

## Annex G: Partial Business and Regulatory Impact Assessment

### Partial Business and Regulatory Impact Assessment

#### Title of Proposal

Review of Part 1 of the Children (Scotland) Act 1995 and creation of a Family Justice Modernisation Strategy.

#### 1. Purpose and intended effect

##### • Background

1.1 The Children (Scotland) Act 1995 (the 1995 Act) is centred on the needs of children and their families. The review is about reforms to part 1 of the 1995 Act which covers parental responsibilities and rights and about creating a Family Justice Modernisation Strategy. It also covers other matters relating to family law such as aspects of the Children's Hearings System.

##### • Objective

1.2 The main aims of the consultation are to:

- Further compliance with the United Nations Convention on the Rights of the Child (UNCRC);
- Ensure that the child's best interest is at the centre of any contact or residence case or children's hearing;
- Ensure that the voice of the child is heard in cases; and
- Ensure that cases and hearings are dealt with in an efficient way.

##### • Rationale for Government intervention

1.4 A number of the options for amending the 1995 Act and creating a Family Justice Modernisation Strategy would require an Act of the Scottish Parliament.

1.5 The policy contributes to the following National Outcomes:

- Our young people are successful learners, confident individuals effective contributors and responsible citizens;
- Our children have the best start in life and are ready to succeed;
- We have improved the life chances for children, young people and families at risk; and
- We live our lives safe from crime, disorder and danger.

#### 2. Consultation

2.1 In preparing the consultation, the Scottish Government's Family and Property Law Team have worked with:

##### Within Scottish Government

- The Directorate for Children and Families

- Justice Analytical Services
- Communities Analytical Services
- National Records of Scotland
- Registers of Scotland
- Crown Office and Procurator Fiscal Service

### **Courts**

- Scottish Courts and Tribunals Service

- **Public Consultation**

2.3 This partial BRIA forms part of a public consultation which will run for 12 weeks.

- **Business**

2.4 Scottish Government conducted interviews with representatives from the following organisations to prepare for the BRIA:

- CALM Scotland
- Children and Young People's Commissioner
- Children 1<sup>st</sup>
- Clan Child Law
- Faculty of Advocates
- Families need Fathers Scotland
- Family Law Association
- Grandparents Apart UK
- Law Society of Scotland
- Relationships Scotland
- Scottish Courts and Tribunals Service
- Scottish Legal Aid Board
- Scottish Women's Aid

2.5 In addition, the Scottish Government interviewed some family law academics.

2.6 The notes of these meetings are being published at the link below:

<http://www.gov.scot/Topics/Justice/law/17867/review-of-children-scotland-act-1995/1995-Act-review-BRIA-interviews>

### **3. Options**

3.1 This section focuses on the key options that are considered in the consultation. The consultation document itself lists all the options we are considering.

#### **3.2 Option 1: How the court considers the views of the child and representation of the child**

- How the voice of the child is heard in court cases;
- Whether the presumption that a child 12 years of age or more is of sufficient age and maturity to form a view should be retained;

- How the court provides feedback to the child; and
- How child welfare reporters and curators *ad litem* should be managed.

### 3.3 Option 2: **How confidential information provided by a child is shared with the court**

### 3.4 Option 3: **Who a child should have contact with and how contact should happen**

- Whether child contact centres should be regulated;
- How child contact with family members generally should be promoted;
- Whether there should be a presumption that children benefit from contact with grandparents and siblings;
- How to promote contact between children who are looked after away from home; and
- How contact orders should be enforced.

### 3.5 Option 4: **Who is a parent**

- Whether the presumption that the husband of a mother is the father of her child continues to be relevant; and
- Whether DNA testing in parentage disputes should be compulsory.

### 3.6 Option 5: **What are Parental Responsibilities and Rights (PRRs) and who should have them**

- Whether Step Parents should be able to obtain PRRs without going to court;
- The use of the terms PRRs and contact and residence;
- Whether all fathers should be granted PRRs;
- Whether joint birth registration should be compulsory;
- Whether children benefit or not from both parents being involved in their life;
- The involvement of a non resident parent in education and healthcare decisions;
- Clarification that not all orders made under section 11 of the 1995 Act automatically grant PRRs;
- How to ensure that a parent does not turn a child against another parent unnecessarily;
- Whether father who jointly register their child's birth overseas in a country that gives men who jointly register a birth PRRs should have this recognised in Scotland; and
- Whether PRRs could be removed from an individual by the criminal courts if they have been convicted of a serious criminal offence.

### 3.7 Option 6: **How international parental child abduction can be prevented**

### 3.8 Option 7: **How children and victims of domestic abuse can be protected**

- Whether the personal cross examination of victims or alleged victims of domestic abuse should be banned;
- How parties can be protected in cases where domestic abuse is alleged;
- Whether the 1995 Act adequately protects children from domestic abuse or risk of abuse;
- How civil courts can be made more aware of relevant criminal convictions;
- Whether repeated litigation should be banned;
- Whether Scottish Government should do more to promote domestic abuse risk assessments; and
- Improving the interaction between criminal and civil courts in the context of domestic abuse.

### 3.9 Option 8: **How court procedure can be improved**

- Ensuring cases are dealt with efficiently;
- Whether all cases should be heard in the Sheriff Court; and
- Whether there should be a checklist of factors the court should take into account.

### 3.10 Option 9: **Alternatives to court**

- Whether to promote the use of alternative dispute resolution;
- Whether to introduce legislation on mediation and international child abduction; and
- Whether to produce further guidance for children and litigants.

### 3.11 Option 10: **Amendments to birth registrations**

- Whether young people under the age of 16 with capacity could apply to record a change of their name on their birth certificate themselves;
- Whether a person applying to record a change of name for a person under the age of 16 should be required to seek the views of the young person; and
- Reregistration of births by unmarried fathers.

### 3.12 Option 11: **Procedural changes to the Children's Hearings System**

- Whether the Principal Reporter should be given the right of appeal on the matter of Relevant Persons;
- Whether changes can be made to allow modernisation of the Children's Hearings System through enhanced use of available technology;
- Whether the local authority should be a recipient of safeguarder and

- independent reports; and
- How to protect vulnerable witnesses and children.

### **Sectors and groups affected**

3.14 We consider the following groups or sectors will be affected by the options being considered:

- Child welfare reporters and Curators *ad litem*
- Children and young people
- Children's Reporters
- The Courts
- Crown Office and Procurator Fiscal Service
- Faculty of Advocates
- Family lawyers
- Family mediators and arbitrators
- Family members
- Grandparents
- Health Boards and GP surgeries
- Individuals seeking to be declared a parent of a child
- Law Society of Scotland
- Local authorities
- National Records of Scotland
- Organisations supporting parents, families and children
- Parents
- Registers of Scotland
- Relationships Scotland and the four independent contact centres in Scotland
- Schools
- Scottish Children's Reporter Administration
- Scottish Courts and Tribunals Service
- Scottish Legal Aid Board
- Siblings
- Step parents

### **Benefits**

Give details of all benefits associated with each option you are considering.

31.15 The main benefits of all the options are:

- Further compliance with the UNCRC;
- Ensuring that the child's best interest is at the centre of any contact or residence case or children's hearing;
- Ensuring that the voice of the child is heard in cases; and
- Ensuring that cases and hearings are dealt with in an effective and efficient way.

3.16 This is a partial BRIA and further consideration will be given to the

benefits of each option in the detailed BRIA which will accompany any Family Law Bill.

### **Costs**

Give details of all costs (additional and savings) associated with each option you are considering.

3.17 We have estimated that if all the options were adopted it could cost approximately £0.5m in set up costs and approximately £5.3m in ongoing running costs. The largest costs are listed below:

- Children's support workers – approx. £3.2m per year based on two per local authority;
- Regulation of child welfare reporters and curators *ad litem* – approx. £1m per year;
- Regulation of contact centres – approx. £0.5m set up costs and £0.5m annual running costs; and
- Banning of personal cross examination of victims of domestic abuse – approx. £0.6m per year.

3.18 The costs currently identified at 3.17 do not cover any increased costs to SCTS should certain options be taken forward.

## **4. Scottish Firms Impact Test**

4.1 To appreciate the impact that the proposed legislation may have on businesses operating in Scotland, we met with organisations including CALM Scotland Mediation, the Faculty of Advocates, the Family Law Association, Law Society of Scotland, Relationships Scotland and Scottish Courts and Tribunals Service.

4.2 All the organisations were asked questions on each of the topics in the consultation.

4.3 A number of family lawyers are also curators *ad litem* and child welfare reporters and therefore the options to regulate curators *ad litem* and child welfare reporters could impact on them.

4.4 Members of the Faculty of Advocates and Law Society of Scotland may be affected by a number of the options as any changes could affect the people that they would represent in court.

4.5 Options around mediation may affect family mediators and arbitrators.

4.6 The Scottish Courts and Tribunals Service will be affected by a large number of the options as they concern how a court case is run.

4.7 Relationships Scotland and the four independent contact centres will be affected by the option to regulate contact centres.

## **5. Competition Assessment**

5.1 We do not expect the options to have an impact on competition as they

will not:

- Limit the number or range of suppliers.
- Limit the ability of suppliers to compete.
- Limit suppliers' incentives to compete vigorously.
- Limit the choice and information available to consumers.

5.2 We would welcome any comments during the consultation as to whether any of the options would have an impact on competition.

## **6. Test run of business forms**

6.1 We do not envisage that any new forms will be introduced for businesses by Scottish Government as a result of our policies.

## **7. Legal Aid Impact Test**

7.1 The independent strategic review of legal aid<sup>135</sup> noted that in 2016/17 60% of the civil legal assistance budget goes on family cases (£18m). Of the £18m, £9m goes on legal aid for contact/parentage cases and £3.3m for cases regarding residence.

7.2 There could potentially be costs for the Scottish Legal Aid Board in relation to a number of the options. In particular:

- Banning personal cross examination of domestic abuse victims and vulnerable parties in contact and residence cases as parties may be entitled to have a lawyer who would need to be funded by legal aid;
- A single court hearing both criminal and civil cases in relation to domestic abuse and family law could increase costs as there is a difference in legal aid rules between the civil and criminal courts. In addition, many people have different solicitors acting for them in criminal and civil cases and this could affect the legal assistance registers held by the Scottish Legal Aid Board;
- Introducing the presumption that it is in the child's best interests for them to have contact with their grandparents and siblings could increase the number of grandparents and siblings who apply to the court for contact with a child; and

7.3 Some of our policy options could lead to savings for the Scottish Legal Aid Board. In particular:

- Regulation of child welfare reporters could lead to some standardisation of costs of child welfare reports. It would also remove the costs of child welfare reports from the legal aid budget;
- Reducing repeated litigation would reduce the number of court cases; and
- Encouraging the use of Alternative Dispute Resolution.

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<sup>135</sup> <http://www.gov.scot/About/Review/legal-aid-review>

7.4 A number of the options that are being considered in the consultation document could have both positive and negative impacts on legal aid. For example, the options to give all fathers PRRs and making joint birth registration compulsory may lead to a reduction in the number of cases by fathers applying for PRRs. However, this could lead to an increase in cases by mothers applying to have a father's PRRs removed.

## **8. Enforcement, sanctions and monitoring**

8.1 Using detailed information provided by the Scottish Courts and Tribunals Service (SCTS), we publish annual Civil Justice Statistics bulletins which includes specific information on family law cases. Working together with our key partners, we are committed, as part of the Family Justice Modernisation Strategy, to improve the quality of family law statistics in Scotland. This will help in relation to monitoring of the outcomes of the policy options.

8.2 This is a partial BRIA and further consideration of the enforcement, sanctions and monitoring of policy will be done in the detailed BRIA which will accompany any Family Law Bill.

## **9. Implementation and delivery plan**

9.1 The consultation will influence our decisions about next steps and the content of any Family Law Bill, any other regulation or any non-legislative changes that can be made. This BRIA would be finalised for any Family Law Bill, taking account of points made by consultees. The final version of the BRIA would be published on the Scottish Government website.

### **Post-implementation review**

9.2 Any Family Law Act would be reviewed in line with the usual approach to post-legislative scrutiny.

## **10. Summary and recommendation**

10.1 We are seeking views on whether and how the 1995 Act should be amended and what should be in a Family Justice Modernisation Strategy. This section will be completed in the final BRIA when we have considered the responses from this consultation.

### **• Summary costs**

We have estimated that if all the options were adopted it could cost approximately £0.5m in set up costs and approximately £5.3m in ongoing running costs. The largest costs are listed below:

- Introduction of child's support workers – approx. £3.2m per year based on two per local authority;
- Regulation of child welfare reporters and curators *ad litem* – approx. £1m per year;
- Regulation of contact centres – approx. £0.5m set up costs and £0.5m annual running costs; and
- Banning of personal cross examination of victims of domestic abuse –



approx. £0.6m per year.

The costs currently identified above do not cover any increased costs to SCTS should certain options be adopted.

May 2018