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Dear Convener,

## **IMPLEMENTATION OF ACTS OF THE SCOTTISH PARLIAMENT**

Thank you for your letter of 25 February 2025 addressed to Jamie Hepburn MSP, Minister for Parliamentary Business. I am replying in relation to the Children (Scotland) Act 2020 (the 2020 Act): we are sending separate letters on the other two Acts.

The Committee is seeking an update on implementation of the 2020 Act, focused on the provisions set out in the appendix to your letter:

- sections 1-3 (participation of children and young people in decision-making)
- section 9 (regulation of child welfare reporters)
- sections 10-12 (regulation of child contact centres)
- section 16 (factors to be considered before making a court order)
- section 18 (duty to consider child's best interests when allowing access to information)
- section 20 (explanation of a court's decisions to a child)
- section 21 (duty to ensure availability of child advocacy services)
- section 22 (failure to obey a court order)
- sections 23-24 (alternative dispute resolution)
- section 30 (delay in court proceedings)

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The 2020 Act is a wide ranging piece of legislation, which requires a variety of implementation activities. This means we have had to prioritise certain areas of implementation work, such as the regulation of child contact services.

We do plan to make further commencement regulations later this year. This will include a short set of commencement regulations by summer recess, and a second set to be made later in 2025 with a lead-in period of around 12 months before coming into force. This reflects that a number of these provisions will have operational and court rules implications before they are commenced. Rules are made by the court with the Scottish Civil Justice Council (SCJC) assisting by preparing and submitting draft civil procedure rules for the court to consider.

A number of the 2020 Act provisions are linked to child welfare reporters. Establishing the register will require a number of tasks to be undertaken and the register is not yet in place. This impacts on the commencement of some of the other provisions in the 2020 Act. However, we have reconvened a Working Group on child welfare reporters, which is considering what is needed for the new register and also what improvements can be made to the current system.

I have set out more details below, relating to the specific provisions the Committee has listed.

### **Sections 1-3 (participation of children and young people in decision-making)**

#### *Section 1*

We intend to commence section 1(2) in the first set of commencement regulations made before summer recess. Section 1(2) strengthens how regard is to be had to the child's views when a person with parental responsibilities and rights is taking a major decision in relation to the child.

Other subsections of section 1 strengthen how the views of children are heard by the courts in cases under section 11 (which mainly relates to child contact and residence) of the Children (Scotland) Act 1995. Section 1(4) is the key provision as it inserts the necessary changes after section 11.

Child welfare reporters are often appointed by the courts in contact and residence cases and a key part of a reporter's role is to obtain the views of the child. We have considered the implications of commencing the remaining subsections of section 1 in advance of the new register of child welfare reporters (section 9 of the 2020 Act) being in place.

There may also be a need for court rules changes before these provisions could come into force. The Scottish Government has written to the SCJC Secretariat on whether rules are required and we are engaging with the Scottish Courts and Tribunals Service (SCTS) on the operational implications of commencing other subsections of section 1.

On this basis, we think that the remaining subsections of section 1 could be included in the second set of planned commencement regulations to be made later in 2025 with a lead-in period of around 12 months before coming into force.

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## *Sections 2 and 3*

Sections 2 and 3 strengthen how the views of children are heard in adoption proceedings and in children's hearings respectively.

There may be operational implications and a need for court rules changes before these provisions could come into force.

Again, the Scottish Government has written to the SCJC Secretariat on whether rules are required and we are engaging with the SCTS, Children's Hearings Scotland and adoption agencies on the operational implications of commencing sections 2 and 3.

On this basis, we aim to include these provisions in the second set of commencement regulations to be made later this year.

## **Section 9 (regulation of child welfare reporters)**

In advance of fully implementing the new register of child welfare reporters, we have reconvened a short-life Working Group of key stakeholders to consider: how the current system is working in practice; what is needed in advance of the new register; and what changes could be made now to improve the current system.

As regards regulations in relation to the new register, we will consider when these can be progressed once the secondary legislation on child contact services regulation (detailed below) is in force.

## **Sections 10-12 (regulation of child contact centres)**

As noted to the Committee previously, we will lay secondary legislation in summer 2025 to add child contact services to the list of care services that the Care Inspectorate regulates under the Public Services Reform (Scotland) Act 2010.

Once the secondary legislation is in force, this will start a lead-in period of up to 18 months during which time the Care Inspectorate will carry out a range of preparatory work, including recruitment, training, engaging with child contact services, and developing a Quality Framework.

## **Section 16 (factors to be considered before making a court order)**

Section 16 amends section 11ZA of the 1995 Act, which is inserted by section 1(4) of the 2020 Act. Commencement of section 16 is therefore linked to the commencement of section 1(4). Please see my comments above regarding the position on commencing section 1(4), which will also apply to commencing section 16, namely that we will aim to include this provision in the second set of commencement regulations.

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## **Section 18 (duty to consider child's best interests when allowing access to information)**

Section 18 requires the views of the child to be sought. As a result, it might involve child welfare reporters, but there is no direct reference to the new register of child welfare reporters.

Again, the Scottish Government has written to the SCJC Secretariat on whether rules are required and we are engaging with the SCTS on the operational implications.

On this basis, we aim to include these provisions in the second set of commencement regulations.

## **Section 20 (explanation of a court's decisions to a child)**

This provision places a duty on the courts to provide feedback to the child following decisions in section 11 cases. The court can appoint a child welfare reporter to provide the feedback, which is a new function for the reporter role.

There is specific reference in section 20 to the child welfare reporter being on the new register. We will commence this section once the new register is in place.

## **Section 21 (duty to ensure availability of child advocacy services)**

We are not in a position to implement this provision until we have further advanced implementation work in other areas. We will prioritise child contact services regulation ahead of establishing the register of child welfare reporters.

I recognise the importance of section 21 and the need to ensure child advocacy is available to children in section 11 cases. Therefore, the Scottish Government will gather views of key bodies on what they would like to see in this area.

## **Section 22 (failure to obey a court order)**

This provision places a duty on the courts to investigate any failure to obey a contact order made under section 11. The court can appoint a child welfare reporter to carry this out, which is a new function for the reporter role.

There is specific reference in section 22 to the child welfare reporter being on the new register. Therefore, we do not plan to commence this section until the new register is in place.

## **Sections 23-24 (alternative dispute resolution)**

As the Committee notes, there are obligations on Scottish Ministers in sections 23 and 24 to lay a statement before Parliament if the duties in those provisions have not been fulfilled to explain why not and state when we expect to fulfil it.

To date we have laid six reports before Parliament in this regard and will lay a further report soon.

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We have undertaken preparatory work in relation to the pilot of mandatory information meetings on ADR (section 24), which is outlined in the reports.

### **Section 30 (delay in court proceedings)**

We will include subsections (3), (4), (5), (6) and (7) in the first set of commencement regulations due before summer recess.

As regards subsection (2), this is linked to the commencement of section 1(4). Therefore, please see my comments above regarding the position on commencing section 1(4), which will also apply to commencing section 30(2), namely that we will aim to include this provision in the second set of commencement regulations later this year.

The courts have made rules on case management in this area (see [Act of Sederunt \(Ordinary Cause Rules 1993 Amendment\) \(Case Management of Defended Family and Civil Partnership Actions\) 2022](#)) and part of the aim of these is to try and resolve cases more quickly.

Yours sincerely,

**SIOBHIAN BROWN**

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