

## Annex H: Partial Child Rights and Wellbeing Impact Assessment

CRWIA front sheet	
<b>Policy/measure</b>  <b>A general description of the policy/measure</b>	<p>The commitment in the Programme for Government 2017/18 to consult upon on a review of part 1 of the Children (Scotland) Act 1995.</p> <p>To create a Family Justice Modernisation Strategy.</p>
<b>Project initiation document</b>  <b>Add link to the document</b>	
<b>Initiating department</b>  <b>The responsible team or division. If this is a cross-cutting policy, name the team that has overall responsibility</b>	<p>Family and Property Law</p>
<b>Policy aims</b>  <b>What the policy or measure is trying to achieve; what are the expected outcomes</b>	<p>This is a partial CRWIA and is focussing on the main themes and desired outcomes of the review of the Children (Scotland) Act 1995 (the 1995 Act) and Family Justice Modernisation Strategy. A further more detailed CRWIA will be completed to accompany any Family Law Bill.</p> <p>The main aims of any Bill would be to:</p> <ul style="list-style-type: none"> <li>• Further compliance with the United Nations Convention on the Rights of the Child;</li> <li>• Ensure that the child’s best interests are at the centre of any contact or residence case or Children’s Hearing;</li> <li>• Ensure that the voice of the child is heard in cases; and</li> <li>• Ensure that cases and hearings are dealt with in an effective and efficient way.</li> </ul> <p>To meet these aims we are seeking your views on the following main topics:</p> <ul style="list-style-type: none"> <li>• How the court considers the views of the child and representation of the child;</li> </ul>

	<ul style="list-style-type: none"> <li>• Who a child should have contact with and how contact should happen;</li> <li>• Who is a parent;</li> <li>• Who has Parental Responsibilities and Rights;</li> <li>• How international parental child abduction can be prevented;</li> <li>• How children and victims of domestic abuse can be protected;</li> <li>• How court procedure can be improved in proceedings affecting children and young people;</li> <li>• What alternatives there are to court;</li> <li>• Amendments to birth registration; and</li> <li>• Procedural changes to the Children’s Hearings System.</li> </ul>
<p><b>Timetable</b></p> <p><b>What is the time frame for a policy announcement/consultation/implementation?</b></p>	<p>Scottish Government is holding a public consultation and will consider the outcome of the consultation later in 2018.</p>
<p><b>Date</b></p>	
<p><b>Signature</b></p>	

<b>CRWIA Stage 1 Screening - key questions</b>
<p><b>1. What aspects of the policy/measure will affect children and young people up to the age of 18?</b></p> <p>The Articles of the UNCRC and the wellbeing indicators under the Children and Young People (Scotland) 2014 apply to all children and young people up to the age of 18, including non-citizen and undocumented children and young people.</p> <p>We expect all of the aspects of our policy to affect children and young people.</p>
<p><b>2. What likely impact - direct or indirect - will the policy/measure have on children and young people?</b></p> <p>'Direct' impact refers to policies/measures where children and young people are directly affected by the proposed changes e.g. in early years, education, child protection or looked after children (children in care). 'Indirect' impact refers to policies/measures that are not directly aimed at children but will have an impact on them. Examples include: welfare reforms, parental leave, housing supply or local transport schemes.</p> <p>We expect a large number of the policies will have a direct impact on children and young people.</p>
<p><b>3. Are there particular groups of children and young people who are more likely to be affected than others?</b></p> <p>Under the UNCRC 'children' can refer to: individual children, groups of children, or children in general. Some groups of children will relate to the groups with protected characteristics under the Equality Act 2010. It may be possible to align the CRWIA with the EQIA in these cases. 'Groups' can also refer to children by age band or setting, or those who are eligible for special protection or assistance e.g. pre-school children, children in hospital, children in rural areas, looked after children, young people who offend, victims of abuse or exploitation, child asylum-seekers, or children living in poverty.</p> <p>We consider that the policies are more likely to affect younger children, those who are victims of domestic abuse, those involved in court proceedings about the arrangements for their upbringing and children and young people involved in the Children's Hearings System</p>
<p><b>4. Who else have you involved in your deliberations?</b></p> <p>Have you included all policy leads who may have an interest in these developments?</p> <p>Yes we have discussed the CRWIA with relevant colleagues including those in Children and Families Directorate, Criminal Justice and Violence Against</p>

Women team.	
<b>5. Will this require a CRWIA?</b> Explain your reasons	
Yes as the majority of policies either directly or indirectly affect children.	
<b>CRWIA Declaration</b>	
Tick relevant section, and complete the form.	
<b>CRWIA required</b>	<b>CRWIA not required</b>
Yes	
<b>Authorisation</b>	
<b>Policy lead</b> Name, title, division	<b>Date</b>
<b>Deputy Director or equivalent</b>  Deputy Director, Civil Law and Legal System	<b>Date</b>

## CRWIA Stage 2 Scoping - key questions

### **1. What children's rights are likely to be affected by the policy/measure?**

List all relevant Articles of the UNCRC and Optional Protocols (see Annex 1). All UNCRC rights are underpinned by the four general principles: non-discrimination; the best interests of the child; the right to life; survival and development; and the right to have children's views given due weight.

The consultation will seek views on a wide range of issues. Below we have listed which articles of the UNCRC we think are relevant to the issues we're going to consult on.

#### **Article 2**

Article 2(1) is relevant when considering whether all fathers should automatically have Parental Responsibilities and Rights (PRRs) in the same way as mothers.

Being married may be classified as an "other status" under Article 2(1) and this would be relevant when considering the presumption that the husband of a woman is the father of her child and issues surrounding fathers with PRRs who are not married to the mother.

#### **Article 3**

Article 3 is key as our policy intention is that the child's best interests are the priority in court cases around contact and residence.

Article 3(3) is relevant to the proposals to regulate child contact centres and child welfare reporters.

#### **Article 5**

This article of the Convention is key in relation to the following issues:

- Extending PRRs to all biological fathers in the same way as mothers;
- The presumption that both parents should be involved in their child's upbringing unless this is contrary to the child's best interests; and
- Whether to introduce a Step Parents Parental Responsibilities and Rights Agreement.

In addition, article 5 is relevant to the issue of whether children and young people under the age of 16 with capacity should be able to apply to register a change of name on their own birth certificate without parental consent.

#### **Article 6**

Article 6 is relevant in relation to the following issues:

- How to further protect children and young people from domestic abuse;
- Whether the criminal court could remove PRRs from someone who is found guilty of a serious criminal offence; and
- How to prevent a parent from turning a child against another parent.

**Article 7**

Article 7(1) is relevant in relation to:

- Whether we should introduce compulsory joint birth registration;
- Whether all fathers should get PRRs automatically the same way as all mothers;
- Re-registration of births to take into account the female spouse of a mother;
- Whether we should make DNA testing compulsory in parentage disputes; and
- Amendments to the registration process for unmarried fathers registering the birth of their child.

**Article 8**

Article 8 is relevant in relation to the option to establish a Step Parents Parental Responsibilities and Rights Agreement so that step parents with whom children may have significant relationships, could obtain PRRs without having to go to court.

This article is also relevant to the option in relation to a child's relationship with grandparents and siblings as they are considered family relations in the implementation handbook for the Convention<sup>136</sup>, published by UNICEF.

**Article 9**

Article 9(1) is key to the options on:

- Protecting children from domestic abuse;
- Preventing international child abduction; and
- Shared parenting.

It may also be relevant in relation to the enforcement of orders made under section 11 of the 1995 Act.

Article 9(2) is relevant in relation to ensuring that the voice of the child is considered in cases under section 11 of the 1995 Act.

It is also relevant to the question of whether the Principal Reporter should be given the right to challenge a sheriff's decision in relation to deemed relevant person status.

Article 9(3) is relevant in relation to:

- Whether we give PRRs to biological fathers in the same way as mothers;
- Enforcement of contact orders; and
- Regulation of contact centres.

**Article 10**

Article 10(2) is relevant to whether:

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[https://www.unicef.org/publications/files/Implementation\\_Handbook\\_for\\_the\\_Convention\\_on\\_the\\_Rights\\_of\\_the\\_Child\\_Part\\_1\\_of\\_3.pdf](https://www.unicef.org/publications/files/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child_Part_1_of_3.pdf)

- Section 2(6) of the 1995 Act regarding the removal of a child from the UK requires the consent of a person who would be exercising one of the PRRs but can't currently exercise these as the child has been removed from the UK;
- The Child Abduction Act 1984 needs to be amended to specify that it is a criminal offence to remove a child from the UK whether there is a court order in place or not; and
- The PRRs of an unmarried father who acquired them abroad, through joint birth registration, should be recognised in Scotland.

### **Article 11**

Article 11 is particularly relevant in relation to the part of the consultation seeking views on international child abduction.

### **Article 12**

Article 12 is key to ensuring that the voice of the child is considered in cases under section 11 of the 1995 Act. It is also relevant in relation to:

- Whether to introduce child support workers;
- Whether a child with capacity can have the right to apply to record a change of name on their birth certificate;
- How the court should hear the views of the child in contact and residence cases;
- How the court should hear the views of other children, such as siblings; and
- Whether to make changes to allow modernisation of the Children's Hearings System through enhanced use of available technology.

### **Article 13**

Article 13 is relevant to the following issues:

- Whether to introduce guidance for children on the court process;
- Whether we should introduce child support workers;
- How the voice of the child should be heard in cases under section 11 of the 1995 Act;
- How feedback should be provided to a child about the court's decision in cases under section 11 of the 1995 Act; and
- Whether to make changes to allow modernisation of the Children's Hearings System through enhanced use of available technology.

### **Article 14**

Article 14 is relevant to any steps which would increase joint decision making, including in relation to a child's health and education.

### **Article 15**

Article 15(1) links to proposals to protect children and young people from domestic abuse where they may be coercively controlled.

### **Article 16**

Article 16 is relevant to:

- Any steps to further protect children and young people from domestic

abuse;

- The sharing of children's case files in court without their prior knowledge or consent;
- Whether we should introduce child support workers;
- The right of the child to have a meaningful relationship with parents, grandparents, and siblings;
- The regulation of contact centres;
- The enforcement of contact orders;
- Changes to allow modernisation of the Children's Hearings System through enhanced use of available technology; and
- The local authority as a potential recipient of safeguarder and independent reports.

#### **Article 17**

Article 17 is relevant to options for any guidance for litigants and children about court proceedings, and the option to introduce child support workers.

#### **Article 18**

Article 18 is key in relation to whether fathers should get automatic PRRs and questions on shared parenting. Article 18 is also relevant to the regulation of contact centres and the option to introduce child support workers.

#### **Article 19**

Article 19(1) is relevant when considering options to protect children and young people from domestic abuse and whether the criminal courts could remove PRRs from a person who has been found guilty of a serious criminal offence.

Article 19 is also relevant when considering whether mediation is in the best interests of a child as in some cases mediation may expose a child to domestic abuse.

The article is also relevant in considering the issue of where one parent is turning a child against another parent and whether contact centres should be regulated.

#### **Article 23**

Article 23 is relevant to the following options:

Ensuring that the voice of the child is heard in contact cases;

Ensuring the welfare of the child is paramount; and

Whether to provide guidance to litigants and children on court procedure.

#### **Article 24**

Article 24 is relevant to options on protecting children and young people from domestic abuse.

#### **Article 34**

Article 34 is relevant in relation to options to repeal or amend sub sections (7A) to (7E) of section 11 of the 1995 Act.



**Article 35**

Article 35 is relevant to options on preventing international child abduction.

**Article 37**

Article 37 is relevant to options on protecting children and young people from domestic abuse.

**2. How will the policy/measure affect children's wellbeing as defined by the wellbeing indicators?**

List all wellbeing indicators relevant to the policy/measure (see Annex 2). The indicators are: Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible and Included.

All the wellbeing indicators are relevant.

**3. How many children and young people are likely to be affected by the policy or measure?**

List potential sources of official and other data, or note the need to locate this information. Are there different levels of impact for different groups of children?

This is a partial CRWIA and is focussing on the main themes and desired outcomes of the review of the Children (Scotland) Act 1995 and creation of a Family Justice Modernisation Strategy. A further more detailed CRWIA will be completed to go with any Family Law Bill.

**Number of children in Scotland**

Data from National Records of Scotland (NRS) shows that in mid 2016 there were 1.03m children and young people under the age of 18 living in Scotland. 915,917 of the children were under the age of 16<sup>137</sup>.

**Number of births in Scotland**

Data from NRS shows that there were 54,488 births registered in Scotland in 2016<sup>138</sup>.

**How the court considers the views of the child and representation of the child**

There is limited data available on the number of children whose views have been sought by the courts. In 2016/17 figures from Scottish Legal Aid Board (SLAB) showed that it funded approximately 1596 child welfare reports for contact and residence cases.

In Mid 2016 there were 698,876 children under the age of 12 in Scotland who may be affected by the option to remove the presumption that a child of 12 is of a sufficient age and maturity to form a view<sup>139</sup>.

<sup>137</sup> <https://www.nrscotland.gov.uk/files//statistics/vital-events-ref-tables/16/3-birth/ve-ref-tabs-16-tab3.03.pdf>

<sup>138</sup> <https://www.nrscotland.gov.uk/files//statistics/high-level-summary/j11198/j1119811.html>

<sup>139</sup> <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2016>

SLAB data shows that between 2015 and 2017 they funded 32 applications from children for legal aid to appear directly before the judge or sheriff. 30 out of the 32 applications came from children aged 12 or over.

### **Who a child should have contact with and how contact should happen**

In 2017 1427 children used contact centres managed by Relationships Scotland. 39% of the children were 0-4 years old, 34% were 5-8 years old and 18% were 13-16 years old. Only 1% of children using contact centres were over 16.

The 2015/16 Annual Report from VSA in Aberdeen says that 23 families received contact through their organisation. The Paisley Child Contact Centre dealt with 24-30 children each year.

The Inverclyde Child (Family) Contact Centre dealt with 60 children from 53 families in 2016 and 76 children from 58 families in 2017. 25 of these children were 3 and under, 20 were 4-6, 17 were 7-10 and 6 were aged 11 and over.

According to figures from Growing Up in Scotland close to 99% of children aged six in the survey had a least one living grandparent and 80% of children at age six had three or more living grandparents<sup>140</sup>. This gives an indication of the number of children that may be affected by the option to promote contact with grandparents.

Clan Childlaw's latest Annual Report shows that in 2015-16 100 out of the 454 enquiries they dealt with were in relation to contact and residence disputes. In 2017 Citizens Advice Scotland provided advised on 1861 new issues related to parental contact with children. These figures give an indication as to the number of children that may be affected by options regarding who a child has contact with.

### **What are Parental Responsibilities and Rights and who should have them**

According to the Civil Justice Statistics in Scotland<sup>141</sup> in 2015/16 there were 2232 cases initiated in the Sheriff Court in relation to Parental Responsibilities and Rights (PRRs), of which 1039 were contact cases, 712 were in relation to residence and 481 were other cases. These statistics relate only to cases where contact is listed on the initial writ. Therefore, the actual caseload is likely to be higher.

In 2015/16 there were eight cases initiated in the Court of Session in relation to PRRs – three of which were in relation to contact and four of which were in relation to residence. Again, these are only the cases where contact is listed on the initial writ. Data from SLAB indicates that they provided legal aid funding for 1986 contact cases in 2016/17 and 1160 cases in relation to

<sup>140</sup> <http://www.gov.scot/Publications/2012/05/6645>

<sup>141</sup> <http://www.gov.scot/Publications/2017/03/5915/downloads>

residence.

The total legal aid funding in 2016/17 was approximately £9m for contact and parentage cases and £3.3m for residence cases. Figures from Scottish Courts and Tribunals Service estimate that there were approximately 13,000 child welfare hearings fixed in 2017. The figures above give an indication of the number of children who might be affected by any changes in relation to PRRs.

The number of children who would be affected by proposals to make joint birth registration compulsory fluctuates year by year. Data from NRS suggests that in 2016 there were 2321 sole birth registrations in Scotland to unmarried parents<sup>142</sup>.

Figures from the 2011 census show that of families with dependent children step families made up 8% (26,000) of married couple families and 29% (26,000) of cohabiting couple families. For married couple families, step families made up 8% of families with one dependent child, 6% of families with two dependent children and 12% of families with three or more dependent children. Step families accounted for just over half of the 15,000 cohabiting couple families where the youngest dependent child was aged 12 or over<sup>143</sup>. These figures give an indication on the number of children who might be affected by proposals to give PRRs to step parents.

Data from NRS shows that between 2000 and 2016, there were 53,065 children and young people under the age of 16 whose birth certificate originally only registered the mother as the parent.<sup>144</sup>

Data from Registers of Scotland (RoS) shows that since the year 2000 4456 Parental Responsibilities and Parental Rights Agreements which give fathers PRRs have been registered in the Books of Council and Session. The table below shows that the number of agreements being registered has fallen since 2006 when fathers were able to get PRRs by jointly registering the birth of a child with the mother of the child.

<b>Year</b>	<b>Number of Agreements registered</b>
2000	331
2001	395
2002	397
2003	502
2004	571
2005	543
2006	556

<sup>142</sup> <https://www.nrscotland.gov.uk/files//statistics/vital-events-ref-tables/16/3-birth/ve-ref-tabs-16-tab3.03.pdf>

<sup>143</sup> <http://www.scotlandscensus.gov.uk/news/census-2011-detailed-characteristics-population-and-households-scotland-release-3e>

<sup>144</sup> <https://www.nrscotland.gov.uk/files//statistics/vital-events-ref-tables/16/3-birth/ve-ref-tabs-16-tab3.03.pdf>

2007	400
2008	375
2009	335
2010	315
2011	235
2012	230
2013	156
2014	140
2015	97
2016	71

According to statistics from NRS between 2000 and 2016<sup>145</sup> there were 19,150 re-registrations of birth certificates.

### **How to prevent international child abduction**

In Scotland, there is a common law offence of plagium: a crime of child stealing which may be committed against children below the age of puberty. Figures from the Scottish Government's publication on Recorded Crime in Scotland shows that in 2016/17 there was one case of plagium recorded by the police. It is also a crime (abduction) to carry off or confine any person against their will without lawful authority. In 2013/14 there was one conviction for child abduction in Scotland.

The Central Authority for Scotland which is part of the Justice Directorate within the Scottish Government has produced the statistics below on the number of Parental Child Abduction cases handled by them under the Hague Convention of 1980 and Council Regulation (EC) No 2201/2003.

<b>Year</b>	<b>Incoming</b>	<b>Outgoing</b>
2007	6	2
2008	7	10
2009	10	12
2010	12	10
2011	15	9
2012	6	16
2013	26	16
2014	17	13
2015	25	16
2016	13	20

### **How children and victims of domestic abuse can be protected**

Research undertaken by Kirsteen Mackay in 2013 shows that domestic abuse was alleged in half of all court actions over contact. When a child was not

<sup>145</sup> <https://www.nrscotland.gov.uk/files//statistics/time-series/2016-birth/births-time-series-tab14.xlsx>

seeing their non-resident parent this was allegedly due to violence upon the child in 18% of the cases<sup>146</sup>. Research by CAFCASS and Women's Aid in 2017 shows that in England and Wales domestic abuse was alleged in 62% of cases with fathers more likely to be the subject of allegations than mothers. Cases featuring allegations of domestic abuse were more likely to result in an order for no direct contact than cases without<sup>147</sup>. Research undertaken by the Ministry of Justice in 2009 showed that 53% of the contact and residence cases in England and Wales involved allegations of domestic abuse or concerns about abduction or harm to children<sup>148</sup>.

According to the latest Scottish Crime and Justice Survey<sup>149</sup> published in May 2016 in 2014/15, 39.4% of those who experienced partner abuse in the last 12 months said that children were living in their household when the most recent incident took place. In addition in 63.7% of cases where children were living in the household the children were present during the most recent incident.

### **Amendments that are needed to birth registers**

There were 915,917 children in 2016 under the age of 16 who may be affected by proposals to allow them to apply to register a change of name on their birth certificate.

### **Children's Hearings**

In 2016/17, 15,118 children and young people were referred to the reporter and 34,106 Children's Hearings were held. Lack of parental care was the most common ground for referral and the majority of referrals (75%) came from the police<sup>150</sup>. Figures from Children 1<sup>st</sup> indicate that safeguarders were appointed in 1441 cases in 2016/17.

## **4. What research evidence is available?**

Preliminary identification of the research base for this policy/measure

A range of research was used to justify the policies. There is a list of research into Family Law on the Scottish Government's Family Law Research Page: <http://www.gov.scot/Topics/Justice/law/17867/familylawresearch>.

We have highlighted below the important research for the key options in the consultation:

### **How the court considers the views of the child and representation of the**

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McKay K 2013 The treatment of the views of children in private law child contact disputes where there is a history of domestic abuse <https://www.cypcs.org.uk/ufiles/views-of-children-and-domestic-abuse.pdf>

<sup>147</sup> <https://www.cafcass.gov.uk/download/2124/>

<sup>148</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217368/family-justice-childrens-proceedings.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217368/family-justice-childrens-proceedings.pdf)

<sup>149</sup> <http://www.gov.scot/Publications/2016/05/2505/downloads>

<sup>150</sup> <http://www.scra.gov.uk/wp-content/uploads/2017/10/SCRA-Annual-Report-2016-17.pdf>

## child

There is evidence to suggest that allowing children to express their views in court cases can lead to better outcomes for the child and can lead to higher rates of satisfaction amongst children of the outcomes<sup>151</sup>. The Scottish Government published research in 2000 on the use of the form F9 in contact and residence cases<sup>152</sup>. There is also research on how the courts consider the views of the child in other countries.<sup>153</sup>

The Power Up Power Down project<sup>154</sup> undertaken by Scottish Women's Aid and the Children and Young People's Commissioner Scotland in relation to children who have experienced domestic abuse made a number of suggestions which have helped inform a number of options including:

- Removing the presumption that only children aged 12 or above are of sufficient age and maturity to form a view in a case;
- Requiring the court to actively consider what is in the best interests of a child;
- The introduction of child support workers; and
- Requiring the court to provide feedback to the child on the outcome of cases.

CLAN Childlaw is currently undertaking a project on using the law and human rights to advance policy. This involves ensuring that the views of children and young people are heard.<sup>155</sup>

The Scottish Government published research in 2010 on the use of child welfare reporters<sup>156</sup>. This research is helpful in considering options for regulating child welfare reporters and curators *ad litem* and establishing the role they play in making court processes more accessible for children and young people.

## Who a child should have contact with and how contact should happen

<sup>151</sup> Holt.S (2016) The voice of the child in family law: a discussion paper. *Children and Youth Services Review* (68)

<sup>152</sup> Scottish Government (2000) Monitoring the Children (Scotland) Act 1995: Pilot Study available at: <http://www.gov.scot/Resource/Doc/156495/0042016.pdf>

<sup>153</sup> Kay,E, Tisdall,M, Bray. R, Marshall K and Cleland A Children's participation in family law proceedings: a step too far or a step too small? (2004) *Journal of Social Welfare and Family Law* 26(1) p17-33.

<sup>154</sup> <https://www.cypcs.org.uk/policy/domestic-abuse/power-uppower-down>

<sup>155</sup> <https://www.clanchildlaw.org/Handlers/Download.ashx?IDMF=6be66e0e-4216-4bad-979b-e5cee781c320>

<sup>156</sup> Whitecross, R Child Welfare Hearings: A scoping study of the commissioning, preparation and use of bar reports. 2011 available at <http://www.gov.scot/Publications/2011/01/07142042/0>

There is evidence to suggest that children benefit from contact with grandparents particularly in times of a family crisis<sup>157</sup>. There is also research that shows a close relationship with grandparents can reduce the level of socio-emotional adjustment for a child after a divorce<sup>158</sup>. CLAN Childlaw has produced a report which highlights the importance of child contact with siblings<sup>159</sup>.

Research undertaken by the Centre for Research on Families and Relationships in 2006 shows that non compliance with contact orders was very low<sup>160</sup>. Research also shows that imprisonment of a mother can have a negative impact on the child's health<sup>161</sup>.

### **Parentage**

It has been suggested by some that relying exclusively on a genetic link to determine who should be considered to have paternal responsibilities for a child may fail to recognize the wide range of social relationships which can form the basis of family life.<sup>162</sup>

### **What are Parental Responsibilities and Rights and who should have them?**

There is research to suggest that children benefit from their father being involved in their upbringing. For example, the Scottish Government's Growing Up in Scotland study found that children with poor father-child relationships are more likely to have higher levels of behavioural and emotional problems and poor school adjustment<sup>163</sup>.

There is research which shows that children benefit from both parents being involved in their lives<sup>164</sup>. There is also research from Belgium that says there

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<sup>157</sup> Jappens, M and Van Bavel J Parental divorce, residence arrangements and contact between grandchildren and grandparents *Journal of Marriage and Family* vol 78(2) p 451-467

<sup>158</sup> Lussier, G, Deater-Deckard, K, Dunn J and Davies L (2002) Support across two generations: children's closeness to grandparents following parental divorce and remarriage *Journal of Family Psychology* vol 16(3) p363-376.

<sup>159</sup> <http://www.clanchildlaw.org/app/uploads/2015/11/Promoting-Sibling-Contact-for-Looked-After-Children.pdf>

<sup>160</sup> A survey of sheriff clerks' perspective on child contact enforcement in Scottish sheriff courts 2006 available at: <http://www.gov.scot/Resource/Doc/156495/0042016.pdf>

<sup>161</sup> Baldwin L & Epstein R. Short but not sweet: A study of the impact of short custodial sentences on mothers and their children 2017

<sup>162</sup> Black G. Identifying the legal parent/child relationship and the biological prerogative: Who then is my parent? *Juridical Review*. April 2018

<sup>163</sup> Growing up in Scotland: Father –child relationships and child socio-emotional wellbeing. 2017. Available at: <http://www.gov.scot/Publications/2017/03/5231>

<sup>164</sup> Caring for children after parental separation: would legislation for shared parenting time help children? 2011. Available at: <http://www.nuffieldfoundation.org/sites/default/files/files/Would%20legislation%20for%20share%20parenting%20time%20help%20children%29OXLAP%20FPB%207.pdf>

has been little evidence that children's well-being in shared residence is higher than children living with one parent<sup>165</sup>. There is research that found that if parental conflict is high and ongoing then shared parenting can be associated with lower child well being compared with sole residence<sup>166</sup>. Research is also available which highlights the negative impact, on a child, of one parent turning the child against another parent<sup>167</sup>.

### **Procedural Changes to the Children's Hearings System**

Recent research conducted on behalf of the Scottish Government on the role of the safeguarder in the Children's Hearings System highlighted issues around the sharing of safeguarder reports with social workers<sup>168</sup>.

### **5. Has there been any public or stakeholder consultations on the policy/measure?**

Stakeholders include children and young people, parents/carers, children's workforce, NGOs.

Yes. This partial CRWIA will be published along with a public consultation document seeking views on our proposals.

Prior to publication of the consultation, the Scottish Government met the following organisations as part of the Business Regulatory Impact

Assessment process:

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

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

<sup>165</sup> Sodermans AK, Matthijs K Joint physical custody and adolescents' subjective well-being: a personality x environment interaction 2014 *Journal of Family Psychology* vol 28(3) p346-356

<sup>166</sup> Vanassche S. Alternating residence for children after parental separation: recent findings from Belgium 2017 *Family Court Review* vol 55(4)

<sup>167</sup> Harman, J, Leder-Elder, S and Biringen Z Prevalence of parental alienation drawn from a representative poll 2016 *Children and Youth Services Review* vol 66. P62-66.

<sup>168</sup> The Role of the Safeguarder in the Children's Hearings System; C. McDiarmid, M. Barry, M. Donnelly, S. Corson; University of Strathclyde, Glasgow. Available at: <http://www.gov.scot/Publications/2017/11/7936>



The notes of these meetings will be published on the Scottish Government website at the link below:  
<http://www.gov.scot/Topics/Justice/law/17867/review-of-children-scotland-act-1995/1995-Act-review-BRIA-interviews>

**6. Has there been any estimate of the resource implications of the policy/measure?**

Capital costs, expenditure, recruitment and training costs for the workforce etc.

Yes. We have estimated that if all the proposals 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:

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

**CRWIA Stage 3  
Data Collection, Evidence Gathering, Involvement of/Consultation with  
Stakeholder Groups - key questions.**

**1. What does the evidence tell you?**

The evidence base may include demographic information, academic research, service monitoring/inspection reports, service evaluation reports, user surveys etc. Identify any gaps in the evidence base. In particular, look at what the evidence tells you about children and young people's views and experiences of the relevant service(s); and/or what it tells you about children and young people's views of the policy proposal.

The evidence suggests that there needs to be changes to legislation and or practice to ensure:

- Further compliance with the UNCRC;
- That the child's welfare is at the centre of any contact or residence case or children's hearing;
- That the voice of the child is heard in a case; and
- Cases are dealt with in an efficient way.

**2. What further data or evidence is required?**

Is the evidence up to date, robust and reliable, sufficiently relevant to what is being proposed, or do you need to commission new research?

The Scottish Government welcomes any further evidence on any of the proposals which consultees may have.

**3. Has there been any consultation on the development of the proposal(s)?**

Public or targeted consultation with children and young people, their parents/carers, the children's workforce - is there enough information on the views of the children and young people who will be affected by the policy/measure?

There will be a full public consultation. This CRWIA forms part of that consultation. We have also met with key organisations that represent children as part of the Business and Regulatory Impact Assessment process.

**4. Should children and young people be further involved in the development of this policy? Are there particular groups of children and young people whose views should be sought?**

Specify how - outline the purpose, format, timetable and the questions you want to ask.

Yes. The Scottish Government welcomes responses to the consultation from children and young people and will seek to engage further with children and young people during the consultation.

**5. Should other stakeholders and experts be further involved in the development of this policy?**

Specify how - outline the purpose, format, timetable and the questions you want to ask.

The Scottish Government welcomes responses from any stakeholder.

**CRWIA Stage 4**  
**Assessing the Impact and Presenting Options - key questions**

**1. What likely impact will the policy have on children's rights?**

Negative/positive/neutral. For those assessed as having a negative impact, list options for modification or mitigation of the policy/measure, or suggested alternatives to the policy/measure.

Positive as one of the aims of the review of the Children (Scotland) Act 1995 and the creation of a Family Justice Modernisation Strategy is to ensure that the child's best interests are at the centre of any contact or residence case or children's hearing.

**2 How will the policy/measure contribute to the wellbeing of children and young people?**

Provide any additional assessment using the wellbeing indicators framework.

All the wellbeing indicators are relevant.

**3. Are some children and young people more likely to be affected than others?**

Which groups of children and young people will be affected by the policy/measure? Are there competing interests between different groups of children and young people, or between children and other groups? List options for modification or mitigation of the proposal.

We consider that the policies are more likely to affect younger children, those who are victims of domestic abuse, those involved in court proceedings about the arrangements for their upbringing and children involved in the Children's Hearings System.

**4. Resource implications of policy modification or mitigation**

If recommending any changes to the policy/measure, include estimates of cost implications.

We have estimated that if all the proposals 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 children's support workers – approx. £3.2m per year based on two per local authority;
- Regulation of child welfare reporters – 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.

**5. How does the policy/measure promote or impede the implementation of the UNCRC and other relevant human rights standards?**

This will inform Scottish Ministers' duty to report to Parliament on children's rights under the Children and Young People (Scotland) Act 2014.

One of the main aims of the review of the Children (Scotland) Act 1995 and the Family Justice Modernisation Strategy is to promote further compliance with the UNCRC.