**Annex A: RESPONDENT INFORMATION FORM**

**Please Note** this form **must** be completed and returned with your response if you are responding by post.

Full name or organisation’s name

Social Work Scotland

Phone number

Address

Postcode

Email8j

Are you responding as an individual or an organisation?

Individual

x Organisation

Where are you resident? (Please select one of the options below)

Scotlandx  Rest of the UK  Rest of the World

If you are responding as an organisation and want to tell us more about your organisation’s purpose and its aims and objectives, you can do so here.

The Scottish Government would like your

**Information for organisations:**

The option 'Publish response only (without name)’ is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

permission to publish your consultation

response. Please indicate your publishing

preference:

x Publish response with name

Publish response only (without name)

Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

x Yes

No

**Annex B: Consultation questions**

Question 1):

Should the presumption that a child aged 12 or over is of sufficient age and maturity to form a view be removed from sections 11(10) and 6(1) of the 1995 Act and section 27 of the Children’s Hearings (Scotland) Act 2011?  
Please select only one answer.

1. Yes – remove the presumption and do not replace it with a different presumption.
2. Yes – remove the presumption and replace with a new presumption based on a different age.
3. No – leave the presumption in.

Why did you select your answer above?

**None of the three options above are adequate remedies. The presumption has been important because it has provided guidance about taking children’s views into account under the age of 16 and policy and practice has developed accordingly – it has become a quick short cut to presume that a child over the age of 12 is able to understand and form a view of their situation, unless there are circumstances which would prevent this. Even with this in place resistance has been encountered to the principle.**

**To remove the presumption would risk a return to children’s views not being taken into consideration. The age at which the presumption is currently set is also consistent with life change for young people- most will either be finishing Primary school or be commencing Secondary school at the age of 12 and accordingly be presumed to have a level of independence and understanding than that of a younger child. However, it would be important to welcome new wording around the presumption to reflect that younger children may be able to give coherent views even in the most complex situations and some children over the age of 12 due to developmental or other issues may not. Accordingly it would be welcome if wording stressed that all children be given an opportunity to express opinions, beyond any presumption, and this is linked to the need to assess each situation and individual child.**

Question 2):

How can we best ensure children’s views are heard in court cases?   
Please select as many answers as you want.

1. The F9 form. x
2. Child welfare reporters. x
3. Speaking directly to the judge or sheriff. x
4. Child support workers. x
5. Another way (please specify). x

Why did you select your answer(s) above?

**As all children are individual and their situations are different, it is less helpful to think about the one route and instead ensure that there are sufficient options for children in order to ensure that their views are heard. It is important that all the current options remain and children are able to express a view on which is the right one for them. However, significant work will be required across all of them to ensure that they are fit for purpose. The F9 form needs to be accessible as possible, including consideration of formats and digital platforms. There needs to be further work undertaken to ensure that the opportunities are taken to develop a child welfare role which has meaningful engagement with children to fully understand what the child’s lived experience is. The role of advocacy has developed significantly in recent years but we note that we still await the implementation of Section 122 of the Children’s Hearings (Scotland) Act which would provide a national service. For some children access to the Sheriff can represent a significant an important way of feeling engaged with the decision.**

**Eliciting the views of very young children requires the establishment of a relationship over time. This is the case for babies too as although the reliance is more on observing the child, inferences can only be made when there is an understanding of the child’s reactions to situations. It is unlikely that a), b) or c) would be able to support this. Child support workers may be better placed (although still difficult). Where a young child has social work and/or education involvement, consultation with the key professionals working with the child should inform any inferences made.**

Question 3):

How should the court’s decision best be explained to a child?  
Please select only one answer.

1. Child support worker.
2. Child welfare reporter. x
3. Another option (please specify).

Why did you select your answer above?

**Within a court setting, it is important that someone with a formal role in the process has the responsibility and is accountable for feeding back to children. It may be useful for this to be a child welfare reporter but not necessarily – the key is an accountable formal role and a person who has the knowledge skills and experience to engage appropriately with children and young people. This would help in developing this role to have meaningful engagement with a child through the court process and not just for the purposes of reporting. We need to end the practice of multiple professionals coming in and out of children’s lives for very limited purposes. It is important however that this links back to Sheriffs- it should in some way be standard but formally directed by the Sheriff, to recognise the connection between the person making the decision and the importance of the child understanding their situation. The Sheriff providing a letter explaining their decision would be helpful. However, there also needs to be recognition that not all children will wish to engage and in these circumstances other arrangements may be necessary.**

Question 4):

What are the best arrangements for child welfare reporters and curators *ad litem*?  
Please select only one answer.

* + 1. There should be no change to the current arrangements.
    2. A new set of arrangements should be put in place that would manage and provide training for child welfare reporters.
    3. The existing arrangements should be modified to set out minimum standards for child welfare reporters and allow the Lord President and Sheriffs Principal to remove them from the list if the reporters cease to meet the necessary standards. x
    4. Another option (please specify)

Why did you select your answer above?

**It is important that there are minimum standards and consistency in what can be expected from a child welfare reporter.**

**Work currently underway on the role of the Safeguarder provides useful experience in this area.**

Question 5):

Should the law be changed to specify that confidential documents should only be disclosed when in the best interests of the child and after the views of the child have been taken into account?

Yes   
No   
Why did you select your answer above?

**Maintaining the confidentiality for a child, unless it is not in their best interests is an important principle. It is essential children are not deterred from speaking openly with professionals about their thoughts and feelings. However, there will require to be robust guidance developed to support implementation and ensure consistency in application.**

Question 6):

Should child contact centres be regulated?

Yes   
No   
Why did you select your answer above?

**This would require further consideration and consultation with the children and families affected as to move immediately to regulation may see the closure of some facilities which families rely on – it may be that there should be some kind of guidance or code developed to ensure that there is a consistency and minimum standard of support and service.**

Question 7):

What steps should be taken to help ensure children continue to have relationships with family members, other than parents, who are important to them?

**It may be important to consider in guidance how, in each key process which affects children’s lives, the right to family life is given consideration. This would prompt the conversation about who is important to the child and what is being or what could be done to maintain the connection. Key to this is hearing from the child. In anything which is subsequently drafted, it would need to be made clear that the paramount consideration is the child’s welfare, the relationship should not take precedence or be at the expense of the child’s welfare. Care needs to be taken that where there is existing conflict in families this is not exacerbated.**

**In accepting that children’s experiences and views are likely to change over time, it is possible that the relationships which are important to them now, may change over time. It will be important that regular discussion takes place with the child to ensure that arrangements reflects their wishes.**

Question 8):

Should there be a presumption in law that children benefit from contact with their grandparents?

Yes   
No x  
Why did you select your answer above?

**Families are complex and unique. There may be a benefit of a wider presumption which would include grandparents and which, where it is in the best interests of the child to do so, recognises those who are significant to the care of the child. As noted in the response to the previous question, it would need to be made clear that the paramount consideration is the child’s welfare – care must be taken to ensure that the relationship does not take precedence over this. This would be important in cases for example where the grandparents relationship with the child could be positive and important, but where they (the grandparent) might be complicit or unable to protect the child from contact with the child’s parent (the grandparent’s son or daughter). It would be concerning if any new legislation led to more people having rights to have contact with the child – this should be child led.**

Question 9):

Should the 1995 Act be clarified to make it clear that siblings, including those under the age of 16, can apply for contact without being granted PRRs?

Yes x  
No   
Why did you select the answer above?

**It is important that clarity is given. However, where possible, it is better for sibling contact to be based on a voluntary recognition of the importance rather than through a legal order.**

Question 10):

What do you think would strengthen the existing guidance to help a looked after child to keep in touch with other children they have shared family life with?

**It would be useful if revised guidance stressed that it is the responsibility of all of those supporting the child or children including foster carers and independent foster care agencies, family, multi-agency professionals etc and not just the local authority to support positive existing relationships where possible. Listening to children’s views is critical in reinforcing this.**

Question 11):

How should contact orders be enforced?  
Please select only one answer.

a) no change to existing procedure.

b) alternative sanctions (eg unpaid work, attending a parenting class or compensation).

c) making a breach of a contact order a criminal offence with penalties including non custodial sentences and unpaid work.

d) another option (please specify).

Why did you select your answer above?

**Would feel others are better placed to comment however it would rarely be in a child’s best interests for a parent to be prosecuted or subject to sanctions.**

Question 12):

Should the definition of “appropriate court” in the Family Law Act 1986 be changed to include the Sheriff Court as well as the Court of Session?

Yes   
No   
Why did you select your answer above?

Question 13):

Are there any other steps that the Scottish Government should be taking on jurisdictional issues in cross-UK border family cases?

Yes   
No   
Why did you select your answer above?

Question 14):

Should the presumption that the husband of a mother is the father of her child be retained in Scots law?

Yes   
No x  
Why did you select your answer above?

**We believe that it is more reliable to consider those whose names are on the child’s birth certificate or who have another legal acknowledgement.**

Question 15):

Should DNA testing be compulsory in parentage disputes?

Yes   
No x  
Why did you select your answer above?

**There are likely to be significant rights issues and difficulties with enforcing this. We also cannot safely assume that the child would always be a baby and need to be mindful of the potential trauma. If the mother refuses, then there should be a mechanism by which the child is able (if they so wish), when they are of sufficient ability, to make an informed decision with support as to whether they would want to undertake DNA testing. Even with the less invasive techniques, the implications of such testing are significant and potentially traumatic.**

Question 16):

Should a step parents parental responsibilities and rights agreement be established so that step parents could obtain PRRs without having to go to court?

Yes   
No   
Why did you select your answer?

Question 17):

Should the term “parental rights” be removed from the 1995 Act?

Yes   
No   
Why did you select your answer above?

**It is important that rights are recognised. However, changes in the wording would be welcome to reinforce that the parental rights are only in relation to parental responsibilities and never at the expense of the child’s rights or welfare. This is important, particularly in situations such as children’s hearings and relevant persons. We note that in other jurisdictions the emphasis has been on parental responsibility which may helpfully place the focus on the child rather than the parent.**

Question 18):

Should the terms “contact” and “residence” be replaced by a new term such as “child’s order”?

Yes x  
No   
Why did you select your answer above?

**This may be helpful if it mirrors the Children’s Hearings arrangements ie one Order and then the specific conditions stated.**

If you answered yes what terms should be used?

**Child’s Order seems reasonable.**

Question 19):

Should all fathers be granted PRRs?

Yes   
No   
Why did you select your answer above?

**Once a child is born, there should be the principle of equal rights and responsibilities for fathers or the non-birthing parent where they are known. However, the problem of identification is unique to the father or the non-birthing parent. It would make sense to rely on their names being on the child’s birth certificate as a means of identification. It may be that a review of the current legal remedies in cases where the non-birthing parent’s name isn’t on the child’s birth certificate is necessary to determine whether they remain fit for purpose. We are aware of the school of thought of making it compulsory for both parents to register children in every case but consider that this could be both difficult and risky in practice for example where the mother had been fleeing violence prior to the birth. We would support the removal of any assumptions made based on marriage as this is not necessarily reflective of modern family life.**

Question 20):

Should the law allowing a father to be given PRRs by jointly registering a birth with the mother be backdated to pre 2006?

Yes   
No   
Why did you select your answer above?

**We would be broadly supportive of this as long as there are no legacy issues such as domestic abuse situations which could cause a child (and their mother) difficulty now.**

Question 21):

Should joint birth registration be compulsory?

Yes   
No x  
Why did you select your answer above?

**There may be situations such as domestic abuse in which this would be dangerous**

Question 22):

Should fathers who jointly register the birth of a child in a country where joint registration leads to PRRs have their PRRs recognised in Scotland?

Yes   
No   
Why did you select your answer above?

Question 23):

Should there be a presumption in law that a child benefits from both parents being involved in their life?

Yes   
No x  
Why did you select your answer above?

**As in previous responses, it might be helpful to have a wider presumption about those who contribute to a child’s care and welfare. We note that in practice for example, it may not necessarily be the child’s father, but the father’s family which the child benefits from being involved in their life. The caveat remains that any changes should not result in children’s rights or welfare being compromised. If there was to be any such presumption about parents, perhaps it should be about shared parenting which links back to responsibility and support for the child rather than a statement about benefits to the child?**

Question 24):

Should legislation be made laying down that courts should not presume that a child benefits from both parents being involved in their life?

Yes   
No   
Why did you select your answer above?

**Please see response to 23**

Question 25):

Should the Scottish Government do more to encourage schools to involve non-resident parents in education decisions?  
Please select only one answer.

1. Yes – put the pupil enrolment form and annual update form on a statutory basis.
2. Yes- issue guidance on the enrolment form and annual update form. x
3. Yes – other (please specify).
4. No – no further action by Scottish Government is required.

Why did you select your answer above?

**Guidance is better placed to effect culture change than legislation. Guidance should specify consideration of the non-resident parent and what they should receive. Decision making should be in the best interests of the child and informed by the multi-agency team of professionals supporting the child as well as the child’s/ resident parent’s views (where this is the case).**

Question 26):

Should the Scottish Government do more to encourage health practitioners to share information with non-resident parents if it is in the child’s best interests?  
Please select only one answer

1. Yes – legislation.
2. Yes – guidance. x
3. Yes – other (please specify).
4. No – no further action is required.

Why did you select your answer above?

**Guidance is better placed to effect culture change than legislation. Guidance should specify consideration of the non-resident parent and what they should receive. Decision making should be in the best interests of the child and informed by the multi-agency team of professionals supporting the child as well as the child’s/ resident parent’s views (where this is the case).**

Question 27):

Does section 11 of the 1995 Act need to be clarified to provide that orders, except for residence orders, or orders on PRRs themselves do not automatically grant PRRs?

Yes x  
No   
Why did you select your answer above?

**See previous response to Question 9**

Question 28):

Should the Scottish Government take action to try and stop children being put under pressure by one parent to reject the other parent?

Yes X  
No   
Why did you select your answer above?

**This is important for the child’s mental health and general well-being.**

If you selected yes what should be done?

**Consultation should take place with children and young people with lived experience as to what did or might have helped in those situations.**

Question 29):

Should a person convicted of a serious criminal offence have their PRRs removed by the criminal court?   
Please select only one answer.

1. Yes – by an application to the criminal court following a conviction to remove that person’s PRRs.
2. Yes – by giving the criminal court a duty to consider the removal of PRRs when a person is convicted of certain types of offences.
3. No – leave as a matter for the civil courts. x
4. No – another way. (please explain).

Why did you select your answer above?

**The criminal court is not best placed to consider these matters. There would be significant concerns if this became something which was used against the non-abusing parent in a domestic abuse situation. It also does not follow that it would always be in the best interests of a child to remove parental rights and responsibilities from a parent convicted of a serious criminal offence. It is right that this is considered separately in the civil court and with a different burden of proof. On this basis we would consider that the current arrangements remain appropriate.**

Question 30):

Should the reference in section 2 of the 1995 Act to “exercising” parental rights be changed to reflect that a person may not be exercising these rights because the child is now outwith the UK?

Yes   
No   
Why did you select your answer above?

Question 31):

Should section 6 of the Child Abduction Act 1984 be amended so that it is a criminal offence for a parent or guardian of a child to remove that child from the UK without appropriate consent?

Yes   
No   
Why did you select your answer above?

Question 32):

Should personal cross examination of domestic abuse victims be banned in court cases concerning contact and residence?

Yes x  
No   
Why did you select your answer above?

**It is important that this is addressed to avoid any further abuse or trauma. However, it would be important to ensure that any changes do not affect access to legal aid.**

Question 33):

Should section 11 of the 1995 Act be amended to provide that the court can, if it sees fit, give directions to protect domestic abuse victims and other vulnerable parties at any hearings heard as a result of an application under section 11?

Yes x  
No   
Why did you select your answer above?

**It is important that the child’s welfare is the primary concern.**

Question 34):

Should subsections (7A)-(7E) of section 11 of the 1995 Act containing a list of matters that a court shall have regard to be kept?  
Please select only one answer.

1. Yes – retain as currently.
2. Yes – but amend (please give details).
3. No – remove these provisions.

Why did you select your answer above?

Question 35):

Should section 11 of the 1995 Act be amended to lay down that no further application under section 11 in respect of the child concerned may be made without leave of the court?

Yes   
No   
Why did you select your answer above?

Question 36):

Should action be taken to ensure that the civil courts have information on domestic abuse when considering a case under section 11 of the 1995 Act?

Yes   
No

If yes, what action should be taken?  
Please select all answers that apply.

1. Introducing a duty in legislation on the civil courts to establish if there has been domestic abuse.
2. Placing a duty in legislation on child welfare reporters that they must consider in each case whether there is evidence of domestic abuse and, if so, report on it accordingly.
3. Including domestic abuse in any welfare checklist for the courts to consider in section 11 cases.
4. Discussing with the Law Society of Scotland and the Family Law Association whether guidance for practitioners would be helpful.
5. Other (please give details).

Why did you select your answer(s) above?

**Others may be best placed to comment on the legal implications. However, we would be broadly supportive of measure which offer further protection for victims and children.**

Question 37):

Should the Scottish Government do more to promote domestic abuse risk assessments?

Yes   
No

If yes what should be done?

**Others may be best placed to comment on the legal implications. However, we would be broadly supportive of measure which offer further protection for victims and children.**

Why did you select your answer above?

Question 38):

Should the Scottish Government explore ways to improve interaction between criminal and civil courts where there has been an allegation of domestic abuse?

Yes   
No   
Why did you select your answer above?

**We note the complexities between the civil and criminal processes - others may be best placed to comment on the legal implications. However, we would be broadly supportive of measure which offer further protection for victims and children.**

Question 39):

Should the Scottish Government introduce a provision in primary legislation which specifies that any delay in a court case relating to the upbringing of a child is likely to affect the welfare of the child?

Yes x  
No   
Why did you select your answer above?

**It is important to have this as a key consideration, although still recognising that there may be circumstances where delays are necessary to secure the best outcome for the child.**

Question 40):

Should cases under section 11 of the 1995 Act be heard exclusively by the Sheriff Court?

Yes   
No   
Why did you select your answer above?

Question 41):

Should a checklist of factors for courts to consider when dealing with a case be added to section 11 of the 1995 Act?

Yes   
No

Why did you select your answer above?

If you answered yes what should be in such a checklist?

Question 42): Should the Scottish Government do more to encourage Alternative Dispute Resolution in family cases?   
Please select as many options as you want.

1. Yes – introduce Mediation Information and Assessment Meetings in Scotland.
2. Yes – better signposting and guidance.
3. Yes – other (please give details).
4. No – no further action required.

Why did you select your answer(s) above?

**Other may be best placed to comment but in our experience, where an agreement can be reached, this is more likely to produce better outcomes for the child. Adversarial processes can exacerbate tensions and can be upsetting for children.**

Question 43):

Should the Scottish Government make regulations to clarify that confidentiality of mediation extends to cases involving cross border abduction of children?

Yes   
No   
Why did you select your answer above?

Question 44):

Should Scottish Government produce guidance for litigants and children in relation to contact and residence?

Yes   
No   
Why did you select your answer above?

Question 45):

Should a person under the age of 16 with capacity be able to apply to record a change of their name in the birth register?

Yes x  
No   
Why did you select your answer above?

**This is an important issue for children in terms of identity, although decision making would need to consider the child’s best interests. There should be parity with discussions in earlier questions concerning the child’s right to have their views taken into account.**

Question 46):

Should a person who is applying to record a change of name for a young person under the age of 16 be required to seek the views of the young person?

Yes x  
No   
Why did you select your answer above?

**This should go further – where it can be determined that the child understands and is able to give a view this must be undertaken. Very careful consideration would needed as to why the child’s view was overridden in this matter. Where the child is deemed to be too young/ unable to understand, there must be clear records as to why this was deemed in the child’s best interests. Any decision making should be in the best interests of the child and in issues of debate, the court may need to make the determination.**

Question 47):

Should SI 1965/1838 be amended so that a father who has a declarator of parentage and has PRRs can re-register the birth showing him on the birth certificate?

Yes   
No   
Why did you select your answer above?

Question 48):

Do you think the Principal Reporter should be given the right to appeal against a sheriff’s decision in relation to deemed relevant person status?

Yes x  
No   
Why did you select your answer above?

**Given the importance and the rights afforded to relevant person status and the implications for children it is important that this decision making is subject to robust scrutiny and challenge where necessary. Particularly in circumstances where the child has already been subject to a legal order, the Reporter may have significant involvement and knowledge of the child’s situation.**

Question 49):

Should changes be made which will allow further modernisation of the Children’s Hearings System through enhanced use of available technology?

Yes x  
No   
Why did you select your answer above?

**It is important that we explore all options which could improve both attendance (physical and virtual) as well as participation in children’s hearings – there may be the opportunity for the hearing to be more child friendly and interactive, even in the way that information is presented (use of SMART boards for example). Any new developments however would need to take account of data protection legislation.**

Question 50):

Should safeguarder reports and other independent reports be provided to local authorities in advance of Children’s Hearings in line with other participants?

Yes x  
No   
Why did you select your answer above?

**It is important that we have transparency and good communication across the system. All professionals should be working to the same aim of the best interests of the child. Being aware of all the relevant information should help all participants in hearings to be able to consider all the relevant issues and support panel members to make the best decision for the child. As far as possible, the hearing should not be the place to hear about new or different information but should be the forum by which there is co-production in the examining of the issues.**

Question 51):

Should personal cross examination of vulnerable witnesses, including children, be banned in certain Childrens (Hearings) Scotland Act 2011 proceedings?

Yes x  
No   
Why did you select your answer above?

**This is in recognition of the potential trauma and the protection that children should be afforded. However, there would need to be arrangements put in place to ensure that any change would not affect legal aid.**

Question 52):

Should section 22 of the Family Law (Scotland) Act 2006 which prescribes where a child is deemed to be domiciled be amended?

Yes   
No   
Why did you select your answer above?

|  |
| --- |
| Question 53):  Do you have any comments about, or evidence relevant to:   1. The partial Business and Regulatory Impact Assessment; 2. The partial Child Rights and Wellbeing Impact Assessment; 3. The partial Data Protection Impact Assessment; or 4. The partial Equality Impact Assessment?   Yes  No  If yes please provide your comments below. |

Question 54):

Do you have any further comments?

Yes   
No   
If you have answered yes please provide your comments below.

**The 1995 Act has been for most part successful and accessible legislation. However, it is imperative that we carefully consider how courts and families interact, particularly given the growing recognition of the negative and lifelong impact of adverse experiences on children. We would note that any proposed changes should focus on placing the child at the centre. We note that the 2011 legislation made changes to the Children’s Hearings system which were intended to support the child but in effect in some situations made relevant persons more powerful and reduced the Reporter’s power to intervene.**