



## **Review of Part 1 of the Children (Scotland) Act 1995 and creation of a Family Justice Modernisation Strategy: A Consultation**

Giving all children in Scotland an equal chance to flourish is at the heart of everything we do. By bringing together a network of people working with and for children, alongside children and young people themselves, we offer a broad, balanced and independent voice. We create solutions, provide support and develop positive change across all areas affecting children in Scotland. We do this by listening, gathering evidence, and applying and sharing our learning, while always working to uphold children's rights. Our range of knowledge and expertise means we can provide trusted support on issues as diverse as the people we work with and the varied lives of children and families in Scotland.

We welcome the opportunity to contribute to the discussion around the review of family law and believe that there are significant opportunities for further implementing child rights in Scots Law.

The consultation is broad and far-reaching, covering many areas which will have a substantial and long-term impact on children, young people and families. The timeframe for responding is restrictive and we have therefore chosen to respond to questions on areas in which we have expertise as an organisation and can respond to within the timescales of this consultation. We wish to be clear that our decision not to respond on issues such as domestic violence in no way signifies that we regard these issues as lacking importance and does not indicate our priorities, and we would signpost to other organisations with significant expertise such as Scottish Women's Aid.

For the purposes of this consultation, we are using the terms 'welfare of the child', the paramount principle in Scots law, and 'best interests of the child' as referred to in the United Nations Convention on the Rights of the Child interchangeably. We acknowledge the differences in interpretation, as discussed in literature<sup>1</sup> and articles<sup>2</sup>, however we are using these terms to refer to a holistic view of the child or young person's life, which is informed heavily by the views and experiences of the child.

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<sup>1</sup> The Best Interests of the Child in Healthcare, Sarah Elliston, 2007

<sup>2</sup> Considering the Best Interests Test in the Context of Disabilities, Vincent Ooi\* and Jia Wei Loh

**Question 1): Should the presumption that a child aged 12 or over is of sufficient age and maturity to form a view be removed from sections 11(10) and 6(1) of the 1995 Act and section 27 of the Children's Hearings (Scotland) Act 2011?**

1. a) Yes – remove the presumption and do not replace it with a different presumption.

It is a core component of any human rights-based system that people have a right to have a say in decisions which affect them. Children and young people are no exception and have protected rights under international<sup>3</sup> and domestic law<sup>4</sup> to have their voice heard, but will require support to have these rights upheld, particularly when interacting with the legal system in any capacity.

As referenced in the consultation paper, the absence of child-friendly language, complex procedures and, worryingly, the lack of feedback on the outcome of cases that are currently characteristic of the legal system mean that there are fewer opportunities or encouragement for young people to engage. This is particularly true of children aged under 12, and we are concerned that keeping the presumption or lowering it undermines children's voices and therefore their rights.

We therefore believe that systemic and cultural change is required in order to create the conditions for meaningful engagement opportunities for children and young people of all ages. In order to drive this forward, the language on the face of the Act should be clear and explicit that all children should be engaged with to ascertain their views where they wish. We therefore would strongly recommend replacing the presumption not with another presumption but with an explicit commitment to seeking the views of all children. We recognise that on some occasions, children may choose not to engage but should be supported to make this choice for themselves.

This requires flexibility, training and support for people working within the legal system. Expertise is required to engage with children and young people, but we are clear that children can share their views even at a very young age if suitable approaches are taken. For example, the principles of the

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<sup>3</sup> Article 12, The United Nations Convention on the Rights of the Child (UNCRC)

<sup>4</sup> See Part 2, Children and Young People (Scotland) Act; Children (Scotland) Act 1995; Children's Hearings (Scotland) Act 2011; Standards in Scotland's Schools etc. Act 2000

Mosaic approach<sup>5</sup> offer useful learning on the variety of methods that can be used to engage with very young children. As described by young people in the Power Up Power Down project:

*“The Sheriff needs to know what the children think – it doesn’t matter how old or young the child is. Being given the opportunity to have a say is really important.”<sup>6</sup>*

Further, in order to promote and encourage children to have their say, it is vital that the outcome of decisions and how their views impacted on these decisions are communicated clearly to the child. This promotes continuous engagement with other services and structures and builds confidence and an understanding of what is happening. Indeed, it can be more damaging to ask for views and not close the feedback loop than to never have asked for views at all, as it can undermine trust at what is already a vulnerable and sensitive time.

**Question 2): How can we best ensure children’s views are heard in court cases? Please select as many answers as you want.**

1. a) The F9 form.
2. b) Child welfare reporters.
3. c) Speaking directly to the judge or sheriff.
4. d) Child support workers.
5. e) Another way (please specify).

Select all options.

## **UNCRC**

As stated in question 1, the UNCRC enshrines that children have the right to express their views and be taken seriously regarding all matters that affect them. Article 12 is one of the General Principles of the UNCRC which underpins the interpretation and implementation of all other rights.<sup>7</sup> Additionally, there are already existing provisions within section 11 (7(b) and Part 2 Section (16(2) Children (Scotland) Act 1995 that children, if they wish to, should have an opportunity to express their views.

We would like to highlight the importance of taking into consideration the views of the very youngest children when making decisions that impact

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<sup>5</sup> [Clark, Alison](#) and Moss, P (2001). *Listening to young children: the Mosaic approach*. London: National Children's Bureau for the Joseph Rowntree Foundation.

<sup>6</sup> Page 42, Power Up/Power Down project report at [https://issuu.com/scottishwomensaid/docs/final\\_print\\_pupd\\_binder](https://issuu.com/scottishwomensaid/docs/final_print_pupd_binder)

<sup>7</sup> <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>

them. The UN Committee on the Rights of the Child published a monograph to help support understanding of implementing children's rights in the context of early childhood.<sup>8</sup> Additionally, UNICEF highlights that the convention does not set a 'minimum age' or 'limit the contexts' in which children can express their views.<sup>9</sup> However, we would emphasise that children's views should be sought using appropriate methods and that they should be supported to do this.

## **Multiple methods of engagement**

The method for finding out the views of the child would be on a case by case basis and children and young people should be asked about their preferred method for sharing their views, including those with Additional Support Needs. We believe that children should be offered different options and should be able to provide their views using a combination of different methods.<sup>9</sup> For example, what is appropriate for one child might not be suitable for another. This is exemplified by the consultation conducted by the Children's Parliament on the F9 form. The consultation recognised that whilst some children might prefer to use the form some may prefer to speak to someone: "*children thought that a form may not be the best way for some children to express their views and it would be easier for them to speak with someone directly*".<sup>10</sup> As a result, the method of engagement should be tailored to meet the needs of the child and where possible the child should be consulted in advance to find out how they would like to share their views.

## **The F9 Form**

### **Accessibility**

We welcome the review of the F9 form by the FLC. We would like to emphasise that the form needs to be appropriate and meet the needs of the child. We echo the findings of the Children's Parliament consultation that the F9 form should use "*clear, simple and child-friendly language*".<sup>10</sup> This is in line with Children in Scotland's principles and guidelines for the meaningful participation of children and young people. The section on inclusion states that information should be presented in a way that children and young people understand and should "*avoid using long words and acronyms*".<sup>11</sup> We recommend that the F9 form should emphasise that organisations need to accommodate the different communication needs of children and young people. For example, Dyslexia Scotland provides advice on Dyslexia-friendly

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<sup>8</sup> [https://www.unicef.org/earlychildhood/files/Guide\\_to\\_GC7.pdf](https://www.unicef.org/earlychildhood/files/Guide_to_GC7.pdf)

<sup>9</sup> <https://www.unicef.org/crc/files/Right-to-Participation.pdf>

<sup>10</sup> <http://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/flc-meeting-files/flc-meeting-papers-08-may-2017/paper-4-1c-children-39-s-parliament-feedback-report-on-form-f9.pdf?sfvrsn=2>

<sup>11</sup> <https://childreninscotland.org.uk/wp-content/uploads/2017/11/Principles-and-Guidelines-FINAL.pdf>

formats.<sup>12</sup> Additionally, to accommodate the needs of children and young people with complex communication needs we would also suggest the use of specific communication symbols (examples include, Talking Mats<sup>13</sup> or Widgit<sup>14</sup>).

We would also recommend exploring how children can be informed about the F9 form using audio, like Siri, video or through cartoons and animation. Presenting information on the F9 form could result in the added benefit of an increased uptake in the form's use.

We would again reiterate the findings of the Children's Parliament consultation highlighting that children would like the form to be 'child-friendly': "*I would like there to be a lot more colour and pictures to make the form seem friendlier*"<sup>10</sup> Additionally, children should be able to present their views through the use of lots of different methods including pictures, drawings and through play. This is especially significant for younger children who may not feel as confident in expressing themselves in writing. This was also acknowledged in the Power Up/Power Down consultation: "*Forms are hard: talking face to face, communicating through playing, telling through drawing, building Lego, saying what you feel in a video or through a voice recording – all of these (and more) are better ways to hear a child.*"<sup>15</sup>

### **Confidentiality and Privacy**

Through our work we have heard from children that it is important that they can share their views in a private and safe space. This is of importance if they are sharing information in relation to their family circumstances and can be seen in our consultation with children and young people regarding the School Nursing Service Review.<sup>16</sup> For example, some children were reluctant to seek help from the school nurse service because of "*perceived loyalty to families*".<sup>16</sup>

As a result, we think it is important that children are asked whether they would like their views, expressed in the F9 form, to be shared with the court. At present, this is up to the discretion of the Sheriff however we believe children should be asked if they would feel comfortable with what they have said being shared with other people. It is important that children understand what will happen with information they have provided. Children may be deterred from sharing their views in the future if information was shared with someone out with their knowledge. Confidentiality was an important finding of the Power Up/Power down consultation.

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<sup>12</sup> [https://www.dyslexiascotland.org.uk/sites/default/files/library/dyslexia\\_friendly\\_formats.pdf](https://www.dyslexiascotland.org.uk/sites/default/files/library/dyslexia_friendly_formats.pdf)

<sup>13</sup> <https://www.talkingmats.com/>

<sup>14</sup> <https://www.widgit.com>

<sup>15</sup> [https://issuu.com/scottishwomensaid/docs/final\\_print\\_pupd\\_binder](https://issuu.com/scottishwomensaid/docs/final_print_pupd_binder)

<sup>16</sup> <https://childrenscotland.org.uk/wp-content/uploads/2018/01/CiS-School-Nurse-CYP-report.pdf>

## **Child Welfare Reporters**

With regards to Child Welfare Reporters, we do not feel best placed to respond, however we would again stress that continuous opportunities for meaningful engagement are offered to all children and young people and would highlight our concern that there is currently no training given to Child Welfare Reporters.

### **Speaking to the judge or sheriff**

As has been highlighted by Children's Parliament some children would prefer to speak to someone directly. However, it is also important to recognise that for some children even knowing that the sheriff will be responsible for making the decision is quite overwhelming and frustrating: *"For us, it's our whole lives and it's really big, but then the Sheriff gets to choose and it's not big for him. It's your life and he decides? That would make me nervous."*<sup>10</sup>

However, as we have previously stated children should be given the option and allowed the choice to decide whether they would like to share their views directly with the Sheriff. As stated, children from the Power Up/Power Down project indicated that they would like to speak to a Sheriff involved in their case.

However, we would emphasise that if they decide to speak to the Sheriff they should be supported by an independent person throughout this process. For example, "My Rights, My Say"<sup>17</sup> is a partnership project being run by Children in Scotland, Enquire, Partners in Advocacy and Cairn Legal which runs a Children's Views service. The service supports young people aged 12-15 to play active roles in decisions about their education through providing a range of support including support to participate in Additional Support Needs Tribunal hearings. This includes having questions sent to young people ahead of the proceedings to provide meaningful opportunities to engage. We would recommend that children be able to provide their views outwith the formal court setting and that these should be sought by the Sheriff in advance. It would be beneficial to draw on some of the principles of the Barnahus model including: providing children with a safe space to share their views, interviewing children in a way that minimises trauma and eliminating the need for children to appear in courts.<sup>18</sup>

## **Child Support Workers**

We would advocate for the use of child support workers (children's advocacy services or children's rights officers). We hear routinely from children and young people that it is important that they are comfortable and feel they can trust someone before sharing their views, problems or feelings

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<sup>17</sup> <http://enquire.org.uk/myrightsmysay/>

<sup>18</sup> <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/06/Barnahus-Improving-the-response-to-child-sexual-abuse-in-England.pdf>

regarding sensitive issues. For example, we heard during our school nurse consultation that participants were willing to speak to the school nurse if they felt that was “someone who is able to listen, someone who you are able to trust”.<sup>16</sup> Additionally, they were more likely to share their views if they had met the person on more than one occasion which correlates with findings from the Power Up/Power down consultation that emphasis that the child should have met the person more than once and have an established relationship with them.

Additionally, the beneficial use of advocacy services was highlighted in the 2017 *State of Children’s Rights in Scotland* report in relation to the review of placements of looked after children. Results from a survey by Who Cares? Scotland show that of those care experienced young people who had advocacy 92% felt it had helped them.<sup>19</sup> Survey respondents were asked to consider if advocacy was a good thing for young people to have access to: “Gives the young person a chance to tell someone what they want/like out with the line of professionals and it’s good to help children and young person to put their views across with what they think is best for them and a lot of children don’t as they don’t think they would be listened to or don’t know how to say it.”<sup>19</sup>

As a result, we recommend that advocacy services are available for all children and young people involved in section 11 cases. We recognise that this would option would be dependent on the child’s wishes and would require investment and ongoing training.

**Question 3): How should the court’s decision best be explained to a child?  
Please select only one answer.**

**c) Another option (please specify).**

In our experience it is vital when children have shared their views that they are informed of the outcomes of such decisions. At present, there is no requirement for feedback to be provided however we believe this should be a requirement. We heard from children and young people during our consultation on educational governance (Excite.Ed project) that is important that they are informed of the outcomes of decisions.<sup>20</sup> Children explained that this would help them to feel listened to and that their input is valued.

As a result, we believe it is important that the feedback loop is closed when undertaking any work seeking children’s views. For example, it is important

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<sup>19</sup> <http://www.chip-partnership.co.uk/wp-content/uploads/2017/07/WCS-Advocacy-Matters-an-analysis-of-young-peoples-views-Oct-2016-2.pdf>

<sup>20</sup> <http://www.gov.scot/Resource/0052/00521082.pdf>

that children and young people are supported to understand the reasons why certain decisions have/haven't been taken even if these are not compatible with the child's expressed wishes. This was highlighted through our work on Excite.Ed and from the Power Up/Power Down consultation "*children need to be told what the decisions made are, why they have been made and what that means for the child.*"<sup>21</sup> It is also important that children have an outlet which enables them to question decisions that have been taken and that their views on the outcome of decisions are heard.

We would recommend that any feedback provided to a child is given by someone who they have an established relationship with. Again, we would emphasise that the child needs to feel that they can trust the person and that they will be understanding. Ideally, we would like the child to be asked who and in what way they would like to receive feedback. However, if this is not possible then we would recommend that feedback is provided (if applicable) by a child support worker as they are likely to have developed a supportive relationship with the child. Again, we would highlight that all feedback is given through clear communication which meets their needs and is fully accessible.

**Question 7): What steps should be taken to help ensure children continue to have relationships with family members, other than parents, who are important to them?**

Through our work we have heard from children that positive social relationships are important to help support their emotional wellbeing. For example, we undertook a consultation with under 12s to help support the development of the Scottish Government's mental health strategy. As part of this consultation we discovered that being with family was very important to help support their wellbeing, and through this work children were able to identify various sources of support including parents, step-parents, siblings, and grandparents. However, it should be noted that whilst families can offer a source of support for many children, they can potentially be an aspect of life where children can experience concerns and worries.<sup>22</sup>

As a result, we would recommend consulting with children to find out about the relationships, other than their parents, that are of importance to them. Each case is unique and steps taken should be unique to the individual case.

**Question 8): Should there be a presumption in law that children benefit from contact with their grandparents?**

**No**

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<sup>21</sup> [https://issuu.com/scottishwomensaid/docs/final\\_print\\_pupd\\_binder](https://issuu.com/scottishwomensaid/docs/final_print_pupd_binder)

<sup>22</sup> [https://childreninscotland.org.uk/wp-content/uploads/2017/11/MH\\_strat\\_U12\\_recommendations\\_report\\_Final-.pdf](https://childreninscotland.org.uk/wp-content/uploads/2017/11/MH_strat_U12_recommendations_report_Final-.pdf)



Grandparents can play hugely significant roles in children's lives and contribute significantly to children's rights being fulfilled. However, we would reiterate that the only overriding principle should be the best interests of the child, and that any presumption over contact could lead to its dilution.

This is exemplified in the recent case of *CF v MF*<sup>23</sup>, in which a 14-year-old girl requested her grandparents to no longer be deemed relevant persons and therefore to stop receiving information about her. The young person had not seen her grandparents for over a year at her own request, and therefore argued that they did not meet the test for being a relevant person due to them not having 'significant involvement' in her life. Following the Pre-Hearing Panel's decision to remove their relevant persons status, the grandparents appealed and the Sheriff decided in the grandparents' favour. This was then appealed again, where it was overturned at the Court of Session and the grandparents were no longer deemed relevant persons. This was also in the absence of a presumption of the child benefitting from contact with their grandparents, and we feel that the introduction of this would complicate things further. We are concerned that it may dilute the best interests of the child governing decisions, with the focus being put on legal tests of thresholds for significant involvement or rebutting the presumption.

Instead, we believe that a holistic look at the child's life – looking at who and what matters to them, engaging with the child or young person to find out their views and ascertain what is in their best interests – will lead to better results for children and young people in Scotland. Support, training and guidance must be available to ensure that this is undertaken well, and we would welcome a review to ensure that this is guiding decision-making.

**Question 9): Should the 1995 Act be clarified to make it clear that siblings, including those under the age of 16, can apply for contact without being granted PRRs?**

**Yes**

Children have a right to maintain family links under Article 9 of the UNCRC, provided it is safe and appropriate to do so and every effort should be made to support this right. This includes the removal of any doubt that siblings can apply for contact without being granted PRRs.

This is particularly important for care experienced young people, as set out in the United Nations Guidelines for the Alternative Care of Children<sup>24</sup>:

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<sup>23</sup> *CF v MF*, GF and Locality Reporter [2017] CSIH 44, available at <http://www.scotcourts.gov.uk/search-judgments/judgment?id=624d38a7-8980-69d2-b500-ff0000d74aa7>

<sup>24</sup> UN General Assembly, 2010, A/RES/64/142

“...every effort should be made to enable siblings to maintain contact with each other, unless this is against their wishes or interests.”

Sibling relationships can be some of the strongest and most enduring relationships in a child's life and can be a source of great support and resilience during periods of change or uncertainty<sup>25</sup>. A local authority must “take such steps to promote ... personal relations and direct contact between the child and any person with parental responsibilities”<sup>26</sup>, however no equivalent duty for siblings exists.

We fully support the recommendations as set out by Fiona Jones and Dr. Christine Jones in their report, *Prioritising Sibling Relationships for Looked After Children*<sup>27</sup>. This includes expanding the definition of siblings to encompass half-siblings, step-siblings and any other person the child regards as their sibling, bringing the definition in line with Article 8 of the European Convention on Human Rights. We also support promoting contact between siblings when in alternative care and placing them together unless compelling reasons are given based on the best interests of one or more siblings. We would refer to Stand Up for Siblings which has a range of evidence about the impact of sibling relationships<sup>28</sup>.

It is vital that barriers are not created to prevent contact between siblings where it is in their best interests, and we therefore strongly support the removal of this barrier to promote clarity in the law and importantly ensure clarity for the families it affects. We would also highlight the recent landmark judgement<sup>29</sup> which found that siblings have the right to be involved in decisions by the Children's Panel. In the Judicial Review of certain decisions of the Children's Hearing, Lady Wise held that the relevant person test was too restrictive and required words to be read into the definition to make it compatible with Article 8 of the European Convention on Human Rights.

**Question 10): What do you think would strengthen the existing guidance to help a looked after child to keep in touch with other children they have shared family life with?**

We would refer to colleagues at Clan Childlaw who possess a wealth of expertise on this area and reiterate our support for their report as referenced in question 9.

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<sup>25</sup> Wojciak, A.S., McWey, L.M. & Waid, J. 2018. Sibling relationships of youth in foster care: A predictor of resilience. *Children and Youth Services Review*, 84, pp.247-254.

<sup>26</sup> Section 17(1)(c), Children (Scotland) Act 1995

<sup>27</sup> <https://www.clanchildlaw.org/Handlers/Download.ashx?IDMF=3edff743-f3cf-442b-b7c8-b56d6e11a98e>

<sup>28</sup> <https://www.standupforsiblings.co.uk/professionals>

<sup>29</sup> ABC V Principal Reporter and Others [2018] CSOH 81

**Question 17): Should the term “parental rights” be removed from the 1995 Act?**

**No**

.While we see the value of setting the tone by making it clear that children as rights holders require support from those with corresponding parental responsibilities, we would be concerned that this could be perceived as parents losing rights. Instead, we see child rights and PRRs as being complementary rather than in conflict and are clear that families should be supported to ensure they can fulfil their children's rights.

Again, we would stress that the guiding principle for all decisions must be the best interests of the child, and do not believe that removing the term parental rights would produce any further benefit.

**Question 23): Should there be a presumption in law that a child benefits from both parents being involved in their life?**

**No**

We believe that children and young people should be supported to maintain positive relationships but have concerns that a presumption may not be in their best interests. Instead, we again would recommend that the best interests of the child remain the paramount consideration, but that support is given through guidance, training and awareness-raising to ensure that these considerations apply in practice.

Contact with family members, shared parenting or any other issues must be looked at through the prism of the young person's life: what impact does each person have on their welfare, wellbeing, rights, happiness and what does the child or young person think – all should be considered rather than a presumption which makes a series of assumptions and can be hard to overcome.

We would also like to highlight a campaign created by a young person named Heather, who has created a petition to limit parental rights where there has been domestic abuse.<sup>30</sup> We believe that further debate is required in this area and that young people have an important role to play in shaping laws which impact them and their peers.

**Question 24):**

**Should legislation be made laying down that courts should not presume that a child benefits from both parents being involved in their life?**

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<sup>30</sup> <https://www.edinburghnews.scotsman.com/news/politics/city-schoolgirl-wants-law-change-in-parental-rights-1-4756028>

**No**

Again, we would re-iterate that the key guiding principle should be the best interests of the child, as discussed in our response to the previous question.

**Question 25): Should the Scottish Government do more to encourage schools to involve non-resident parents in education decisions?**

**Please select only one answer.**

1. a) Yes – put the pupil enrolment form and annual update form on a statutory basis.
2. **b) Yes- issue guidance on the enrolment form and annual update form.**
3. c) Yes – other (please specify).
4. d) No – no further action by Scottish Government is required.

We believe that there is a strong link with work the Scottish Government is currently doing around attainment which recognises that learning happens beyond the classroom environment. In order for children to flourish, they need support at home, and would benefit from more than one parent being involved. Families play a significant role in children's development, and learning through playing, communicating and reading are all aspects of a child's learning. We therefore welcome the inclusion of parental updates for non-resident parents to ensure that support is placed around the child. The use of technology by schools to communicate with parents could be explored, although this may cause additional barriers for those with reduced access to technology or knowledge of how to use it.

We do however wish to raise that there are significant issues when the non-resident parent has been abusive and would again strongly recommend that the welfare of the child, their wellbeing and rights are recognised as of paramount importance. The guidance must reflect this, but there would need to be clarity as to whether or not schools would have access to this information and at what point, to ensure that no child is placed at risk.

**Question 28): Should the Scottish Government take action to try and stop children being put under pressure by one parent to reject the other parent?**

**No**

We have significant concerns about this question and question 11 on offences for a breach of contact order which we believe require sensitive and nuanced discussion. We do not feel that this is possible within the constraints of this consultation, particularly given the abundance of issues explored within this document. We are particularly concerned that this will

disproportionately affect single parents and women and would have significant child rights implications.

We believe that meaningful engagement and dialogue is required and would caution against further action without exploring all of the possible ramifications of this and of introducing sanctions or offence grounds for breach of contact which we view as linked.

**Question 32): Should personal cross examination of domestic abuse victims be banned in court cases concerning contact and residence?**

We do not feel best placed to answer this question and would suggest referring to a response from Scottish Women's Aid in the first instance. However, we agree that a ban on personal cross examination of a victim of domestic abuse should extend to the personal cross examination of any child involved. We believe that a child attending court should be avoided at all costs. Additionally, cross examination could be a re-traumatising experience and we feel that this is not in line with a child right's approach.

As mentioned in question 2 it would be beneficial to apply the principles of the Barnahus model enabling children to safely express their views in a way that does not have damaging implications on their emotional wellbeing. For example, in West Lothian, the council has created a post of Domestic Abuse Children's Rights Officer to support children and young people to talk through concerns with important decision makers in their lives.<sup>31</sup>

**Question 42): Should the Scottish Government do more to encourage Alternative Dispute Resolution in family cases?  
Please select as many options as you want.**

1. a) Yes – introduce Mediation Information and Assessment Meetings in Scotland.
2. b) Yes – better signposting and guidance.
- 3. c) Yes – other (please give details).**
4. d) No – no further action required.

As we have consistently highlighted, we believe that no child should have to go to court and so we are broadly supportive of Alternative Dispute Resolution. We believe that children and young people should be asked their views on Alternative Dispute Resolution and would welcome a consultation in this area.

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<sup>31</sup> [http://www.togetherscotland.org.uk/pdfs/2017\\_Online\\_V11.pdf](http://www.togetherscotland.org.uk/pdfs/2017_Online_V11.pdf)

**Question 46): Should a person who is applying to record a change of name for a young person under the age of 16 be required to seek the views of the young person?**

**Yes**

We would recommend in line with Articles 8 and 12 of the UNCRC that children are consulted if a person is applying to record a change of name. Article 8 states that children should have the right to an identity including a name. As a result, children should be consulted if a decision is taken to change their name or identity. Changing a child's name or identity could have a negative impact upon a child's emotional wellbeing and as a result it is important to consider this at each stage of the process.

However, we would acknowledge that in some very exceptional cases it may be necessary to change the child's name without their permission. In these cases, the decision would be taken in line with Article 3 to support the best interests of the child. However, we would stress that even in this instance children should understand the reasons for why this is happening as this will have implications for their daily life.

**Question 49): Should changes be made which will allow further modernisation of the Children's Hearings System through enhanced use of available technology?**

**Yes**

There are a variety of ways that technology could be used to modernise the Children's Hearings System, and many that have yet to be developed. Strict safeguards would evidently be necessary and again the use of technology would have to be in the child or young person's best interests.

We support creative uses of technology to provide support to children and young people to share their views and engage in the Hearing's System and indeed the wider justice system. For example, in England VR headsets have been used to for children to watch a video which acts as a walkthrough of a day in court, from how to get to a court room, how the staff will greet them and the whole process of a court hearing<sup>32</sup>. Similar approaches here could contribute significantly to minimising stress or distress in children and young people and promote a shared understanding of how processes and procedures work.

**Question 51): Should personal cross examination of vulnerable witnesses, including children, be banned in certain Children's (Hearings) Scotland Act 2011 proceedings?**

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<sup>32</sup> <https://www.salford.ac.uk/news/articles/2018/pioneering-vr-project-to-help-demystify-court-process-wins-government-backing>

## **Yes**

We would refer to our earlier response on cross-examination and would support a move to ban children from being cross-examined through the Children's (Hearings) Scotland Act 2011 proceedings. As detailed above, we do not believe that children and young people should have to go to court to share their views, and that there are a variety of options to support children and young people to have their say in a more comfortable, child-friendly environment with trusted adults.

We would again refer to the Barnahus model which has the aim of minimising trauma for children at its core. We would strongly suggest researching this further and looking at the possible application here in Scotland. Family law must put the child at the centre, and if we are to truly apply the principle of the welfare of the child as paramount, this must include tailoring systems, structures and procedures to be accessible for children and make efforts to minimise trauma, while still providing opportunities for their voice to be heard.