



Karen Adam MSP
Convener, Equalities, Human Rights and Civil Justice Committee,

Dear Ms Adam

We welcome the opportunity to comment on the lack of progress in implementing the 2020 Children (Scotland) Act. Given that this legislation makes some fundamental changes to the operation of family courts and also could take some cases out of court it is both disappointing and frustrating that so little has happened to date.

The sheriffs and lawyers conducting court cases in this area are placed in the very difficult position of knowing changes are coming but are stuck in the current system.

Parents considering whether to go to court are prevented from receiving alternative dispute resolution information or funding which could free them from a slow, expensive and adversarial court action.

Most important, the children who are the main focus of this legislation are denied the proposed new involvement processes and explanation of court decisions. This is counter to the added respect for their rights they should now enjoy through the implementation of the UNCRC (Incorporation) (Scotland) Act..

Children don't even benefit from the implementation of section 30 of the Children (Scotland) Act, which instructs the court is to have regard to any risk of prejudice to the child's welfare that delay in proceedings would pose. We raised this delay at a meeting with the Minister in 2022, suggesting that implementing section 30 would not be affected by funding restraints and would be a welcome signal that the Act is starting to come into force.

Our comments to the committee can be grouped under four headings:

1. **Children's views and involvement.** These matters are included in sections 1.2, 3, 15, 18, 18, 20, 30 and 31 in relation to Section 11 proceedings. The delay in implementing this major enhancement of the role of children sends a very poor message to the many thousands of Scottish children whose parents engage in court action every year.
Given the recent and speedy implementation of the UNCRC (Incorporation) (Scotland) Act 2024, the publication by Scottish Government in February 2024 of draft guidance to that Act stating the following is somewhat ironic:
*"The Scottish Government is committed to Scotland being the best place in the world to grow up. A central part of our vision is the recognition of, respect for, and promotion of children's rights. These include rights to be treated fairly, to be heard and to be as healthy as possible.
Our vision is a Scotland where children's rights are embedded in all aspects of society, where policy, law, and decision-making take account of children's*

rights and where all children have a voice and are empowered to be human rights defenders.”¹

2. **Alternative Dispute Resolution.** The measures in sections 23 and 24 of the Act have the potential to settle disputes earlier and keep many cases out of the Scottish family courts. That would benefit the children who get an earlier resolution of contact and other disputes with less family money being channeled into court action.

Scotland now risks falling behind England and Wales in this respect. The introduction of a £500 Mediation Voucher scheme in 2021 in England and Wales has resulted in major improvements. The evaluation of the results from the first 7214 families published in March 2023² showed that:

- 69% of families were able to reach agreement on some or all issues and are classed as a successful diversion from court.
- 51% of cases only mediated because the scheme was available to them and would not have self-funded sessions otherwise.
- This success rate was broadly consistent across various group breakdowns (for example, those who were and weren't willing to self-fund mediation, those who also received Legal Aid funding and those who mediated online vs. in person).
- The total amount of vouchers claimed was £3.1m and the average amount claimed per family was £424.

3. **Changes to Court Processes.** The Act includes various significant changes to the way that Section 11 family court proceedings are conducted. Section 4 prevents party litigants from examining ex-partners; section 7 introduces training and oversight of child welfare reporters, section 22 makes a limited improvement to the process for enforcing contact orders made in court; and section 29 will make it easier to enforce other UK contact orders in Scottish sheriff courts.

Many of these changes will be welcomed by sheriffs and other court users but it is extremely unfortunate that they remain in limbo – knowing what is going to change but not able to put anything into place. We know, for instance, that sheriffs faced with party litigants examining ex-partners in proof hearings have been using a variety of measures to handle this situation. Speedier implementation would help these sheriffs as well as the vulnerable witnesses and party litigants.

Similarly, we know of cases in which the section 29 extension to sheriffs of enforcement powers under Family Law Act 1986 would remove the need for parents to use the Court of Session to deal with cross-border enforcement of an English contact order.

4. **Regulation of contact services.** Although Shared Parenting Scotland is not involved in provision of contact centres, many of the parents who seek our support are likely to be using contact centres. We consider that these centres currently work very well and provide a very important service. We are concerned that the current uncertainty of funding faced by these services

¹ <https://www.gov.scot/publications/statutory-guidance-part-2-uncrc-incorporation-scotland-act-2024/pages/3/>

² [Supporting earlier resolution of private family law arrangements - Ministry of Justice - Citizen Space](#)

makes it far more difficult to operate these contact centres. There are already backlogs which mean that some children will have to wait a long time before their contact sessions even start.

We hope that alongside the regulation and training provisions the Scottish Government will put all contact services on stable long-term funding schemes.

We would be very happy to provide the Committee with more details on any of the above points.

Ian Maxwell
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