



Briefing for the Public Petitions Committee

Petition Number: [PE01529](#)

Main Petitioner: John Ronald

Subject: Enforcement of child court orders

Calls on the Parliament to urge the Scottish Government to strengthen court orders for child access and provide a more straight forward enforcement procedure that does not require further court expenses

Background

Scotland

Overview

The Children (Scotland) Act 1995 ('the 1995 Act') (as amended) provides for a range of parental rights and responsibilities ('PRRs') in respect of children living in Scotland, where practicable and in the best interests of the child.

PRRs include the right to have the child live with the person having PRRs and, where the child does not live with that person, the right to have contact with that child.

Section 11 of the 1995 Act provides for a range of court orders relating to PRRs. For example, if parents can't agree on arrangements for the parent who the child does not live with to see the child, the court can grant a 'contact order' stipulating future arrangements in this regard. When the permanent residence of the child is in dispute, the court can also make a 'residence order' determining this issue.

Enforcement of contact orders

Sometimes, after a contact order is obtained, the party in whose favour it is granted experiences difficulties with enforcing the terms of the order in practice. If reaching an amicable solution fails, the current legal remedies for breach of a contact order are as follows:

- **contempt of court:** the person in breach can be found in contempt of court with the possibility of them being fined or imprisoned. Judges are reluctant to imprison an individual in this situation because of the implications for the children involved.¹
- **variation of existing court orders:** a court has a discretion to vary the terms of any residence order in place, as well as any contact order. Theoretically, the court could alter who the child lives with as a result of the breach of the contact order. However, the welfare of the child is the paramount consideration.

The practical implications

All these enforcement powers involve a return to court for the person seeking to enforce the contact order.

Additional legal expenses are likely to be incurred by that person during the process, unless he qualifies to have all of his expenses met out of the civil legal aid budget. Around 75% of the Scottish population qualify financially for civil legal aid (although this figure includes those qualifying to have part of, as opposed to all of, their costs met from the fund).²

England and Wales

The current position

The equivalent to section 11 orders can be made under section 8 of the Children Act 1989.

As in Scotland, faced with a breach of such an order, the court can use its contempt of court powers and, in an appropriate case, can consider imposing a fine or custodial sentence. The child's living arrangements can also be altered, although again the welfare of the child is the paramount consideration.

The Children and Adoption Act 2006 introduced new enforcement powers for courts relating to breaches of orders relating to contact. These include the power to impose an unpaid work requirement on the person in breach and the power to require that person to pay compensation to the other parent for financial loss suffered.

Proposed reforms

In 2012, the UK Government consulted on whether there was a need to explore additional enforcement sanctions where there was "a wilful refusal" to

¹ For a rare example of a situation where a parent in a contact dispute was imprisoned for contempt of court see the case of TAM v MJS [2009] CSIH 44:

<http://www.scotcourts.gov.uk/opinions/2009CSIH44.html>

² <http://www.slab.org.uk/public/civil/eligibility/>

comply with a court order.³ Proposed sanctions included court orders imposing a curfew on the person in breach and the withdrawal of passports and driving licences. In February 2013 the UK Government said that it had decided it would be premature to introduce additional measures.⁴

Relevant research

Research was published by the Nuffield Foundation and the University of Exeter in 2013 which considered the additional enforcement powers created by the Children and Adoption Act 2006. It concluded that the new powers under the 2006 Act had been rarely used in practice and that there was no evidence that further or new sanctions would be more widely used.⁵

Scottish Government Action

The Family Law (Scotland) Act 2006

The last major review of this area of law in Scotland resulted in the Family Law (Scotland) Act 2006.

During the Bill's parliamentary passage the then Justice 1 Committee received evidence on the issue of enforcement of contact orders. The Committee's [Stage 1 Report](#) acknowledged that there were no easy solutions to the problem but thought that a speedy return to court was important in the event of a breach. In the context of enforcement, the Committee also recommended the creation of a Scotland-wide system of specialist family law courts to deal with the complex issues often raised by acrimonious family law cases.⁶

The Courts Reform (Scotland) Bill

The [Courts Reform \(Scotland\) Bill](#) (section 41) currently being considered by the Parliament contains proposals to enable Scottish Ministers to create specialist sheriff courts with an all-Scotland jurisdiction. These courts would be able to sit anywhere in Scotland. However, the Scottish Government has

³ Department for Education & the Ministry of Justice (2012) *Co-operative parenting following family separation: proposed legislation on the involvement of both parents in a child's life*. London: UK Government. Available at: <http://dera.ioe.ac.uk/14682/>

⁴ Ministry of Justice (2013) *Co-operative parenting following family separation: proposed legislation on the involvement of both parents in a child's life – summary of consultation responses and the Government's response*. London: UK Government. Available at: <http://media.education.gov.uk/assets/files/pdf/c/co-operative%20parenting%20following%20family%20separation%20proposals%20on%20enforcing%20court-ordered%20child%20arrangements.pdf>

⁵ Trinder, L. (2013) *Enforcing Child Contact Orders: Are the Family Courts Getting it Right?* Available at: <http://www.nuffieldfoundation.org/sites/default/files/files/enforcement%20briefing%20paper%20final.pdf>

Trinder, L *et al.* (2013) *Enforcing Child Contact Orders: Problem-Solving or Punishment?* Available at: <http://www.nuffieldfoundation.org/sites/default/files/files/Enforcement%20report%20final%20Dec%202013.pdf>

⁶ See paras 136–139.

not made any specific commitment to use these powers to create specialist family law court(s).⁷

Parenting Agreement

Following the 2006 Act, the then Scottish Executive introduced the [Parenting Agreement](#) (and the associated [Guide](#)) as a tool designed to promote shared parenting, that is to say the involvement of both parents in the lives of their children. As part of its [National Parenting Strategy](#) the Scottish Government is committed to updating the parenting agreement in 2014.

A review of PRRs

The Scottish Government has no plans for a general review of the law relating to PRRs in Scotland.

Scottish Parliament Action

The Public Petitions Committee is currently considering [PE01513](#), also relating to fathers' rights.⁸ At its [meeting on 5 August](#) it agreed to write to the Scottish Government on a variety of issues raised by the submissions to the Committee.

The Equal Opportunities Committee recently carried out an inquiry into fathers and parenting, including consideration of issues around PRRs. However, it focused on the practical and social aspects of this topic, not issues falling on the remit of the Justice Committee. Its report was published in May 2014. More information on this inquiry can be accessed [here](#).

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⁷ The [Courts Reform \(Scotland\) Bill](#) (sections 34–37) also contains powers facilitating greater specialisation amongst individual sheriffs and family law has been identified as a possible area for individual sheriff specialisation.

⁸ See the SPICe Briefing on this petition:
<http://www.scottish.parliament.uk/parliamentarybusiness/75687.aspx>