

Minister for Community Safety submission of 9 December 2022

PE1984/B: Introduce the C100 form for child arrangement orders in Scotland

The Committee has requested a response from the Scottish Government to Public Petition PE1984, which asks the Scottish Parliament to *'reduce the financial barriers that prevent parents from having contact with their children by introducing a Scottish equivalent to the C100 form, with a fixed fee, for making applications for child residence or child contact orders'*.

Current position in Scotland

In Scotland applications to court for child residence and child contact orders are made under section 11 of the [Children \(Scotland\) Act 1995](#). There is no set application form for raising such an order in the Scottish courts. Most actions are raised in the sheriff court through the [Ordinary Cause procedure](#) by lodging an initial writ. The applicant must serve the writ on the other party to the action who can then lodge defences. The relevant procedures are set out in the [Ordinary Cause Rules](#).

When the sheriff court is dealing with a contact or residence application, it is likely to hold child welfare hearings. These are informal, non-evidential hearings and there may be a number of hearings over the course of the action. A small proportion of cases proceed to proof, which is a final evidential hearing.

There are fixed fees payable to the Scottish Courts and Tribunals Service for the most common applications and stages of procedure in the sheriff court. These are set out in [The Sheriff Court Fees Order 2022](#). The fee for lodging an initial writ is currently £135 and there may be further fees for other aspects of the action, e.g. lodging motions, shorthand writers, child welfare reports. Fee exemptions are available for those in receipt of certain benefits.

In Scotland legal aid is available for parties in family actions, including contact and residence cases, subject to statutory tests. The means test ascertains whether an applicant is financially eligible for legal aid and, if

so, whether a contribution requires to be paid towards the cost of their legal representation. Despite significant financial pressures, Scotland is one of the leading jurisdictions in Europe in terms of scope and eligibility for legal aid, with three-quarters of people eligible for some form of civil legal aid assistance. The Scottish Government consultation on legal aid reform in 2019 found that the majority of respondents supported that those who could afford to pay a contribution to their legal costs should continue to do so. With a demand-led Fund, appropriate means-testing is an important balancing lever to enable legal aid to continue to support a wide scope of actions.

The Lord President recently made an Act of Sederunt containing rules of court to enhance judicial [defended family and civil partnership actions](#) in Scotland. The key aim is to enable cases to be resolved more quickly and prevent undue delay in cases relating to the welfare of children. The new rules will come into force on 25 September 2023.

The C100 form

The C100 form is used in England and Wales to allow parties to apply to the court for child arrangement orders, specific issue orders and prohibited steps orders under the Children Act 1989. There is a paper form and an online version. There are supplemental forms, including the C1A which can be used when a party is making or responding to allegations of harm or domestic violence. (There is also a form-based process in Northern Ireland. The C1 form can be used to apply for residence or contact orders).

The C100 provides information on Mediation Information and Assessment Meetings on alternatives to court and also asks for information which CAFCASS needs in relation to safeguarding checks. (In Scotland there is no direct equivalent to CAFCASS – the Children and Family Court Advisory and Support Service. In Scotland the court can appoint a child welfare reporter in contact and residence cases to obtain the child's views and investigate the best interests of the child).

Once a C100 application is received and checked the court will set an initial hearing to discuss the next steps. The first hearing is usually set within around five weeks and there may be further hearings scheduled subsequently.

In England and Wales there is a flat fee of £232 to apply to court for a child arrangements order, which covers the court proceedings leading to the issuing of an order. However, there may be additional fees in certain circumstances (e.g. additional orders are sought or for court copies of documents). Legal aid is not generally available for child arrangement applications in England and Wales (other than in cases involving domestic abuse).

Points to consider in relation to the petition

The Scottish Government understands that the procedure of lodging initial writs and defences in Scotland is often seen as difficult to understand. In general terms a form could be a more contained and focussed way for an applicant to navigate through the application process. However, having discussed with a number of bodies, the Scottish Government considers there are a range of issues to consider before moving to a forms- based system, including:

- A criticism of the C100 form in England and Wales is that it is too lengthy and can be difficult for vulnerable applicants to complete without assistance.
- Concerns that a forms-based process could incentivise litigation and lead to more vexatious actions being raised, particularly where there has been domestic abuse.
- A form could be seen as a very clinical way for vulnerable individuals, such as domestic abuse victims, to give sensitive information.
- Concerns that a forms-based process may not be focussed on the best interests of the child.
- A form may not capture all of the relevant issues for the court to consider (alternatively, as indicated above, any form could be very long).
- A forms-based process may perhaps reduce costs at the initial application stage. However, applicants are still likely to need legal advice and most applicants are legally represented at child welfare hearings and other stages of the process. Therefore, it is unclear to what extent a forms-based process would reduce the overall costs arising from the court action.

There are also a number of practical considerations:

- It is likely new court rules would be required. If a form based approach should be proposed, a paper would need to go to the [Family Law Committee of the Scottish Civil Justice Council](#) to propose new court rules and court forms.
- There would need to be training for court staff and judges.
- There would need to be changes to the Scottish Courts and Tribunals Service IT.
- Public facing guidance would need to be prepared.

It is not clear how a form would work when a court action has multiple craves (i.e. requests to the court). For example, an action in relation to child contact might have craves in other areas such as divorce; financial provision on divorce; civil protection orders against domestic abuse, etc. Any form to capture all of this might need to be very lengthy.