

Minister for Victims and Community Safety submission of 7 December 2023

PE2057/A: Promote shared parenting and prevent the separation of children from their parents

The petitioner's first ask around equal parental contact is an issue which was considered as part of the [review of Part 1 of the Children \(Scotland\) Act 1995 and creation of a Family Justice Modernisation Strategy](#) in 2018. While we did not consult on equal parental contact specifically, the consultation asked questions around whether or not courts should presume that a child benefits from both parents being involved in their life. The [analysis of consultation responses](#) showed that there were mixed views on this (see section 8.6).

Section 11 of the [Children \(Scotland\) Act 1995](#) makes provision on court orders relating to matters such as parental responsibilities. Under this, when considering whether or not to make an order and what order to make, the court has to regard the welfare of the child concerned as its paramount consideration. A presumption of equal contact between parents could cut across this. Where separating parents cannot agree, it should be for the courts to decide what parental contact arrangement is in the best interests of the child, on a case-by-case basis.

Following the 2018 consultation, the Scottish Government introduced the Children (Scotland) Bill into Parliament. This Bill became the [Children \(Scotland\) Act 2020](#) (the 2020 Act) after its Parliamentary passage. The issue of shared parenting was considered at Stage 1. The Parliament's Justice Committee said in their [Stage 1 Report](#) (see paragraph 265) that: *'On balance, we are not persuaded that the Bill should include a presumption in favour of shared parenting'*.

An amendment was lodged by Liam McArthur MSP at Stage 2 of the Bill (amendment 83) on shared parenting. The debate on this amendment can be found in the [Official Report](#) at columns 11 to 15 and 17 to 18. At column 66, Mr McArthur said he would not move the amendment or bring it back at Stage 3.

The petitioner's second point is on the promotion of parenting agreements. The Scottish Government believes that, where possible, it is better if separating parents can agree with each other about what is

best for their child. We have produced [Your Parenting Plan](#), a guide for parents in making practical arrangements for children when they are living apart or in the process of separating. This includes, amongst other things, a [joint agreement](#) for parents to use to structure and record their discussion about the future care and welfare of their children. As Your Parenting Plan notes, it is also possible to draw up and register a formal Minute of Agreement.

Sometimes services such as family mediation can help parents reach agreement. The Scottish Government provides funding to [Relationships Scotland](#), whose network provides family mediation services. The Scottish Government also supports [New Ways for Families](#), run by Shared Parenting Scotland.

Thirdly, the petitioner raises concerns about long court proceedings having an adverse impact on the child-parent relationship.

Recently, the Family Law Committee of the Scottish Civil Justice Council developed [court rule changes on the case management of family actions](#) in the Sheriff Court. These changes (available to [view in full as an Act of Sederunt](#)) came into effect on 25 September 2023, and the provisions apply to all family and civil partnerships actions. It is anticipated that greater judicial case management as a result of these rules will lead to cases being resolved more quickly.

These rules make provision for an initial case management hearing and a full case management hearing. These hearings have a checklist to run through and parties will be expected to advise the court about each matter. This is intended to ensure the important issues are clearly focussed upon so that cases can be resolved more quickly, reducing system churn with fewer continuations.

In addition, section 30 of the 2020 Act, once commenced, will require the court to have regard to any risk of prejudice to the child's welfare that delay in proceedings would pose.

Finally, the petition asks about raising public awareness of the importance of both parties in a child's life. The Scottish Government is clear that both parents should be fully involved in their child's life, as long as this is practical and in the best interests of the child. [Your Parenting Plan](#) states in its very first section that: '*Whenever it's safe and possible, children benefit from positive relationships with both parents*'.

In addition, and as indicated above, the Scottish Government provides funding to [Shared Parenting Scotland](#).

I hope the Committee finds this information to be of assistance in its consideration of the petition.

Siobhian Brown MSP