

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE1984](#): introduce the C100 form for child arrangement orders in Scotland, lodged by Amy Stevenson

Brief overview of issues raised by the petition

This petition focuses on two features of the system in England and Wales for the resolution of disputes between parents about the care of their children (disputes of the type which can occur after a separation or divorce).

The petitioner argues for the introduction of these two aspects of the English system in Scotland. The first proposed feature is the form used to commence the court action in England and Wales ([the C100 form](#)). The second suggested feature is the fee payable to the court at the point of that form is lodged with the court, and specifically its 'all-inclusive' nature (described in more detail later).

Note that court fees are one of a range of costs which someone bringing a court action may face.

A comparison of the two systems north and south of the border

To better understand the petition, it is helpful to understand how the two court-based systems for resolving parenting disputes work both north and south of the border.

First, the law which the courts apply to decide cases are very similar in both legal systems. The [Children \(Scotland\) Act 1995](#) ('the 1995 Act') applies in Scotland, the [Children Act 1989](#) applies in England and Wales. How the law applies in an individual case can be a complex matter in both legal systems.

The **child arrangements order** is a court order which can be made in England and Wales to resolve the living arrangements for a child or who a child should have contact with (and on what terms). In Scotland, there are two direct equivalents – a **residence order** determines where a child should live, a **contact order** sets out the contact arrangements.

In England and Wales, there is a specialist family court system. In Scotland, [the local sheriff courts](#), who hear a wide range of criminal and civil matters, usually determine family cases.

In Scotland, people on low and moderate incomes will qualify to have (all or part of) the costs of legal advice from, and representation in court by, a solicitor met out of the legal aid budget. [It is thought that around 70% of the Scottish population would qualify for some support in this regard](#). Legal costs can be considerable, depending on the circumstances. Another notable benefit of qualifying for legal aid in the context of this petition is that people who qualify are also exempt from paying court fees.

In England and Wales, legal aid is only available in family cases where domestic abuse is an issue. Consequently, 'self-representation' (where a parent or other litigant represents themselves in court) is much more common.

The use of mediation (as an alternative to court) is also much more formally embedded in the system for family cases south of the border, compared to in Scotland. In England and Wales, if parents use mediation, [a session also incurs a fee \(unless the parents are eligible for legal aid for mediation\)](#).

Although Scotland benefits from much greater legal aid provision in family cases than in England and Wales, it is worth noting there are some known policy issues associated with legal aid and cases under the 1995 Act in Scotland. For example, [new courts rules, which come into force in September 2023](#), envisage that there will be great use of 'case management hearings' in family cases, i.e. those designed to encourage early resolution of the dispute. However, to the extent that case management hearings are used under the current rules, [there is a question about whether the work solicitors need to carry out in relation to these hearings is covered by legal aid](#).

A further difference between the systems north and south of the border is that, in England and Wales, [a public body called CAFCASS](#) has a key role in reporting to the court on what is in the best interests of a child in an individual case.

There is no equivalent of CAFCASS in Scotland and instead the sheriff court uses **child welfare reporters**. These are solicitors from private practice (separate from the solicitors representing each parent) who prepare reports for the court. The costs of these reports are variable, [but the average is thought to be around £2,700](#). With some discretion for the court remaining, the [current Scottish court rules](#) (rule 33.21) say that the child welfare reporter's fees should be borne equally, in the first instance, by both litigants.

There is a system for regulation of child welfare reporters set out in [the Children \(Scotland\) Act 2020](#) (not yet in force, with implementation delayed). Once it is in force, [the Scottish Government intends that the Government would meet the costs of child welfare reporters directly](#).

In summary, there are some similarities but also significant differences between the two systems for resolving parenting disputes. This can make them somewhat challenging to compare in practice, both in terms of the costs to litigants and to the public purse.

C100 form – and its Scottish equivalent

Turning now to the petitioner's specific proposals, the [C100 form](#) allows a parent (whether legally represented or not) to apply online to the family court in England and Wales for a child arrangements order. The **initial writ**, usually prepared by a solicitor and which commences a court action under the 1995 Act, is the court document equivalent to this form in Scotland.

The [C100 form](#) appears to be more accessible to someone without a legal background than its equivalent in Scotland. (In policy terms, this seems particularly important in a system where self-representation is common). With the initial writ, and wider aspects of the Scottish court procedure, legal advice and representation by a solicitor is recommended.

Court fees

On the petitioner's second point, in **England and Wales**, it costs £232 to apply to court for a child arrangements order. This is a flat fee which covers all the court proceedings leading to the issuing of an order (assuming one is granted). Depending on the case, several appointments, and [hearings \(including hearings where evidence is taken\)](#) might be included in that fee. Additional fees may be charged in some (limited) circumstances. See further: [Fees in the Civil and Family Courts – main fees \(EX50\)](#). A person may be able to get money off their court fees if they have limited savings and have a low income or are in receipt of certain benefits. See: [How to apply for help with fees \(EX160A\)](#).

In **Scotland**, [according to the latest Fees Order](#):

- there is a court fee for one parent lodging the initial writ (**£135**).
- there is a court fee for the other parent lodging defences (**£134**)
- there is a court fee for fixing a date for a proof, i.e., the type of hearing where evidence is heard, and witnesses are cross-examined on it (**£58**)
- there is a court fee for each day or part day a proof is heard (**£247**).

It is relatively unusual (although not unheard of) for a case in Scotland to get to a 'proof', i.e., where formal evidence is taken, and the witnesses are cross-examined on it. Instead, a key part of the dispute resolution process is a **child welfare hearing**. Here the sheriff typically speaks directly to the parents and takes a problem-solving approach. There may be multiple child welfare hearings for one case before any final court order is issued.

As a matter of drafting, the [Fees Order](#) could be clearer on how a child welfare hearing is classified for fees purposes. However, the Scottish Government, in consultation with [the Scottish Courts and Tribunal Service](#),

has expressed the view that neither a child welfare hearing, nor a case management hearing (earlier referred to on p. 2 of this note) attracts a separate court fee.

Key Organisations

[Shared Parenting Scotland](#)

[Law Society of Scotland](#)

[Family Law Association](#)

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22/11/22

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

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