



T: 0300 244 4000
E: scottish.ministers@gov.scot

Joe FitzPatrick MSP
Convener
Equalities, Human Rights and Civil Justice Committee
The Scottish Parliament
Edinburgh
EH99 1SP

Via: ehrcj.committee@parliament.scot

22 April 2022

Dear Convener

FAMILY LAW ROUNDTABLE

Thank you for your letter dated 10 March 2022 following the roundtable session on family law on 22 February 2022. I have considered the Committee's questions on the issues raised by attendees during the session and from the written evidence.

WebEx

On the use of WebEx, we raised the points you asked with the Scottish Courts and Tribunals Service (SCTS). The SCTS have said that the way in which hearings are conducted in the sheriff court has and continues to be the subject of ongoing review based on assessment of COVID safety measures and consideration of the best approach for each particular case.

Revised court [guidance](#), which will take effect from 25 April 2022, has recently been published and this provides that proofs, debates, substantive hearings, FAIs and procedural hearings will be conducted using WebEx, unless otherwise directed by the court.

The mode by which individual hearings are conducted is ultimately a matter for the judiciary and takes account of factors such as the circumstances of the case and the preference of the parties involved, in determining whether virtual or in-person hearings are most appropriate.

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot



Child welfare hearings take place in Glasgow Sheriff Court via telephone, using WebEx and in person. It is open to parties/agents to make a request to the sheriff that their hearing be held using WebEx. We are unaware of any such requests being refused. Irrespective of the mode of hearing, parties are not excluded from child welfare hearings and specific provisions have been made to support that.

The Scottish Civil Justice Council recently consulted on modes of attendance in civil proceedings – with a view to setting out new rules for the types of hearing that, in general, would be held remotely or held in person in the future, drawing on the experience of the past few years. The Council discussed the consultation analysis and agreed at its meeting in January 2022 that it would:

- Issue drafting instructions for new rules that reflect the feedback received from this consultation exercise;
- Initiate a process for generating revised practice notes and guidance to deliver improved consistency; and
- Establish a forum to monitor the changes made and initiate more regular improvements in court practice.

The Scottish Government has also commissioned a research project, which is now underway, looking at the impact of the switch to remote hearings in the civil courts and tribunals and the experience of service users during the pandemic.

Form F9 and children’s participation in decisions about them

As the Committee notes, a revised version of the form F9, that was aimed at being more child-friendly, was published in June 2019. The F9 asks for the child’s views on how they feel about the outcome that the party is seeking and asks if there is anything else that the child would like to happen. The form also gives the child the opportunity to say if they would prefer to give their views in another way. The F9 is laid down in court rules and any further revision to it would require the court rules to be changed.

One of the key aims of the Children (Scotland) Act 2020 (the 2020 Act) is to ensure that the views of children, including younger children, are heard in contact and residence cases and that the child is given the opportunity to express those views in a manner they prefer or is suitable for them. Sections 1 to 3 of the 2020 Act make provision on children’s views in family cases: paragraphs 7 to 11 of the Explanatory Notes to the Act outline their effect: [Children \(Scotland\) Act 2020 - Explanatory Notes \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2020/10/explanatory-notes). In contact and residence cases, the new section 11ZB of the Children (Scotland) Act 1995 (the 1995 Act) is particularly relevant.

Section 11ZB is not yet in force. It would require the court obtaining the views of a child to consider a range of options on how this is done. These could include speaking directly to the judge or sheriff; completing a form such as the F9; submitting a drawing, email or letter; or speaking to a child welfare reporter. We recently consulted on the regulation of child

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

welfare reporters¹, including what skills and training they should have in relation to speaking to children. At the moment, our main focus in relation to implementing the 2020 Act is on the proposed regulation of child contact centres. We intend later this year to consider what is required to implement the provisions on child welfare reporters and on hearing the voice of the child.

The Scottish Government has published guidance for children on speaking to a child welfare reporter: [Speaking to a child welfare reporter - mygov.scot](https://www.mygov.scot). We are currently preparing a version aimed at younger children.

You asked about child advocacy services. Section 21 of the 2020 Act added section 100A to the 1995 Act and introduces a duty on the Scottish Ministers to ensure the availability of child advocacy services in cases such as contact and residence. In response to the recently closed public petition on the regulation of non-statutory child advocacy services, I gave a commitment to carry out a full public consultation in 2023 on the implementation of this provision: [PE1838/N Minister for Community Safety submission of 8 October 2021 | Scottish Parliament Website](https://www.parliament.scot/pe1838/n-minister-for-community-safety-submission-of-8-october-2021).

I note that the Committee will be holding another roundtable session in April on how best to appropriately and effectively take children's views during civil court proceedings.

Alternative dispute resolution

The Scottish Government believes that where appropriate family cases should be resolved outwith court. A number of forms of alternative dispute resolution (ADR) are available in family cases such as mediation, arbitration, collaborative law and family group decision making. The Scottish Government has also published a voluntary parenting plan for separating parents (please see the information at <https://www.mygov.scot/parentingplan> which also contains a link to information on drawing up a legally binding minute of agreement).

On the pilot of meetings about ADR, in line with the duties set out in sections 23 and 24 of the 2020 Act, the Scottish Ministers have laid two six-monthly progress reports² before the Parliament on establishing the pilot and on funding for ADR.

Paragraph 24 of the second report noted that the Scottish Government would discuss further with ADR providers how to ensure the pilot covers all forms of family ADR and that when a party attends a meeting, the party is given information on the various forms of family ADR. Since laying the second report, the Scottish Government has held a meeting with providers of family ADR in Scotland to discuss the pilot. A minute from this meeting is being finalised and will be included as part of the next progress report to Parliament, covering the period from 1 October 2021 to 31 March 2022.

¹ [Registers of child welfare reporters - Scottish Government - Citizen Space \(consult.gov.scot\)](https://www.gov.scot/consult/citizen-space/registers-of-child-welfare-reporters) and [Registers of child welfare reporters - consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/consult/citizen-space/registers-of-child-welfare-reporters-consultation-analysis)

² [Children \(Scotland\) Act 2020 - alternatives to court and funding of alternative dispute resolution pilots: report - gov.scot \(www.gov.scot\)](https://www.gov.scot/consult/citizen-space/children-scotland-act-2020-alternatives-to-court-and-funding-of-alternative-dispute-resolution-pilots-report) and [Pilot of mandatory meetings on alternatives to court - 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/consult/citizen-space/pilot-of-mandatory-meetings-on-alternatives-to-court-children-scotland-act-2020-section-231-and-section-241-second-report-on-the-scottish-ministers-duties)

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

The next steps for the Scottish Government in relation to the pilot are to:

- Ensure that training is provided to the facilitators running the meetings.
- Prepare information for parties attending the meetings.
- Consider what regulations may be needed under section 24 of the 2020 Act to establish the scheme. Any such regulations would be subject to the affirmative procedure.
- Consider what rules of court may be needed in relation to the meetings and, if required, prepare a policy paper to the Scottish Civil Justice Council requesting that such rules be made.

The Committee may also be interested to note that I intend to publish guidance for adults and children on what it is like to go to court in family cases, and what alternatives are available.

ASH REGAN

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Taigh Naomh Anndrais, Rathad Regent, Dùn Èideann EH1
3DG
St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot



INVESTORS
IN PEOPLE

Accredited
Until 2020

