

# **PE2166/A: Establish a standardised timeframe for civil proceedings in child custody cases**

## **Scottish Government written submission, 19 June 2025**

### **Does the Scottish Government consider the specific asks of the petition to be practical or achievable?**

The Scottish Government does not consider the specific asks of the petition to be practical or achievable. However, as outlined in the sections below, the Scottish Government recognises concerns about delays in child contact and residence cases. Action has been taken in this area through court rules. The Scottish Government also plans to commence a provision in the Children (Scotland) Act 2020 (the 2020 Act) on delays.

When they split up, many couples are able to resolve issues on bringing up their children without going to court. They may be able to do this by resolving the matter for themselves; using the Scottish Government's [Parenting Plan](#); using alternative dispute resolution, such as [family mediation](#); drawing up and registering a [minute of agreement](#); or by a combination of these methods.

However, some cases do have to go to court. Section 11 of the [Children \(Scotland\) Act 1995](#) (the 1995 Act) empowers the court to make a wide range of orders covering areas such as who has parental responsibilities and rights; residence (who a child should live with) and contact (who the child should spend time with). When considering a case under section 11, the court's paramount consideration is the welfare of the child concerned.

The Scottish Government does not consider the asks of the petition to be practical or achievable for a variety of reasons:

- Cases under section 11 can vary enormously. Some may be undefended. In others, the parties may be far apart on what they consider to be in the child's best interests. In some cases there can be a high level of conflict. A standardised timetable would not recognise the different complexities in individual cases.
- A crave (request) in a court action for child contact or residence may be a stand-alone action or may be part of a wider court action (e.g. covering divorce as well). It's not clear whether a

standardised timeframe would apply just to stand-alone court actions for contact or residence or would also include court actions covering other matters as well.

- A key feature of section 11 cases is obtaining the views of the child. It is not clear if a standardised time frame would take full account of the need to do this. The court may wish to appoint a child welfare reporter to get the child's views.
- The petition proposes that "proof hearings be made mandatory within 14 days of the initiation of any civil action". However, the usual practice in contact and residence cases is for child welfare hearings to take place before any proof hearing (the final decision-making stage).
- Child welfare hearings are designed to be more informal and can be a way of establishing whether there is common ground between the parties. The Scottish Government's understanding is that most cases under section 11 do not go to proof as they are generally settled before then.
- Sheriff Court Ordinary Cause Rule 33.22A (4) provides that at a child welfare hearing "the sheriff shall seek to secure the expeditious resolution of disputes in relation to the child by ascertaining from the parties the matters in dispute and any information relevant to that dispute".
- The court may put interim orders in place in a child welfare hearing and use further hearings to monitor progress. For example, the court could order that contact between the child and a parent they don't live with must take place supervised at a child contact centre. This is often for a number of weeks, with the court receiving a report from the centre on how the contact sessions have gone.
- The petitioner proposes that "proof hearings be made mandatory within 14 days of the initiation of any civil action." That would be a major change to the current system of child welfare hearings and could add to costs (e.g. the costs of legal representation) given that proofs themselves can take days.
- In addition, 14 days from the start of any civil action would be a very tight timeframe. As indicated above, there is a need to obtain views from children in contact and residence cases. In some case the court may decide to put interim orders in place and it's not clear how that would fit with a 14-day timescale.
- Furthermore, solicitors representing the parties may not have enough time to prepare. And 14 days could create problems in relation to court scheduling and might mean that other cases would need to be moved or delayed.

**What, if any, action the Scottish Government is currently taking to address the issues raised by this petition, and is any further action being considered that will achieve the asks of this petition?**

Section 30 of the 2020 Act makes provision on delay in court proceedings being likely to prejudice child's welfare: this is one of the points made by the petitioner.

Section 30(2) relates specifically to cases under section 11 of the 1995 Act on matters such as child contact and residence. The Scottish Government has indicated that it intends to lay regulations later this year to commence section 30(2) (please see the second page of this [Policy Note](#) for a previous SSI commencing provisions of the 2020 Act).

**Is there any further information the Scottish Government wish to bring to the Committee's attention, which would assist it in considering this petition?**

The Committee will wish to be aware of case management rules in place in respect of family actions.

The Scottish Civil Justice Council (the SCJC) prepares draft rules of procedure for the civil courts and advises the Lord President on the development of the civil justice system in Scotland. In 2018, it carried out a [Consultation on the Case Management of Family and Civil Partnership Actions in the Sheriff Court](#). Following this consultation, court rules were made in 2022 and came into force on 25 September 2023.

Information about these rules is available [on the SCJC website](#). As this indicates, the case management provisions apply to all family and civil partnerships actions, including contact and residence. A key aim is for greater judicial case management to result in cases being resolved more quickly. The rules themselves are at [Act of Sederunt \(Ordinary Cause Rules 1993 Amendment\) \(Case Management of Defended Family and Civil Partnership Actions\) 2022](#).

**Civil Law and Legal System Division**