

## Response ID ANON-VPUF-TEH7-S

Submitted to **Review of Part 1 of the Children (Scotland) Act 1995 and creation of a family justice modernisation strategy**

Submitted on **2018-09-29 00:00:02**

### Obtaining the views of a child

#### **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)(b) of the 1995 Act and section 27 of the 2011 Act?**

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

##### **Why did you select your answer above? :**

The inclusion of a specific, arbitrary age at which a child is deemed sufficiently mature is potentially unhelpful and even dangerous. Unhelpful because it may prevent appropriate levels of involvement by children younger than 12; dangerous because it may lead to a presumption that all children aged 12 and over are sufficiently mature for what they say to be given high weight by a court.

Assessment of children of any age is a highly specialised skill. It is not a skill of judges, barristers or other legal professionals. However, few social workers, psychologists or even psychiatrists have the necessary skill-set either.

It is imperative that wherever children are to speak with professionals, such professionals have very high levels of training and are held accountable by a professional body for their work.

It is also imperative not to conflate 'what a child says' with 'a child's views' which, especially during family separation, are susceptible to undue influence and manipulation to an unusually high degree.

Empowering children and not keeping them isolated from one of the most important decisions of their lives is an important goal. Giving children the responsibility to choose between parents is potentially very harmful to them.

#### **2 How can we best ensure children's views are heard in court cases?**

Another way (please specify)

##### **If another way, please specify. :**

1) Listen to friends and extended family members who have known the child for years; and 2) Engage a highly qualified specialist to listen to the child (and video such interviews).

##### **Why did you select your answer above?:**

#### **3 How should the court's decision best be explained to a child?**

Another option (please specify)

##### **If other, please specify::**

A child should have ongoing, regular access to a familiar professional

##### **Why did you select your answer above?:**

This very question illustrates the inappropriateness and inhumanity of a family court system. A child should not be put in the position where some stranger suddenly comes to them to explain the most important decision of their lives.

Although children should be involved in family court cases as little as possible, there should be ongoing support from, and continuity of connection with, someone the child trusts and knows. Ideally, this would be a relative or friend agreed upon by both parents. Alternatively, someone appointed by the State.

#### **4 What are the best arrangement for child welfare reporters and curators ad litem:**

Not Answered

##### **If another option, please specify. :**

##### **Why did you select your answer above?:**

### Parental Responsibilities and Rights

#### **16 Should a step parents parental responsibilities and rights agreement be established so that step parents could obtain PRRs without having to go to court?**

Not Answered

##### **Why did you select your answer above?:**

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

Not Answered

**Why did you select your answer above?:**

**18 Should the terms “contact” and “residence” be replaced by a new term such as “child’s order”?**

Yes

**Why did you select your answer above? If you answered yes what terms should be used? :**

The legislation should be much better framed from a child's perspective.

It should, for instance, explicitly require that a Sheriff give primary consideration to a child being protected from all forms of harm, and to how a child will maintain and develop each of his/her pre-existing, positive relationships, especially with individuals who have been central to that child's life.

**19 Should all fathers be granted PRRs?**

Not Answered

**Why did you select your answer above?:**

**20 Should the law allowing a father to be given PRRs by jointly registering a birth with the mother be backdated to pre 2006?**

Not Answered

**Why did you select your answer above?:**

**21 Should joint birth registration be compulsory?**

Not Answered

**Why did you select your answer above?:**

**22 Should fathers who jointly register the birth of a child in a country where joint registration leads to PRRs have their PRRs recognised in Scotland?**

Not Answered

**Why did you select your answer above?:**

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

Not Answered

**Why did you select your answer above?:**

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

Not Answered

**Why did you select your answer above?:**

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

Not Answered

**If other, please specify.:**

**Why did you select your answer above?:**

**26 Should the Scottish Government do more to encourage health practitioners to share information with non-resident parents if it is in the child's best interests?**

Not Answered

**If other, please specify.:**

**Why did you select your answer above?:**

**27 Does section 11 of the 1995 Act need to be clarified to provide that orders, except for residence orders, or orders on PRRs themselves, do not automatically grant PRRs?**

Not Answered

**Why did you select your answer above?:**

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

Not Answered

**Why did you select your answer above? If you selected yes, what should be done?:**

**29 Should a person convicted of a serious criminal offence have their PRRs removed by the criminal court?**

Not Answered

**If other way, please explain.:**

**Why did you select your answer above?:**

### **Court Procedure**

**39 Should the Scottish Government introduce a provision in primary legislation which specifies that any delay in a court case relating to the upbringing of a child is likely to affect the welfare of the child?**

Yes

**Why did you select your answer above?:**

For a child, every day counts. The impact of taking time to make decisions when children are involved should be highlighted in the clearest way to all judicial officers such that they are held accountable for the timescale of proceedings in which they are involved.

In the Dinant/Namur district of Belgium, for instance, a hearing is held and a decision made in family cases WITHIN 15 DAYS of an application by parents. Any children involved are then effectively monitored by that same judge until they turn 18.

Where children are involved, the wisest decisions can be - and generally are - made quickly.

**40 Should cases under section 11 of the 1995 Act be heard exclusively by the Sheriff Court?**

Not Answered

**Why did you select your answer above?:**

**41 Should a check list of factors for courts to consider when dealing with a case be added to section 11 of the 1995 Act?**

Not Answered

**Why did you select your answer above? If you answered yes please give details about what should be in such a check list.:**

### **Alternatives to Court**

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

Yes – introduce Mediation Information and Assessment Meetings in Scotland., Yes – better signposting and guidance., Yes – other.

**If other, please give details.:**

Non-court methods/initiatives - not family courts - should be the primary way of resolving family cases

**Why did you select your answer(s) above?:**

We believe that this is one of the most important and fundamental questions of this consultation.

Family courts are intrinsically slow, frightening, unaffordable and adversarial and are not fit for the purpose of looking after the best interests of children. There is little or no scientific evidence that family courts provide a net benefit to children and their families, while there is much evidence that they exacerbate conflict, stress and trauma and, albeit inadvertently, contribute significantly to harm to children. They do not pass a 'do no harm' test.

A fresh approach to family separation and family violence - based on existing social and medical networks and on a range of private sector and government initiatives (each rigorously monitored for the outcomes they provide) - will provide safer, healthier outcomes for children and their families than the current family law system.

Such an approach may include mandatory elements prior to court involvement, such as:

- 1) A form of family group conferencing where the issues faced by a family can be seen and addressed far more clearly and quickly than through any court process;
- 2) High-quality, professional coaching and support for parents at an exceptionally difficult and vulnerable time in their lives;
- 3) A requirement for parties to use collaborative (and monitored) online tools or smartphone apps that engender collaboration and facilitate the rebuilding of a relationship focused on looking after any children;
- 4) The early provision of a highly skilled professional to liaise with, and look after, children - all of whom are exposed to significant levels of risk by the very process of family separation;
- 5) High quality mediation, with skilled mediators, preceded by a coaching component that has been demonstrated (e.g. in New Zealand) to yield higher success rates;
- 6) Arbitration should precede any family court proceedings, for both children's and financial matters. It's "a no-brainer", to quote former UK High Court judge, Sir Paul Coleridge.

Equally importantly, there should be a major education campaign about the serious risks to children associated with family separation, such that families are much better prepared to avoid them.

Doctors' surgeries and medical practices should all have readily visible notices and leaflets about the risks associated with adversarial family separations and about the support, and healthiest options, available - just as they may highlight the risks of smoking, or the availability of support for alcoholics, or problem gamblers.

Family separation is a social and a child health issue, not primarily a legal issue. Or, to quote a well-known Canadian family court judge, family separation and divorce are "a public health crisis that does not belong in the courts".

#### **43 Should Scottish Government make regulations to clarify that confidentiality of mediation extends to cases involving cross border abduction of children?**

Not Answered

**Why did you select your answer above?:**

#### **44 Should Scottish Government produce guidance for litigants and children in relation to contact and residence?**

Yes

**Why did you select your answer above?:**

Much greater levels of education, which should include high-production-value TV ads as well as conventional brochures or online information, is essential.

Please see response to Q 42.

### **Children's Hearings**

#### **48 Do you think the Principal Reporter should be given the right to appeal against a sheriff's decision in relation to deemed relevant person status?**

Not Answered

**Why did you select your answer above?:**

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

Yes

**Why did you select your answer above?:**

One relevant issue is that, in many jurisdictions, children are interviewed multiple times by many different individuals of varying skills and qualifications. This can represent a form of child abuse in its own right.

One of the uses of available technology should be to video interviews between children and professionals such that the need for further interviews can be minimised, and the skills and conduct of such professionals can be monitored and assessed.

#### **50 Should safeguarder reports and other independent reports be provided to local authorities in advance of Children's Hearings in line with other participants?**

Not Answered

**Why did you select your answer above?:**

**51 Should personal cross examination of vulnerable witnesses, including children, be banned in certain 2011 Act proceedings.**

Not Answered

**Why did you select your answer above?:**

## **Conclusion**

**53 Do you have any comments about, or evidence relevant to:**

**If yes, please provide your comments below. :**

**54 Do you have any further comments?**

Not Answered

**If you have answered yes please provide your comments below. :**

## **About you**

**What is your name?**

**Name:**

Dr David Curl

**What is your email address?**

**Email:**

david@forkidssake.org.au

**Are you responding as an individual or an organisation?**

Organisation

**What is your organisation?**

**Organisation:**

For Kids Sake

**If you are responding as an organisation and want to tell us more about your organisation's purpose and its aims and objectives, you can do so here.:**

For Kids Sake is an international non-profit organisation, first established in Australia, dedicated to protecting children and their families from all forms of harm associated with family separation.

Our aim is to bring an evidence-based approach to addressing risks, harm and trauma to children from family separation and family violence.

**Where are you resident?**

Rest of the World

**The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:**

Publish response with name

**We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?**

Yes

## **Evaluation**

**Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)**

**Matrix 1 - How satisfied were you with this consultation?:**

Slightly dissatisfied

**Please enter comments here.:**

For the sake of Scotland's children and families, this consultation needed to be much broader. We believe it needed to ask more open questions and not presume that family law offers solutions to the issues of either family separation or family violence.

A fresh, and very different, approach to family separation is needed - one that focuses much more on education, support for families, and early intervention. Family separation should be treated as a child health issue and as a major social issue, not primarily as a legal issue - and this consultation did not enable this fresh approach to be properly explored.

We wish you well with the consultation and will hope for a positive outcome.

**Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:**

Slightly satisfied

**Please enter comments here.:**

This platform worked OK. Thank you.