

Citizen Participation and Public Petitions Committee  
Wednesday 8 October 2025  
15th Meeting, 2025 (Session 6)

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

### Introduction

**Petitioner** John Watson McMaster

**Petition summary** Calling on the Scottish Parliament to urge the Scottish Government to establish a standardised timeframe for civil proceedings related to child custody cases, including a 14-day timeframe for proof hearings.

**Webpage** <https://petitions.parliament.scot/petitions/PE2166>

1. This is a new petition that was lodged on 22 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, 8 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**  
**October 2025**

## **Annexe A: Summary of petition**

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

#### **Petitioner**

John Watson McMaster

#### **Date Lodged**

22 May 2025

#### **Petition summary**

Calling on the Scottish Parliament to urge the Scottish Government to establish a standardised timeframe for civil proceedings related to child custody cases, including a 14-day timeframe for proof hearings.

#### **Background information**

Over the past six years, extensive experience has revealed the immense challenges faced by courts in handling civil proceedings related to children's custody cases. Not only are courts under significant pressure, but they are often compelled to make decisions based on misleading or false information. This severely undermines the ability to ensure just and informed outcomes for the children involved.

To address this issue, I propose that proof hearings be made mandatory within 14 days of the initiation of any civil action. This provision would facilitate the timely presentation of evidence, enabling courts to make more accurate decisions while reducing opportunities for disinformation to distort proceedings.

Delays in the judicial process cause irreversible harm to children, often leading to their alienation over prolonged periods. False accusations are frequently withdrawn after years of litigation, yet the damage has already been done, leaving children with lifelong emotional scars.

## Annexe B: SPICe briefing on PE2166



### The Children (Scotland) Act 1995

This petition relates to court cases considered under Part 1 of the [Children \(Scotland\) Act 1995](#) ('the 1995 Act').

Part 1 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**, sometimes called 'custody' in practice). Furthermore, where the child does not live with that person, there is both the right and the responsibility to have **contact** with that child.

Section 11 of the 1995 Act is an important provision which gives the court various powers to decide an issue in a dispute about PRRs. 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.

[A detailed discussion of the law in this area](#) is set out in the SPICe briefing, [Parental Responsibilities and Rights](#).

### The 1995 Act in practice

Cases under the 1995 Act are usually considered by [the local sheriff court](#), by a judge called a **sheriff** or a judge called a **summary sheriff**. Individual sheriffs do not specialise in family cases, except, to some extent, in large urban centres.

Relatively few court cases relating to section 11 of the 1995 Act ('section 11 cases') tend to get as far as a **proof**, a full hearing where witnesses give evidence and are cross-examined on it. Instead, they are typically settled during **child welfare hearings**, which are relatively informal, private proceedings. It is common for multiple such hearings to take place over the course of a case.

In section 11 cases, an important role is often played by **child welfare reporters**. These are court-appointed officials who report to the court on what the views of the child are, or what is in the interests of the welfare of the child. In 2023-24, the Scottish Parliament considered [a separate petition \(PE2069, now closed\)](#) that sought to ensure the accuracy of statements contained in child welfare reports.

### Court procedure

The detailed court procedure to be followed in 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.

Sometimes some provision on court procedure is made in primary legislation. Section 30(2) of the [Children \(Scotland\) Act 2020](#) ('the 2020 Act'), discussed in more detail below, is an example of this, although it is not yet in force.

## Delays in section 11 cases

There have been [long-standing policy concerns about delays in cases affecting children](#), including in section 11 cases, and inconsistencies in respect of how such cases are managed.

### Section 30(2) of the 2020 Act

Section 30(2) of the 2020 Act (as already mentioned, not yet in force) was part of the Scottish Government's policy response to this. It requires the court, when considering the child's welfare under a section 11 case, to consider whether any delay in proceedings would negatively affect the child's welfare.

The section does not specify the length of delay that would have a negative effect on the child's welfare. The [Explanatory Notes to the 2020 Act](#) say that the length having this impact would vary from case to case.

[The Scottish Government has said it intends to commence section 30\(2\) of the 2020 Act through regulations laid later this year.](#)

### Work of the Scottish Civil Justice Council

Separately, in 2017, the Scottish Government [submitted a policy paper](#) to the [Family Law Committee](#) of the [Scottish Civil Justice Council](#) (SCJC).

Key recommendations of the policy paper included:

- **earlier and more active judicial case management**, including timetabling and regular reviews
- **greater consistency** in procedures across courts
- **use of dedicated family sheriffs** where possible
- **improved data collection** on case durations and outcomes
- **enhanced training** for legal professionals and judiciary in family law and child welfare.

On the first bullet point above, broadly, active **judicial case management** involves the judge, rather than the litigants or their solicitors, being responsible for setting the pace of, and controlling, the litigation process.

Later in 2017, a sub-committee of the SCJC's [Family Law Committee finalised a report](#) that [made a number of recommendations, including:](#)

- a new case management structure for all family cases in the sheriff court (see [para 4.8 of the report](#) for some suggested associated timescales for court proceedings)
- greater judicial control over the ‘sisting’ (pausing) of family court actions
- allocating these court actions to either a ‘fast track’ or ‘proof track’ court procedure, as appropriate.

On the final point, [the report of the sub-committee explained](#):

“The initial case management hearing will function as a triage hearing. The sheriff shall seek to establish whether the case is (i) of a complex, or potentially high-conflict, nature which will require proactive judicial case management leading up to a proof (‘the proof track’); or (ii) a more straightforward case where the issues in dispute appear to be capable of being resolved by a series of child welfare hearings without the need for a proof (‘the fast track’).”

In 2018, [a consultation was carried out by the SCJC on case management rules in family actions](#). The [report on the consultation](#) explains that a number of respondents did not like the proposed two-track structure. One of the main concerns was that it was “needlessly complex” and that it was not always possible to separate the issues raised at child welfare hearings from those raised at case management hearings.

Related court rules were later put in place aiming to improve case management in family cases, although they did not contain the two-track structure originally proposed: [Act of Sederunt \(Ordinary Cause Rules 1993 Amendment\) \(Case Management of Defended Family and Civil Partnership Actions\) 2022](#).

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29 May 2025

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## Annexe C: Written submissions

### Scottish Government written submission, 19 June 2025

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

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

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

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

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

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

- Cases under section 11 can vary enormously. Some may be undefended. In others, the parties may be far apart on what they consider to be in the child's best interests. In some cases there can be a high level of conflict. A standardised timetable would not recognise the different complexities in individual cases.
- A crave (request) in a court action for child contact or residence may be a stand-alone action or may be part of a wider court action (e.g. covering divorce as well). It's not clear whether a standardised timeframe would apply just to stand-alone court actions for contact or residence or would also include court actions covering other matters as well.
- A key feature of section 11 cases is obtaining the views of the child. It is not clear if a standardised time frame would take full account of the need to do this. The court may wish to appoint a child welfare reporter to get the child's views.
- The petition proposes that "proof hearings be made mandatory within 14 days of the initiation of any civil action". However, the usual practice in contact and

residence cases is for child welfare hearings to take place before any proof hearing (the final decision-making stage).

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

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

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

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

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

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

The Scottish Civil Justice Council (the SCJC) prepares draft rules of procedure for the civil courts and advises the Lord President on the development of the civil justice system in Scotland. In 2018, it carried out a [Consultation on the Case Management](#)

[of Family and Civil Partnership Actions in the Sheriff Court](#). Following this consultation, court rules were made in 2022 and came into force on 25 September 2023.

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

## **Civil Law and Legal System Division**

### **Petitioner written submission, 29 September 2025**

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

##### **1. Introduction and Purpose**

Thank you for the opportunity to address the Committee. This submission builds upon a constructive dialogue with the Scottish Government's Family Law Policy Office and the Civil Law and Legal System Division. Its purpose is to advocate for a specific, evidence-based amendment to the proposed rules for child dispute resolution, focusing on the critical issue of procedural timeliness.

##### **2. Acknowledgement of Legislative Intent**

I wish to first acknowledge the significant efforts embodied in the Children (Scotland) Act 1995 and the Children (Scotland) Act 2020. The principles and protections these Acts establish are commendable and vital. However, as both my extensive, eight-year first-hand experience and discussions with government officials confirm, a gap persists between legislative intent and practical enforcement.

##### **3. The Critical Issue: Enforcement and Delay**

The core issue is not a lack of rules but a systemic failure to enforce them consistently, leading to harmful delays that are detrimental to child welfare.

For instance, the current enforceable rules mandate:

- A Case Management Hearing (CMH) within 28 days of a Section 11 application.
- A final hearing date within 12 weeks of the CMH.

Furthermore, Section 3(1)(c) of the Children (Scotland) Act 1995, provides a crucial safeguard, stipulating that in cases involving allegations of abuse, the Sheriff \*must\* list a preliminary hearing within 14 days to assess the allegation.

Despite this clear legal requirement, evidence suggests this specific 14-day rule is seldom, if ever, enacted in practice. This enforcement gap is a significant concern, as delays are one of the most damaging factors in child dispute cases, often exacerbating conflict and enabling the alienation of children.

##### **4. Proposed Amendment and Rationale**



Following my meeting with the Family Law Policy office, a consensus was reached that a more practicable and still highly effective timeframe for such a proof hearing would be **4 to 6 weeks**.

I therefore respectfully ask the Committee to amend the original proposal to reflect this **4 to 6-week** timeframe. This adjustment achieves several key objectives:

- It is pragmatic: it aligns with operational realities of the courts while still drastically accelerating the process.
- It protects child welfare: it prioritises a swift resolution, minimising the time children are separated from a parent based on unproven allegations and reducing the risk of parental alienation. This aligns with the Scottish Government's "The Promise"
- It improves system efficiency: by reducing opportunistic and malicious litigation, it frees up invaluable court time and resources to focus on genuine and complex cases.
- Aligns with the Children (Scotland) Act 2020: which prioritises child welfare. Similar to **English Family Court** reforms under the **Family Procedure Rules 2010**, which encourage strict timetables.

## **5. Systemic Failure in Court Processes: A Case Study from an Eight-Year Campaign**

### **5.1. Chronic Failure and Delay**

My experience over the past eight years demonstrates a systemic failure in the court processes for child custody cases. A specific example illustrates this point: it took **41 months**, from January 2019 to May 2022, simply to secure a proof hearing date for my case, despite meticulously following every required procedure.

This was not an exception but a characteristic of a process that is fundamentally unfit for purpose, causing profound distress to families.

### **5.2. The Limits of Alternative Dispute Resolution**

I note the Scottish Government's policy on alternatives to court, such as mediation and parenting plans. While valuable, these measures are, by design, precursors to court action. This petition addresses the critical breakdown that occurs *after* these alternatives have been exhausted. The core question for the Committee is whether the subsequent court systems themselves are functional, efficient, and just.

### **5.3. The Critical Issue of Child Welfare Reports**

The Scottish Government Policy Office has rightly highlighted the importance of how "child welfare reports are requested and used." I wish to bring the Committee's attention to a grave concern regarding their execution.

In my case, a child welfare report concluded that the child in question was unhappy with in-person contact and preferred video calls. However, this conclusion was starkly contradicted by video evidence recorded less than two weeks before the report was written. With the Committee's permission, I would be prepared to provide access to both the report and this short video. This discrepancy is not a minor oversight; it calls into question the very foundation of evidence upon which the court made its decision.

#### **5.4. A Fundamental Conflict of Interest: Solicitors as Child Welfare Reporters**

This leads to a fundamental, structural problem: the prevalent use of solicitors as child welfare reporters. This creates a conflict of interest analogous to a situation understood by Police Scotland.

Police Scotland does not allow a serving police officer to pilot its aircraft because the pilot's primary duty must be to the safety of the aircraft and its passengers, not to the operational priorities of a police investigation. The roles are distinct and require separate, specialised skillsets.

Similarly, the role of a child welfare reporter must be exclusively focused on the welfare of the child, conducted with impartiality and specialist training in child development and psychology. A solicitor, by training and professional duty, is an advocate and a legal technician. Placing a solicitor in the role of a welfare reporter risks conflating legal argument with child welfare assessment, potentially privileging procedural form over substantive, evidence-based findings on a child's best interests.

#### **5.5. The Child's Voice and the Consequences of Systemic Failure**

The ultimate measure of any system dealing with children is the well-being of the children themselves. The human cost of the current adversarial process is profound and lasting.

In January 2025, I encountered two of my children. Their reaction—expressing feelings of abandonment and rejection—screaming at me, “*you abandoned us*” is a direct consequence of the prolonged and damaging court process they have been subjected to for years. This is not merely a personal tragedy; it is a demonstrable social outcome resulting from a system that prioritises legal conflict over child welfare.

The social damage caused by these procedural failures is measurable not only in the immense emotional toll on families but also in the long-term costs to public services, including mental health support and social work intervention.

Therefore, the core aim of this petition is to make the Sheriff's responsibilities simpler and more direct. The current framework allows for complex legal manoeuvring that can obscure the fundamental principle of the child's best interests. We must streamline processes to ensure that the views and welfare of the child are the paramount and expedited focus of proceedings, not a secondary consideration to legal technicalities.

This petition proposes concrete steps to achieve that clarity. I urge the Committee to recognise this not as an isolated case, but as evidence of a systemic issue requiring legislative and procedural reform. Allowing this petition to progress is the first step towards ensuring that the voices of children are heard and that their welfare is truly placed at the heart of our family court system.

#### **6. Conclusion**

Just as speed limits on our roads are essential for safety but require consistent enforcement to be effective, our legislative frameworks require robust and consistent procedural enforcement to fulfil their purpose. The proposed **4 to 6 week** timeframe is a balanced, reasonable, and enforceable measure that will give practical force to the admirable goals of our existing legislation and ensure that the child's sense of time is placed at the heart of the process.

**CPPP/S6/25/15/8**

Thank you for your consideration of this important procedural matter.