

# Citizen Participation and Public Petitions Committee

2nd Meeting, 2023 (Session 6), Wednesday 8  
February

## PE1968: Restrict perpetrators of domestic abuse from using family court proceedings to continue tormenting their victims

**Lodged on** 18 October 2022

**Petitioner** Angela Evans

**Petition  
summary** Calling on the Scottish Parliament to urge the Scottish Government to review existing legislation on family law and seek to stop perpetrators of domestic abuse causing further abuse and distress to partners and children by removing their ability to apply for contact orders under Section 11 of the Children (Scotland) Act 2020.

**Webpage** <https://petitions.parliament.scot/petitions/PE1968>

### Introduction

1. This is a new petition that was lodged on 18 October 2022.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. While not a formal requirement, petitioners have the option to collect signatures on their petition. On this occasion, the petitioner elected to collect this information. 55 signatures have been received.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe C** of this paper.
6. A submission has been provided by the petitioner. This is included at **Annexe D**.

## Action

The Committee is invited to consider what action it wishes to take on this petition.

**Clerk to the Committee**

## Annexe A

### PE1968: Restrict perpetrators of domestic abuse from using family court proceedings to continue tormenting their victims

#### Petitioner

Angela Evans

#### Date lodged

18 October 2022

#### Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to review existing legislation on family law and seek to stop perpetrators of domestic abuse causing further abuse and distress to partners and children by removing their ability to apply for contact orders under Section 11 of the Children (Scotland) Act 2020.

#### Previous action

I have written to the First Minister, Nicola Sturgeon, but the response contained only general information about family law and my concerns weren't taken seriously.

#### Background information

Mothers and children are repeatedly put through the family court process when section 11 applications are made by former partners. Contact orders are given to the detriment of all the victims involved. The mother is forced against her will to force her child or children, who are also victims, to spend time with someone who has abused them. The term 'best interest of the child' is used very loosely and, in my view, domestic abuse isn't taken seriously.

The family court system is vastly underestimating the emotional trauma that is relived every day by victims of domestic abuse, even after the perpetrator has left the home. In my view, perpetrators of domestic abuse use the family court system as a way to continue abusing their victims. This happens even when there are no parental rights and no

claim of interest, yet the Section 11 order can still be sought by the abuser, causing severe emotional turmoil for the victims.

## Annexe B

The logo for SPICe (The Information Centre) is a purple rounded rectangle. The text 'SPICe' is in white, with 'SPIC' in a larger font and 'e' in a smaller font. To the right of 'SPICe', the text 'The Information Centre' is in white, and 'An t-Ionad Fiosrachaidh' is in a smaller white font below it.

The Information Centre  
An t-Ionad Fiosrachaidh

# Briefing for the Citizen Participation and Public Petitions Committee on petition PE1968: Restrict perpetrators of domestic abuse from using family court proceedings to continue tormenting their victims, lodged by Angela Evans

## Brief overview of issues raised by the petition

The current law relevant to this petition is found in the [Children \(Scotland\) Act 1995](#) ('the 1995 Act'), as amended by the [Children \(Scotland\) Act 2020](#) ('the 2020 Act').

The 1995 Act provides for a range of parental responsibilities and rights ('PRRs') in respect of all children living in Scotland.

Section 11 of the 1995 Act (not the 2020 Act, as referred to in the petition) enables a parent (and others) to apply to the court for it to make a court order relating to PRRs. PRRs can be granted, restricted or removed under this provision. The court can also grant a **contact order** under section 11. This sets out future arrangements for contact between a child and a parent with whom a child does not live. One option is that the court can require that contact to take place at [a child contact centre](#) run by the third sector.

In considering whether to grant any court order under section 11 of the 1995 Act, the court will follow three principles (also set out in the 1995 Act):

- the welfare of the child is the paramount consideration

- taking account of the child’s age and maturity, the child shall, so far as practicable, be given an opportunity to express his or her views; and
- the court will not make any order unless it considers that to do so would be better than making no order at all.

The [Family Law \(Scotland\) Act 2006](#) also amended section 11 to require the courts to “have regard in particular” to the need to protect the child from actual or possible abuse; the effects of such abuse on children; the ability of the abuser to care for the child; and the effects of abuse on a person’s capacity to fulfil PRRs. In this context, abuse is defined as including “abuse of a person other than the child.” Accordingly, the situation where one parent is abusing (or has abused) the other is covered.

A high profile petition from Session 5 of the Scottish Parliament ([PE1635](#)) raised serious questions about the courts' approach to contact arrangements where there is a risk of abuse. [Scottish Women’s Aid’s written submission](#) relating to this petition, [as well as the submission of the Children and Young People’s Commissioner](#), were among those raising concerns about how well the statutory provisions are working in practice.

### **Children (Scotland) Act 2020**

The 2020 Act is the latest attempt to reform the 1995 Act. The fundamental features of the 1995 Act remain after the reforms provided for in the 2020 Act. However, the 2020 Act contains various measures designed to improve the position of families affected by domestic abuse. **The relevant provisions are not yet in force.**

Key provisions of the 2020 Act include:

- **Section 1**, which is designed to strengthen the importance of the child’s views in court decision-making, especially the views of younger children, traditionally at risk of being marginalised in the decision-making process.
- **Sections 4–8**, which aim to improve the experience of vulnerable people in the courtroom in family cases, including people affected by domestic abuse.
- **Section 9**, which makes provision for a system of statutory regulation of child welfare reporters. Child welfare reporters are

court-appointed officials who prepare reports for the court in relation to what is in the best interests of a child or what the views of a child are. Child welfare reporter's recommendations are influential in practice and the lack of statutory regulation of these officials has been a matter of policy controversy.

- **Sections 10-12**, which make provision for the statutory regulation for the first time of child contact centres. Again, the lack of statutory regulation in this area has been controversial.

On 4 October 2022, the Scottish Government provided SPICe with an email update on its target timescales for implementation of these provisions. It appears **the Government is now aiming for 2024** as the year these provisions will be implemented, or the new systems of regulation become operational. The Scottish Government also said that the implementation work is, "subject to the challenging budgetary constraints that we are facing across the Scottish Government."

**Sarah Harvie-Clark**  
**Senior Researcher**

06/10/2022

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at [spice@parliament.scot](mailto:spice@parliament.scot)

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH99 1SP

## Annexe C

### Scottish Government submission of 3 November 2022

#### PE1968/A: Restrict perpetrators of domestic abuse from using family court proceedings to continue tormenting their victims

The Committee has requested a response from the Scottish Government to Public Petition PE1968, which asks the Scottish Parliament to '*urge the Scottish Government to review existing legislation on family law and seek to stop perpetrators of domestic abuse causing further abuse and distress to partners and children by removing their ability to apply for contact orders under Section 11 of the Children (Scotland) Act 2020*'.

There is no place for domestic abuse in Scotland and [Equally Safe: Scotland's strategy to eradicate violence against women and girls](#) acknowledges the need to strengthen the justice response to victims and perpetrators. The Scottish Government continues to pursue this goal and we fully recognise the concerns raised by the petitioner. However, removing the ability of perpetrators of domestic abuse to apply for contact orders might raise questions about access to justice.

Article 6 of the European Convention on Human Rights establishes an individual's right to a fair hearing in determination of their civil rights and obligations. The right to respect for family life guaranteed by Article 8 also requires court proceedings to be conducted in a way that ensures due respect for the interests safeguarded by that Article. These would need to be taken account of in relation to any proposed provision seeking to limit a person's access to the courts.

Applications to court for contact orders are made under section 11 of the [Children \(Scotland\) Act 1995](#). Section 11(7)(a) provides, in considering whether or not to make an order under section 11, that the court must regard the welfare of the child as its paramount consideration and must not make any order unless it considers it would be better for the child that an order be made than no order be made at all.



A person who has experienced domestic abuse will have genuine concerns for their own wellbeing and for their children's wellbeing if the abuser raises a contact action in the courts. There have been changes to the law in section 11 of the 1995 Act in the past which recognise the impact of domestic abuse. In particular, the Family Law (Scotland) Act 2006 added relevant provisions. These provide that when carrying out the duties imposed by section 11(7)(a), the court must have regard to the need to protect the child from any abuse or the risk of any abuse which affects, or might affect, the child, and to the effect that any abuse or the risk of any abuse might have on the carrying out of parental responsibilities. The definition of abuse in this context includes domestic abuse.

There are also provisions in the [Children \(Scotland\) Act 2020](#), which are not yet implemented, that will help domestic abuse victims when contact cases are taken to court. In particular, it is common in child contact cases for the court to appoint a Child Welfare Reporter to gather the views of the child or to investigate and report on the child's best interests.

Section 9 of the 2020 Act places a duty on the Scottish Ministers to establish and maintain a register of these Reporters. Once this provision is implemented, a court will only be able to appoint a Reporter who is included on the register. Individuals will be eligible to apply to be on the register if they meet certain requirements in relation to training, qualifications and experience. One of the required skills will be an understanding of domestic abuse.

Sections 4 to 8 of the 2020 Act, which have not yet been implemented, make provision in respect of some family cases, including contact cases, on protections for vulnerable witnesses and parties, including victims of domestic abuse. These protections include the use of special measures such as screens, video links and supporters. In addition, section 4 of the 2020 Act will introduce a new special measure to prohibit a party from personally conducting their case in certain circumstances.

The Scottish Government has recently consulted about the possibility of extending the measures contained in section 4 to 8 of the 2020 Act to civil court cases generally. More information can be found in the consultation paper at: [Chapter Three: Special measures in civil cases - Improving victims' experiences of the justice system](#)

The petitioner mentions that '*mothers and children are repeatedly put through the family court process when section 11 applications are made by former partners*'. In 2018, the Scottish Government consulted on potential reforms to the 1995 Act and the creation of a Family Justice Modernisation Strategy. The consultation, which ultimately led to the development of the 2020 Act, discussed issues around cases where individuals made repeated attempts to gain a contact order for the same child: please see paragraphs 9.30 to 9.35 of the consultation paper which can be found at: <https://consult.gov.scot/family-law/children-scotland-act/>

Following on from that, paragraph 4.26 of the [Family Justice Modernisation Strategy](#) sets out proposals for the Scottish Ministers to make regulations under section 102 of the [Courts Reform \(Scotland\) Act 2014](#) in relation to family cases under section 11 of the 1995 Act.

Section 102 of the 2014 Act enables the Scottish Ministers, after consultation with the Lord President, to make regulations allowing a court to make an order in relation to a person who has behaved in a vexatious manner in civil proceedings.

The Scottish Government intends to consult the Lord President later this year on whether regulations under section 102 of the 2014 Act should be made.

In addition, the Scottish Government intends to publish a progress update on the Family Justice Modernisation Strategy.

The Lord President has recently made an Act of Sederunt containing rules of court which aim to enhance judicial case management of family actions, such as contact cases. The new rules will come into force on 25 September 2023. More details are available at: [https://www.scottishciviljusticecouncil.gov.uk/news/2022/10/03/act-of-sederunt-\(ordinary-cause-rules-1993-amendment\)-\(case-management-of-defended-family-and-civil-partnership-actions\)-2022](https://www.scottishciviljusticecouncil.gov.uk/news/2022/10/03/act-of-sederunt-(ordinary-cause-rules-1993-amendment)-(case-management-of-defended-family-and-civil-partnership-actions)-2022).

Finally, the Judicial Institute for Scotland conducts training for all sheriffs and judges in Scotland, discharging the Lord President's responsibility to educate and train the Scottish judiciary. The Institute regularly provides such training in family law in a variety of ways, including face-to-face courses and online resources. The Institute responds to all significant legislative developments with judicial training, including on the Domestic

Abuse (Scotland) Act 2018. This training includes insight into the impact of the criminal behaviour on victims and children.

## Annexe D

### Petitioner submission of 7 November 2022

#### PE1968/B: Restrict the perpetrators of domestic abuse from using family court proceedings to continue tormenting their victims

Thank you to the Scottish Government for their response to my petition and thank you to the Committee for taking the time to review what was detailed.

I understand that several things have changed over the years, however, mothers like myself are still continually being let down by the family court system. Child welfare reporters are allowed to pick and choose what they deem necessary to put in their report to the court and, through means of manipulation by the abusive ex-partner, the victim is left without a voice. The domestic abuse in some cases is ignored by the family court and, because of this, severe emotional distress is caused to the victim and their children.

Contact orders are still being granted when there has been abuse, and because of this the child is likely to be put at further risk of abuse. The family courts listen to the perpetrator more than the victim. In the cases where a no contact order should be put in place, domestic and/or child abuse is ignored, with the child then forced to spend time with the abuser. This is happening now, on a regular basis, in Scottish family courts.