

---

<b>Report To:</b>	<b>Heath &amp; Social Care Committee</b>	<b>Date:</b>	<b>7 January 2021</b>
<b>Report By:</b>	<b>Louise Long Corporate Director (Chief Officer) Inverclyde Health and Social Care Partnership (HSCP)</b>	<b>Report No:</b>	<b>SW/05/2021/SMcA</b>
<b>Contact Officer:</b>	<b>Sharon McAlees</b>	<b>Contact No:</b>	<b>715282</b>
<b>Subject:</b>	<b>Children (Scotland) Bill 2019</b>		

---

## 1.0 PURPOSE

- 1.1 The purpose of this report is to advise the Health & Social Care Committee that the Children (Scotland) Bill was passed by the Scottish Parliament on 25 August 2020.
- 1.2 This report will also outline the implications that this has for the delivery of Children's Services in Inverclyde.

## 2.0 SUMMARY

- 2.1 The Children (Scotland) Bill (thereafter called The Bill) is part of the wider Scottish Government's Family Justice Modernisation Strategy that seeks to respond to the changing legal and societal landscape of evolving and more complex family circumstances.
- 2.2 The Bill provides the secondary legislation to address the gaps in the Children (Scotland) Act 1995, which is the primary legislation in relation to parental responsibilities and rights, and cases where a child should live and who should see the child if parents are separated or not together (contact and residence cases).
- 2.3 The Bill aims to:
  - Ensure that the child's best interests are at the centre of any contact and residence case or Children's Hearing;
  - Ensure that the views of the child are heard;
  - Achieve further compliance with the principles of the United Nations Convention on the Rights of the Child (UNCRC) in family courts; and,
  - Further protect victims of domestic abuse and their children.
- 2.4 Significantly, the Bill's change of language reflects how children and young people view their familial relationships and is in step with the Independent Care Review (ICR). This will make changes to aspects of the Children's Hearing system and Adoption proceedings, Looked After Children Regulations 2009, for example, who can attend Children's Hearing, seeking the views of siblings in care planning, and the views of other adult who are significant to children.
- 2.5 While the overall focus of the Bill to minimise delays in decision-making that currently exist for children is welcomed, the Bill's additional tasks will put pressures on Children's Services because their delivery will require increased time and resources to respond to the complexity of family circumstances.
- 2.6 It is also acknowledged that the Bill is only one part of the process, and in order to realise the change that keeps the *child's best interests at the centre*, this will take conscientious implementation over time and involve all parties that are part of the legal proceedings.

### **3.0 RECOMMENDATIONS**

3.1 The Health & Social Care Committee is asked to:-

- a. Note the changes that this secondary legislation brings to the delivery of Children's Services
- b. Note the consequent resource implications that this brings in to practice.

**Louise Long  
Chief Officer  
Inverclyde HSCP**

## 4.0 BACKGROUND

- 4.1 The Bill advances the Scottish Government's Family Justice Modernisation Strategy. COSLA, in its response to the Bill, stated that it enhances the rights of children, supports the GIRFEC principles and aligns with their role in the development of the National Performance Framework.
- 4.2 The Children (Scotland) Bill resulted from a consultation on the Review of the Children (Scotland) Act 1995 (the 1995 Act), the primary legislation in relation to parental responsibilities and rights, and cases where a child should live and who should see the child if parents are separated or not together (contact and residence cases).
- 4.3 The Bill provides secondary legislation to address the gaps in the 1995 Act which, while it was ground breaking at the time, is now 25 years old. Its provisions position *the child's best interests* as being central in all family law cases and their voices are given due weight in Court by:
  - removing the current legal presumption that a child aged 12 or over is mature enough to give their view;
  - a new role and registration of child welfare officers (CWRs); and,
  - giving more protection to victims of domestic abuse and their children
- 4.4 The amended presumption to seek all children's views ensures that the right of every child to express their view (as set out in Article 12 of the UNCRC) is respected. The Court or other decision maker must also do this in a manner that the child prefers. This is welcome, and where this is not progressed, a clear rationale and explanation must be given.
- 4.5 The new role of CWRs is welcomed to keep the best interests of the child at the centre of proceedings. Currently, 90% of reports to courts are provided by solicitors and many of the responses to the Bill highlighted that CWRs should be drawn from a mix of professional backgrounds, and with different skill sets to meet the challenges and complexities that are inherent to these proceedings. Social workers will be part of this pool of professionals, along with psychologists and play therapists.
- 4.6 All CWRs and curators ad litem will be required to be registered under the Bill and, while these roles are to be further defined through guidance and regulations; this is a positive step forward. It will give a set of standards, qualification and training requirements and adherence to these will be part of their review when re-registering. Registration will give much needed transparency and regulation to what has in the past been seen as an opaque process.
- 4.7 The role of the CWRs (who give a report to the court after speaking to a child about their family situation) is potentially important to reduce the number of different people that a child tells their story to, and they would also be a known person who explains the court decisions to the child.
- 4.8 The role of the curator ad litem remains unchanged outwith what has been highlighted in 4.6. The Court remains able to appoint a curator ad litem to represent a child's interest in a court case. The Scottish Government is continuing to work on regulations and guidance to detail the standard rules on how they work and the CWRs.
- 4.9 Special measures to assist vulnerable witnesses and their children giving evidence in domestic abuse cases will be put in place. This will include the offer of a support person, the use of screens and/or live video links. Restrictions will also be put in place so that a party to the proceedings cannot personally conduct their own case where there is a vulnerable witness; to prevent further harm to the witness. A solicitor can be appointed by the Court to lead this evidence.
- 4.10 Significantly, these proposed changes will regulate the way in which vulnerable parents and witnesses are able to give evidence in cases involving their children. This gives families a more certain path and ensures that where domestic abuse or other types of abuse are part of the family dynamic, the court will have the power to protect witnesses and allow them to give

evidence in the least traumatic way possible.

- 4.11 The Bill also extends the current legal duties on local authorities to take steps to promote, on a regular basis, personal relations and direct contact between siblings and ongoing relationships that are 'like sibling' relationships.
- 4.12 The desire and importance of having continuing relationships with their siblings, and those that they consider as siblings, were strongly expressed through the Independent Care Review (ICR).
- 4.13 While we share the outcome of the ICR, the complexity of family structures (and the journey of some children through care placements) is likely to place considerable pressure on Children's Services. There is already pressure on facilitating current contact arrangements and the new duty will require all relevant relationships to be assessed. This is not a simple process (balancing wish, welfare and best interests considerations), and for every child this requires time.
- 4.14 There will be further rules about this, but this means they will have the right to be notified of a hearing, to be provided with paperwork that is relevant to them, to be able to attend, be represented and seek review of decisions after 3 months.
- 4.15 All this means that when taking decisions about a child in their care, a local authority will have to ask the child's brothers and sisters for their views on what should happen.
- 4.16 Also, when courts are making decisions about family matters, like where children are going to live and who they have contact with, the court must take account of children's important relationships, like grandparents (brothers and sisters already referenced above).
- 4.17 Other changes include the registration of contact centres. Given the number of children and their families who use these, ensuring consistent standards training and facilities can only enhance and make this a safe place to be.

A court is also given specific power to appoint a Child Welfare Reporter to investigate and report on the circumstances of the alleged failure to obey a Court Order.

- 4.18 The changes outlined to the Children's Hearing and Court processes will have an impact on current practices within Children and Families Services. This was highlighted by COSLA and Social Work Scotland in their response to the Bill. They noted that:

*"It has been documented through numerous inquiries, consultation and reviews; there is not capacity within the current social work profession to accommodate additional tasks without cost elsewhere."*

- 4.19 With regard to the CWR role and for this to happen, there is a need to ensure that there are enough professionals who are available and accessible to give effect to this. The detail in the accompanying Financial Memorandum is key to ensure that there are a sufficient number of available social workers, art and play therapists and psychologists to meet the expected increase in demand.
- 4.20 Consequently, for social workers who are currently employed in Children's Services to fulfil the role of CWRs; time is required to fulfil training and registration needs, all of which impacts on case time and service delivery.

## **5.0 PROPOSALS**

- 5.1 Briefing sessions to inform the Children's Service workforce around the additional duties contained in this legislation (COVID-19 safe).
- 5.2 Consideration of what these duties mean for workforce planning and delivery of service.

## 6.0 IMPLICATIONS

### 6.1 Finance

The financial memorandum to accompany the Bill indicates that much of the funding will fall on the Scottish Government and does not anticipate additional cost implications for local authorities. Where there are new duties on local authorities such as increased involvement with extended family and facilitation of contact, there will be additional resource implications that services will have to absorb.

#### Financial Implications:

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report	Virement From	Other Comments
N/A					

#### Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments
N/A					

### 6.2 Legal

There are no legal implications in respect of this report.

### 6.3 Human Resources

There are no human resources implications in respect of this report.

### 6.4 Equalities

#### Equalities

- (a) Has an Equality Impact Assessment been carried out?

<input checked="" type="checkbox"/>	YES An EQIA was undertaken and published by Scottish Government in connection with the Bill. None of the provision within the Bill is considered to give rise to the possibility of those with protected characteristics being treated less favourably and for some protected groups the Bill will have a positive impact.
<input type="checkbox"/>	NO –

- (b) Fairer Scotland Duty

If this report affects or proposes any major strategic decision:-

Has there been active consideration of how this report's recommendations reduce inequalities of outcome?

X	YES – Scottish Government completed and published a Fairer Duty Impact Assessment
	NO

(c) Data Protection

Has a Data Protection Impact Assessment been carried out?

	YES –.
x	NO

**6.5 Repopulation**

There are no repopulation implications in respect of this report.

**7.0 CONSULTATIONS**

7.1 The report has been prepared after due consideration with relevant senior officers in the HSCP.

**8.0 BACKGROUND PAPERS**

8.1 [Family Justice Modernisation Strategy \(Scottish Government, 2019\)](#)

References COSLA, Social Work Scotland, Children and Young People Strategic Commissioner (CYPSP)