

Citizen Participation and Public Petitions Committee

3rd Meeting, 2023 (Session 6), Wednesday
22 February 2023

PE1984: Introduce the C100 form for child arrangement orders in Scotland

Petitioner	Amy Stevenson
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to urge the Scottish Government to reduce the financial barriers that prevent parents from having contact with their children by introducing a Scottish equivalent to the C100 form, with a fixed fee, for making applications for child residence or child contact orders.
Webpage	https://petitions.parliament.scot/petitions/PE1984

Introduction

1. This is a new petition that was lodged on 28 November 2022.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. While not a formal requirement, petitioners have the option to collect signatures on their petition. On this occasion, the petitioner elected to collect this information. 110 signatures have been received.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Minister for Community Safety and is included at **Annexe C** of this paper.
6. The Committee has also received submissions from Claire Baker MSP, and Shared Parenting Scotland. These can be found in **Annexe D**.

Action

The Committee is invited to consider what action it wishes to take on this petition.

Clerk to the Committee

Annexe A

PE1984: Introduce the C100 form for child arrangement orders in Scotland

Petitioner

Amy Stevenson

Date lodged

28 November 2022

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to reduce the financial barriers that prevent parents from having contact with their children by introducing a Scottish equivalent to the C100 form, with a fixed fee, for making applications for child residence or child contact orders.

Previous action

I have had a face-to-face meeting with Claire Baker MSP. I have also had a meeting with Cllr David Graham.

My previous petition about providing legal aid for parents PE1917 also had support from Relationship Scotland and Shared Parenting Scotland, who all support the fact that financial barriers are having an impact on a child being able to see both of their parents after they break up.

Background information

The C100 form, available in England and Wales, asks for a family court to make a judgement, under Section 8 of the Children's Act 1989, on the parenting arrangements. Having a similar provision in Scotland would support quick resolutions on the contact arrangements for a child and would reduce financial barriers coming in between a child seeing both parents.

I previously submitted a petition to get the Legal Aid Bill changed to include parental responsibilities, but I am aware this would have an impact on the budgets. Having a C100 form in Scotland would still mean that people pay for the service but it wouldn't financially cripple people to the point where they give up and don't get to see or have a relationship

with their child/children. It would also cut out the middle-man, saving time and money and supporting the children's needs.

There are too many children growing up without having the love from both parents and we should try to make the process of child contact a little more bearable for the alienated parent.

Annexe B

The logo for SPICe, featuring the text 'SPICe' in white on a purple-to-blue gradient background.

The Information Centre
An t-Ionad Fiosrachaidh

Briefing for the Citizen Participation and Public Petitions Committee on petition PE1984: introduce the C100 form for child arrangement orders in Scotland, lodged by Amy Stevenson

Brief overview of issues raised by the petition

This petition focuses on two features of the system in England and Wales for the resolution of disputes between parents about the care of their children (disputes of the type which can occur after a separation or divorce).

The petitioner argues for the introduction of these two aspects of the English system in Scotland. The first proposed feature is the form used to commence the court action in England and Wales ([the C100 form](#)). The second suggested feature is the fee payable to the court at the point of that form is lodged with the court, and specifically its 'all-inclusive' nature (described in more detail later).

Note that court fees are one of a range of costs which someone bringing a court action may face.

A comparison of the two systems north and south of the border

To better understand the petition, it is helpful to understand how the two court-based systems for resolving parenting disputes work both north and south of the border.

First, the law which the courts apply to decide cases are very similar in both legal systems. The [Children \(Scotland\) Act 1995](#) ('the 1995 Act') applies in Scotland, the [Children Act 1989](#) applies in England and

Wales. How the law applies in an individual case can be a complex matter in both legal systems.

The **child arrangements order** is a court order which can be made in England and Wales to resolve the living arrangements for a child or who a child should have contact with (and on what terms). In Scotland, there are two direct equivalents – a **residence order** determines where a child should live, a **contact order** sets out the contact arrangements.

In England and Wales, there is a specialist family court system. In Scotland, [the local sheriff courts](#), who hear a wide range of criminal and civil matters, usually determine family cases.

In Scotland, people on low and moderate incomes will qualify to have (all or part of) the costs of legal advice from, and representation in court by, a solicitor met out of the legal aid budget. [It is thought that around 70% of the Scottish population would qualify for some support in this regard.](#) Legal costs can be considerable, depending on the circumstances. Another notable benefit of qualifying for legal aid in the context of this petition is that people who qualify are also exempt from paying court fees.

In England and Wales, legal aid is only available in family cases where domestic abuse is an issue. Consequently, 'self-representation' (where a parent or other litigant represents themselves in court) is much more common.

The use of mediation (as an alternative to court) is also much more formally embedded in the system for family cases south of the border, compared to in Scotland. In England and Wales, if parents use mediation, [a session also incurs a fee \(unless the parents are eligible for legal aid for mediation\).](#)

Although Scotland benefits from much greater legal aid provision in family cases than in England and Wales, it is worth noting there are some known policy issues associated with legal aid and cases under the 1995 Act in Scotland. For example, [new courts rules, which come into force in September 2023](#), envisage that there will be great use of 'case management hearings' in family cases, i.e. those designed to encourage early resolution of the dispute. However, to the extent that case management hearings are used under the current rules, [there is a question about whether the work solicitors need to carry out in relation to these hearings is covered by legal aid.](#)

A further difference between the systems north and south of the border is that, in England and Wales, [a public body called CAFCASS](#) has a key role in reporting to the court on what is in the best interests of a child in an individual case.

There is no equivalent of CAFCASS in Scotland and instead the sheriff court uses **child welfare reporters**. These are solicitors from private practice (separate from the solicitors representing each parent) who prepare reports for the court. The costs of these reports are variable, [but the average is thought to be around £2,700](#). With some discretion for the court remaining, the [current Scottish court rules](#) (rule 33.21) say that the child welfare reporter's fees should be borne equally, in the first instance, by both litigants.

There is a system for regulation of child welfare reporters set out in [the Children \(Scotland\) Act 2020](#) (not yet in force, with implementation delayed). Once it is in force, [the Scottish Government intends that the Government would meet the costs of child welfare reporters directly](#).

In summary, there are some similarities but also significant differences between the two systems for resolving parenting disputes. This can make them somewhat challenging to compare in practice, both in terms of the costs to litigants and to the public purse.

C100 form – and its Scottish equivalent

Turning now to the petitioner's specific proposals, the [C100 form](#) allows a parent (whether legally represented or not) to apply online to the family court in England and Wales for a child arrangements order. The **initial writ**, usually prepared by a solicitor and which commences a court action under the 1995 Act, is the court document equivalent to this form in Scotland.

The [C100 form](#) appears to be more accessible to someone without a legal background than its equivalent in Scotland. (In policy terms, this seems particularly important in a system where self-representation is common). With the initial writ, and wider aspects of the Scottish court procedure, legal advice and representation by a solicitor is recommended.

Court fees

On the petitioner's second point, in **England and Wales**, it costs £232 to apply to court for a child arrangements order. This is a flat fee which covers all the court proceedings leading to the issuing of an order (assuming one is granted). Depending on the case, several

appointments, and [hearings \(including hearings where evidence is taken\)](#) might be included in that fee. Additional fees may be charged in some (limited) circumstances. See further: [Fees in the Civil and Family Courts – main fees \(EX50\)](#). A person may be able to get money off their court fees if they have limited savings and have a low income or are in receipt of certain benefits. See: [How to apply for help with fees \(EX160A\)](#).

In **Scotland**, [according to the latest Fees Order](#):

- there is a court fee for one parent lodging the initial writ (**£135**).
- there is a court fee for the other parent lodging defences (**£134**)
- there is a court fee for fixing a date for a proof, i.e., the type of hearing where evidence is heard, and witnesses are cross-examined on it (**£58**)
- there is a court fee for each day or part day a proof is heard (**£247**).

It is relatively unusual (although not unheard of) for a case in Scotland to get to a ‘proof’, i.e., where formal evidence is taken, and the witnesses are cross-examined on it. Instead, a key part of the dispute resolution process is a **child welfare hearing**. Here the sheriff typically speaks directly to the parents and takes a problem-solving approach. There may be multiple child welfare hearings for one case before any final court order is issued.

As a matter of drafting, the [Fees Order](#) could be clearer on how a child welfare hearing is classified for fees purposes. However, the Scottish Government, in consultation with [the Scottish Courts and Tribunal Service](#), has expressed the view that neither a child welfare hearing, nor a case management hearing (earlier referred to on p. 2 of this note) attracts a separate court fee.

Sarah Harvie-Clark
Senior Researcher
22/11/22

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these

briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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Annexe C

Minister for Community Safety submission of 9 December 2022

PE1984/B: Introduce the C100 form for child arrangement orders in Scotland

The Committee has requested a response from the Scottish Government to Public Petition PE1984, which asks the Scottish Parliament to *'reduce the financial barriers that prevent parents from having contact with their children by introducing a Scottish equivalent to the C100 form, with a fixed fee, for making applications for child residence or child contact orders'*.

Current position in Scotland

In Scotland applications to court for child residence and child contact orders are made under section 11 of the [Children \(Scotland\) Act 1995](#). There is no set application form for raising such an order in the Scottish courts. Most actions are raised in the sheriff court through the [Ordinary Cause procedure](#) by lodging an initial writ. The applicant must serve the writ on the other party to the action who can then lodge defences. The relevant procedures are set out in the [Ordinary Cause Rules](#).

When the sheriff court is dealing with a contact or residence application, it is likely to hold child welfare hearings. These are informal, non-evidential hearings and there may be a number of hearings over the course of the action. A small proportion of cases proceed to proof, which is a final evidential hearing.

There are fixed fees payable to the Scottish Courts and Tribunals Service for the most common applications and stages of procedure in the sheriff court. These are set out in [The Sheriff Court Fees Order 2022](#). The fee for lodging an initial writ is currently £135 and there may be further fees for other aspects of the action, e.g. lodging motions, shorthand writers, child welfare reports. Fee exemptions are available for those in receipt of certain benefits.

In Scotland legal aid is available for parties in family actions, including contact and residence cases, subject to statutory tests. The means test ascertains whether an applicant is financially eligible for legal aid and, if so, whether a contribution requires to be paid towards the cost of their

legal representation. Despite significant financial pressures, Scotland is one of the leading jurisdictions in Europe in terms of scope and eligibility for legal aid, with three-quarters of people eligible for some form of civil legal aid assistance. The Scottish Government consultation on legal aid reform in 2019 found that the majority of respondents supported that those who could afford to pay a contribution to their legal costs should continue to do so. With a demand-led Fund, appropriate means-testing is an important balancing lever to enable legal aid to continue to support a wide scope of actions.

The Lord President recently made an Act of Sederunt containing rules of court to enhance judicial [defended family and civil partnership actions](#) in Scotland. The key aim is to enable cases to be resolved more quickly and prevent undue delay in cases relating to the welfare of children. The new rules will come into force on 25 September 2023.

The C100 form

The C100 form is used in England and Wales to allow parties to apply to the court for child arrangement orders, specific issue orders and prohibited steps orders under the Children Act 1989. There is a paper form and an online version. There are supplemental forms, including the C1A which can be used when a party is making or responding to allegations of harm or domestic violence. (There is also a form-based process in Northern Ireland. The C1 form can be used to apply for residence or contact orders).

The C100 provides information on Mediation Information and Assessment Meetings on alternatives to court and also asks for information which CAFCASS needs in relation to safeguarding checks. (In Scotland there is no direct equivalent to CAFCASS – the Children and Family Court Advisory and Support Service. In Scotland the court can appoint a child welfare reporter in contact and residence cases to obtain the child's views and investigate the best interests of the child).

Once a C100 application is received and checked the court will set an initial hearing to discuss the next steps. The first hearing is usually set within around five weeks and there may be further hearings scheduled subsequently.

In England and Wales there is a flat fee of £232 to apply to court for a child arrangements order, which covers the court proceedings leading to the issuing of an order. However, there may be additional fees in certain circumstances (e.g. additional orders are sought or for court copies of

documents). Legal aid is not generally available for child arrangement applications in England and Wales (other than in cases involving domestic abuse).

Points to consider in relation to the petition

The Scottish Government understands that the procedure of lodging initial writs and defences in Scotland is often seen as difficult to understand. In general terms a form could be a more contained and focussed way for an applicant to navigate through the application process. However, having discussed with a number of bodies, the Scottish Government considers there are a range of issues to consider before moving to a forms- based system, including:

- A criticism of the C100 form in England and Wales is that it is too lengthy and can be difficult for vulnerable applicants to complete without assistance.
- Concerns that a forms-based process could incentivise litigation and lead to more vexatious actions being raised, particularly where there has been domestic abuse.
- A form could be seen as a very clinical way for vulnerable individuals, such as domestic abuse victims, to give sensitive information.
- Concerns that a forms-based process may not be focussed on the best interests of the child.
- A form may not capture all of the relevant issues for the court to consider (alternatively, as indicated above, any form could be very long).
- A forms-based process may perhaps reduce costs at the initial application stage. However, applicants are still likely to need legal advice and most applicants are legally represented at child welfare hearings and other stages of the process. Therefore, it is unclear to what extent a forms-based process would reduce the overall costs arising from the court action.

There are also a number of practical considerations:

- It is likely new court rules would be required. If a form based approach should be proposed, a paper would need to go to the [Family Law Committee of the Scottish Civil Justice Council](#) to propose new court rules and court forms.
- There would need to be training for court staff and judges.
- There would need to be changes to the Scottish Courts and Tribunals Service IT.

- Public facing guidance would need to be prepared.

It is not clear how a form would work when a court action has multiple craves (i.e. requests to the court). For example, an action in relation to child contact might have craves in other areas such as divorce; financial provision on divorce; civil protection orders against domestic abuse, etc. Any form to capture all of this might need to be very lengthy.

Annexe D

Shared Parenting Scotland submission of 6 December 2022

PE1984/A: Introduce the C100 form for child arrangement orders in Scotland

Shared Parenting Scotland has been established as a separate Scottish Charity since 2010, initially as Families Need Fathers Scotland. We changed our name to Shared Parenting Scotland in February 2020 to reflect the increasing diversity of the individuals who contact us for information and advice - that is non-resident mothers as well as non-resident fathers, new partners, grandparents and brothers and sisters.

We had just over 1,000 active enquiries during 2021. We staff a daily telephone helpline for individual enquiries. We run monthly support group meetings in Edinburgh, Glasgow, Stirling, Dundee and Aberdeen. We run one online meeting a month for people who are still uncomfortable with in person gatherings. All our meetings now have a family law solicitor in attendance on a pro bono basis for general advice about the law and legal procedures.

We publish several free 'user guides' to help inform individuals about rights and responsibilities of parents in relation to maintaining and nurturing a meaningful relationship with their children after divorce or separation. [Downloadable guides and publications from Shared Parenting Scotland - Shared Parenting Scotland](#)

We also provide the [New Ways For Families® training and coaching programme](#) to calm potentially high-conflict separation and help separated parents to communicate and reach agreement.

Our general advice for those who get in touch with us is to avoid going to court if at all possible. Family courts are unpredictable, slow, expensive and, sitting within the adversarial approach of civil justice, often generate entirely new tensions and disagreements between the parties as they seek to 'win time' with their children rather than collaborate to be as good co-parents as possible.

WE NEED A NEW ONLINE SUPPORT PROCESS FOR SEPARATED PARENTS, NOT JUST A NEW FORM

We agree with the petitioner that there are significant financial barriers facing parents who are trying to restore or establish a schedule of contact with their children after separation. We consider that the current process for raising court actions is unduly difficult to understand and very hard for a lay person to use.

While the introduction of a C100-type online form would remove some of these barriers, we would suggest that far more than a form is needed to support separated parents in Scotland.

The Scottish Courts and Tribunals website does not have any specific information for parents about how they can initiate and structure an action for contact issues in court. It does have limited guidance about actions for divorce. To find the necessary court rules it is necessary to know that they are contained under the heading of “Ordinary Cause Rules” then “Special provisions in relation to particular causes” then under one of seven versions of Chapter 33 Family Actions. Having reached this destination you have to wade through sections on Averments, Warrants, Intimations and Productions before hopefully ending up grappling with condescendences and averments in the initial writ.

Even these are the nuts and bolts of process and do not guide a party on what will be seen as relevant to the sheriff.

Introducing a C100 form would avoid needing to enter this maze of verbiage. However, we suggest that it would be far better for an online process to start far earlier in the dispute resolution process.

ONLINE GUIDANCE TO RESOLVE DISPUTES

Systems that have been recently introduced in the Netherlands and in Australia start by asking simple questions designed to sort out what are the issues at stake.

They go on to help each parent to compile a set of requirements and conditions, which are then automatically compared with the equivalent set prepared by the other parent to identify what is still in dispute. By using an online set of questions and hints this process avoids the acrimonious to and fro that often is produced from face-to-face discussion between ex-partners. It also allows for introduction of the views of the children on issues that concern them.

Once this assessment of the position of the two ex-partners has been produced, the system then helps them to produce their own parenting

agreement. If the assessment shows that there are major differences outstanding parents are guided towards appropriate sources of support such as family mediation or family lawyers. It also suggests organisations providing support on topics like shared parenting, child support, domestic abuse, parental alienation or child abduction.

Court action may be the final destination for some, but this process will help to avoid the milder disputes from escalating into major confrontations. It also accelerates any resulting court decision using information that has already been collected from the parents to prepare their initial statements.

These online processes avoid some of the current delay which is so damaging to the children.

The **Uitelkaar.nl** online system in the Netherlands and the **AMICA** system in Australia support both separated parents through this process.

We suggest that development of an online support gateway for the 30,000 parents who separate every year in Scotland would be far better than producing a new form to initiate court disputes. The initial cost of this change would easily be recouped in savings to the public purse from all the separation disputes that don't have to go anywhere near the family court.

Claire Baker MSP submission of 24 January 2023

PE1984/C: Introduce the C100 form for child arrangement orders in Scotland

Thank you for the notification that the Citizen Participation and Public Petitions Committee will consider petition 'PE1984: Introduce the C100 form for child arrangement orders in Scotland' at its meeting on Wednesday 22 February.

I have previously met with the petitioner, Amy Stevenson, to hear her concerns and discuss the content of the petition. I recognise the hard work she has put in regarding the petition and how important the issues raised are to her. I am supportive of her action in petitioning the Scottish Parliament and have encouraged her to make representations to the Scottish Government.

I welcome that Petition PE1984 is being brought to the Committee and I believe that it merits further consideration.

Claire Baker MSP for Mid Scotland and Fife