

# Citizen Participation and Public Petitions Committee

1st Meeting, 2024 (Session 6), Wednesday 24  
January 2024

## PE2057: Promote shared parenting and prevent the separation of children from their parents

<b>Petitioner</b>	John McMaster
<b>Petition summary</b>	Calling on the Scottish Parliament to urge the Scottish Government to: <ul style="list-style-type: none"><li>• ensure the frequency and duration of parental contact is equal;</li><li>• promote the use of parenting agreements;</li><li>• require that evidence of accusations from one parent to another are provided within 14 days of any civil action; and</li><li>• raise public awareness of the importance of both parents in a child's life.</li></ul>

**Webpage** <https://petitions.parliament.scot/petitions/PE2057>

### Introduction

1. This is a new petition that was lodged on 26 October 2023.
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. Every petition collects signatures while it remains under consideration. At the time of writing, 159 signatures have been received on this petition.
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 Scottish Government and is included at **Annexe C** of this paper.

## Action

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

**Clerk to the Committee**

## Annexe A

# PE2057: Promote shared parenting and prevent the separation of children from their parents

## Petitioner

John McMaster

## Date Lodged:

26 October 2023

## Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to:

- ensure the frequency and duration of parental contact is equal;
- promote the use of parenting agreements;
- require that evidence of accusations from one parent to another are provided within 14 days of any civil action; and
- raise public awareness of the importance of both parents in a child's life.

## Previous action

I have contacted George Adams who has advised that I should start a petition.

## Background information

The purpose of this petition is not to take any of the necessary protection away but to prevent the abuse of the current systems that are knowingly abused to alienate children and keep them away from their parents.

Both parents have an equal responsibility and right to be involved in the upbringing of their child and should be encouraged to participate fully in their child's life even if this is done separately. Parents should be encouraged to have a meaningful relationship with their child and to share equally in the responsibilities and joys of parenting unless it is contrary to the best interests of the child.

Prima Facie can be used as the method to prevent a parent from being with their children, because court can take a very long time this can and, in my experience, will cause alienation of the child. Forcing a short time period would help to prevent the abuse of the current system and I hope help stop solicitors who may take advantage of the current systems to protect children.

## Annexe B

The logo for SPICe, featuring the letters 'SPICe' in a white, sans-serif font on a dark purple background.

The Information Centre  
An t-Ionad Fiosrachaidh

### Briefing for the Citizen Participation and Public Petitions Committee on petition [PE2057](#): Promote shared parenting and prevent the separation of children from their parents, lodged by John McMaster

An overview of issues raised by the petition

#### The Children (Scotland) Act 1995: parental responsibilities and rights ('PRRs')

When parents separate or divorce, Part 1 of the [Children \(Scotland\) Act 1995](#) ('the 1995 Act') is key to resolving any disputes that arise between the parents relating to the care of their children.

Part 1 sets out a range of parental responsibilities and rights ('PRRs') in respect of all children living in Scotland.

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.

#### Reaching agreement amicably

In 2018, the Scottish Government [published guidance](#) designed to help parents agree a **Parenting Plan** after separation or divorce, that is, a voluntary agreement relating to the future care of their children.

A key caveat is that [use of a parenting plan is not recommended where there is a history of violence or abuse.](#)

Parents can also reach a legally binding agreement relating to their arrangements for their children, known as a **minute of agreement**.

## The Children (Scotland) Act 1995

If parents cannot agree the arrangements for the care of their children, section 11 of the 1995 Act is a key provision. Section 11 enables the court to make a range of 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 parent or with both parents
- a **contact order** 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.

When a child is to live with both parents this is sometimes referred to as **joint residence**, although this term does not appear in the legislation.

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, 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.

The courts also must "have regard in particular to":

- the need to protect the child from actual or possible abuse
- the effects of such abuse on a child
- the ability of the abuser to care for the child
- the effects of abuse on a person's capacity to fulfil PRRs.

Abuse includes abuse of a parent, as well as abuse of a child.

The 1995 Act has been the subject of two significant sets of reforms since the creation of the Scottish Parliament. The first set of reforms was in the [Family Law \(Scotland\) Act 2006](#) ('the 2006 Act'), the second set of reforms was in the [Children \(Scotland\) Act 2020](#) ('the 2020 Act'). Both Acts are discussed below.

## The Family Law (Scotland) Act 2006

When the Bill which became the 2006 Act was being considered at Stage 1, the lead committee, the Justice 1 Committee, considered arguments about whether there should be a statutory presumption (that is, a legal starting point for the courts) of 'equal parenting time'. Broadly, this is a 50/50 split of time for the child between the two parents.

In its [Stage 1 report](#), [the Justice 1 Committee said](#) that there should be a policy emphasis placed on the importance of joint parenting, as generally being in the child's best interests. However, a presumption about parenting time should not be added to the legislation. The Committee wanted to retain discretion for the courts to decide that an equal split of time was not in the child's best interests in an individual case.

## The Children (Scotland) Act 2020

The 2020 Act, **most of which is not yet in force**, [contains a wide range of reforms to Part 1 of the 1995 Act](#).

For example, section 16 of the 2020 Act (not in force) adds to the statutory factors which the courts must consider when deciding an individual case. Specifically, the 2020 Act says the court must look at the impact of any court orders on the child's relationships with i) their parents; and ii) other important people in their life.

When the Bill which became the 2020 Act was being considered at Stage 1, the lead committee, the Justice Committee, considered arguments that a statutory presumption for the courts should be added to the legislation. This presumption was in favour of 'shared parenting'. This presumption was about parental involvement rather than a particular allocation of parental time. In its [Stage 1 report](#), the Justice Committee [commented as follows](#):

"We note that the courts in Scotland currently apply a broad assumption (or general principle) that it will normally be beneficial

for children to have an ongoing relationship with both parents. On balance, we are not persuaded that the Bill should include a presumption in favour of shared parenting. The welfare of the child must remain the paramount consideration. Any shared parenting presumption could cut across that key principle.”

[Delays in cases under the 1995 Act have previously been flagged by senior judges as an important issue](#). Related to this, section 30 of the 2020 Act (not in force) says that, in certain family cases, including those under the 1995 Act, the court must consider the risk to a child’s welfare that delay would pose.

## New court rules

In September 2023, [new court rules](#) (which determine the procedure followed by courts in cases) came into effect for family cases, including those under the 1995 Act. The rules seek to encourage the courts to actively manage cases. [The hope among the legal profession is that the new rules will provide a means to encourage the speedier resolution of cases](#).

**Sarah Harvie-Clark**

15/11/23

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](mailto: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 Victims and Community Safety submission of 7 December 2023

#### PE2057/A: Promote shared parenting and prevent the separation of children from their parents

The petitioner's first ask around equal parental contact is an issue which was considered as part of the [review of Part 1 of the Children \(Scotland\) Act 1995 and creation of a Family Justice Modernisation Strategy](#) in 2018. While we did not consult on equal parental contact specifically, the consultation asked questions around whether or not courts should presume that a child benefits from both parents being involved in their life. The [analysis of consultation responses](#) showed that there were mixed views on this (see section 8.6).

Section 11 of the [Children \(Scotland\) Act 1995](#) makes provision on court orders relating to matters such as parental responsibilities. Under this, when considering whether or not to make an order and what order to make, the court has to regard the welfare of the child concerned as its paramount consideration. A presumption of equal contact between parents could cut across this. Where separating parents cannot agree, it should be for the courts to decide what parental contact arrangement is in the best interests of the child, on a case-by-case basis.

Following the 2018 consultation, the Scottish Government introduced the Children (Scotland) Bill into Parliament. This Bill became the [Children \(Scotland\) Act 2020](#) (the 2020 Act) after its Parliamentary passage. The issue of shared parenting was considered at Stage 1. The Parliament's Justice Committee said in their [Stage 1 Report](#) (see paragraph 265) that: *'On balance, we are not persuaded that the Bill should include a presumption in favour of shared parenting'*.

An amendment was lodged by Liam McArthur MSP at Stage 2 of the Bill (amendment 83) on shared parenting. The debate on this amendment can be found in the [Official Report](#) at columns 11 to 15 and 17 to 18. At column 66, Mr McArthur said he would not move the amendment or bring it back at Stage 3.

The petitioner's second point is on the promotion of parenting agreements. The Scottish Government believes that, where possible, it is better if separating parents can agree with each other about what is best for their child. We have produced [Your Parenting Plan](#), a guide for parents in making practical arrangements for children when they are living apart or in the process of separating. This includes, amongst other things, a [joint agreement](#) for parents to use to structure and record their discussion about the future care and welfare of their children. As Your Parenting Plan notes, it is also possible to draw up and register a formal Minute of Agreement.

Sometimes services such as family mediation can help parents reach agreement. The Scottish Government provides funding to [Relationships Scotland](#), whose network provides family mediation services. The Scottish Government also supports [New Ways for Families](#), run by Shared Parenting Scotland.

Thirdly, the petitioner raises concerns about long court proceedings having an adverse impact on the child-parent relationship.

Recently, the Family Law Committee of the Scottish Civil Justice Council developed [court rule changes on the case management of family actions](#) in the Sheriff Court. These changes (available to [view in full as an Act of Sederunt](#)) came into effect on 25 September 2023, and the provisions apply to all family and civil partnerships actions. It is anticipated that greater judicial case management as a result of these rules will lead to cases being resolved more quickly.

These rules make provision for an initial case management hearing and a full case management hearing. These hearings have a checklist to run through and parties will be expected to advise the court about each matter. This is intended to ensure the important issues are clearly focussed upon so that cases can be resolved more quickly, reducing system churn with fewer continuations.

In addition, section 30 of the 2020 Act, once commenced, will require the court to have regard to any risk of prejudice to the child's welfare that delay in proceedings would pose.

Finally, the petition asks about raising public awareness of the importance of both parties in a child's life. The Scottish Government is clear that both parents should be fully involved in their child's life, as long as this is practical and in the best interests of the child. [Your](#)

[Parenting Plan](#) states in its very first section that: '*Whenever it's safe and possible, children benefit from positive relationships with both parents*'. In addition, and as indicated above, the Scottish Government provides funding to [Shared Parenting Scotland](#).

I hope the Committee finds this information to be of assistance in its consideration of the petition.

**Siobhian Brown MSP**