

Briefing for the Public Petitions Committee

Petition Number: [PE1838](#)

Main Petitioner: Martin Baker and Katherine Bailey

Subject: Regulation of non-statutory child advocacy services

Calls on the Parliament to urge the Scottish Government to ensure that non-statutory child advocacy services are properly regulated to ensure competence, transparency and accountability.

Background

Advocacy services

The [Scottish Government Children's Advocacy Guidance](#) (2014) says that, in its broadest sense, children's advocacy is about empowering children and young people to make sure that their rights are respected and that their views and wishes are fully considered and reflected in decision-making about their own lives.

This guidance also states that advocacy workers do not make choices for children – instead, they support children and young people to make their own choices.

Children's advocacy is used across a range of public services, including health, education and social work. As explained in more detail below, it can be used where a child is in some way involved in court proceedings.

The individual providing the service is sometimes referred to as a 'child support worker'.

Children's advocacy services can be provided by paid or unpaid advocacy workers, depending on the policy sphere in which they are provided. Likewise, the services are currently subject to varying degrees of regulation and oversight, depending on the context in which the services are offered.

As an example of a recent policy development in this area, the [Children's Hearings Advocacy Expert Reference Group was set up in 2019](#) to "advise Ministers on arrangements to work with us to establish and develop a sustainable model of advocacy to deliver on section 122 of the Children's Hearings (Scotland) Act 2011." [Secondary legislation came into force on 21 November 2020](#) setting out requirements as to qualifications, training and fees for children's advocacy services provided under [the children's hearing system](#).

Furthermore, [ten third sector advocacy providers have been contracted by the Scottish Government to provide advocacy services for children and young people](#) within the children's hearing system across every local authority area in Scotland.

Children (Scotland) Act 1995

The petitioners' specific area of interest concerns the use of children's advocacy services in the context of private disputes between parents under the [Children \(Scotland\) Act 1995](#) ('the 1995 Act').

The 1995 Act sets out various parental responsibilities and rights (PRRs) in respect of children living in Scotland. Section 11 of the 1995 Act allows a parent to raise court proceedings to resolve an issue which has arisen in respect of PRRs. For example, when parents separate or divorce, disputes can arise over where a child should live or contact arrangements with a parent who is not living with the child.

The courts make decisions under section 11 according to various criteria, with the welfare of the child the paramount consideration.

There is no formal statutory role for children's advocacy services under the 1995 Act. However, such services, provided by third sector organisations or local authorities, are sometimes used in relation to section 11 court actions. The availability of this service provision is very varied across the country and there is no specific statutory regulation of the services provided in this context.

The Children (Scotland) Act 2020

The consultation

In 2018, [the Scottish Government consulted on the proposals to substantially amend the 1995 Act](#).

The Scottish Government asked whether child support workers should:

- have a formal role in section 11 cases to help explain the court process to the child;
- support the child in giving his or her views to the court;
- and provide feedback to the child on the court's decision.

The Children (Scotland) Bill and the Family Justice Modernisation Strategy

The associated [Children \(Scotland\) Bill](#) ('the Bill'), which became the [Children \(Scotland\) Act 2020](#), was introduced in the Scottish Parliament in autumn 2019. As introduced, the Bill did not contain any provisions promoting the use of child advocacy services in court actions under section 11 of the 1995 Act nor any regulation of those services.

The Bill did contain provisions to enable regulation (for the first time) of some of the other 'infrastructure' associated with, but not directly referred to in, the 1995 Act. These parts of the Bill ultimately became law, although the relevant provisions are not due to come into force until 2023 at the earliest.

Specifically, section 9 of the 2020 Act provides for a register of 'child welfare reporters.' These are court-appointed officials who provide reports to the courts on the child in the case. In addition, sections 10-12 of the Act make provision for a regulatory framework for child contact centres. Such centres are neutral venues provided by the third sector where parents and children can meet.

The Scottish Government also published a [Family Justice Modernisation Strategy](#) ('FJMS') at the same time as the Bill, setting out related policy work to be progressed by the Scottish Government and other public bodies.

The FJMS comments as follows on the topic of children's advocacy:

"The Scottish Government considers that child support workers may be useful in supporting children to give their views or to explain the outcome of decisions to children. However, to ensure the best interests of the child are met there would need to be minimum standards of training and experience set out in legislation.

The Scottish Government is concerned that establishing a system of child support workers at the present time may result in children who are involved in Children's Hearings, a case under section 11 of the 1995 Act and a criminal case having multiple child support workers appointed. This would not be in the best interests of the child. In addition, it may require individuals who wish to be on the list of child support workers to be registered multiple times.

Therefore, the Scottish Government proposes to consider further whether to introduce child support workers to ensure that any new system would work with existing systems and other proposed work."

Stage 1 of the Bill

The [Justice Committee was appointed the lead committee](#) on the Bill which became the 2020 Act.

The [Committee's Stage 1 Report on the Bill referred to "powerful evidence"](#) that the infrastructure for taking children's views in court cases needs to be strengthened for the Bill to make a difference in practice, particularly in relation to younger children. It recommended the Scottish Government develop detailed proposals on this topic (Recommendation 180).

The report highlighted that a key theme in the evidence to the Committee was the need for children to be supported to express their views by an independent person who they know and trust. It recommended (Recommendation 183) that the Scottish Government should ensure that children's advocacy is available to all children involved in cases under section 11 of the 1995 Act.

Stage 2 of the Bill

At Stage 2 of the Bill's parliamentary passage, a non-government amendment, in the name of Liam McArthur MSP, was agreed to by division. It inserted what is now section 21 of the Act. It requires Scottish Ministers to make such provision as they consider "necessary and sufficient" to ensure that all children associated with court proceedings under the section 11 of the 1995 Act have access to child advocacy services while going through a court process. This provision is not in force.

Section 21 does not make provision for the regulation of any child advocacy services associated with section 11 cases.

United Nations Conventions on the Rights of the Child (Incorporation) (Scotland) Bill ('UNCRC Bill')

The [UNCRC Bill](#), introduced to the Scottish Parliament on 1 September 2020, is a Scottish Government bill to incorporate the [United Nations Convention on the Rights of the Child](#) into domestic law.

This Bill is currently being considered at Stage 1 of the parliamentary process, with the [Equalities and Human Rights Committee](#) as the lead committee.

The importance of children's advocacy services in the context of court proceedings affecting children has been raised by several stakeholders in [oral evidence sessions on 12 November 2020](#), [19 November 2020](#) and [26 November 2020](#).

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2 December 2020

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