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Parental responsibilities and rights

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This briefing explains the system of 'parental responsibilities and rights' under the Children (Scotland) Act 1995. The 1995 Act is a key piece of legislation affecting the lives of parents and children in Scotland. For example, it provides the mechanism for the courts to resolve disputes arising between parents about the care of their children.

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Executive Summary

Part 1 of the [Children \(Scotland\) Act 1995](#) provides for a range of parental responsibilities and rights ('PRRs') in respect of all children living in Scotland.

For example, PRRs include the right to have the child live with a person having PRRs (**residence**). Furthermore, where the child does not live with that person, there is both the right and the responsibility to have **contact** with that child.

PRRs exist where practicable and in the best interests of the child.

In practice, if a person has the full set of PRRs in respect of a child, they can make decisions about many aspects of that child's life. This includes both routine day-to-day decisions and major decisions with lasting consequences.

More than one person may have, and commonly does have, PRRs in respect of a child. For example, this is often the situation with two parents.

PRRs usually come to an end when the young person in question reaches **the age of 16**. The exception is the parental responsibility to provide guidance, which ends when the young person **turns 18**.

A very small minority of parenting disputes go as far as court. This means that Part 1 of the 1995 Act is much more likely to be used by, for example, solicitors and [family mediators](#) advising clients, than it is by the courts.

However, section 11 of the 1995 Act is an important provision which gives the court various powers to decide an issue in a dispute about PRRs, for example, between two parents, or between a parent and another relative of a child, such as a grandparent.

Section 11 says the court should follow certain key principles when making decisions. The welfare of the child is the paramount consideration, that is to say, the most important and overriding one. The child must be given an opportunity to express their views. The court must consider, although not necessarily follow, any views expressed.

The court can make a range of court orders under the 1995 Act. For example, a court order can give, or take away, some (or all) of the PRRs. For example, the court can also make a **residence order**, setting out where the child is to live, which can be with one or both parents. Also important is a **contact order**. This sets out the arrangements for a child to have contact with a person he or she does not live with, for example, a parent or grandparent.

The [Children \(Scotland\) Act 2020](#) contains a wide range of reforms to the 1995 Act. However, [most of the Act's provisions relating to parenting disputes are not in force](#).

Introduction

This briefing describes the current law and practice relating to parental responsibilities and rights (PRRs).

Topics covered include:

- [the content of individual PRRs](#)
- [the distinction between legal parenthood and PRRs](#)
- [who has PRRs, including how someone can get them if they do not have them automatically](#)
- [the available court orders under the 1995 Act to resolve disputes, and what can be done if these court orders are disobeyed](#)
- [how parents can try to reach agreement on parenting issues themselves outside the court process](#)
- [the reforms in the Children \(Scotland\) 2020](#)
- [sources of support, advice and further information](#) for constituents.

Please note that SPICe can only provide general information relating to the law of Scotland. If a person wishes to receive legal advice in relation to the circumstances of their individual case they should contact a solicitor. [How to obtain legal advice is one topic covered later in the briefing.](#)

Parental responsibilities and rights: an overview

This section of the briefing provides an **introductory overview** to the law relating to PRRs.

What are parental responsibilities and rights?

When parents separate or divorce, or indeed have always lived apart, much of the legal framework relevant to issues that may arise on parenting can be found in Part 1 of the [Children \(Scotland\) Act 1995](#) ('the 1995 Act').

Part 1 provides for a range of parental responsibilities (PRRs) in respect of all children living in Scotland. PRRs exist where practicable and in the best interests of the child.ⁱ

PRRs are powers which enable parents to take a range of parenting decisions on behalf of their children. This includes both routine, day-to-day decisions and major decisions affecting the children's lives for the long-term.

PRRs usually come to an end when the young person in question reaches **the age of 16**. The exception is the parental responsibility to **provide guidance**, which ends when the young person **turns 18**.ⁱⁱ

For convenience, in the rest of this briefing any individual who is the subject of PRRs is referred to as a **child**, although it is recognised that **young person** is a more accurate term for the older age group.

PRRs include the right to have the child live with a person having PRRs (**residence**). Furthermore, where the child does not live with that person, there is both the right and the responsibility to have **contact** with that child.ⁱⁱⁱ

Under the predecessor legislation to the 1995 Act, the equivalent terms were **custody**, instead of residence, and **access**, instead of contact. While these words no longer have a specific legal meaning, they are still sometimes used in practice.

PRRs also include:

- safeguarding and promoting a child's health, development and welfare.^{iv}
- controlling, directing or guiding the child's upbringing in an age appropriate way.^v
- acting as the child's legal representative.^{vi}

On the last bullet point, this means, for example, that someone with this PRR could raise

i [Children \(Scotland\) Act 1995](#), sections 1 and 2.

ii [Children \(Scotland\) Act 1995](#), sections 1(2) and 2(7).

iii [Children \(Scotland\) Act 1995](#), section 1(1)(c) and section 2(1)(a) and (c).

iv [Children \(Scotland\) Act 1995](#), section 1(a).

v [Children \(Scotland\) Act 1995](#), section 1(1)(b) and 2(1)(b).

vi [Children \(Scotland\) Act 1995](#), section 1(1)(d) and section 2(1)(d).

or defend legal proceedings in court on the child's behalf.

Legal parenthood and PRRs

While this may be somewhat confusing for families, there is a distinction in law between who is someone's **legal parent** and **who has PRRs**. These are separate areas of law with different legal rules applying to each area.

It is possible for someone to be a child's legal parent but not to have PRRs. Conversely, it is possible for a person to have PRRs in respect of a child but not to be and never have been that child's legal parent.

Both areas of law are complex topics. The focus of this briefing is almost exclusively on the law relating to PRRs.

Decision-making when more than one person has PRRs

It is possible, and indeed common, for more than one person to have PRRs in respect of a child.

Where two or more people have PRRs, the general rule is that each can exercise a parental right without the consent of the other, unless, for example, they are limited from doing so by a court order.^{vii}

However, where major decisions about a child are concerned, so far as practicable, individuals with PRRs must consult each other (and the child, taking account of the child's age and maturity) when reaching such decisions.^{viii}

In addition, a person with PRRs may not take a child out of the UK without the consent of any other person who has PRRs or without the permission of the court.^{ix}

In the event of a dispute between people with PRRs that cannot be resolved by amicable means, an issue may have to be resolved in court, [as discussed in more detail later](#).

vii [Children \(Scotland\) Act 1995](#), section 2(2).

viii [Children \(Scotland\) Act 1995](#), section 6(1).

ix [Children \(Scotland\) Act 1995](#), section 2(3) and (6).

Who has parental responsibilities and rights?

This section of the briefing considers who has PRRs, or who can acquire them. The discussion reflects the different ways in which people become parents or otherwise become involved in a child's life.

Note that this section of the briefing, and indeed the rest of the briefing, does not cover the important, but separate, topic of a local authority's involvement in a child's life for child protection purposes.

Other key points to note are that:

- a legal parent may not have PRRs at any point in a child's life but still have other legal responsibilities in respect of their child, for example, under the separate laws relating to [child maintenance](#) or [inheritance law](#)
- even where someone starts out with PRRs, or otherwise acquires them, PRRs might still be later removed or varied by the court, for example, [as a result of a court order made under section 11 of the 1995 Act](#).

The child's biological mother and father

The terms **biological mother** and **biological father** do not feature in the 1995 Act. These terms are used in this section of the briefing as follows:

- A **biological father**, also sometimes referred to as a **genetic father**, gave the genes to a child that makes up one half of that child's DNA.
- A **biological mother**, also sometimes referred to as a **birth mother**, is the person who gave birth to a child.

The biological mother

All biological mothers have PRRs from the moment of the child's birth.^x

This legal rule still applies if the biological mother does not have a genetic link with the child, because the child was conceived through egg or embryo donation.

^x [Children \(Scotland\) Act 1995](#), section 3(1)(a); [Human Fertilisation and Embryology Act 2008](#), section 33.

Someone who donated an egg, but did not give birth, does not have PRRs by virtue of being such a person.

However, a member of a female same-sex couple may donate an egg to their partner in the context of their fertility treatment. The person donating may become a **second female parent** with PRRs, [where certain conditions are satisfied](#). The conditions do not relate to the egg donation.

The biological father

Not all biological fathers have PRRs. A biological father has PRRs if:

- he was married to, or in a civil partnership with, the child's mother at the point the child was conceived or at some point thereafter - this rule applies even if the parents' marriage or civil partnership later ends^{xi}
- he [jointly registered the child's birth](#) with the child's birth mother on or after **4th May 2006**^{xii}
- he signed and registered an agreement with the child's birth mother, unless a court took away her PRRs before such an agreement was made^{xiii}
- he was given all or some of the PRRs [by a court under section 11 of the 1995 Act](#).^{xiv}

Adoptive parents

Adoption is a potential route to parenthood for those aged over 21 years who are single or in a same-sex or mixed-sex couple (whether married, civil partners, or living together in an enduring family relationship).

Crucially, for the purposes of this briefing, an adoptive parent acquires all PRRs at the point the court grants the order finalising the adoption.^{xv} Adoption orders can also extinguish any PRRs a parent, guardian or local authority had immediately before the adoption order was made.^{xvi}

Under Scots law, there is both a main adoption procedure, where a child can be adopted by a couple or a single applicant.^{xvii} Separately, there is also [a special adoption procedure](#)

xi [Children \(Scotland\) Act 1995](#), section 3(1)(b)(i).

xii [Children \(Scotland\) Act 1995](#), section 3(1)(b)(ii) and (1A); [Registration of Births, Deaths and Marriages \(Scotland\) Act 1965](#), section 18.

xiii [Children \(Scotland\) Act 1995](#), section 4.

xiv [Children \(Scotland\) Act 1995](#), section 11.

xv [Adoption and Children \(Scotland\) Act 2007](#), section 28(1).

xvi [Adoption and Children \(Scotland\) Act 2007](#), section 35(2)(a) and 40(4).

available in some circumstances to step-parents.^{xviii}

The consequences of adoption are very significant in legal terms. Once a child is adopted, the child is treated by the legal system as being born to the adoptive parent or parents and as not being the child of any person other than the adoptive parent or parents.^{xix}

Adoption orders can provide for contact between a child and their birth family.^{xx} Accordingly, contact between the child and that family is not covered by the 1995 Act in the context of adoption.

Same-sex parents

There are a number of ways in which same-sex couples can become parents. [They can become parents through adoption](#). Alternatively, a child might be born to one member of the couple following fertility treatment. A couple might become parents through a surrogacy arrangement, [a topic explored in a later section of this briefing](#).

For couples in a same-sex female relationship, the [Human Fertilisation and Embryology Act 2008](#) ('the 2008 Act') recognises the concept of a **second female parent**, as follows:

- One person in the couple has successful fertility treatment at a UK licensed clinic and gives birth to a child - this is the **mother**.^{xxi}
- The **second female parent** is a legal status which can be obtained by the other person in the couple, the one who has not given birth.^{xxii}

Although outside the scope of this briefing, note there are several ways to be legally recognised as a second female parent. There are distinct approaches depending on whether the couple are married/in a civil partnership or not.^{xxiii}

How a second female parent acquires PRRs also depends on their legal status as a couple.

A second female parent **automatically has PRRs** if she was married to, or in a civil partnership with, the birth mother at the time of the treatment. This applies even if the marriage or civil partnership later ends.^{xxiv}

Otherwise, a second female parent can get PRRs by:

xvii [Adoption and Children \(Scotland\) Act 2007](#), sections 29 and 30.

xviii [Adoption and Children \(Scotland\) Act 2007](#), section 30(1) and (3).

xix [Adoption and Children \(Scotland\) Act 2007](#), section 40.

xx [Adoption and Children \(Scotland\) Act 2007](#), section 28(3).

xxi [Human Fertilisation and Embryology Act 2008](#), section 33.

xxii [Human Fertilisation and Embryology Act 2008](#), sections 42-45.

xxiii [Human Fertilisation and Embryology Act 2008](#), sections 42-45.

xxiv [Children \(Scotland\) Act 1995](#), section 3(1)(c).

- [jointly registering the child's birth](#) with the child's mother **on or after 6 April 2009**^{xxv}
- a registered agreement with the child's mother, unless a court took away the mother's PRRs before such an agreement was made^{xxvi}
- [a court order under section 11 of the 1995 Act](#).

This is similar to the approach of the law to biological fathers, [discussed earlier](#).

Parents through surrogacy

Couples, both mixed-sex and same-sex, and single people can become parents as a result of a surrogacy agreement.

With surrogacy, a woman (the **surrogate**) becomes pregnant with a child that may or may not be genetically related to her. She carries the child, and gives birth to the child, for a couple (the **intended parents**) or a single person (the **intended parent**).

The surrogate may have fertility treatment in a clinic. However, if the surrogate's own egg is being used (so-called **traditional surrogacy**) it is also possible for artificial insemination to occur outside a clinic setting.

When a child is born as a result of a surrogacy arrangement, the surrogate is, at first, the legal mother^{xxvii} and has PRRs.^{xxviii}

In addition, if the surrogate is married or in a civil partnership, initially her spouse or civil partner will be the legal father or [second female parent](#). This applies unless the spouse or civil partner did not consent to any fertility treatment.^{xxix} Any spouse or civil partner will also have PRRs.^{xxx}

This describes what is usually an interim position with surrogacy until a **parental order** is granted by the court under the 2008 Act.^{xxxi} In practice, it usually takes at least six months for the court to grant a parental order.

The **parental order**, from the date of the order, transfers **legal parenthood** from the surrogate, or from the surrogate and her spouse or civil partner, to an intended parent or the intended parents.

xxv [Children \(Scotland\) Act 1995](#), section 3(1)(d) and (3A); [Registration of Births, Deaths and Marriages \(Scotland\) Act 1965](#), section 18B.

xxvi [Children \(Scotland\) Act 1995](#), section 4A.

xxvii [Human Fertilisation and Embryology Act 2008](#), section 33.

xxviii [Children \(Scotland\) Act 1995](#), section 3(1)(a).

xxix [Law Reform \(Parent and Child\) \(Scotland\) Act 1986](#), section 5(1)(a); [Human Fertilisation and Embryology Act 2008](#), sections 35 and 42.

xxx [Law Reform \(Parent and Child\) \(Scotland\) Act 1986](#), section 5(1)(a); [Human Fertilisation and Embryology Act 2008](#), sections 35 and 42; [Children \(Scotland\) Act 1995](#), section 3(1)(b)(i) and 3(1)(c).

xxxi [Human Fertilisation and Embryology Act 2008](#), section 54 and 54A.

The parental order, from the date of the order, can also **confer PRRs** on an intended parent or the intended parents.

There are circumstances (beyond the scope of this briefing) in which a parental order under the 2008 Act is not possible following the birth of a child after a surrogacy arrangement. As an alternative to a parental order, PRRs can then be acquired by an intended parent or the intended parents [under section 11 of the 1995 Act](#), or [by adoption](#).

Recommendations for reform in 2023

In March 2023, [significant reforms to the law of surrogacy were recommended in a report](#) published by the [Law Commission of England and Wales](#) and the [Scottish Law Commission](#).

The proposals would affect, among other things, who is the legal parent after a child's birth, and who has PRRs, in the context of a surrogacy arrangement. A full response to the report from the UK Government is currently awaited.

Step-parents

Step-parents have no automatic PRRs in respect of their step-child. This includes where they are married to, or in a civil partnership with, the child's parent.

One way for the step-parent to acquire PRRs is via [adoption of the child](#), using the special adoption procedure available in some circumstances to step-parents.^{xxxii} Under this procedure, adoption does not extinguish the PRRs of the biological parent who is in the relationship with the step-parent.

[As an alternative to adoption, another way for a step-parent to acquire PRRs is by a court order under section 11 of the 1995 Act.](#)

Grandparents

Grandparents do not have automatic PRRs in respect of their grandchildren. [Grandparents can acquire all or some of the PRRs by a court order under section 11 of the 1995 Act.](#)

xxxii [Adoption and Children \(Scotland\) Act 2007](#), section 30(3).

Getting PRRs: registration or re-registration of a child's birth

As discussed earlier in the briefing, the process of **joint registration**, including **joint re-registration**, of a birth is a key way [certain fathers](#) and [second female parents](#) can acquire PRRs.

To recap, joint registration or re-registration is important for fathers and second female parents who are not, and never have been married to, or in a civil partnership with, the child's mother.^{xxxiii}

This section of the briefing explains more about both the concepts of [joint registration](#) and [joint re-registration](#).

Joint registration

Where a [biological father's](#) name, or a [second female parent's](#) name, is **not** entered in the Register of Births, this is called a **sole registration**. Where their name is entered, this called a **joint registration**.

Sole registrations are now not particularly common. In 2023, [the latest year for which statistics are available](#), sole registrations were **around 4%** of all birth registrations in Scotland.

The need for parental co-operation

Excluded types of registration

Joint birth registration confers PRRs on the father or the second female parent. However, this is not the case when registration follows certain court orders.

These are a court order declaring a particular man to be the [biological father of the child](#) (following a paternity dispute) or a court order declaring a woman a child's [second female parent](#) (where the factual situation which would confer this status has been disputed).^{xxxiv}

Joint registration conferring PRRs requires **both parents to co-operate in the process**.

[Registration of a birth](#) can be via an **in-person appointment**, or, where available in a local registration area, by **remote registration**.^{xxxv} Remote registration is a process completed by email, over the phone, through video conversations or a combination of these methods.

xxxiii [Children \(Scotland\) Act 1995](#), section 3(1)(b)(ii), (d), (1A) and (3A); [Registration of Births, Deaths and Marriages \(Scotland\) Act 1965](#), sections 18 and 18B.

xxxiv [Registration of Births, Deaths and Marriages \(Scotland\) Act 1965](#), section 18(1)(b)(ii) and 18B(1)(c).

xxxv [Registration of Births, Deaths and Marriages \(Scotland\) Act 1965](#), section 14, as amended by the [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022](#), section 25.

Where an **in-person appointment** is opted for, attendance by both parents at the registrar's office is one way to carry out joint registration.^{xxxvi} However, despite the name, **joint registration**, both parents going to the registrar's office is **not** required. One parent can go to the registrar's office with certain official documentation, signed by both parents.^{xxxvii}

Joint re-registration

Sometimes **biological fathers** and **second female parents** are not initially entered on the Register of Births, so their names originally do not appear on their child's birth certificate. However, with the co-operation of the child's mother, in some circumstances they can apply for **re-registration** of the child's birth at a later date.^{xxxviii}

After re-registration, the child's birth certificate will show a) the name of the **child's father**; or b) the name of the **second female parent** (depending on the circumstances of the individual case).^{xxxix}

Re-registration, like registration, confers PRRs on **biological fathers** and **second female parents** who do not already have such PRRs.^{xl}

xxxvi [Registration of Births, Deaths and Marriages \(Scotland\) Act 1965](#), section 18 (1)(a) and 18B (1)(a).

xxxvii [Registration of Births, Deaths and Marriages \(Scotland\) Act 1965](#), section 18 (1)(b)(i) and (c) and 18B (1)(b) and (d).

xxxviii [Registration of Births, Deaths and Marriages \(Scotland\) Act 1965](#), section 20.

xxxix [Registration of Births, Deaths and Marriages \(Scotland\) Act 1965](#), section 18(1)(b)(c) & (2)(b) and section 18B(1)(b)(d) & (3).

xl [Children \(Scotland\) Act 1995](#), sections 3(1)(b)(ii)(d), (1A) and (3A); [Registration of Births, Deaths and Marriages \(Scotland\) Act 1965](#), section 18(1)(b)(c) & (2)(b) and section 18B(1)(b)(d) & (3).

Court orders under section 11 of the 1995 Act

This briefing has already explained that a court order under section 11 of the [Children \(Scotland\) Act 1995](#) ('the 1995 Act') is an important way someone can acquire (or lose) some, or all, of their PRRs.

Section 11 of the 1995 Act also enables the court to make **a range of other court orders** relating to PRRs. For example, a court can make:

- a **residence order**, setting out where the child is to live, which can be with one or both parents, or indeed with another person
- a **contact order** setting out the arrangements for a child to have contact with a person he or she does not live with, for example, a parent or grandparent
- a **specific issue order** - this aims to settle a dispute on a particular issue associated with PRRs, such as where a child should go to school, the surname by which they should be known, or whether a parent can relocate outside Scotland with their child.

Significantly, anyone who **claims an interest**, such as a parent or other family member, can apply for an order under section 11.

The remainder of this section of the briefing considers:

- [the key principles which courts must use when reaching their decisions under section 11](#)
- [what legal remedies are available if a court order under section 11 is disobeyed.](#)

Settling disputes outside the court process

Only a very small minority of disputes about PRRs get as far as court. Instead, most are settled privately, with or without the support of solicitors.

However, [where legal advice is obtained](#), private negotiations typically occur with participants aware of the legal principles which would be applied by a court, and the likely outcome, had the case got as far as court.

The key principles relating to court orders under section 11

In considering whether to grant any court order under section 11 of the 1995 Act, the court will have regard to **three principles**, namely:

1. The **welfare of the child** is the paramount consideration, that is to say, the most important and overriding one.

2. Taking account of the child's age and maturity, the child shall, so far as practicable, be given an opportunity **to express their views**. The court must consider, although not necessarily follow, any views expressed.
3. The court will not make any court order unless it considers that to do so would be better than making no order at all.^{xli}

These general principles have been developed by the decisions of the courts over the years. Accordingly, for example, in the context of what constitutes the welfare of the child, the courts will take into account individual factors not explicitly set out in legislation.

In relation to point 2 above, a **child aged 12 years or older** is presumed to have sufficient maturity to form a view.^{xlii} The courts can take the evidence of younger children, although there is some evidence to suggest this is not routine.¹

As discussed later in the briefing, if the relevant provisions of the [Children \(Scotland\) Act 2020](#) come into force, the statutory incentive to take views of younger children will become much stronger.

In terms of factors the courts have to take into account, the [Family Law \(Scotland\) Act 2006](#) also amended section 11 of the 1995 Act 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
- the effects of abuse on a person's capacity to fulfil PRRs.^{xliii}

Abuse is defined as including **abuse of a person other than the child**.^{xliiv} Accordingly, the situation where one parent is abusing (or has abused) the other, that is, **domestic abuse**, is included.

The 2006 Act also amended the 1995 Act to require the courts, when considering whether to make an order which would require **relevant persons** to co-operate with each other, to consider whether it would be appropriate to make the order.^{xliv} Relevant persons are parents or other individuals with PRRs.^{xlvi}

xli [Children \(Scotland\) Act 1995](#), section 11(7).

xlii [Children \(Scotland\) Act 1995](#), section 11(10).

xliii [Children \(Scotland\) Act 1995](#), section 11(7A)-(7E), as inserted by the [Family Law \(Scotland\) Act 2006](#), section 24.

xliv [Children \(Scotland\) Act 1995](#), section 11(7C)(b).

xliv [Children \(Scotland\) Act 1995](#), section 11(7D).

xlvi [Children \(Scotland\) Act 1995](#), section 11(7E).

The legal remedies if a court order is disobeyed

Sometimes, after a court order such as a **contact order** is obtained, the person in whose favour it is granted experiences difficulties with enforcing the terms of the order in practice.

This section of the briefing considers **the legal remedies** available when a court order obtained under section 11 of the [Children \(Scotland\) Act 1995](#) is disobeyed (**breached**). If reaching an amicable solution fails, the current legal remedies are as follows:

- the person in breach can be found in **contempt of court** with the possibility of them being **fined** or **imprisoned**. Courts are reluctant to imprison an individual in this situation because of the implications for the children involved but it does happen in a small number of cases.
- a court has a discretion to **vary the terms of any residence order** in place in respect of a child, as well as any contact order.^{xlvii} Theoretically, the court could alter who the child lives with as a result of a breach of the contact order. However, crucially, [the welfare of the child remains the paramount consideration](#).

One issue in connection with these enforcement powers is they 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 they qualify to have their legal costs and expenses wholly met out of the Civil Legal Aid budget](#).

Note that difficulties over contact do not justify a person stopping making [child maintenance payments](#). The legal obligations associated with child maintenance are entirely separate from the law governing contact with children.

xlvii [Children \(Scotland\) Act 1995](#), section 11(2).

The Children (Scotland) Act 1995 in practice

This section of the briefing considers some aspects of the court process and wider practice associated with cases under Part 1 of the 1995 Act.

Disputes in the sheriff court - the process

Cases under the 1995 Act are usually considered by [the local sheriff court](#), although a very small minority are considered by the [Court of Session](#) in Edinburgh.

Any sheriff court usually hears a wide range of civil and criminal cases. Individual sheriffs do not specialise in family cases, except, to some extent, in large urban centres.

Few court cases relating to section 11 of the 1995 Act seem to get as far as a **proof**, that is to say, a full hearing where witnesses give evidence and are cross-examined. Instead, most appear to be resolved at the stage of a **child welfare hearing**. Child welfare hearings are relatively informal proceedings, held in private. There may be a number of child welfare hearings associated with a case.

Child welfare reporters

An important role in the court process in practice is played by **child welfare reporters**. These are court-appointed officials, usually solicitors, who report to the court on what the views of the child are or what is in the welfare of the child. The solicitors typically come from private practice and charge a fee for their services. In some instances, these fees may be met by the legal aid budget.

Child welfare reporters are independent in the case they are appointed to report on and are separate from the solicitors representing the parents

Child contact centres

Child contact centres are another important part of the 'machinery' of the 1995 Act in practice.

Child contact centres are neutral venues, run by third sector organisations, where parents who do not live with their children can have contact with their children. The centres are run by a mixture of paid staff and volunteers. [Relationships Scotland](#) are [a major provider of these centres in Scotland](#).

Families can be referred to child contact centres from [the sheriff court](#), [under a contact order](#). They can also be referred from other sources, such as the parents' solicitors, the NHS or from social work departments. Some families **self-refer**.

Two types of contact are offered at contact centres:

- **Supported contact** is undertaken where there is no significant risk to the child. Contact centres only record that the contact took place and not details of how it went.
- **Supervised contact** takes place in the constant presence of an independent person, with the aim of ensuring the safety of those involved. Centres will usually provide a report to the court where supervised contact has been ordered.

Some centres also provide **handover support**, which usually means parents need not see each other when a child is dropped off or collected.

Resolving parenting disputes without going to court

When parents cannot agree on an issue which is important to them, going to court has potential benefits, including the court reaching a legally binding decision as to what should happen next.

However, court action also has potential drawbacks, including the potential expense, [unless the costs are fully met out of the Civil Legal Aid budget](#),² and the possibility of additional stress for the parents and children involved.

For many parents, it is best if they can come to an amicable agreement in relation to the care of their children. Various approaches to this are considered in this section of the briefing.

Note that, for some parents, resolution outside the court process, with direct communication between the parents concerned, is not a desirable or indeed safe option. For example, this can apply if one parent is abusive and poses a risk to the other parent or to the child.

Anyone signposting parents to possible services should always keep this important issue in mind.

Alternative dispute resolution

Alternative dispute resolution (ADR) is the term used to describe a collection of methods designed to enable people to resolve disputes outside the court process.

This section of the briefing describes types of ADR used in parenting disputes. Ways of finding an individual provider of ADR are discussed [in a later section of the briefing](#).

For people on low and moderate incomes, [family mediation](#), one type of ADR, can be (wholly or partly) funded by legal aid. Other types of ADR for family cases are not available under the legal aid system. [This may change at a later date under the Children \(Scotland\) Act 2020](#).

Family mediation

The main type of ADR currently used in parenting disputes is **family mediation**.

Mediation involves an independent and impartial person helping parents to negotiate a potential solution to a problem in a confidential setting. The parents, not the mediator, decide the terms of any agreement. The outcome is not legally binding [without further steps being taken separately](#).

Sometimes a court in a case under the 1995 Act will refer those in dispute to mediation.^{xlviii} However, resolving a dispute through family mediation can also be used as an alternative

to starting court proceedings.

Mediation in family cases is mainly provided by third sector organisations or by solicitors who are also qualified as mediators.

There is no compulsion to participate in mediation. Both parents must be willing to participate voluntarily for the process to work.

The cost of mediation depends on [the type of mediation service used](#), as well as eligibility for legal aid, [as discussed earlier](#).

Collaborative law

With **collaborative law**, the two parents and each of their lawyers meet together in a four-way conference, aiming to negotiate a fair outcome.

A key aspect of the process is that everyone enters into a contract at the outset. This prevents the couple from instructing the collaborative lawyers to raise a court action if their negotiation fails. The aim is to incentivise all those participating to reach a successful outcome.

Arbitration

In **arbitration**, a third party, who often has specialist expertise or knowledge, will decide how the dispute should be resolved. **The outcome is legally binding**. Arbitration is more commonly used in commercial or employment law cases; however, it can also be used in family cases.

Family Group Decision Making

Family Group Decision Making can help a child's wider family to come together to agree a family plan to support their child, before a decision is made about their future.

It is more often used in cases with a child protection element but it can be used in other cases too.

Making a Parenting Plan

A **Parenting Plan** is a **voluntary agreement** between parents about arrangements for the care of their children. While it is referred to in the legislation of some countries, in Scotland, it is a non-legislative term.

The Scottish Government has developed [specific guidance to support parents in their](#)

efforts to reach agreement using a [Parenting Plan](#).³ It has also included [additional information on the mygov.scot website](#).

The Government guidance has helpful suggestions on what to include in the plan and things to consider. It envisages that parents can work on the content of a plan face-to-face, by phone, email or by other online methods (e.g. instant messaging). The guidance suggests that [a family mediator](#) or [solicitor](#) could support the process.

Furthermore, the guidance encourages parents to ask their children what they think and feel about any changes which are taking place. It also encourages parents to discuss any new arrangements with children, so that they can understand what is happening and why.

Legally binding agreements

Sometimes parents might want to convert the outcomes of any negotiated agreement they have reached about parenting issues into something that is legally enforceable.

A **minute of agreement** is the name given to a legally binding document that records the terms of any agreement reached outside the court process. It is registered in [the Register of Deeds](#), one branch of a register known as the Books of Council and Session.

A **joint minute of agreement** is a similar document but which has been approved by the court as part of a court process. A typical pattern would be that one parent initially commences court proceedings, but the parents are later able to agree the terms of an agreement, which the court then approves.

If parents are seeking to reach a legally binding agreement, [later in the briefing there are resources to help identify a suitable solicitor to support the process](#).

Note that, regardless of what the parents have agreed in a minute of agreement or joint minute of agreement, the care arrangements for the children may later be overturned in court.

This is because it remains open to the court to grant a section 11 order at any stage after the parents reach such an agreement. [As noted earlier](#), the welfare of the child is the paramount consideration in section 11 cases.

The Children (Scotland) Act 2020

The 1995 Act, in its original form, was a groundbreaking piece of legislation in its day. However, between 2006, [when the 1995 Act was reformed](#), and 2018, pressure grew for further reform. [An earlier SPICe Briefing discusses these pressures in more detail](#).

This led to the [Children \(Scotland\) Act 2020](#), which, among other things, aimed to modernise Part 1 of the 1995 Act.

A handful of the 2020 Act's provisions came into force in 2021, including some relating to [children's hearings](#), a key part of the child protection system.^{xlix} However, most of the provisions of the 2020 Act which would reform Part 1 of the 1995 Act are **not yet in force**.

A summary of the key provisions in the 2020 Act is included in this section of the briefing to show the changes to the law which may happen at a future date.

Children's participation in decisions about them

The 2020 Act sets out changes to the 1995 Act (and other legislation) to help children to participate in decisions about them.ⁱ

It aims to encourage the court to hear the views of younger children (under 12s) before reaching its decision. Another aim is to explain (most) court decisions to (most) children.

How courts reach their decisions - new statutory factors

The 2020 Act restates, and adds to, [the statutory factors the court must consider when deciding an individual case about PRRs](#).

In particular, the 2020 Act says the court should look at the impact of any court orders on the child's relationships with a) their parents; and b) other important people in the child's life.ⁱⁱ

Delay in a court case

The 2020 Act says that, in various family cases, including those under the 1995 Act, the court must consider the risk to the child's welfare that delay would pose.ⁱⁱⁱ Delay is an ongoing issue of concern in family cases.

xlix [Children \(Scotland\) Act 2020](#), sections 25 and 26.

i [Children \(Scotland\) Act 2020](#), sections 1-3 and 20.

ii [Children \(Scotland\) Act 2020](#), section 16.

iii [Children \(Scotland\) Act 2020](#), section 30.

Regulation of child contact centres and child welfare reporters

The 2020 Act also contains various reforms to the 'machinery' associated with the 1995 Act, with the aim of making it work better for users of the system. Most of these provisions in the 2020 Act would require detailed secondary legislation to give effect to the Government's policy intentions.

First, the 2020 Act makes high-level provision for the **regulation of child contact centres**, which, [as noted earlier](#), are neutral venues where parents, and other relatives, can meet with children.^{liii}

In 2021, the Scottish Government launched [a consultation on the proposed details of the regulatory scheme for child contact centres](#).⁴ [Individual responses to this consultation are available online](#). In addition, in 2022, the Government published [an analysis of the responses received](#).⁵

The 2020 Act also proposes **a regulatory regime for child welfare reporters**, [whose role in the current system was also discussed earlier](#).^{liv}

Likewise, in 2021, the Scottish Government launched [a consultation on the proposed details of the regulatory scheme for child welfare reporters](#).⁶ [Individual responses to this consultation are available online](#). In 2022, the Government published [an analysis of the responses received](#).⁷

Note that, before the passage of the 2020 Act, the lack of regulation of both the aspects of the system discussed were a matter of some policy controversy.

Child advocacy services

A **child advocate** can offer advice and support to a child or young person. They can enable children to express their wishes and feelings.

The 2020 Act requires Scottish Ministers to ensure that, when a court is considering a dispute about children's care (under the 1995 Act), appropriate **child advocacy services** are available to the extent Scottish Ministers consider "necessary and sufficient."^{lv} [The Scottish Government intends to consult on how to implement this provision](#). No consultation has yet emerged.

liii [Children \(Scotland\) Act 2020](#), sections 10-12.

liv [Children \(Scotland\) Act 2020](#), section 9.

lv [Children \(Scotland\) Act 2020](#), section 21.

Failure to obey a court order

When someone fails to obey a court order, the 2020 Act imposes a new statutory duty on the court to investigate why this has happened. This duty could be carried out by the court itself or [by a child welfare reporter](#) on behalf of the court.^{lvi}

Alternative dispute resolution

[As explained earlier](#), **alternative dispute resolution** (ADR) is the term used to describe a collection of methods designed to enable people to resolve disputes outside the court system.

The 2020 Act requires Scottish Ministers to make **public funding** available for procedures used in family cases ([not just for mediation, which can be covered by legal aid at present](#)). Ministers can set financial and other eligibility criteria for funding.^{lvii} The provision envisages that Ministers might want to make secondary legislation on this topic, but it does not require this.

The 2020 Act also requires Scottish Ministers to set up a pilot scheme for **mandatory information meetings**. These would be for people contemplating court action to receive information about the availability of ADR.^{lviii} There would be no requirement to participate in ADR after going to an information meeting. There is a specific exception to the requirement to attend an information meeting if one of the parties has an alleged or proven history of abuse.^{lix}

If Scottish Ministers fail to comply with either of these statutory duties, they must report to Parliament at **six monthly intervals** with their reasons.^{lx} The sixth such report was published by the Scottish Government on 5 August 2024.⁸

Review of the 2020 Act

The 2020 Act places a duty on the Scottish Ministers to review the effect of the Act on children's participation in decision-making no later than **five years** from the date of Royal Assent.^{lxi}

lvi [Children \(Scotland\) Act 2020](#), section 22.

lvii [Children \(Scotland\) Act 2020](#), section 23.

lviii [Children \(Scotland\) Act 2020](#), section 24.

lix [Children \(Scotland\) Act 2020](#), section 24(2)(b).

lx [Children \(Scotland\) Act 2020](#), section 23(7)(8) and 24(4)(5).

lxi [Children \(Scotland\) Act 2020](#), section 31.

The date of Royal Assent of the 2020 Act was **1 October 2020**, meaning the review must take place no later than **1 October 2025**.

Support, advice and further information

This final section of the briefing considers some possible sources of support, advice and information for parents and other relatives of a child in relation to disputes under Part 1 of the 1995 Act.

Support organisations

[Shared Parenting Scotland](#) (previously known as 'Families Need Fathers Scotland') provides support for parents, children and other close family members dealing with the effects of divorce or separation.

For families affected by domestic abuse, [Scottish Women's Aid](#) supports a network of Women's Aid services across Scotland. They deliver support including refuge, counselling and outreach at a local level. Scottish Women's Aid also manages [Scotland's Domestic Abuse and Forced Marriage Helpline](#).

There is one specific support organisation for grandparents, [Grandparents Apart UK](#). This Scotland-based, but UK-wide, organisation aims to help grandparents stay in contact with their grandchildren.

Alternative dispute resolution

There are various ways to find a **family mediator** in Scotland:

- The network of [Relationships Scotland](#) provides family mediation services across Scotland. See [Relationships Scotland's webpage on family mediation](#) for more details.
- An individual can find a local mediation service [using the search facility on the Scottish Mediation website](#).
- [CALM Scotland](#) offers mediation services from experienced lawyer-mediators that can help with ways of resolving disputes and problems associated with parents separating.

For providers of **collaborative law**, [a specific type of ADR for family disputes discussed earlier](#), the [online search facility](#) of the organisation, [Consensus Scotland](#), is the recommended starting point.

Likewise, for **arbitration** in family cases, [a legally binding form of ADR](#), the [online search facility](#) provided by the [Family Law Arbitration Group Scotland \(FLAGS\)](#) can enable a search for solicitors specialising in this area.

For **Family Group Decision Making**, [an approach which involves the extended family](#), [Children 1st](#) is one of the main providers.

Legal advice

Some solicitors are family law specialists. If someone needs help finding a solicitor, [the Law Society of Scotland](#) has [an online search facility](#). An individual can search by specialism, by geographical area and identify solicitors, or firms of solicitors, who take on legal aid cases.

In addition, the [Family Law Association](#), a membership organisation for family law specialists, has [a similar online search facility](#).

SPICe has also recently published a briefing entitled [Legal advice - where to go and how to pay](#).⁹

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