

Citizen Participation and Public Petitions Committee
Wednesday 24 September 2025
14th Meeting, 2025 (Session 6)

PE2163: Develop guidance on child contact domestic abuse

Introduction

Petitioner Alistair Scott

Petition summary Calling on the Scottish Parliament to urge the Scottish Government to work with partners to develop guidance on the interaction between child contact dispute processes and the Domestic Abuse (Scotland) Act 2018.

Webpage <https://petitions.parliament.scot/petitions/PE2163>

1. This is a new petition that was lodged on 13 May 2025.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. Every petition collects signatures while it remains under consideration. At the time of writing, 71 signatures have been received on this petition.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered.
6. The Committee has received submissions from the Scottish Government and the Petitioner which are set out in **Annexe C** of this paper.

Action

7. The Committee is invited to consider what action it wishes to take.

Clerks to the Committee
September 2025

Annexe A: Summary of petition

PE2163: Develop guidance on child contact domestic abuse

Petitioner

Alastair Scott

Date Lodged

13 May 2025

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to work with partners to develop guidance on the interaction between child contact dispute processes and the Domestic Abuse (Scotland) Act 2018.

Background information

I experienced domestic abuse through child contact processes from an ex-partner but Police Scotland did not regard any of it as abuse.

Non-resident parents post-separation routinely need to fight in the courts to see their children. Abusive and controlling parents have no desire to use mediation to reach an agreement and will use malicious allegations and the court process to frustrate the non-resident parent. These parents often suffer significant mental health and financial problems as a result.

Annexe B: SPICe briefing on PE2163



Overview

Civil law, which includes family law, governs relationships between individuals and helps resolve disputes, through the civil courts if necessary. It does not criminalise behaviour: that role belongs to **criminal law**, which deals with prosecuting offences defined as crimes.

Sometimes, a person's actions may be relevant under both civil and criminal law. Very broadly, the petitioner wants guidance to be created to manage one situation where such an overlap might occur.

Criminal law: domestic abuse

The petitioner refers to the [Domestic Abuse \(Scotland\) Act 2018](#) ('the 2018 Act'). Part 1 of the 2018 Act created a new offence of domestic abuse against a partner or ex-partner. The aim was to help enable the effective prosecution of behaviour, taking place over a period of time, which is physically and/or psychologically abusive – including coercive and controlling behaviour. It provided that the new offence may be aggravated where a child is involved (e.g. where the child is cared for by the victim of domestic abuse).

The creation of the new offence was not intended to wholly replace the use of other more general offences in the prosecution of domestic abuse (e.g. assault or threatening and abusive behaviour). Those offences are still used in conjunction with the domestic abuse aggravator provided for in section 1 of the [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#).

Family law: child contact cases

Separately, Part 1 of the [Children \(Scotland\) Act 1995](#) ('the 1995 Act') makes provision for the resolution of disputes between parents through the civil courts.

First, Part 1 of the 1995 Act provides for a range of parental responsibilities and rights ('PRRs') in respect of all children (under 16s) living in Scotland.

For example, PRRs include the right to have the child live with a person having PRRs (**residence**). Furthermore, where the child does not live with that person, there is both the right and the responsibility to have **contact** with that child. Child contact is the petitioner's particular area of interest.

Section 11 of the 1995 Act gives the civil court various powers to decide an issue in a dispute about PRRs, including about residence and contact.

Section 11 says the court should follow certain key principles when making decisions. The welfare of the child is the paramount consideration, that is, the most important and overriding one. The child must be given an opportunity to express their views. The court must consider, although not necessarily follow, any views expressed by the child.

[The Family Law \(Scotland\) Act 2006](#) ('the 2006 Act') also amended section 11 of the 1995 Act to require the courts to have regard in particular to:

- the need to protect the child from actual or possible abuse
- the effects of such abuse on children
- the ability of the abuser to care for the child
- the effects of abuse on a person's capacity to fulfil PRRs.

Abuse is defined as including abuse of a person other than the child. Accordingly, the situation where one parent is abusing (or has abused) the other, that is, domestic abuse, is included.

The 2006 Act also amended the 1995 Act to require the courts, when considering whether to make an order which would require **relevant persons** to co-operate with each other, to consider whether it would be appropriate to make the order. Relevant persons are parents or other individuals with PRRs.

The [Children \(Scotland\) Act 2020](#) (not yet in force) restates, and adds to, the statutory factors the court must consider when deciding an individual case about PRRs. In particular, it says the court should look at the impact of any court orders on the child's relationships with a) their parents; and b) other important people in the child's life.

The general principles in the legislation have also been developed by the decisions of the courts over the years (**case law**). Accordingly, for example, in the context of what constitutes the welfare of the child, the courts will consider individual factors not explicitly set out in legislation.

Court procedure, practice notes and training

The detailed court procedure to be followed in civil cases, including family cases, is generally set out in **court rules**. The [Court of Session](#) makes these rules in a form of secondary legislation known as 'Acts of Sederunt'. The [Scottish Civil Justice Council](#) has a key role in drafting rules for the Court of Session to consider.

[Sheriffs principal](#), senior judges in the local sheriff courts, and [the Lord President](#), the head of the Scottish judiciary, can issue **practice notes**. [These can be found on the website of the Scottish Courts and Tribunal Service](#). Sometimes practice notes are issued affecting all sheriff courts in Scotland.

The [Judicial Institute for Scotland](#) provides education for Scottish judges.

False allegations of criminality

Finally, as the petitioner refers to ‘malicious allegations’, it may be relevant to note the existence of both criminal law and civil law dealing with a false allegation of criminality. The separate [SPICe briefing](#) for petition [PE2047](#) provides some information in this area.

Sarah Harvie-Clark
Senior Researcher (Civil Law), SPICe
29 May 2025

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

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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Annexe C: Written submissions

Scottish Government written submission, 13 June 2025

PE2163/A: Develop guidance on child contact domestic abuse

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

The Scottish Government does not consider the specific ask of the petition to be practical. The petition does not make clear who such guidance would be directed towards, nor what it would be intended to achieve. The Scottish Government does not issue guidance to the courts, given that the courts are independent of the Government.

The question of when and in what circumstances behaviour amounts to an offence under the [Domestic Abuse \(Scotland\) Act 2018](#) is, in the first instance, an operational matter for Police Scotland, and the Scottish Government would not seek to develop guidance in that regard. It is open to individuals to raise a complaint with Police Scotland if they feel that they have not received the standard of service expected.

When parents separate, it is better if they can agree about what is best for their child without the involvement of the courts. However, in some occasions and for many reasons (including in cases of domestic abuse), asking a court to make a decision on what is best for the child when parents separate is unavoidable.

Alternative dispute resolution, such as mediation, can play a valuable role in helping to resolve family disputes out of court. The Scottish Government gives funding to Relationships Scotland who provide family mediation services.

However, mediation may not be appropriate in all cases. Scottish Women's Aid note that mediation should not be used when there has been domestic abuse, given the power imbalance.

The key legislation in relation to contact, residence and Parental Responsibilities and Rights (PRRs) is the [Children \(Scotland\) Act 1995](#) (the 1995 Act), and orders on these issues are made under [section 11](#) of this Act. In deciding whether to make such an order – and if so, what order to make – the welfare of the child must be the court's paramount consideration. It must not make any order unless it considers it would be better for the child that an order be made than no order be made at all. Before making a decision on a contact order, the 1995 Act provides that the court shall have regard to the need to protect the child from abuse (or the risk of abuse).

This includes abuse of a person other than the child, and the effect that any abuse (or risk of any abuse) might have on another individual who has PRRs in discharging their responsibilities. The definition of abuse in this context includes domestic abuse.

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?

The Scottish Government is not taking action to directly address the ask of the petition. However, there is work being taken forward which may be relevant.

There are provisions in the [Children \(Scotland\) Act 2020](#) (the 2020 Act), which are not yet implemented, that will help domestic abuse victims when child contact cases are taken to court. In particular, it is common in contact cases for the court to appoint a Child Welfare Reporter to gather the views of the child or to investigate and report on the child's best interests.

[Section 9](#) of the 2020 Act places a duty on Scottish Ministers to establish and maintain a register of these Reporters. Once this provision is implemented, a court will only be able to appoint a Reporter who is included on the register. Individuals will be eligible to apply to be on the register if they meet certain requirements in relation to training, qualifications and experience. One of the required skills will be an understanding of domestic abuse. The Scottish Government has set up a Working Group on Child Welfare Reporters and one of the key aims of this Group is to consider what needs to be done to implement the register.

The Scottish Government is also preparing guidance for adults and children on what it is like to go to court in family cases. This will cover areas such as the main principles of section 11 of the 1995 Act, special measures to protect vulnerable witnesses, sources of support and alternatives to court.

Family Law Unit

Petitioner written submission, 8 September 2025

PE2163/B Develop guidance on child contact domestic abuse

My petition is aimed at creating an open and frank discussion around the issues many parents who have experienced domestic abuse have in relation to maintaining a relationship with their children.

Many parents who have faced domestic abuse and left that relationship but had to leave their children behind find it difficult to maintain a relationship with their children. They often find their abuser is hostile to the very idea of them maintaining a relationship with their children and will continue to be abusive and controlling. The legal services both civil and criminal which we would reasonably expect to offer a solution to the issues we face are often ineffective and more often used against us to cause further harm. I shall attempt in this submission to outline how the legal services are ineffective and how that impacts on both parents and children.

Police Scotland and the Crown Office and Procurator Fiscal Service (COPFS) see domestic abuse as:

"Any form of physical, verbal, sexual, psychological or financial abuse which might amount to criminal conduct, and which takes place within the context of a relationship."

The proposal within the Children (Scotland) Act 2020 for the court to appoint a Child Welfare Reporter to gather the views of the child or to investigate and report on the child's best interests. The Scottish Government is surely aware that the courts already appoint qualified persons to do this. It may be worth noting that there is evidence to suggest that a child's opinion especially in high conflict cases may not be their true opinion. Research such as that carried out by Dr Kirk Weir and published on the Law Society of Scotland's website in December 2011 outlines how in many cases the child's opinion can be manipulated.

The Scottish Government has acknowledged that court proceedings can be both costly and lengthy and should be avoided where possible. Many parents who are forced to use the courts find that the costs are prohibitive. Many parents get heavily into debt whilst other resort to representing ourselves. There has been a previous petition which sought to allow universal legal aid for all involved in child welfare cases. If you compare published data for the number of family law cases heard in Scotland annually with the number of grants for legal aid for family law cases (obtained from a freedom of information request to SLAB), you will find that it is nowhere near the 80% the Scottish Government state are eligible.

To avoid court the Scottish Government and most family law solicitors would advise going to mediation. The Scottish Government has indicated that it intends to as part of the Children (Scotland) Act 2020 to introduce mandatory dispute resolution. I'm not sure if I understand how this would help abused parents who are trying to see their children. It would not be suitable on the grounds of the abusive nature of the relationship and has most likely already been offered and refused. This leaves the parent seeking contact no option but court.

An abused parent who then tries to use court action to see their children will most likely have to defend themselves against malicious and vexatious allegations. Some of which can be incredibly distressing and disturbing. Ranging from stalking to assault or even child abuse.

The Scottish Government has pointed out that there are functions within civil and criminal law that are meant to allow a person the ability to stop vexatious or malicious court actions and prevent malicious allegations being made to the police. The Court Reform (Scotland) Act 2014 gives provision to allow persons to prevent vexatious litigations.

As per The Family Law (Scotland) Act 2006 family courts will always be concerned with protecting a child from abuse or possible abuse from the person seeking contact. The legal system then by nature must always disregard the impact false and malicious allegations have on the person seeking contact in favour of protecting children from potential harm. It can therefore be virtually impossible for an abused parent to have a court take any action to prevent abusive parents making such false and malicious allegations. These false and malicious allegations can and do have a profound impact on the mental health of the abused parent. They also have a significant impact on the finances of the parent facing these accusations as well as the drain on court resources.

In general, all that the Scottish Government has suggested comes from the standpoint that it is the abuser seeking contact and fails to recognise that it may well be the victim seeking contact. They have in all my communications with them over the last 9 years acknowledged that where it is safe to do so all parents should be encouraged to have a relationship with their children. They have however, not made any practical suggestions as to how we better support parents when they face intractable hostility towards maintaining a relationship with their children.

Victims of this sort of abuse have no practical means of resolution and will often just give up. The Scottish Government have on more than one occasion told me, my desire for a resolution to the problems that exist with child contact abuses as being "unreasonable or unrealistic."

I fail to see why it is unreasonable or unrealistic for any parent who is or was the victim of abuse to be able to have a relationship with their children free from abuse and harassment from their ex-partner. I also fail to see why it is acceptable for any parent to need to accept that they will be abused just because they wish to spend time with their children.