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Dear Convener,

NON-IMPLEMENTATION OF LEGISLATION

Thank you for your letter addressed to Jamie Hepburn MSP, the Minister for Parliamentary Business on 8 October 2026 in relation to non-implementation of legislation. I am responding in relation to the Children (Scotland) Act 2020, since the main parts of that Act fall within my portfolio responsibility.

I note that your predecessor Committee examined the impact of the delay in implementing the three Acts in question and that the current Committee will continue to pursue non-implementation in this session. I am also aware that quarterly updates were being provided to the previous Committee, which I am happy to continue to do on a quarterly basis, meaning our next update would be just prior to February recess.

Children (Scotland) Act 2020

I recognise concerns that key parts of the Act are not yet implemented and I remain committed to implementing the Act in full. The Act is a wide-ranging piece of legislation, involving a variety of detailed implementation tasks, and it was always going to be the case that it would be implemented in stages. This means we have had to prioritise certain areas to take forward, such as the regulation of child contact services.

However, I can assure the Committee that our priorities in the next 12 months are to make significant progress with two important parts of the Act: Firstly, the registers of child welfare reporters and curators *ad litem*, and secondly the child advocacy provision.

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Register of child welfare reporters

As noted, one of our main priorities in the next 12 months is to progress with implementation of the register of child welfare reporters (under section 9 of the 2020 Act), who provide reports to the courts in many contact and residence cases. I am aware of the importance of the register, given the vital role reporters have in many contact and residence cases in the civil courts. Establishing a national register will help ensure reporters are properly skilled and trained, and that there is consistent good practice across Scotland. I also appreciate that child welfare reporters are linked to many other parts of the 2020 Act, so it is important to get the register in place.

Implementation work is underway, but given the various implementation tasks involved, it will take 2 to 3 years before the new register will be fully operational. For example:

- tendering a contract for the day-to-day running the register in the name of the Scottish Ministers;
- making regulations on matters such as requirements for individuals to be on the register (e.g. in relation to training) and on the remuneration of reporters;
- considering whether court rule changes are needed, which involves engagement with the Scottish Civil Justice Council, who make civil court rules in Scotland.

We have been facilitating a Working Group on Child Welfare Reporters with key stakeholders from across the family justice system to consider what needs to be in place to establish the new register. My officials presented a draft implementation plan at a meeting of the Group in March. A further meeting was held on 29 October, to discuss the structuring of the project work over the next 12 months, as well as specific items, such as training. Next steps are to get the different work streams underway and I can provide further details on this in my next update.

Child advocacy

Our other key priority under the 2020 Act in the next 12 months is progressing the initial phase of work on child advocacy provision. Section 21 of the 2020 Act places a duty on Scottish Ministers to make such provision as they consider necessary and sufficient, to ensure that all children concerned in contact and residence cases and other cases where the court is considering making an order under section 11(1) of the Children (Scotland) Act 1995 have access to appropriate child advocacy services.

I recognise the importance of child advocacy and ensuring that children's rights under the UNCRC are realised in practice by strengthening their voices and enabling meaningful participation in decisions that affect them. Child advocacy is also important to tackling violence against women and girls and domestic abuse because it helps ensure that children's experiences, wishes and safety are properly understood and represented in family justice decisions, particularly in cases where abuse may have affected the child directly or indirectly.

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There are already some excellent examples of child advocacy in certain systems and in certain locations in the country. However, there will be different needs depending on the journey of the individual child. For example, some children involved in a civil case may already be receiving advocacy support if they have been referred to a Bairns' Hoose. However, for children who are not involved in criminal proceedings, and have no involvement with a local authority, they may not be receiving that support. We do not currently have a settled position as to what the provision of child advocacy services looks like across Scotland, particularly for children involved in civil cases.

This requires more policy development to understand what is currently in place throughout Scotland and what would be required to meet the obligations under the Act (or indeed, go further). My officials are looking at the best options to conduct this exercise. We would want to build on what is already there and working well if possible, but recognising that any model needs to be able to flex to the needs of any child who requires support and representation in a child contact proceeding.

Regulation of child contact services

The regulation of child contact services has been a priority area for the Scottish Government to implement, and we laid secondary legislation in November 2025 to bring child contact services under the Care Inspectorate's remit. The Care Inspectorate are currently in a preparatory phase ahead of regulation coming into force on 1 April 2027.

Child contact services have an important role in the family justice system, providing services to help children spend time with a parent they don't live with in a safe, neutral and child-friendly environment with the necessary support or supervision.

The regulation of child contact services by the Care Inspectorate is a significant milestone. It will strengthen safeguards and existing good practice to help improve outcomes for the children and families using these services. In addition to carrying out regular inspections, the Care Inspectorate are developing a Quality Improvement Framework to support child contact services and ensure consistent, child-centred, trauma-informed approaches.

I met with the Care Inspectorate this summer and was impressed to hear about the range of preparatory work they are undertaking ahead of regulation starting next year, working with child contact services and the wider family justice system.

Ahead of regulation, Relationships Scotland have also been developing a national training framework for child contact practitioners, part-funded by Scottish Government, to help ensure there is high-quality professional practice in essential aspects of this work – including topics such as domestic abuse, trauma-informed practice and conflict management.

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Special measures to protect vulnerable witnesses and parties

The Scottish Government wants to ensure that victims of domestic abuse and sexual assault feel protected in civil proceedings, including family cases. Concerns have been raised by domestic abuse victims and support services that victims often feel less protected in civil proceedings than they do in the criminal courts.

There are provisions in sections 4 to 8 of the 2020 Act to enhance the availability of special measures (e.g. screens, live tv link, supporter) in certain family proceedings, namely cases under section 11 of the 1995 Act (including contact and residence) and Children's Hearings proceedings. This includes protection for parties (i.e. not witnesses) involved in non-evidential hearings, such as child welfare hearings and also a new special measure of prohibiting a person from conducting their own case in certain circumstances.

The Victims, Witnesses and Justice Reform (Scotland) Act 2025 (the 2025 Act), significantly extends the special measure provisions in the 2020 Act to benefit vulnerable individuals involved in all types of civil proceedings, and it also enhances the criteria for when a person may be deemed vulnerable in civil case.

Implementation of the 2020 Act provisions was paused while the Victims, Witnesses and Justice Reform (Scotland) Bill (now the 2025 Act) was progressing, and implementation of the provisions in both Acts is now interconnected.

Implementation of the VWJR Act as a whole is being phased in order to allow for management of operational impacts.

It is reasonable to anticipate significant demand for special measures once they become available in civil cases, and operational impacts for the courts. Although there is no systematic recording of domestic abuse within civil court data, we understand from support services, family law practitioners, and past research, that there is a high prevalence of domestic abuse in family cases in particular.

Currently these facilities are routinely required for criminal cases, which presents significant operational challenges in terms of civil roll-out, but discussions with the Scottish Courts and Tribunals Service are currently underway on the potential options and timings for implementation.

In addition, as noted above, the legislation requires Scottish Ministers to establish a register of solicitors who may be appointed by the court when a person has been prohibited from conducting their own civil case. This will require secondary legislation and work to identify who would hold the register.

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Commencement of further provisions

A number of provisions have been commenced, such as those relating to promoting sibling contact; around delay in children's hearings and adoption and permanence court proceedings; and parents having regard to the child's views in major decisions.

We previously identified a number of further provisions to include in the next phase of commencement, and these were set out to the previous Committee in a letter from my predecessor dated 11 March 2025. This included provisions:

- to enhance how the views of the child are heard in contact and residence cases (section 1), adoption and permanence proceedings (section 2), and children's hearings court proceedings (section 3).
- to introduce additional factors for the court to consider around how orders affect parental involvement in bringing the child up and the child's relationships with wider family (section 16).
- to introduce a duty on the courts to consider the child's best interests when allowing access to information (section 18).
- requiring the court to consider how delay in contact and residence cases can prejudice a child's welfare (section 30(2)).

Due to the need to prioritise other implementation work (e.g. the regulation of child contact services and the register of child welfare reporters) the commencement regulations have been delayed, but we hope to progress this work again over the next 12 months.

Pilot of mandatory meetings on Alternative Dispute Resolution (ADR)

Other parts of the 2020 Act, including sections 23 and 24, will take more time to progress and fully implement.

I recognise that the pilot of mandatory information meetings on ADR is an important part of the 2020 Act, and that encouraging greater use of ADR in contact and residence cases could lead to fewer family disputes ending up in court. We know that going through the court process can be a lengthy, stressful and costly process.

Some preparatory work had been progressed on the pilot of mandatory information meetings on ADR, but work was paused due to other priorities. While I hope over the next 12 months we can continue some of the preparatory work that had been done, this will very much depend on capacity given our other implementation priorities.

I would add that it is already open to the court in a contact and residence case to refer parties to family mediation, and the Scottish Government provides funding to Relationships Scotland to provide those services across Scotland. The aim of the pilot of information meetings is to encourage greater use of ADR and also to make parties aware of the different types of ADR that are available.

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Following the pilot we would also consider section 23 of the Act, which is about financial assistance for ADR, either through legal aid – which is already available for family mediation– or another funding scheme.

Yours sincerely

KIRSTEN OSWALD

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