register of child welfare reporters is the best way to ensure that there is consistency across Scotland in terms of appointment process, complaints procedure and training requirements."

Whether a child welfare reporter will seek the child's views in a particular case is likely to depend on what the court sets out in the interlocutor appointing that reporter. Paragraphs 2.11 to 2.13 of last year's consultation outlined the current court rules on appointing a reporter in a particular case.

Timetable

You asked about the timetable for secondary legislation in relation to child welfare reporters. As indicated above, I hope to be in a position to lay secondary legislation in relation to the register next year. Should the operation and management of the new register be contracted out to a third party body, we will also need time to carry out a tendering exercise and for the successful body to gear up.

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