

Annex I: Partial Data Protection Impact Assessment

1. Introduction

1.1 The purpose of this document is to report on and assess against any potential Privacy Impacts as a result of the review of the Children (Scotland) Act 1995 and the creation of a Family Justice Modernisation Strategy.

2. Document metadata

- 2.1 Name of Project:
Review of Part 1 of the Children (Scotland) Act 1995 and creation of a Family Justice Modernisation Strategy.
- 2.2 Author of report:
Family and Property Law team, Civil Law and Legal System division.
- 2.3 Date of report: (to be completed when DPIA is finalised).
- 2.4 Name of Information Asset Owner (IAO) of relevant business unit:
Deputy Director Civil Law and Legal System.
- 2.5 Date for review of Data Protection Impact Assessment (DPIA):
This partial DPIA will be reviewed after the public consultation is completed and the Scottish Government has decided on the appropriate next steps.

3. Description of the project

3.1 Description of the work:

The Children (Scotland) Act 1995 (the 1995 Act) is over 20 years old now and the shape of families has changed considerably in that time. We have received a number of comments from stakeholders that certain aspects of the 1995 Act could be reformed. The main aims of the consultation are to:

- Further comply with United Nations Convention on the Rights of the Child;
- Ensure that the child's best interests are 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 effective and efficient way.

The consultation is seeking views on the following main topics:

- How the court considers the views of a child and representation of a child;
- Who a child should have contact with and how contact should happen;
- Who should have Parental Responsibilities and Rights;
- How international parental child abduction can be prevented;
- How children and victims of domestic abuse can be protected;
- How court procedure can be improved;
- What alternatives there are to court;
- Amendments that may be needed to birth registrations; and
- Procedural changes to the Children’s Hearings System.

3.2 Personal data to be processed.

Variable	Data Source
<p>One option being considered is to introduce new arrangements on the management and training of child welfare reporters. This could involve responsibility for them transferring from Sheriffs Principal to either the Scottish Government or an organisation which is contracted to do this work.</p> <p>Information would be processed on child welfare reporters. This could include personal data such as contact details, date of birth, employment history, appraisal forms, training records and any records of misconduct.</p>	<p>From the child welfare reporters themselves when they apply to the Scottish Ministers or external organisation.</p>
<p>Confidential information provided by children being used as evidence in court.</p>	<p>Local authorities and other organisations providing confidential service to children.</p>
<p>Changes to allow modernisation of the Children’s Hearings System through enhanced use of available technology may result in a range of personal and confidential information being provided and collected differently.</p>	<p>Children and families themselves; papers and reports provided to Children’s Hearings.</p>
<p>Confidential information on children’s personal lives, possibly including medical information being passed to Local authorities for Children’s Hearings.</p>	<p>Safeguarder reports and other reports provided to the Children’s Hearing.</p>

3.3 Describe how this data will be processed:

In the first case, personal data on child welfare reporters is currently held by Sheriffs Principal. This includes contact information and employment history. If we take forward the option to regulate child welfare reporters then this information may be gathered by Scottish Government. This work may be contracted out to another organisation. The information will only be accessed by the body who will be responsible for child welfare reporters. The information will be stored in an appropriate manner and disposed of securely when no longer required. The data will be owned by either the Scottish Government or the organisation that is contracted to do this work. Child welfare reporters will be asked to notify any changes to contact details. Child welfare reporters are likely to require regular appraisals and to maintain a training record. Any conduct complaint is likely to be raised directly with either the Scottish Government or the organisation contracted to do this work.

In the second case, personal and private information may be gathered by Local authorities and other organisations during confidential meetings with children. This can be shared with a court if the organisation is requested by either party in a court case. The information will be sent to the court in a separate sealed packet marked "confidential". A further application to the judge then needs to be made requesting this packet be opened. Children should be made aware when their private or personal information is to be shared with the court and given an opportunity to express their views. Information should only be shared when it is in the child's best interests. The information will be stored in an appropriate manner and disposed of securely when no longer required.

In the third case, decisions with regard to any changes to how the data is processed will be taken following the public consultation.

In the fourth case, data will initially be gathered and compiled into reports by safeguarders or other professionals such as medical experts. The Scottish Children's Report Administrator (SCRA) holds copies of reports electronically. SCRA is the data processor and owner. The information will be stored in an appropriate manner and disposed of securely when no longer required.

3.4 Explain the legal basis for the sharing with internal or external partners:

This is not applicable for the first case.

In the second case, the:

- Administration of Justice (Scotland) Act 1972 makes provision on the Court and Session and the sheriff court being able to recover documents which are relevant to an existing case;
- Section 10 of the Court of Session Act 1988 makes some provision on Outer House of the Court of Session granting commission and diligence;
- Chapter 28 of the Sheriff Court Ordinary Cause Rules makes provision on procedures in the sheriff court for recovery of evidence; and

- Chapter 64 of the Court of Session Rules makes provision on applications for an order to recover documents where an action has not already started.

In the third case, rules 23 to 29 of the Children's Hearings (Scotland) Act 2011(Rules of Procedure in Children's Hearings) Rules 2013 provide for the sharing of information.

In the fourth case, rule 89 may need to be amended to add to the information that can be shared to Local authorities under the Children's Hearings (Scotland) Act 2011(Rules of Procedure in Children's Hearings)Rules 2013.

4. Stakeholder analysis and consultation

The partial DPIA is part of the full public consultation on the Review of the Children (Scotland) Act 1995 and the creation of a Family Justice Modernisation Strategy. We are seeking views from all stakeholders on the draft DPIA as part of this process.

4.1 Method used to consult with these groups when making the DPIA.

This is a partial DPIA and we are seeking views in this consultation on the impact of our policies.

4.2 Method used to communicate the outcomes of the DPIA .

A final DPIA will be included in any Family Law Bill.

5. Questions to identify privacy issues

5.1 Involvement of multiple organisations

In the first case, the current arrangements only involve the individual Sheriffs Principal. If we decide to regulate child welfare reporters and contract this work out to another organisation then this organisation would be involved.

In the second case, the local authorities and other organisations who have meetings with children and young people where confidential information may be raised, the Scottish Courts and Tribunals Service, parties in a case and the judges are involved.

In the third and fourth cases the organisations participating in Children’s Hearings are involved. This includes SCRA, local authorities and Children’s Hearings Scotland.

5.2 Anonymity and pseudonymity

We are not proposing to combine data from two or more sources.

In the first case, we would be transferring responsibility for child welfare reporters and curators *ad litem* from Sheriffs Principal to a new or existing body.

In the second case, we are not proposing to change procedure but to make it clearer that confidential information should only be used in a court case if it is in the best interests of the child and that the child must be made aware that the information may be disclosed.

N/A for the last two cases.

5.3 Technology

Decisions on next steps will be taken following the public consultation.

Children’s Hearings are confidential, closed meetings with restricted access to information. Any amendments to modernise the system in relation to new technology must reflect the confidential nature of the meetings and the sensitive nature of the information involved.

5.4 Identification methods

There are no plans to use unique identifiers in each situation as in all cases individuals need to be identified. However, personal data will not be available to the public and would be restricted to:

In the first case, those who require access;

In the second case, to the judge and any parties if the judge deems it in the best interests of the child; and

In the third and fourth cases, to those with the right to access papers for a Children’s Hearing.

5.5 Sensitive/Special Category personal data

The Scottish Government’s decisions on next steps will be taken following the public consultation. The first option has no impact on sensitive personal data as none of this type of data is likely to be gathered.

In relation to the second and fourth option, information on a child’s physical or mental health may be included in evidence shared confidentially with a court or a Children’s Hearing by a local authority or other organisation. However,

this information is currently being gathered so any changes would have either a neutral or positive impact on the child involved.

In relation to the third option, decisions on next steps will be taken following the public consultation.

5.6 Changes to data handling procedures

The Scottish Government's decisions on next steps will be taken following the public consultation. In particular, data retention arrangements can only be finalised at that stage. The personal data on child welfare reporters is not publicly available and there are no proposals to make such data available.

The personal data provided by children and young people in the second case is only shared with the judge who decided whether this information should be disclosed. We are proposing that judges should only disclose information if it is in the best interests of the child.

The personal data involved in Children's Hearings is not publicly available. Children's Hearings are confidential, closed meetings with restricted access to information. Any changes to modernise the system in relation to new technology must reflect the confidential nature of the meetings and the sensitive nature of the information involved.

The policy proposals do not involve:

New or changed data collection policies or practices that are unclear or intrusive; or

Changes to data quality assurance, processes and standards that may be unclear or unsatisfactory; or

New or changed data security access or disclosure arrangements that may be unclear or extensive; or

New or changed data retention arrangements that may be unclear or extensive; or

A change in the medium for disclosure of publically available information such that the data becomes more readily accessible than before.

5.7 Statutory exemptions/protection

The first case would not require any statutory exemptions.

In the second case, as personal data is exempt from the non-disclosure provisions in connection with any legal proceedings. However, this is not a change from the current situation.

These do not apply to the third and fourth options.

5.8 Justification

N/A

5.9 Other risks

There are no other risks

6. The Data Protection Act (DPA) and General Data Protection Regulation (GDPR) Principles

The consultation is intended to assist Scottish Government in reaching a view on the appropriate next steps. The content of draft legislation will be finalised after that. The consideration of the principles against the refined policy proposals will be done at that time and on review of this DPIA.

7. Risks identified and appropriate solutions or mitigation actions proposed

Is the risk eliminated, reduced or accepted?

Risk	Ref	Solution or mitigation	Result
Mediation is meant to be confidential and no information should be admissible as evidence in any civil court proceedings. In June 2015, there was an international child abduction case in the Outer House of the Court of Session ¹⁶⁹ . In paragraph 17 of its opinion, the Court said: "In my view the arguments for		We are seeking views on whether to make legislation under the Civil Evidence (Family Mediation) (Scotland) Act 1995 to clarify that confidentiality of mediation extends to cases involving cross border abduction of children.	Eliminate

¹⁶⁹ <https://www.scotcourts.gov.uk/search-judgments/judgment?id=5ea1eea6-8980-69d2-b500-ff0000d74aa7>

the proposition that the 1995 Act does not apply to mediations about cross-border abductions have the edge”.			
Private information that a child may provide in confidence to a local authority or other organisation may be shared with parties in a family law case without the child being aware this is happening.		We are consulting on options to clarify that confidential information should only be disclosed in a contact or residence case if it is in the best interests of the child. The child should also be given the opportunity to express their views before the information is disclosed.	Reduced
We anticipate that a regulated system for child welfare reporters would require personal data to be processed by either Scottish Government officials or another organisation if this is contracted out.		Personal information on Child welfare reporters is currently held by Sheriffs Principal and the proposal to regulate child welfare reporters would transfer responsibility from Sheriffs Principal to either Scottish Government or another organisation if this work is contracted out.	Accept

8. Incorporating Privacy Risks into planning

Explain how the risks and solutions or mitigation actions will be incorporated into the project/business plan, and how they will be monitored. There must be a named official responsible for addressing and monitoring each risk.

Risk	Ref	How risk will be incorporated into planning	Owner
Mediation is meant to be confidential and no information should be		We are seeking views on whether to introduce legislation under the Civil Evidence (Family Mediation)	N/A at this stage

admissible as evidence in any court proceedings.		(Scotland) Act 1995 to clarify that confidentiality of mediation extends to cases involving cross border abduction of children.	
Private information that a child may provide in confidence to a local authority or other organisation may be shared with parties in a family law case without the child being aware this is happening.		We are considering whether to amend primary legislation.	N/A at this stage
We anticipate that a system of regulation for child welfare reporters and curators <i>ad litem</i> would require personal data to be processed either Scottish Government officials or another organisation if this is contracted out.		Consideration will be given whether to regulate child welfare reporters.	N/A at this stage

9. Authorisation and publication

I confirm that the impact of undertaking the Review of the Children (Scotland) Act 1995 and creation of a Family Justice Modernisation Strategy has been sufficiently assessed against the needs of the privacy duty:

Name and job title of a IAO or equivalent	Date each version authorised
To be completed in final DPIA	