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The Children (Scotland) Bill

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The Children (Scotland) Bill would significantly amend the Children (Scotland) Act 1995. The 1995 Act sets out the law which applies to resolve disputes between parents about their children. This briefing explains what the Bill does and explores the extent to which the Bill addresses major policy concerns associated with the 1995 Act.

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Executive Summary

Sometimes parents end up in dispute with each other over their children, for example when the parents are separating or divorcing. Part 1 of the Children (Scotland) Act 1995 contains the law which applies to resolve these disputes. The Children (Scotland) Bill ('the Bill') would substantially amend the 1995 Act, as well as making some changes to other legislation affecting children. The last major amendments to Part 1 were in 2006.

Before the Bill was introduced, there was an ambitious and wide-ranging consultation. A number of proposals consulted on by the Government have not made it into the Bill. For example, the consultation suggested introducing **child support workers**, to help children participate in court decisions affecting them. The Government is still considering this area.

The consultation also had, for example, various proposals aimed at **strengthening the rights of unmarried fathers**. A recent research report commissioned by the Parliament's Justice Committee looked at this topic in relation to the European Convention on Human Rights and the UN Convention on the Rights of the Child. [1] The report says the current law on unmarried fathers is looking increasingly outdated. However, after mixed responses on consultation, the Bill does not propose any changes to the law.

The Bill would make some important reforms. It aims to encourage the court to **hear the views of younger children** (under 12s) before reaching its decision. It would require courts to explain (most) court decisions to (most) children. The Bill would also introduce practical measures to **improve the experience of vulnerable people in the courtroom**, such as parents affected by domestic abuse.

The **welfare of the child**, as the paramount consideration, is a key principle of the 1995 Act which the courts apply. The Bill would introduce two **new statutory factors** to guide the court's assessment of welfare in an individual case. This is an important topic. Interested individuals and organisations are likely to give views on whether the right balance is struck between i) ensuring the involvement of both parents in the child's life (in suitable cases); and ii) protecting vulnerable parents and children, where they are at risk.

The Bill also proposes statutory regulation of **child welfare reporters**, who provide important information to the court on children, and **child contact centres**, which provide neutral venues where children and parents can meet with each other. Much of the detail of this regulation **has been left to secondary legislation.** This may make it hard to assess at this stage whether the policy aims would be achieved.

In addition, most child contact centres are managed by Relationship Scotland. The current funding arrangements of these centres are under threat. This is significant in the context of this part of the Bill, as statutory regulation would have additional costs associated with it.

Delay has been a significant policy issue in cases relating to children in recent times. The Bill introduces a new (high level) duty on the court to consider the risk to the child's welfare that **delay** in a court case would pose. However, the courts have been left to make rules introducing any detailed changes to court procedure. The Scottish Civil Justice Council's role is to formulate proposals for new court rules, although sometimes it does this at a slower pace than is desired by some individuals and organisations interested in reform.

Introduction and background

The Children (Scotland) Bill ('the Bill') was introduced in the Scottish Parliament on 2nd September 2019, along with a Policy Memorandum, [2] Explanatory Notes [3] and a Financial Memorandum. [4]

The Government also published a Family Justice Modernisation Strategy ('the Strategy') [5] at the same time as the Bill, explaining other (ongoing and future) policy work in this area. The Bill and the Strategy followed a detailed Scottish Government consultation in 2018. [6] Responses to the consultation, an analysis of responses [7] and summary of responses [8] were published in May 2019.

The Justice Committee was appointed lead parliamentary committee on the Bill in September of this year. Also in September, it issued a call for views with a closing date of 15 November 2019.

To help support the Committee's work on the Bill, SPICe published a briefing, entitled Resolving parenting disputes: Scotland compared to other countries, on 20 November 2019. [9] The Committee also commissioned external research from Dr Barnes Macfarlane of Edinburgh Napier University. This looked at whether the existing and proposed law is compatible with the rights of parents and children, as set out in the European Convention on Human Rights and the UN Convention on the Rights of the Child. The research report [10] (and summary) [1] were published on 15 November 2019 ('the Barnes Macfarlane report').

This SPICe briefing explains what the Bill does and, importantly, does not do. It considers whether the Bill will address the various policy issues with which people and organisations are currently concerned. Part 1 of the briefing gives an overview of the subject (including a quick summary of what the Bill does) and Part 2 of the briefing considers the topic in more depth.

It has not been possible to discuss the responses to the Justice Committee's call for views in this briefing, as the call for views closed on 15 November. The briefing refers to responses to the Government's 2018 consultation where possible, as well as to some early commentary on the Bill.

Part 1: an overview of the Bill

Pragmatic - but with complex drafting

In terms of the Bill's content, there is a contrast between the 2018 consultation and the Bill. The consultation was very ambitious in its scope, considering many (although not all) of the current policy issues associated with parenting disputes. The Bill, although still significant, is smaller in scale and more pragmatic.

In several places, the Bill is a complex piece of legislative drafting. Interested individuals and organisations have expressed initial concerns about how accessible the proposed law will be to its users, which include members of the public. [10]

The Children (Scotland) Act 1995

This part of the briefing gives an overview of the Children (Scotland) Act 1995 ('the 1995 Act') which is the main piece of legislation amended by the Bill.

An overview

The 1995 Act was based on a report [11] by the Scottish Law Commission, and was recognised as an important legal milestone in its day. The Act aimed to incorporate key principles of the UN Convention on the Rights of the Child (UNCRC) into Scottish family law.

Part 1 of the 1995 Act sets out various **parental responsibilities and rights** ('PRRs') in respect of children living in Scotland. In practice, PRRs are powers which enable parents to take key parenting decisions on behalf of their children.

Section 11 of the 1995 Act gives the court various powers to decide an issue in a parenting dispute. Section 11 says the court should follow certain key principles. The **welfare of the child** is the paramount consideration, that is to say, the most important and overriding one. The child must be given an opportunity **to express his or her views** - and the court must consider (although not necessarily follow) any views expressed.

The types of court order which the court can make include a **residence order**, setting out where the child is to live, which can be with one or both parents. Also important is a **contact order**. This sets out the arrangements for a child to have contact with a person he or she does not live with, for example, a parent or grandparent. The court can also grant or take away some (or all) of the PRRs and make court orders to settle disputes on other parenting issues.

The 1995 Act was last reformed in 2006, by the Family Law (Scotland) Act 2006 ('the 2006 Act'). As explored in more detail later, the 2006 Act **strengthened the position of unmarried fathers**. Most, **but not all**, unmarried fathers now have PRRs in respect of their children. The 2006 Act also reformed section 11 of the 1995 Act. The policy aim was to encourage the courts to consider **abuse (or a risk of abuse)** when making court orders.

Part 1 in practice

Research suggests that a very small minority of parenting disputes go as far as court. [12] This means that Part 1 of the 1995 Act is much more likely to be used by, for example, solicitors and mediators advising clients, than it is by the courts.

When cases do get as far as court, they are usually considered by the **local sheriff court**, which hears a wide range of civil and criminal cases. Individual sheriffs do not specialise in family cases, except, to some extent, in large urban centres, mainly Edinburgh and Glasgow.

Few court cases relating to section 11 of the 1995 Act (around 4%) get as far as a **proof** , i.e. a full hearing where witnesses give evidence and are cross-examined. Instead, most are resolved (by court order) at a **child welfare hearing** or a number of such hearings. [13] These are relatively informal proceedings, held in private.

An important role is played by **child welfare reporters**. These are court-appointed officials, usually solicitors, who report to the court on what the views of the child might be or what is in the welfare of the child. The solicitors typically come from private practice and charge a fee for their services. They are independent in the case they are appointed to report on and are separate from the solicitors representing the litigants. The lack of statutory regulation of reporters has been controversial in policy terms. [14] [15]

The road to reform (2006-2018)

Various pressures for further reform to this area of law have grown over the last decade or so.

First, judges in Scottish family cases heard on appeal, including one before the UK Supreme Court, were strongly critical of **delays in cases involving children**. [16] [17] [18]

The Parliament's Public Petitions Committee has also received **a steady stream of relevant petitions**. A number of them related to a father's involvement in his child's life, including when a mother does not obey a contact order. A particularly high profile petition (PE01635) raised serious questions about the courts' approach to contact arrangements where there is a risk of abuse. This included the role played by child contact centres, run by the third sector.

In 2016, the Parliament's then Justice Committee carried out some post legislative scrutiny of the 2006 Act. In its report, the Committee noted the possible need for a review of the 1995 Act, focused not just on what the law says but **on its application in practice.** On the mechanisms used to resolve disputes, the Committee said that cases would benefit from the **increased use of mediation** and from being heard by **specialist family law sheriffs**. [19]

Also in 2016, the Scottish Government held a summit to help formulate its Strategy. Participants said, for example, that **cases involving children take far too long**, both before and after they reach court. Furthermore, that **the voice of the child is not being**

heard properly during these court cases. Participants suggested specialist family courts and sheriffs may be part of the answer. [20]

Finally, there was an enormous growth in the idea of **children as independent right-holders** between 2006 and 2018. In 2019, the Government said it would incorporate the UN Convention on the Rights of the Child (UNCRC) into domestic law before the end of the current parliamentary session. [21] Yesterday it announced that the associated Bill will be introduced in the Scottish Parliament next year. [22] Related to the imminent incorporation of the UNCRC into domestic law, there was a growing need to revisit the 1995 Act and its associated infrastructure, with the aim of strengthening its adherence to the UNCRC.

What the Bill does - a quick summary

The main provisions of the Bill are as follows:

- **Children's participation:** sections 1 to 3 and 15 propose changes to the 1995 Act (and other legislation) to help children participate in decisions about them. One aim is to encourage the court to hear the views of younger children (under 12s) before reaching its decision. Another is to explain (most) court decisions to (most) children.

- **Statutory factors**: sections 1 and 12 would restate, and add to, the statutory factors the court must take into account when deciding an individual case. Courts have always had their own list of factors, which have evolved over time. In 2006, some statutory factors were added to the 1995 Act, related to abuse or a risk of abuse. The Bill would add further factors to the statutory list, so the courts must look at the impact of any court orders on the child's relationships with i) his or her parents; and ii) other important people in his or her life.

- **Vulnerable people**: sections 4 to 7 aim to improve the experience of vulnerable people in the courtroom in family cases, such as those affected by domestic abuse. Most of the proposals build on existing legislation on vulnerable witnesses. However, one aim is to extend existing protections to hearings where formal evidence is not taken, including child welfare hearings. A range of protective measures are proposed, such as a person being able to speak from behind a screen or have a supportive person sitting beside them.

- **Greater regulation**: sections 8, 9 and 13 propose statutory regulation of several aspects of the 'machinery' associated with the 1995 Act. This includes child welfare reporters and child contact centres.

- **Siblings**: section 10 says that, for looked after children, a local authority must promote "personal relations and direct contact" with siblings, to the extent practicable and appropriate.

- **Failure to obey a court order**: where someone fails to obey a court order, section 16 would impose a new duty on the court to investigate why this has happened. This duty could be carried out by a child welfare reporter.

- **Delay:** section 21 says that, in various family cases, including those under the 1995 Act, the court must consider the risk to the child's welfare that delay would pose.

Section 11 of the 1995 Act would be heavily amended under the Bill and would become more complex. The Government recently produced a version of what section 11 would look like.

What is not in the Bill

Proposals not taken forward after consultation

There are a number of proposals consulted on, but which do not appear in the Bill.

One proposal would have required litigants to attend an information meeting about mediation, prior to beginning court proceedings. The Justice Committee said in its report on ADR in 2018 that it may wish to return to this issue in the context of the Bill. [23]

The consultation also explored giving greater rights to unmarried fathers. In addition, it considered **updating the language associated with PRRs**, as a number of other countries have done. [9] One view is that the current terms of **residence** and **contact** suggest one parent has a better relationship with the child than the other parent. [24] Responses were mixed on consultation though. [25]

The consultation also proposed creating various presumptions (i.e. formal starting points) for the courts. Two presumptions related to the role played by parents, one presumption was in favour of children having contact with their grandparents.

The consultation also suggested a range of changes to improve the consistency of decision-making between the civil and criminal courts in cases involving domestic abuse. One significant proposal was integrated domestic abuse courts, to consider both the criminal and family law aspects of the case.

Most of these issues are explored in more depth in Part 2 of the briefing.

The role of the courts and the Scottish Civil Justice Council

Judicial training, specialisation and continuity

Under the Judiciary and Courts (Scotland) Act 2008 and the Courts Reform (Scotland) Act 2014 ('the 2014 Act') there are various issues relating to family cases which are currently the responsibility of the courts (and others) rather than the Scottish Government.

These include the required content and frequency of **judicial training** - this is a matter for the Judicial Institute. Also for the courts are i) decisions on the possible introduction of specialist family courts and sheriffs (**judicial specialisation**); and ii) how sheriffs are

deployed to individual cases. An example of this type of issue in practice is whether the same sheriff hears all stages of a case (**judicial continuity**).

The Scottish Government did not consult on whether it should legislate directly on any of these issues for family cases, nor do any relevant proposals appear in the Bill.

Court rules

Under the 2014 Act, the courts also have responsibility for making **court rules**, which cover the more detailed aspects of how courts operate. Sometimes, when people are expressing concerns about the 1995 Act, they are really expressing concern about issues currently covered by these rules.

It is the Scottish Civil Justice Council, an independent body, which makes recommendations to the Lord President (as head of the judiciary) on **proposed new court rules.**

Topics which have been tackled by the Council include, for example, **how to hear the views of the child in family cases**. Between 2015 and 2019, the Council updated a form used by the court for this purpose, with the aim of making it more child friendly (the Form F9). A policy paper from the Government in 2015 had suggested wider reforms [26] but the Council is not required to follow the Government's suggested approach on any issue.

The pace of the Council's reform projects has been slower than hoped for by some interest groups and organisations. [27] As explored later, the Council is also working on **case management** (how the progress of litigation is managed by the courts). This work is still ongoing and will be important in addressing delays in cases affecting children.

Part 2: the Bill in more depth

The remainder of this briefing explores some of the Government's proposals which did not make it into the Bill. The briefing also looks at the main proposals in the Bill, considering the extent to they are likely to meet the expectations of those who have been arguing for reforms.

What is not in the Bill

Alternatives to court

In its consultation, the Government said it wanted to promote alternatives to court for resolving parenting disputes. There are a range of methods, collectively referred to as 'alternative dispute resolution' (ADR).

Background

Mediation is currently the main form of ADR used in family cases, although other methods are also used including collaborative law and arbitration.

With mediation parents work with an independent third party to reach an agreement that works for both parents. Mediation is mainly provided by third sector organisations who are members of Relationships Scotland, or by solicitors who are also qualified as mediators.

People can 'self-refer' to ADR. The current court rules also allow the sheriff to refer a case under section 11 to mediation at any stage of the court action.

The Government's approach

The Scottish Government consulted on introducing, with some exceptions, **a requirement on parents to attend an information meeting about mediation**, prior to raising court proceedings. [28] Similar requirements exist in England and Wales and in Ontario, Canada. [9]

Compared to the Government's other suggestions for promoting ADR, the information meeting was a popular option, with **41% of respondents** to the consultation in favour. This was closely followed by better signposting and guidance, preferred by **35% of respondents.** (16% favoured other options; 31% gave no response). [29] There is no proposal on information meetings in the Bill. Instead, the Government plans to issue **guidance**. [30]

In the consultation document, the Government said that changes might be required to the **current court rules**. [31] The UK is signed up to (and hopes to ratify) the Istanbul Convention. The Convention prohibits the use of mandatory ADR, including mediation, in relation to violence against women. The suggested changes to the court rules, arguably important ones, would make it explicit that mediation should not take place when there has

been domestic abuse. The Government intends to prepare a policy paper for the Family Law Committee of the Scottish Civil Justice Council, which will include this topic. [32] [33]

2019 policy developments

Since the Government consulted, there have been a couple of significant policy developments relating to mediation.

First, a proposal for a Member's Bill by Margaret Mitchell MSP. The Bill would require that, when a case first comes before a court, a **duty mediator** would be required to meet with the litigants in an information session, to discuss whether they want attempt mediation. Second, a major report on mediation was launched by Scottish Mediation, based on work by an expert group. This recommends creating a **presumption** that a court should refer a case to mediation unless there is a good reason not to. [34] The Government says it will respond to the report **by the end of 2019**. [35] Both sets of proposals suggest exemptions relating to cases involving domestic abuse. [36] [37]

Unmarried fathers

The consultation looked at the need for greater rights for unmarried fathers.

Background

Since 2009, **just over half of all births** have been to unmarried parents than to married parents. [38]

However, unmarried fathers do **not** have automatic PRRs in respect of their children. Here they differ from mothers and from fathers who are, or ever have been, married to the child's mother.

In the 1995 Act, in its original form, the main way an unmarried father could get PRRs was by court order. While this is still possible, since 2006, the main way an unmarried father can get PRRs is by **joint registration of the birth**, so the father's name appears on the birth certificate. Joint registration is common but not compulsory. It requires the mother's cooperation. In 2018, **2,178 births in Scotland** (4% of all births) were sole registrations, where only the mother's name is registered. [39]

The 2006 change did not give rights to unmarried fathers who had jointly registered their child's birth *before* 2006. Today, some unmarried fathers and their children are still subject to the pre-2006 law.

The Barnes Macfarlane report says that the current law may raise issues for an unmarried father under Article 8 of the European Convention on Human Rights, which covers the right to respect for private and family life. The report says it may also raise issues for his children under Article 2 of the UN Convention on the Rights of the Child (UNCRC). Article 2 refers to the child's right not to be discriminated against based on the child's birth status. [1]

The Government's approach

The Scottish Government's 2018 consultation contained various proposals designed to strengthen the position of the unmarried father to different degrees. [40] These proposals were:

- automatically giving PRRs to unmarried fathers because of their genetic parentage, as the Scottish Law Commission had recommended in 1992; [11]
- backdating the change introduced in 2006, so that all unmarried fathers who had jointly registered a birth pre-2006 could, from a date to be specified, acquire PRRs this way; and
- introducing, with some exceptions, compulsory joint birth registration, as some other countries have done. The person registering would be required to name both parents. (Exceptions to compulsory registration might relate to, for example, situations where there had been rape or domestic abuse).

All children currently affected by the relevant law before 2006 would be 16 years old **from 2022**. 16 is the age when all parental rights, and most parental responsibilities, terminate.

On consultation, there was a fairly even split of views about each of the possible reform options. Support was strongest for automatic PRRs based on genetic parentage. [41]

Ultimately, no proposals relating to unmarried fathers were included in the Bill. In the Strategy, the Government gives various reasons for this. For example, it says the current law strikes an appropriate balance between granting PRRs to fathers, where appropriate; protecting vulnerable mothers; and upholding the best interests of the child. [42]

Presumptions for the courts: shared parenting and protection from abuse

In its consultation, the Government proposed introducing various **presumptions** to direct the courts in their decision-making under the 1995 Act, as a number of other countries have done.

Presumptions are formal starting points for the court. It cannot overturn a presumption in an individual case unless enough evidence is produced to rebut (i.e. disprove) the presumption. [10]

A presumption that **a child benefits from both parents being involved in the child's life** featured as one proposal in the 2018 consultation. [43] **Half of the respondents** to the main consultation agreed with this proposal, over a quarter (27%) disagreed. (The remaining 23% provided no response.) [44]

One policy concern is **how to protect families from parents who are perpetrators of abuse**. Some commentators have argued that, for families at risk, the objective of protection cannot exist alongside the objective of encouraging shared parenting. The Scottish Government's consultation proposed a second (alternative) presumption: that the courts should **not** presume a child benefits from both parents being involved in their life. [45] **Just over half (52%)** of all respondents were **against** such presumption, while 22% were in favour. (The remaining 26% did not provide a response.) [46]

> The Government did not include either presumption in the Bill.

One of the Government's concerns is that a presumption might cut across the principle that the welfare of the child is the paramount consideration. Instead, the approach in the Bill is to try to address policy concerns through developing the statutory factors the court must take into account in individual cases. [42]

Grandparents

Grandparents in Scotland (as in the rest of the UK) have **no automatic right to see their grandchildren**. At present, a grandparent is entitled (as someone with "an interest") to apply for a contact order, with the courts treating the welfare of the child as the paramount consideration.

The Scottish Government consulted on a possible **presumption in favour of contact** between children and their grandparents. [47] Those responding to the consultation were divided on issue, with 45% in favour of the presumption and 40% against. (15% did not respond to that question). [48] **No such presumption appears in the Bill**. However, the impact of a court order on the child's "important relationships with other people" features as one of the proposed new statutory factors in the Bill.

The approach to domestic abuse cases

> While the Bill does contain some important proposals designed to improve the handling of cases involving domestic abuse, other significant proposals on this topic were not taken forward after consultation.

One option the Scottish Government consulted on, but did not proceed with, is **a proactive statutory duty on the courts** to establish if there has been domestic abuse in an individual case. [49] This would have been similar to the one that has just been created in Canada.

At present, sheriffs in section 11 cases rely (sometimes entirely) on information provided by litigants, usually through their solicitors. For example, previous prosecutions for relevant criminal offences, ongoing criminal proceedings or other civil court orders relating to abuse. A policy issue is whether the key information is reaching the sheriff in all cases.

Half of all respondents to the consultation were supportive of change here, to impose a specific duty on the court. [50] The Government's view is that existing methods for gathering information are sufficient. For example, the court might ask a child welfare reporter (where one is appointed to the case) to obtain relevant information for the court. [51]

The Scottish Government also consulted on whether **PRRs should be removed from a person by a criminal court if they have been convicted of a serious criminal offence**. [52] The consultation produced mixed views on this. [53] The Government went with the most popular response, which was that this issue should remain a matter for the civil courts. [53]

The consultation also consulted on **integrated domestic abuse courts** in Scotland, considering both the criminal and family law aspects of a case. [54] The Government has published research on the topic, [55] but there is no relevant proposal in the Bill. The Strategy says that "in due course" the Government will produce a general discussion paper "for key stakeholders" on improving interaction between criminal and civil courts. [32]

The Government has also said it will produce a policy paper for the Family Law Committee of the Scottish Civil Justice Council on domestic abuse. [56]

Key policy proposals in the Bill

This part of the briefing considers the main policy proposals in the Bill. It has not always been possible to consider the proposals in the order they appear in the Bill.

Participation of the child in decisions affecting them (sections 1-3 and section 15)

Background

A key principle of the 1995 Act is that a court, when reaching a decision, must give a child an opportunity to express their views (if he or she wants to) and "have regard to" any views expressed. This doesn't mean the court has to follow the views expressed - the welfare of the child may require a different approach.

The court can take account of the child's age and maturity, and a child who is aged 12 or over is **presumed** to be mature enough to form a view. This creates an expectation that most children in this age bracket are able to express a view, although it was never intended to prevent younger children from doing so. [11]

Similar requirements regarding the child's views can be found in the 1995 Act for when parents are reaching major decisions at home (section 6), as well as in the Adoption and Children (Scotland) Act 2007 ('the 2007 Act') and the Children's Hearings (Scotland) Act 2011 ('the 2011 Act').

The 1995 Act does not set out **how** a child is to express his or her views. In practice, approaches for section 11 cases include: [57] [10]

- the child expressing a view in writing through completion of the Form F9;

- the child welfare reporter writing a report for the court;
- the child speaking to the sheriff directly;
- the child speaking to a trusted adult in their life, who then gives the court information; and
- the child instructing their own solicitor who can, for example, help the child to complete the Form F9 or represent his or her views in court.

Research suggests that a minority of children express their views directly to sheriffs or instruct a solicitor themselves. Most speak to a child welfare reporter or complete the Form F9. [10] [13]

One of the ongoing issues associated with the Form F9 is how to ensure that the child receives the form in the post (without it being intercepted by a parent). Another issue is how to create the circumstances where the child is able to fill it out, without being unduly influenced by a parent's views. **27** [58]

There is currently no requirement in the 1995 Act **for the court's decision to be explained a child**. In a couple of recent, well-publicised cases, sheriffs have taken steps on their own initiative, by way of **a letter from the sheriff to the child**. [59] However, there is no established practice in this area.

What the Bill says

Sections 1 to 3 of the Bill would remove the presumption that a child aged 12 or over is considered mature enough to give their views. This presumption removed from relevant provisions of the 1995 Act, as well as from the 2007 Act and the 2011 Act.

The Bill keeps an existing presumption that a child of 12 years and over is sufficiently mature enough **to instruct his or her own solicitor.**

Section 15 of the Bill says the court must explain to (most) children (most) decisions made under section 11 of the 1995 Act. For example, it doesn't have to explain decisions relating to the next step of a court's procedure in an individual case. A court also does not have to explain a decision where a child is **not capable of understanding it** or it is **not in the best interests of the child.**

A child welfare reporter can explain a decision on behalf of the court. The Financial Memorandum (at para 44) suggests that **the vast majority of decisions** (90%) will be explained to children in this way. [4]

Policy analysis

Removing the 12+ presumption

Forty one per cent of respondents to the Government's consultation supported removing the current 12+ presumption and not replacing it. **Twenty per cent** thought the

presumption should stay and **15%** supported replacing it with a new presumption referring to a different age. (24% did not answer the question.) [60]

Those supporting the current presumption were worried that, without it, children's views would not be sought by the court. At the very least, these respondents thought that there might be increased court assessments of the capacity of individual children (over 12) to give views. [61]

On the other hand, various organisations supported the removal of the 12+ presumption as improving compliance with Article 12 of the UNCRC. [62] The Barnes Macfarlane report shares this view. [1] Article 12 requires that a child (who is capable) can express his or her views freely in all decisions affecting him or her. Article 12 does not contain a (minimum) age limit on the exercise of the right and the UN Committee guidance expressly discourages this (para 21). [63]

The Bill says the court does **not** have to take into account a child's view in various circumstances, including when the child is **not capable** of forming a view. However, some of those commenting on the Bill so far (including various academics and CLAN Childlaw) have questioned the lack of detail in the Bill here. In particular they ask, how, where and when will any assessment of a child's capacity take place? [57] [10]

Children's participation in practice

At the Government's 2016 summit, participants argued that some of the professionals currently involved in taking a child's views do not have the skills and training to interview children. [20]

In addition, some early commentators on the Bill have argued that more could have been done in the Bill to reflect the ethos of Article 12. [57] [1] [10] Key points from the UN Committee guidance on Article 12 include:

- There should be an **enabling, encouraging and child-friendly environment** for a court hearing (para 34).
- If a child wants to express his or her views, it is usually the child who should decide **how** this should happen (para 35).
- Wherever possible, the child must be given an opportunity to be **directly heard** in court proceedings, rather than speaking through an intermediary (para 36).
- Children's participation should be considered at **all stages** of the court process (paras 40-47).

One option is to introduce **child support workers** nationwide, to help children participate throughout the court process. [57] [1] This proposal was consulted upon by the Government but does not feature in the Bill. [64] The Strategy says the Government is still working on this area, [65] although it remains unclear if and when this will be implemented. [57] The 2018 consultation noted "significant cost implications." [66]

Another possibility would be to set out in statute i) what the recognised methods for expressing children's views are; and ii) that it is **children**, not sheriffs, who have the choice over which method is used. Without this, some commentators argue, children might not know what they can do and too little will change from current practices. [57] [1] The Policy Memorandum to the Bill says that the Government is against letting children choose. Its reasons include that it might cause delay in court cases and the method chosen may not be "practicable" (paras 21, 36 and 38). [2]

Respondents to the Scottish Government's consultations made various suggestions on other ways the child could put his or her views **directly to the court**. These included having the child prepare a letter or email, a video or audio recording for the court, or make use of specially designed apps or online platforms. [67]

Welfare of the child - statutory factors (sections 1 and 12)

The Bill would make changes to the statutory factors which the court must take into account when assessing the welfare of the child in the context of a parenting dispute.

Background

When a court is reaching a decision under section 11 of the 1995 Act, the paramount consideration is the **welfare of the child**, sometimes referred to as **best interests of the child**.

The various factors which the courts consider in assessing this were first set out, not in legislation, but **in case law**, i.e. the law developed by the decisions of judges in individual cases. Section 24 of the 2006 Act amended the law to to put **two factors** on the face of the 1995 Act:

- Section 11(7A-7C) requires the court, when assessing the welfare of the child, to consider the need to protect **children from abuse or the risk of abuse**. 'Abuse' is defined widely enough to include abuse of a parent.
- Section 11(7D-7E) also says that, when the court is deciding whether to make a court order, it needs to consider **the prospect of parental cooperation** before making the order.

Since 2006, Scotland has what has been been referred to as a **partial statutory checklist**. [68] Many of the factors the courts take into account remain in case law.

There has been strong policy debate about how successful the amended section 11 has been. [19] One leading academic (Professor Elaine Sutherland) has questioned whether it is desirable to have a partial statutory checklist. [68]

What the Bill says

Under **section 1 of the Bill**, the two existing statutory factors added by the 2006 Act would be retained (i.e. **protection from abuse** and **parental co-operation**).

Section 12 of the Bill would introduce **two other statutory factors** which must be considered by the court. These are:

- the effect that a court order might have on the involvement of the child's parent in bringing the child up; and
- the effect that a court order might have on the child's important relationships with other people.

These factors pick up themes from ongoing policy debates, and from existing case law, on **shared parenting** and the **role of the wider family** in the child's life.

Policy analysis

Should there be a statutory checklist?

Forty per cent of respondents to the Government's 2018 consultation supported a statutory checklist and 20% did not support it. (40% provided no response). [69]

Today, a number of other legal systems, such as those of England and Wales, Australia, New Zealand and Canada, have statutory checklists appearing in modern legislation. Some of these modern checklists are considerably more detailed than what is proposed for Scotland. [9]

What should be in the statutory checklist?

When the statutory factors were last amended in 2006, there was a significant policy debate on whether the right balance was being struck between:

- the **promotion of shared parenting**, i.e. parenting by both parents, in suitable cases; and
- the **protection of parents and children**, in situations where they might be at risk.

Such a debate is likely to feature during parliamentary scrutiny of this Bill.

The restated 2006 provisions might also be assessed in the context of **subsequent legislative developments**. For example, the new definition of abusive behaviour found in section 1 of the the Domestic Abuse (Scotland) Act 2018, with its emphasis on psychological harm and coercive control. The Scottish Government did consult on whether section 11 should include a specific reference to domestic abuse [70] but no relevant proposal appears in the Bill.

A key point is that, even should the Bill become law, **some factors the Scottish courts currently take into account will remain in case law**. For example, although they don't feature in the Bill, the Policy Memorandum (at para 148) says the courts will continue to

take into account the **age, sex and background of the child**. [2] These characteristics are aspects of statutory checklists in several other countries. [9]

The Scottish Government also consulted on the inclusion of a specific factor relating to **parental alienation** [71] but ultimately decided against it. This term is sometimes used when there is evidence of one parent unreasonably trying to influence the child against another parent.

In addition, statutory checklists from Australia, Canada and New Zealand don't just mention abuse but specifically require the courts to have regard to **other relevant criminal or civil court proceedings** relating to abuse. [9] The aim to improve the consistency between courts' decisions in family cases and their decisions in other (civil and criminal) cases. The Scottish Government consulted on a similar change here, but no specific proposal has emerged. [72]

Like the Bill, several checklists used by other countries refer to **the role of the extended family** in the child's life. In several other countries, specific relatives are included as examples in the checklists. **Siblings** (Canada) and **grandparents** (Canada; Australia) appear in this regard. [9] The Bill simply refers to the child's "important relationships" with other people. At Stage 1 of the Bill, the absence of a specific (Scottish) reference to siblings and grandparents might be explored, with the aim of highlighting any impact this would have in practice.

Delay in disputes affecting children (section 21)

Delay in court cases affecting children is a significant policy issue.

Background

Research was carried out for the Scottish Government on this topic in 2010. [13] **Thirty nine per cent of cases it examined** were still active after 18 months. Many litigants surveyed for the research were concerned about "an apparently open-ended sequence of hearings." In 49% of the cases there had been **three or more** child welfare hearings, and in 21% there had been **six or more** such hearings. [13]

More recent data from the Scottish Legal Aid Board (highlighted in the 2018 consultation) shows the timings involved in court cases where parents received legal aid: [73]

Cases relating to contact and residence where litigants received legal aid

	Contact (%)	Residence (%)	Total (%)
Up to six months	15	21	17
6-12 months	24	30	26
12-18 months	17	17	17
18-24 months	13	10	12
2-3 years	17	12	15
3-4 years	7	5	7
4-5 years	4	2	3
Over five years	3	2	3

Senior judges have also expressed frustration with delays in family cases in the sheriff courts. In an important case, heard on appeal in 2017, the Court of Session in Edinburgh said:

> " The time taken to resolve disputes about contact should be measured **not in years but in weeks or, at most, months** [emphasis added]"
>
> SM v CM, 2017[18]

What the Bill says

Following the approach in England and Wales, **section 21 of the Bill** says that, when considering a child's welfare, the court is to "have regard to" any risk of prejudice to the child's welfare that delay in proceedings would pose.

Section 21 does not specify **the length of delay** that would have a negative effect on the child's welfare. The Explanatory Notes to the Bill (at para 85) say this is because this would vary from case to case. [3]

Section 21 would apply to cases under section 11 of the 1995 Act. It would also apply where a court or an adoption agency is coming to a decision relating to **the adoption of a child** or where a local authority is applying for a **permanence order**. With a permanence order, the local authority wants control over where the child lives transferred from the parent(s) to the local authority.

Policy analysis

The proposal to tackle unnecessary delays in such cases, now embodied in section 21 of the Bill received **majority support** (**54%**) from respondents to the Scottish Government's consultation. [74]

One policy issue for further consideration might be the limitations of what section 21 can achieve on its own.

Case management

Arguably, in tackling delays, there is also an important role for detailed rules on **case management**. Case management involves the pace of litigation being managed by sheriffs and/or fixed timescales, as opposed to being determined by litigants and their solicitors.

Some relevant changes have already been made to the existing court rules, but these are only for the small minority of cases which go to proof (a full hearing on the evidence). [75] For other cases, work has been ongoing in the Scottish Civil Justice Council **since 2017**, with the aim of proposing **additional court rules on case management.** [76]

The Council's recommendations to the Lord President on new rules are not likely to be finalised until **Spring 2020**, at the earliest. [77] At present, not enough details about the content of the proposed rules are available to assess their likely impact. It might have been easier to evaluate the merits of section 21 of the Bill if the finalised (or near finalised) court rules were available.

Exploring the causes of delays

Another important point is that there are a range of reasons for delays in family cases.

For example, at the Government's 2016 summit, participants said that some of the delay occurred **before** the court action was raised, caused by **delays in parents obtaining legal aid**. [20] The Government has just consulted on the future of legal aid in Scotland and much there remains to be decided. [78]

Summit participants also suggested that some of the delays in family cases were caused by **a lack of court time, with criminal cases being prioritised**. [20] As mentioned earlier, how sheriffs are deployed to individual cases, as well as the possible need for judicial specialisation, are issues for the courts.

Breaches of court orders (section 16)

Background

A key policy issue is how the courts should respond to the situation where one parent disobeys ('breaches') a court order in favour of another parent (or relative).

One remedy where a parent breaches a court order is for the person affected by the breach to ask the court to find the offending parent in **contempt of court**. In the sheriff court contempt of court has the maximum penalty of three months' imprisonment, a fine up to £2,500 or both. [79] Imprisonment is used as a last resort. The court can also **vary the existing court orders** relating to residence and contact. In relation to any proposed variation of the court orders, the welfare of the child remains the paramount consideration.

The reasons for breaches of court orders can be complex. Sometimes contact is being resisted because a parent has legitimate fears for a child's safety. [80] [81]

What the Bill says

When someone fails to follow a court order, section 16 of the Bill would impose a new duty on the court to investigate why the order has not been complied with.

Section 16 says the investigation can be done either by the court itself or by the court appointing a child welfare reporter to investigate.

Policy analysis

Stage 1 scrutiny of the Bill is likely to shed light on how much the new duty would build on, or alter, existing court practices.

In its 2018 consultation, the Scottish Government suggested other approaches to reform the law on breaches of court orders. For example, **alternative sanctions**, such as unpaid work, attending a parenting class or paying compensation to the person affected by the breach. [82] Views were mixed in consultation responses [83] and no proposal consulted on appears in the Bill.

In its Strategy, the Government also refers to **the possible use of mediation** in this context. However, it highlights the difficulties this presents in the context of domestic abuse cases. [84]

During the parliamentary passage of what became the 2006 Act, the then Scottish Executive announced a **Family Contact Facilitator pilot project**. The idea was that the facilitator would help families resolve issues around contact (where there was a breach or risk of breach). [85]

A similar role is played by **family consultants in Australia**. They are social workers or psychologists, who also report to the court on the views of, and best interests of, the child. The Australian Law Reform Commission recently recommended strengthening their role. For example, giving them powers to **apply to the court directly** for enforcement measures in a particular case, rather than the parent having to do it. [86]

For the Scottish project, the then Scottish Executive got as far as running a procurement exercise. However, there was no tender which met the specifications and so pilot did not go ahead. [87] The Government did not consult on this issue directly in 2018.

Vulnerable people in the court room (sections 4-7)

Sections 4-7 of the Bill aim to improve the court room experience experience of vulnerable people.

Background

Special measures are practical things a court does to help vulnerable people appear in court with as little fear and distress as possible.

The Vulnerable Witness (Scotland) Act 2004 ('the 2004 Act') sets out special measures for civil cases, including family cases. The 2004 Act covers the situation where witnesses give evidence under oath and are cross-examined on it. Other court hearings, **including child welfare hearings**, are not covered.

Current special measures for vulnerable witnesses in civil cases include giving evidence by video link, from behind a screen or with a supportive person sitting next to the witness.

Establishing whether someone is a vulnerable witness in a civil case involves applying a statutory test which has a number of different elements to it. In contrast, in criminal cases, certain categories of witnesses are **deemed vulnerable witnesses**. For example, those who are alleged victims of sexual offences or offences relating to domestic abuse.

It is thought that **around 10-15% of litigants in family cases** represent themselves in the courtroom (Policy Memorandum, para 305). [2] The future of the legal aid system in Scotland (recently consulted on) is likely to affect trends in this area. [78]

What the Bill says

Deemed vulnerable witnesses and the ban on personal conduct of a case

Sections 4 to 6 of the Bill concentrate on **vulnerable witnesses**, i.e. those who are giving evidence in court and being cross-examined on it. These provisions would amend the 2004 Act.

The provisions cover: i) parenting disputes under section 11 of the 1995 Act; and ii) specified court proceedings under the children's hearing system. For ii), the Scottish Government's focus is on **applications to the sheriff court** under the children's hearing system, **not** cases before a children's hearing itself.

The sheriff can decide whether grounds for referral to the children's hearing system are established, where this is disputed or not understood. The sheriff also has a role in relation to appeals from children's hearings.

Like the legislation applicable to criminal cases, **section 4 of the Bill** says that, for both i) and ii), a person would be **deemed a vulnerable witness**, where specified circumstances exist. For both i) and ii), a **ban on personal examination or cross-examination** of a vulnerable witness would be added to the 2004 Act as a possible special measure.

The Bill then goes on to set out the circumstances in which the court is to **presume** there should be a ban on personal conduct of a case, although evidence can overturn this presumption in an individual case, and the circumstances where there **must** be a ban. Overall, there is a wider ban on personal conduct of cases under the children's hearing system, compared to cases under the 1995 Act.

The detail is summarised in the table below. Note that, in this table, the term **party to the proceedings** refers to a person on either side of the court case.

What sections 4-6 of the Bill do: the detail

Type of case	Description
Section 11 case	A person will be **deemed to be a vulnerable witness** if the person is: (i) protected by a type of court order known as a **civil protection order**, prohibiting certain conduct towards the person by a party to the proceedings; or (ii) a party to the proceedings has been convicted of committing, or is being prosecuted for committing, certain offences against the witness (including domestic abuse and sexual offences). Where a person is deemed to be a vulnerable witness and the party in question intend to examine or cross-examine the witness, then there will be a **presumption** that prohibiting that party from conducting their own case is the most appropriate special measure. This presumption can be rebutted in certain circumstances, for example, where applying the prohibition would give rise to a significant risk of prejudice to the fairness of the proceedings. Furthermore, that risk significantly outweighs any risk of prejudice to the interests of the witness if the special measure is not applied.
Children's hearing case	A person will be **deemed to be a vulnerable witness** if it is **alleged** in the statement of grounds that the person is a victim of certain offences, including domestic abuse and sexual offences. Where a person is: (i) deemed to be a vulnerable witness because of conduct perpetrated or alleged to have been perpetrated by a party to the proceedings; and (ii) that party intends to examine or cross-examine the witness; then the court **must** prohibit that party from personally conducting their case. The Bill also introduces a **presumption** that prohibiting **every** party who intends to examine or cross-examine a vulnerable witness, or deemed vulnerable witness, from personally conducting their own case is the most appropriate special measure. As above, this presumption can be rebutted in certain circumstances.

Obtaining a solicitor when the ban is in place

Where someone has been banned from personally conducting their case, they may appoint a solicitor themselves, either privately funded or through applying in the usual way for legal aid.

If the person **fails to appoint a solicitor**, **section 4 of the Bill** says that the court must appoint a solicitor to conduct this person's case. This **must** be of a solicitor from a register kept for this purpose. The solicitor will not be paid for by the person concerned. **Section 6 of the Bill** requires Scottish Ministers, by way of regulations, to establish and maintain the required register of solicitors.

Vulnerable litigants in other types of court hearing

Section 7 of the Bill would allow the sheriff court to order use of special measures in court hearings under section 11 of the 1995 Act where formal evidence is not being taken. This includes in **child welfare hearings**. This is a key policy development.

Possible special measures include the use of a live TV link, speaking from behind a screen or with a supportive person sitting next to the litigant.

No category of person is deemed to be a vulnerable party to proceedings in this context. The test for establishing whether someone is vulnerable in an individual case has a number of elements to it, including the characteristics of that person; the behaviour of the other litigant (and his or her family and associates) and what the particular hearing will cover.

Policy analysis

There was **majority support** for the vulnerable litigant proposals among those who answered the relevant questions on consultation. [88]

One policy issue which arises is the best way of ensuring a solicitor is available to someone who is subject to the ban on personal cross-examination.

In their consultation, the Scottish Government proposed making **automatic legal aid** available to such individuals (a form of legal aid where a person's financial resources are not relevant). [89] The individual would then be able to choose between any of the legal aid solicitors in private practice who were willing to take on the case.

The Scottish Government is now concerned about the possibility that no solicitor might fall into that category in an individual instance, hence the register of solicitors (Policy Memorandum, para 62). [2] A combination of the two methods might be possible (i.e. automatic legal aid as the starting point with a register to fall back on) but this is not the approach taken in the Bill.

Child welfare reporters (and curators ad litem)(sections 8 and 13)

Sections 8 and 13 of the Bill propose statutory regulation of two court-appointed officials who support the operation of the 1995 Act - **child welfare reporters** and **curators ad litem**.

Much of the detail of the proposed regulation will be left to future secondary legislation. The Government expects these new regulatory regimes to be operational by **April 2023**. [4] [51]

Background

How the system works

As noted earlier, **child welfare reporters** (CWRs) report on the views of the child, or the welfare of the child in cases under section 11 of the 1995 Act.

Curators ad litem (curators) safeguard and promote the interests of someone who lacks capacity, such as a child. They are used in section 11 cases but also in other types of family case, such as adoption cases. Their role is similar to children's lawyers in some other countries but they do not take instructions directly from the child.

There are around 400 CWRs in Scotland, over 90% of whom are solicitors. [90] Each of the six sheriffdoms in Scotland has its own list of CWRs and a sheriff in an individual case decides which CWR to use. Some CWRs may perform their role relatively infrequently (e.g. four times a year). [91]

Curators are solicitors. How they are selected in cases under section 11 (of the 1995 Act) varies across Scotland. Usually, they are appointed from the lists of child welfare reporters or from lists (panels) held by each local authority. In some parts of the country, curators are used to write reports instead of CWRs.

The fees paid to CWRs and curators in section 11 cases are funded by legal aid, where litigants qualify for this, or privately by litigants.

Issues with the system

For at least a decade, [15] it has been recognised that there are a variety of issues associated with CWRs and curators. Some work has been done by the Scottish Government (and others), but outstanding issues relating to CWRs and curators include: [92] [93]

- a lack of standardised requirements relating to their suitability for appointment (e.g. the years of experience required);
- that there are no formal training requirements, either initial or ongoing ones;
- the appointment of CWRs/curators is not time limited;
- the use of CWRs/curators across Scotland varies considerably and it seems there is no consistent pattern to their use; and
- for child welfare reports, there is marked variability in the fees charged.

On the last bullet point, the range is thought to be from **under £500** to in **excess of £3,000 for reports** funded by the Scottish Legal Aid Board (Financial Memorandum, paras 36 and 40). [4]

What the Bill says

Section 8 of the Bill says Scottish Ministers must establish and maintain a register of CWRs. **Section 13 of the Bill** makes equivalent provision for a separate register of curators. The registers might be run in-house by the Government or contracted out to a third party. The sections also give Scottish Ministers the power, through regulations, to further regulate CWRs and curators. The aim here is to address the outstanding issues already discussed.

The Policy Memorandum (at para 81) says the Government will now fund all fees paid to CWRs or curators in section 11 cases, rather than them being funded by legal aid or by litigants themselves. [2]

In 2017/18, the Scottish Legal Aid Board funded approximately **1,600 child welfare reports** for contact and residence cases at a **total cost of £3.3m million**. [94]

As a broad estimate it is thought there are likely to around **160 reports** privately funded annually. No official data is kept on the costs per report. Exceptionally, costs can be up to £10,000 per report. [94] [95]

The Government says it does not expect demand for child welfare reports to rise, although it doesn't provide further detail on why this might be the case. [96]

Policy analysis

Just over half of respondents to the Scottish Government consultation felt that there needed to be some type of change to the current arrangements. Views differed somewhat on what those changes should be. For example, some questioned whether lawyers had the appropriate skill set to interview children. [97]

Topics which might be explored at Stage 1 of the Bill include how **fee rates** will be set for CWRs and curators and the balance that should be struck between i) the objective of delivering value for the public purse; compared to ii) the objective of attracting good quality candidates to perform an important function.

Another issue is **whether the professional backgrounds of CWRs should be widened** to include, for example, social workers or psychologists. The Government is keen to encourage this (Policy Memorandum, para 89,) [2] yet all existing CWRs will be given the opportunity, at least, to apply for reappointment (Financial Memorandum, para 21). [4] The significance of this issue long-term may depend, in part, on whether i) child support workers are introduced nationally at a future date; and ii) whether they will replace the CWR role or exist alongside it. (Schemes for supporting children are in place in some parts of Scotland and the relevant professionals tend to have a social work or child development background.)

Section 13 would require that courts ‘only appoint’ curators where necessary, ‘give reasons for that appointment’ and ‘reassess the appointment every 6 months’. The Barnes Macfarlane report [10] (at p 70) says the effect of section 13, were it enacted, is likely to be

(i) a reduction in the number of curator appointments made in family cases, and (ii) a lack of ongoing involvement of curators in family cases. If the role of curators is to be reduced, the Government may have the opportunity to expand on the reasons for this at Stage 1 of the Bill.

Child contact centres (section 9)

The Bill proposes to regulate child contact centres, with the new regime to be operational by **April 2023**. [4]

Background

Relationships Scotland has 42 child contact centres across Scotland. [98] In addition, there are three independent centres in Aberdeen, Inverclyde, and Glasgow.

Families can be referred to child contact centres from the sheriff court, under a **contact order**. They can also be referred from other sources, such as the parents' solicitors, the NHS or from social work departments. Some families 'self-refer'.

Two types of contact are offered at contact centres. **Supported contact** is where there is no significant risk to the child. Contact centres only record that the contact took place and not details of how it went. **Supervised contact** takes place in the constant presence of an independent person, with the aim of ensuring the safety of those involved. Some centres also provide **handover support**, which usually means parents need not see each other when a child is dropped off or collected. [10] Contact centres are run by a mixture of paid staff and volunteers.

As noted earlier, in 2017, there was a high-profile public petition in the Scottish Parliament which argued strongly for a review of the current system of child contact centres to ensure that the rights, safety and welfare of children are paramount. [80]

What the Bill says

Section 9 of the Bill gives Scottish Ministers the power to regulate the provision of contact centres. This would include the power to set minimum standards in relation to training of staff and accommodation for contact centres. Section 9 also gives Scottish Ministers the power to **appoint a body** to oversee these standards and report on them on a regular basis.

Section 9 says that **where a court orders contact** under section 11, this must be at a regulated centre. Referrals to contact centre from other sources, for example solicitors, will **not** have to be to a registered centre.

Policy analysis

Sixty six per cent of respondents to the Scottish Government's 2018 consultation supported the regulation of contact centres, with only 6% opposing regulation. (The remaining 28% did not provide a response). [99] Relationships Scotland (RS) supports statutory regulation. [98]

Notwithstanding broad support for the regulation of contact centres, one concern expressed by respondents was the need to ensure sufficient funding and prevent closures of contact centre services (Policy Memorandum, para 102).

The Financial Memorandum (para 113 and 124) sets out the additional costs to contact centres and any body appointed to oversee their regulation. [4] However, it does not explain whether additional funding will be provided by the Scottish Government to meet those costs.

RS has received over £6.5 million over the last four years from the Scottish Government. (This is for RS services generally, including their network of mediation services, and not just for contact centres.) [100]

The Big Lottery has provided **around £750,000** in funding annually over the past six years for RS's child contact centres. **This funding will come to an end on 31 March 2020**. RS is currently in discussion with Scottish Ministers regarding potential future funding arrangements for their centres. [98] [100] The possible impact of the current funding situation on RS's capacity to i) continue to operate all existing contact centres; and ii) absorb the costs of statutory regulation, is likely to be explored at Stage 1 of the Bill's parliamentary scrutiny.

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