

# Scottish Government submission of 3 April 2023

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

I am grateful to the Committee for the letter of 8 March 2023 in relation to Public Petition PE1984. You highlighted the Uitelkaar.nl and AMICA online systems that have been developed in the Netherlands and Australia respectively, and asked for information on what consideration the Scottish Government has given to developing a similar service for parents who have separated in Scotland.

### **Current position in Scotland**

The Scottish Government view is that, generally, it is better if separating parents can agree about what is best for their child. We recognise that there are advantages in resolving cases outwith court as it can be more flexible, quicker, less stressful, and can be less costly than attending court. However, there are cases where dispute resolution other than court may not be appropriate, most notably where there is evidence of domestic abuse.

In many cases couples who are in dispute about parental responsibilities and rights will be able to reach agreement, either through direct discussions, or through discussions conducted on their behalf by solicitors, without resort to contentious proceedings. In Scotland there are also a number of other existing (or planned) resources and services available to help separating parents resolve disputes and make arrangements outside of court:

- The [Your Parenting Plan](#) is a guide produced by the Scottish Government for parents on making voluntary practical arrangements for their children when living apart or separating. To make a formal commitment to reflect the agreement parents can ask a solicitor to help draw up and register a Minute of Agreement in the Books of Council and Session.
- Services such as family mediation and “parenting apart” classes can help parents reach agreement. The Scottish Government

gives funding to [Relationships Scotland](#) who are a provider of these services.

- The Scottish Government gives funding to Shared Parenting Scotland to support their online [New Ways for Families](#) training programme to help separated families by teaching the skills necessary to effectively resolve co-parenting disagreements and protect their children from the conflict.
- The Scottish Government is progressing implementation of section 24 of the [Children \(Scotland\) Act 2020](#) to establish a pilot of mandatory information meetings on alternatives to court in child contact and residence cases. We plan to take steps to set up the pilot later this year.

The Scottish Government has also committed in Part 7 of the [Family Justice Modernisation Strategy](#) (published when the Children (Scotland) Act 2020 was introduced to Parliament) to produce guidance for individuals who are considering seeking a contact or residence order on alternatives to court. We plan to progress this later this year and will consult key stakeholders on the draft guidance and the best ways to make that guidance easily available and accessible.

## **Uitelkaar.nl and AMICA**

We understand that the aim behind both of these online systems is primarily to try and keep couples who are divorcing or separating out of court as far as possible. The systems are not therefore directly comparable to the C100 form (or equivalent), which is a means of applying to court online in England and Wales to raise an action.

### *Uitelkaar.nl*

The Uitelkaar.nl system in the Netherlands is an online platform aimed at making the divorce process more accessible. It is designed to help couples “break up well” and to make a personalised parenting plan or divorce plan. A personal case manager offers support through the process and the system is also supported by lawyers and mediators. The system takes couples through three stages: preparation (with support of a case manager), feedback from a lawyer (to both couples), and court (to make plans official where necessary).

We understand that in 2020, 478 couples finalised the Uitelkaar.nl process and that in 2022 there were between 40 - 50 finalised cases per month. We also understand that Uitelkaar.nl is a financially sustainable service based on the fees charged. The costs range from €38 to €595 depending on which type of divorce settlement and/or parenting plan is processed and whether parents are eligible for a subsidised rate.

The Uitelkaar.nl system is a more recent version of the previous Rechtwijzer pilot project set up by the Dutch Legal Aid Board and others. It was also an online self-help tool for divorce that assisted separating parents in formalising their divorce and parenting agreements. The Rechtwijzer scheme stopped running in 2017 with a view that it should be left to the market to take up. Uitelkaar.nl is a private enterprise that works in cooperation with the government/judiciary/legal aid board.

The Rechtwijzer system was publicised in Scotland at that time. One of the issues identified as a potential barrier to being introduced here was that in Scotland a lawyer shall not act for two or more parties whose interests conflict. Even where the clients say they are in agreement about what they want to do, a conflict of interest could be said to exist if the lawyer would give different advice to each client on that same matter.

### *AMICA*

Launched in June 2020, the Australian AMICA system is a secure digital platform designed for desktops and mobiles, which uses artificial intelligence to take account of various factors and help parents make their own separation arrangements. Agreements are recorded on the system and can be downloaded. Any point where there isn't agreement can be discussed directly between the parties on the system, or progress can be saved while they seek assistance from the legal helpline.

AMICA is backed by the Australian Government (we understand with A\$3 million funding) and is free to use for couples if one person is receiving income support. For anyone else, the process of entering information to agree arrangements is without charge, then there is a fee payable to finalise and download a written agreement. The fee for a parenting agreement is A\$250.00. We understand that over 10,000 user accounts have been created so far.

Where AMICA is not suitable for a couple, the website can refer to legal assistance or other support services. There is an initial checklist step to identify such cases (e.g. where there is “family violence”, existing court orders, complex financial arrangements). AMICA is not a replacement for legal advice, and it cannot be used to obtain a divorce. However, it is designed to empower couples and reduce disagreement, lowering legal bills and pressure on the family courts.

### **Introduction of an online system in Scotland**

If we were to consider an on-line dispute resolution system here, we would need to assess what would work best in the Scottish context. This would be informed by considering further data and evidence on how the processes in other countries are working and if they are improving outcomes for children and families.

Online dispute resolution systems for family cases are not a priority for the Scottish Government at the present time. Our priority in relation to contact and residence cases is to implement the Children (Scotland) Act 2020 and to carry out outstanding actions in the Family Justice Modernisation Strategy, including raising awareness of existing alternatives to court. In addition, we would need to consider whether there are any set up costs for on-line systems which might need to be met through the public purse. However, we would be interested to consider evaluations of the Uitelkaar.nl and AMICA systems and will keep this area under review when carrying out future work.