



Briefing for the Public Petitions Committee

Petition Number: [PE01570](#)

Main Petitioner: Alan Lee

Subject: Parental Rights To Child Contact

Calls on the Parliament to urge the Scottish Government to change or review the laws that govern parental rights and child access, and their implementation, to ensure the resident parent cannot stop the non-resident parent from contact with his/her child.

Background

Scotland - parental rights and responsibilities (PRRs)

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. Parental responsibilities exist where practicable and in the best interests of the child.

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

Who has PRRs?

A range of people automatically have PRRs in respect of a child, including: 1) the child's mother; 2) the child's father where he is married to the mother at the time of the child's conception or subsequently; and 3) the child's father where he is registered as the father of a child on or after 4 May 2006.¹

PRRs can also be acquired by several methods, including by application to the court under section 11 of the 1995 Act for a court order granting the applicant some or all of the PRRs.

¹ 1995 Act, section 3, as amended by section 23 of the Family Law (Scotland) Act 2006; Registration of Births, Deaths and Marriages (Scotland) Act 1965, section 18.

Section 11 orders are also used in other circumstances

It is also possible to apply specifically under section 11 for a 'residence order', determining who a child should live with. A parent can also apply for a 'contact order', regulating contact arrangements for the child in respect of the parent the child does not live with. Parents with PRRs frequently apply for such orders when a couple separate or divorce.

Section 11 orders and the concept of 'shared residence'

There is no specific provision in the legislation for 'shared residence', i.e. where the child lives for a significant or equal portion of the week with each parent. However, it is possible for a court to grant a residence order making such provision in a specific case.

Factors the court takes into account

In considering whether to grant any court order under section 11, the court will have regard to three principles, namely:

- the welfare of the child is the paramount consideration;
- the child must be given an opportunity to express his or her views and account will be taken of those views in the light of the child's age and maturity;² and
- the court will not make any order unless it considers that to do so would be better than making no order at all (1995 Act, section 11(7) and (10)).

The Family Law (Scotland) Act 2006 ('the 2006 Act') also amended section 11 to require the courts to "have regard in particular" to the need to protect the child from actual or possible abuse, the effects of such abuse on children, the ability of the abuser to care for the child, and the effects of abuse on a person's capacity to fulfil PRRs.

Developments in England and Wales

The Children Act 1989 contains comparable provisions to those discussed above applicable to England and Wales.

Section 11 of the Children and Families Act 2014 amends the checklist in the 1989 Act which the court must have regard to when considering whether to grant a court order relating to the care of children. Specifically:

"A court...is as respects each parent...to presume, unless the contrary is shown, that the involvement of that parent in the life of the child concerned will further the child's welfare."

During the bill's parliamentary passage section 11 was amended to clarify that involvement in this context means:

² A child of 12 years or over is presumed to have sufficient maturity to form a view.

“involvement of some kind, either direct or indirect, but not any particular division of a child's time.”

For some groups campaigning on this topic, this provision of the 2014 Act, whilst welcome, did not go far enough.³ Conversely, groups campaigning to protect (usually female) domestic abuse victims were disappointed that the legislation did not provide for a presumption against an abuser having unsupervised contact with a child.

Scottish Government Action

The Family Law (Scotland) Act 2006

The last major review of this area of law in Scotland resulted in the 2006 Act.

At the time the 2006 Act was undergoing its parliamentary passage in Scotland, some stakeholders argued that the 1995 Act required further amendment relating to fathers' rights. Specifically, these stakeholders wanted to create a presumption of equal parenting time (i.e. a 50/50 split of time between parents) in the legislation.

The then Scottish Executive did not accept the argument for legislative change but did introduce 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.

Recent developments

As part of its [National Parenting Strategy](#) the Scottish Government is committed to updating the Parenting Agreement. Several meetings of a working group convened by the Scottish Government have taken place. Following these meetings, the Scottish Government is considering various options which could be taken forwards.⁴

The Scottish Government is also chairing a working group to examine the role of child welfare reporters (formerly known as ‘bar reporters’) in cases involving contact and residence with children. More information on the work of this group can be found [here](#).

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

³ See, for example, the news release (dated 19 March 2014) from Families Need Fathers Scotland: <http://www.fnfscotland.org.uk/news/tag/legislation> (you will need to scroll past several later news items).

⁴ Telephone conversation with Simon Stockwell from the Scottish Government on 9th September 2015.

Scottish Parliament Action

The Public Petitions Committee has considered a number of petitions in recent years relating to parenting and fathers' rights. These include:

- [PE01528](#): this sought amendment of the child contact laws to provide that there should be near to 50/50 contact for both parents if parents are fit and proper to parent. The petition was closed in May 2015 on the basis that there was opposition to the legislative changes sought by the petitioners
- [PE01529](#): this related to the enforcement of court orders relating to child contact. It was closed in November 2014 on the basis that the Scottish Government was not supportive of the change sought, i.e. the establishment of a new government agency to oversee enforcement
- [PE01513](#) this petition sought to ensure that unmarried fathers had guaranteed rights to be part of their children's lives if they are deemed fit parents. It was considered along with PE1528 (above) and was closed in May 2015 on the same grounds as PE1528

In 2014 the Equal Opportunities Committee 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](#).

Sarah Harvie-Clark
Senior Researcher

11th September 2015

SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However if you have any comments on any petition briefing you can email us at spice@scottish.parliament.uk

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

Published by the Scottish Parliament Information Centre (SPICe), The Scottish Parliament, Edinburgh, EH99 1SP www.scottish.parliament.uk