Children (Scotland) Bill Stage 3: Protecting children's human rights in the civil justice system

A joint briefing by Scottish Women's Aid, Children 1st, Dr Fiona Morrison (University of Stirling) and Professor Kay Tisdall (University of Edinburgh)

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"Adults always seem to be given more priority than children, even though it is all supposed to be about the child. We hope that this Bill will change that."

- YELLO!, an expert group of young people who have experienced domestic abuse and the family courts[1]

[1] YELLO! (2019) Written response to the call for views on the Children (Scotland) Bill https://bit.ly/3bOz8Mv. For further information about IJCC and YELLO! see https://www.ed.ac.uk/education/rke/centres-groups/childhood-and-youth-studies-research-group/research/ijcc

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Overview

This is a joint briefing submitted by Scottish Women's Aid (with input from Yello!, an expert group of young people who have experienced domestic abuse and the family courts), Children 1st, Professor Kay Tisdall (University of Edinburgh) and Dr Fiona Morrison (University of Stirling).

We warmly welcome Stage 3 of the Children (Scotland) Bill.

Many of the children, families and survivors of domestic abuse we work alongside have told us that their experience of the civil court system is distressing, disempowering and re-traumatising. As a group of organisations and academics working to uphold children's human rights and the protection of those who have experienced domestic abuse, we believe that transformative reform is urgently needed to ensure that children's human rights are implemented in the family courts.

We are encouraged by the considerable progress that has been made to advance children's participation rights throughout the course of the Bill. With adequate resources and training, these changes will begin to transform children's experiences in the civil courts. These significant changes are the beginning of a broader change to incorporate existing obligations under the UN Convention on the Rights of the Child (UNCRC) into policy, law and practice in Scotland and we look forward to ongoing, related work to advance children's participation rights in the civil and criminal justice systems as well as the Children's Hearings System.

As we approach Stage 3 of the Bill, we hope MSPs will continue to build on the considerable progress that has been made to the Bill. This briefing highlights the areas where the position of children's human rights need to be further strengthened.

Our briefing follows the structure of the Groupings of Amendments for Stage 3. We have not commented on every amendment, but only on those that we strongly support, are concerned about or feel require further attention. In particular, we wish to note our strong support for:

- **Amendments 8, 12-16 & 31,** lodged by Ash Denham, the Minister for Community Safety, to give children an opportunity to express their views in the way they prefer
- **Amendment 46**, lodged by Liam McArthur, which introduces a duty to consider children's best interests when their information is shared with the court; and
- **Amendment 47**, lodged by John Finnie, which establishes a system of redress—a mechanism of accountability for children's human rights.

We believe that these amendments will improve the Bill's compliance with the UNCRC, uphold children's human rights and offer further protections to ensure the court process is not traumatising, disempowering or distressing.

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Group 1: The voice of the child

Amendments 8, 12-16 & 31, lodged by Ash Denham: WE STRONGLY SUPPORT
(8) In section 1, page 1, line 12, leave out <a manner suitable to the child,> and insert <— (i) the manner that the child prefers, or (ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference,> *(Amendments 12-16 & 31 not reproduced here to avoid repetition)*

We strongly support these amendments and those that follow in this regard. Ensuring that children and young people are presumed capable of forming a view offers further protection for their right to participate and makes the Bill compliant with the UNCRC. Asking children how they wish to share their views allows them the choice and flexibility to determine the best way for them to communicate directly with the court. This flexibility will mean that even very young children can express their views to the court. We note that this was a recommendation from the Justice Committee's Stage 1 report (para. 188).

Some children may wish to talk to the Sheriff, write a letter, draw a picture, make a film, engage with a Child Welfare Reporter or want the support of an advocacy worker. An approach that enables children to decide the safest and most appropriate way for them to be able to express their views directly to the court, makes participation as safe and as meaningful as it can be. We have set out further detail on the importance of children's participation in the family courts in our written and oral evidence, in research and in our joint briefings on Stages One and Two of this Bill.[2]

As stated in our previous written and oral evidence and in the joint response that Children 1st and Scottish Women's Aid provided to the Financial Memorandum,[3] it is a child's human right, and in the interests of the court and the parties involved, to ensure that children are able to express their views and for these views to be transmitted directly to the court. However, adequate resources must be made available so that courts can make arrangements for children to express views in the manner which they prefer. Although we note that the revised Financial Memorandum published after Stage 2 includes additional funding for child advocacy workers we remain concerned that there is not additional funding to help facilitate the variety of ways children may wish to share their views with the Court. **Our organisations seek clarification on the resources and training that will be provided to ensure this amendment will be implemented to the fullest effect in line with Article 4 of the UNCRC (undertaking measures to the maximum extent of available resources).**

Amendment 35, lodged by Alex Cole- Hamilton: WE DO NOT SUPPORT
(35) In section 1, page 1, line 15, after <maturity> insert <(including views expressed by the child about the child's desire to maintain personal relations with family members, in so far as doing so is practicable and in the interests of the child)>

Our organisations recognise the important and positive role that grandparents, family members and other adults can play in children's lives in helping children feel loved, safe and secure. The Preamble of the UNCRC is clear that children should "grow up in a family environment, in an atmosphere of happiness, love and understanding."

[2] Children 1st, Scottish Women's Aid, Dr Fiona Morrison and Professor Kay Tisdall (2020) Joint briefing on Stage One of the Children (Scotland) Bill https://www.children1st.org.uk/media/7849/joint-briefing-on-stage-1-children-scotland-bill.pdf; Stage Two briefing https://womensaid.scot/wp-content/uploads/2020/06/Joint-Briefing-on-Stage-Two-Children-Scotland-Bill.pdf; Morrison, F, Tisdall, E. K. M., Warburton, J., Reid, A, Jones, F (2020) Children's Participation in Family Actions – Probing Compliance with Children's Rights Research Report https://bit.ly/2WMWqhl; https://www.parliament.scot/S5_JusticeCommittee/Inquiries/JS519CH26_Morrison_Friskney_Tisdall.pdf

[3] https://www.parliament.scot/S5_Finance/General%20Documents/Scottish_women_Aid_Children_.pdf

However, we do not support this amendment for a number of reasons:

- Firstly, it is incongruous to the duties on the person with parental responsibilities and rights (PRRs) in section 6 of the Children (Scotland) Act 1995, as it essentially provides that in every major decision, the child's views about maintaining contact with family members would have to be sought.
- We do not believe that it furthers children's human rights, even in regards to maintaining personal relations with family members; Section 11 (3)(a)(i) of the Children (Scotland) Act 1995 already provides for parties without parental responsibilities and rights to apply for a court order to maintain personal relations with a child. Section 12 of the Bill ('factors to be considered before making order') includes clear reference to considering the effect of the order on the child's important relationships with other people (section 12 (2)). It is not clear how this amendment will add to these existing provisions. The amendment does not define 'family member' and, as noted above, many children have important relationships with other people outside their families.
- This amendment would also create an inappropriate "hierarchy" of views by giving preference to only one particular view of the child over many other equally important views that child may hold, when section 6 already provides that all views of the child should be taken into account.

For these reasons, we do not support this amendment and urge members to vote against it.

Amendment 48, lodged by Liam McArthur: WE SUPPORT

(48) Before section 22, insert— <Review of children's ability to participate (1) The Scottish Ministers must review the ability of children to effectively participate in the making of decisions in relation to which one of the following enactments requires that the child be given an opportunity to express a view and that regard be had to any view expressed— (a) sections 11ZB(1), 11DA(3), 11F(2)(b) and 16(1) of the Children (Scotland) Act 1995, (b) sections 14(4A) and 84(5) of the Adoption and Children (Scotland) Act 2007, (c) section 27(3) of the Children's Hearings (Scotland) Act 2011. (2) The review must, in particular, consider the resources required to ensure effective participation by children in the making of the decisions. (3) The review must be completed no later than 5 years after the date of Royal Assent. (4) As soon as practicable after completing the review, the Scottish Ministers must— (a) make a report of the review publicly available, and (b) lay a copy of the report before the Scottish Parliament. (5) The report must set out— (a) the steps, if any, that the Scottish Ministers propose to take in light of the review, (b) a proposed timetable for taking the steps, and (c) if any of the steps are not to be taken in the parliamentary session during which the copy of the report is laid before the Parliament, an explanation of why the Ministers do not propose to take those steps before that session ends. (6) In subsection (5)(c), "parliamentary session" has the meaning given in section 19(1) of the Interests of Members of the Scottish Parliament Act 2006.>

We welcome this amendment in order to ensure the implementation of children's rights is monitored and adequately provided for in line with the original intentions of this Bill. Our organisations are clear that the passage of the Bill must be the beginning of a broader systems change whereby children's human rights are placed at the heart of the civil court system.

As we note in our written evidence[4], this requires specific data to be gathered and published for monitoring**.** As a minimum that data should include:

[4] https://www.parliament.scot/S5_JusticeCommittee/Inquiries/JS519CH26_Morrison_Friskney_Tisdall.pdf

- Numbers of contested S.11 cases where children's views were and were not facilitated to be provided to the Courts, and the reasons why those views were not facilitated in those rare cases.
- Information on the different mechanisms used to facilitate children's views, including where those views were expressed directly to the Court (this information is crucial to enable resource planning).
- Data on children's satisfaction both with the process by which they were enabled to exercise their rights in the Court process on matters which affect them and the outcome of the decision made.
- Demographic data of the children and young people involved (including age, sex, ethnicity, if the children and young people have any additional needs)

This work must begin immediately to ensure that we monitor how children's views are given effect throughout—not just an evaluation at the end of a five-year period. When discussing this amendment, Yello!, the young expert group, highlighted the importance of Scottish Ministers committing to take steps based on the review's findings, in order to continuously improve children and young people's experiences in the courts.

Group 2: Matters to be considered in making an order under section 11(1) of the Children (Scotland) Act 1995

Amendment 9-11, lodged by Rhoda Grant: WE SUPPORT
(9) In section 1, page 1, line 26, leave out <(7D)> and insert <(7E)> *(10) In section 1, page 2, line 23, leave out <the effect of the fact that two or more persons would be required to> and insert <whether it is, or would be, appropriate for an order to require that two or more persons>* *(11) In section 1, page 2, leave out lines 35 to 41*

We are in support of these amendments as we believe they further strengthen the Bill's protection for survivors of domestic abuse. These amendments relate to the Bill's protections in the new section 11ZA, ensuring that, when making any order under section 11(1) in the context of domestic abuse, the court must have regard to the impact an order would make on two or more persons who would be required to 'cooperate'.

Removal of the definition of 'person' in this context (Amendment 11) ensures wider judicial scrutiny of the order's impact, beyond actions involving only those who are parents of the child in question, or who have parental rights and responsibilities (PRRs). We know from those using our specialist domestic abuse services that contact arrangements with family members such as grandparents can often by exploited by perpetrators to further their abuse. Therefore, placing a duty on the courts to consider the appropriateness of 'cooperation' beyond parents, in order to ensure children and non-abusing parents are kept safe, increases the protection afforded to survivors of domestic abuse.

Amendment 26, lodged by Liam McArthur: WE STRONGLY OPPOSE
26 In section 12, page 21, line 17, at end insert— *<( ) in the absence of an agreement on the pattern of residence of a child and at the request of at least one of the child's parents, the possibility of ordering that the child should reside on an approximately equal basis with each of the child's parents.".>*

As stated in our initial response to this amendment at Stage 2, we strongly oppose this amendment. We believe that a presumption of shared residency is one that favours adults, not children. It undermines the rights of the child, and prioritises the wishes of a parent over the best interests and views of the child. This amendment undermines and detracts from an assessment of a child's best interests. Any assessment about children's living arrangements must be done on a case-by-case basis. For some children it is safe and appropriate for their residency to be shared equally between their parents. For others, this is wholly unsafe and inappropriate.

We remind members of Paragraph 67 of the UN Committee on the Rights of the Child's General Comment 14 which states "…shared parental responsibilities are generally in the child's best interests. **However, in decisions regarding parental responsibilities, the only criterion shall be what is in the best interests of the particular child. It is contrary to those interests if the law automatically gives parental responsibilities to either or both parents**."[5]

Answers to questions on what is in a child's best interests are found through careful consideration of a child's particular circumstances, including by listening to the child's views and experiences. We note that this amendment does not include any reference to whether, or how, a child's wishes would factor into the decision made about their lives.

When discussing this amendment, members of Yello!, the young expert group, expressed frustration that consideration of children's views were absent and stressed the need for contact decisions to be made on a case-by-case basis, based on what the child wants. They expressed concerns regarding how this amendment could affect children and young people experiencing domestic abuse.

Decisions must not be driven by a desire to reach an outcome based on time or other shared parenting arrangements. Presumptions on what might be beneficial in some cases are not helpful and not applicable to the specific context of the minority of cases that result in litigation. Research shows court ordered shared parenting can have detrimental outcomes for children when there are high levels of conflict between parents – often the very families whose cases require to be resolved in court.[6]

It is important to be clear that the majority of cases which make it to courts include reports of domestic abuse,[7] and extensive research shows that child contact is frequently used by perpetrators as a means of furthering and intensifying abuse.[8] This amendment could effectively place the burden of proof on survivors of domestic abuse to evidence why contact is unsafe, which is directly contradictory to the Bill's policy objective of further protecting survivors of domestic abuse. In cases of domestic abuse, a presumption of shared residency is likely to be actively detrimental to the welfare of the child; the paramount consideration of the Children (Scotland) Act 1995. We urge members not to support this.

[5] https://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf
[6] Newis, P (2011) 'Shared Care in Separated Families: Building on what Works.' London: Gingerbread; Fehlberg B., Smyth B. et al (2011). 'Family Policy Briefing 7: Caring for children after parental separation: would legislation for shared parenting time help children?' University of Oxford, Department of Social Policy & Intervention; Trinder, L. 'Shared residence: A review of recent research evidence', Child & Family Quarterly, Vol 22, No. 4, pp. 475-498.
[7] Mackay, K (2013) The treatment of the views of children in private law child contact disputes where there is a history of domestic abuse, A Report to Scotland's Commissioner for Children and Young People https://bit.ly/3e4kthK
[8] Scottish Women's Aid (2018) Briefing: Domestic abuse and child contact https://bit.ly/2YNdmE6

Group 3: Disclosure of information

Amendment 36, lodged by Liam McArthur: WE SUPPORT IN LIGHT OF AMENDMENT 46
(36) Leave out section 1A

We support this amendment given that removing section 1A of the Bill, as amended at Stage 2 will be replaced by amendment 46 'duty to consider child's best interests when allowing access to information.'

Amendment 46, lodged by Liam McArthur: WE STRONGLY SUPPORT
(46) Leave out section 13A and insert— <Duty to consider child's best interests when allowing access to information (1) The Children (Scotland) Act 1995 is modified as follows. (2) After section 11D (which is inserted by section 13(2) of this Act) insert— "11DA Duty to consider child's best interests when allowing access to information (1) Where the court— (a) is considering making an order under section 11(1), and (b) has to decide whether a person should have access to anything in which private information about a child is recorded, in making that decision it must comply with subsections (2) and (3) in relation to that child. (2) The court must regard the best interests of the child as a primary consideration. (3) The court must— (a) give the child an opportunity to express the child's views in— (i) the manner that the child prefers, or (ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference, and (b) have regard to any views expressed by the child, taking into account the child's age and maturity. (4) But the court is not required to comply with subsection (3) if satisfied that— (a) the child is not capable of forming a view, or (b) the location of the child is not known. (5) The child is to be presumed to be capable of forming a view unless the contrary is shown. (6) In this section, "private information" means information in which the child could have a reasonable expectation of privacy.".>

We warmly welcome the Scottish Government and the Scottish Parliament's consideration of the importance of protecting children's rights when their information is being shared with the courts. We are grateful to the Liam McArthur MSP and to the Scottish Government for acknowledging the issues our organisations, and children with lived experience of domestic abuse and court-ordered contact, have raised in regards to confidentiality of children's information.

Under Article 8 of the European Convention on Human Rights (ECHR) children have rights to privacy. Children who access support and recovery services and share their views should be able to share information about their experiences safe in the knowledge that this personal information will not be shared with the court without them being informed or when it is not proportionate, relevant or in their best interests. This is particularly important to ensure that a child's personal information is not shared with a person who may have perpetrated abuse against them without it being in the child's best interests or without it being discussed with the child.

This amendment will not prevent information from being shared where it is proportionate and relevant to the court. Indeed, our organisations strongly believe that proportionate and relevant information-sharing is in a child's best interests to keep them safe and ensure the courts are equipped with all the details at their disposal to make informed decisions. **The amendment does not remove the court's discretion on whether to disclose information to a parent or carer but rather stipulates what must be considered when deciding whether to allow disclosure.**

Children 1st has written in detail about the need for further protections in this area in written evidence submitted to the Committee (page 8).[9] Children and young people have been clear: to feel safe enough to give their views, they need to know that their privacy is being respected.[10] This is particularly important when children have experienced domestic abuse. This amendment offers protection to children: those who are most vulnerable in family courts and who often feel marginalised, insignificant and ignored when decisions are made about them. We strongly urge members to support it.

Group 4: Vulnerable witnesses and vulnerable parties

Amendment 37-39, lodged by Ash Denham: WE SUPPORT
(37) After section 4, insert— <Vulnerable witnesses: requirement to consider special measures without application in certain cases (1) The Vulnerable Witnesses (Scotland) Act 2004 is modified as follows. (2) In section 12 (orders authorising the use of special measures for vulnerable witnesses), after subsection (6) insert— "(6A) If the witness is deemed to be a vulnerable witness by virtue of section 11B— (a) before the proof or other hearing at which the witness is to give evidence the court must either— (i) make an order under subsection (6) authorising the use of a special measure for the purpose of taking the witness's evidence, or (ii) make an order that the witness is to give evidence without the benefit of any special measure, (b) the court is to do so whether or not a vulnerable witness application is made.".>
(38) In section 7, page 14, line 3, leave out <applies,> and insert <applies—(a) in relation to a party whom the court would be required by section 11B of the Vulnerable Witnesses (Scotland) Act 2004 to consider a vulnerable witness if the party were to give evidence in or for the purposes of the proceedings, the court must— (i) order the use of any special measure that the party requests, (ii) order the use of a special measure that the court considers appropriate and, if the party requested a different special measure, give reasons for not ordering its use, or (iii) give reasons for not ordering the use of any special measure, (b) in relation to any other party,>
(39) In section 7, page 14, line 4, leave out <in relation to a party>

We welcomed the provisions introduced at section 4, in relation to vulnerable witnesses in section 11 evidential hearings such as proofs, and section 7 for parties in "non-evidential hearings" such as Child Welfare Hearings. Parties in non-evidential hearings are currently excluded from accessing special measures under the Vulnerable Witnesses (Scotland) Act 2004, so the Bill has been bold in introducing these completely new protections. Given that Child Welfare Hearings often precede formal proofs, it was unacceptable that a woman experiencing domestic abuse would be protected in a proof but not in a Child Welfare Hearing where she is obliged to be in closer proximity to the abuse. Consequently, these provisions were much welcomed and the Scottish Government is to be commended for introducing them.

Amendment 37 is a further step forward in protecting vulnerable witnesses giving evidence at evidential hearings (e.g. proofs) in section 11 cases, by requiring the court to consider authorising special measures to protect a "deemed vulnerable witness" without the need for any vulnerable witness application to be made. While again welcomed and supported as a move toward a measure of automatic entitlement to the use of special measures, this does not, however, provide that the vulnerable witness has any choice in the special measure granted and the court may choose not to authorise special measures, both without giving reasons, in contrast with amendment 38 below.

In their report on Stage 1 of this Bill, the Justice Committee recommended that the Scottish Government should undertake a review of special measures to ensure that, where possible and appropriate, the approach to children and vulnerable individuals is the same across all

[9] https://www.children1st.org.uk/media/7564/children-1st-response-to-children-scotland-bill-141119.pdf
[10] YELLO! (Young Expert Group) Written Evidence to the Justice Committee for consideration at Stage One of the Children (Scotland) Bill https://womensaid.scot/wp-content/uploads/2019/12/Yello-Response-to-Children-Scotland-Bill-call-for-views.pdf

criminal and civil proceedings, including children's hearings themselves. We therefore look to the Scottish Government to commit to further improving the position of vulnerable witnesses in civil proofs.

Amendment 38 relates to special measures for parties at non-evidential hearings (e.g. child welfare hearings). This builds on, and substantially improves, the innovative protections introduced initially for these parties in the Bill and again moves toward an automatic right to special measures for those qualifying as "deemed vulnerable witnesses" by requiring the court to authorise (or else give reasons for not doing so) any special measures sought by these witnesses. **We welcome and support this.**

We would also reiterate our previous statement that in order to fully meet the Bill's policy aim of providing further protection for women, children and young people experiencing domestic abuse, provisions to protect vulnerable witnesses engaging in civil proceedings must extend beyond the court room itself.

Group 5: Child welfare reporters: qualifications and experience

Amendment 40, lodged by Liam McArthur: WE DO NOT SUPPORT
(40) In section 8, page 16, line 20, at end insert— <( ) Only a social worker registered with the Scottish Social Services Council may be appointed as a child welfare reporter.>

We note that this amendment was previously debated at Stage 2. As we stated at Stage 2, considerations about training, qualifications and standards for Child Welfare Reporters would be more appropriately considered when guidance and regulations are being developed. We understand that there will be extensive consideration of training requirements and national standards for Child Welfare Reporters and warmly welcome a focus on training relating to children's rights, assessment, domestic abuse and ways to support children express their views directly to the court.

While we are supportive of seeking suitable professionals for the role of Child Welfare Reporters beyond the legal profession, we have concerns about an amendment that would permit only one profession to undertake this role. The most important factor when considering who should be a Child Welfare Reporter is that they meet required standards, regardless of their professional background. The children and young people that we work alongside tell us that what they want from Child Welfare Reporters are skills in listening and understanding, clear information about the process, and ways to raise concerns.[11] We believe that a variety of professional backgrounds may possess the required skills, and to limit it to one is unlikely to be in children's best interests or indeed practical.

We have concerns about the availability and capacity of social workers to fulfil this role, and the potential loss of expertise from other professions from carrying out this role. We do not believe professional qualifications are the only factor that will need to be considered when exploring who is suitable to be a Child Welfare Reporter. We encourage further discussion and exploration when regulations are being developed and standards drafted about whom would be most suitable to engage with children in this important role.

Children 1st and Scottish Women's Aid have written extensively about the need to carefully consider and fully resource training of Child Welfare Reporters in our joint response to the Financial Memorandum.[12]

[11] https://womensaid.scot/wp-content/uploads/2019/12/Yello-Response-to-Children-Scotland-Bill-call-for-views.pdf
[12] https://www.parliament.scot/S5_Finance/General%20Documents/Scottish_women_Aid_Children_.pdf

Amendment 1, lodged by Neil Findlay: WE DO NOT SUPPORT
(1) In section 8, page 16, line 32, at end insert— <( ) For the purposes of subsection (3)(a), persons who have knowledge in a professional capacity of the child to which the child welfare report relates may be included in the register where they have obtained the necessary professional qualifications.>

As stated in our response to this amendment at Stage 2, while we are supportive of seeking suitable professionals for the role of Child Welfare Reporters beyond the legal profession, we do not believe this amendment is a necessary for achieving this. We do not believe that professional qualifications are the only factor that need to be considered when exploring who is suitable to be a Child Welfare Reporter, and we understand that the Scottish Government has committed to further work on this issue regarding regulation set out under secondary legislation.

Amendment 2, lodged by Neil Findlay
(2) In section 8, page 16, line 32, at end insert— <( ) Before making, revising or revoking regulations under subsection (3), the Scottish Ministers must consult persons with lived experience of— (a) domestic abuse, (b) court-ordered contact.>

As we stated in our briefing at Stage 2, in response to this amendment, our organisations are supportive of meaningful, rights-based engagement and participation with those with lived experience of domestic abuse and court-ordered contact in designing and delivering policy, legislation and practice. It has been clear throughout the passage of this Bill the impact that those with lived experience have had on shaping new provisions to improve the civil justice system for others. We strongly support the continued involvement of survivors of domestic abuse and those with experience of contact centres and the civil justice system in the ongoing development, implementation and reviewing of provisions made in this Bill. We welcome the intention of this amendment. We also acknowledge that full public consultation is planned for relevant secondary legislation in this area.

Group 6: Regulation of contact services

As raised in our oral and written evidence and our Stage 2 briefing, we welcome the measures to regulate and introduce minimum standards for contact centres. Our oral and written evidence and the evidence of young people who have experienced domestic abuse and the family courts[13] was clear that contact centres do not feel like safe or enjoyable spaces for many children and young people, particularly those who have experienced domestic abuse.

We acknowledge contact centre provision is inconsistent across Scotland. There are particular challenges for operating contact centres in rural areas and, as a result, it may be in the child's best interests to facilitate contact outwith a registered contact centre. However, given contact centres seek to offer support for and supervision of contact in circumstances of domestic abuse and other safety concerns, we urge that careful consideration is given to any cases where supported or supervised contact is deemed to be safe enough to take place at a venue that is not registered as a contact centre.

We wish to again highlight that **contact must be safe for it to be in children's best interests. There is danger that this regulation only focuses on the physical premises of contact**

[13] See Morrison, Friskney and Tisdall's written evidence
https://www.parliament.scot/S5_JusticeCommittee/Inquiries/JS519CH26_Morrison_Friskney_Tisdall.pdf

centres and not enough attention is given to the quality of contact that takes place in contact centres and children's experiences of it.

We therefore wish to remind members of the Justice Committee's recommendation regarding the piloting and evaluation of the use of domestic abuse risk assessments by the courts when making decisions about contact. We would encourage development of robust risk assessment processes in collaboration with specialist domestic abuse services and Scottish Women's Aid in order to offer further protection for non-abusing parents, children and young people experiencing domestic abuse and coercive control.

Amendment 5, lodged by Neil Findlay
(5) In section 9, page 17, line 11, at end insert— <( ) make provision for staff referred to in paragraph (a) to be trained and to hold recognised professional qualifications in relation to issues concerning children,>

Our organisations are in support of this amendment in principle, but acknowledge that this will be addressed in the regulation of contact centres to be set out in secondary legislation and guidance.

Amendment 41, lodged by Bob Doris
(41) In section 9, page 17, line 36, at end insert— <( ) issuing reports on any failure, or possible failure, by a contact service provider to comply with the provider's duties under the Equality Act 2010, and in particular any duty to make reasonable adjustments to premises in order to facilitate their use by disabled people,>

Our organisations are in support of this amendment in principle, but acknowledge that this will be addressed in the regulation of contact centres to be set out in secondary legislation and guidance.

Amendment 6, lodged by Neil Findlay
(6) In section 9, page 17, line 39, at end insert— <( ) Before making, implementing or reviewing regulations under subsection (1), the Scottish Ministers must consult persons with lived experience of— (a) domestic abuse, (b) court-ordered contact.>

As we outlined in our Stage 2 briefing in response to this amendment, and in our comments on amendment 2, our organisations are always supportive of meaningful engagement and participation of those with lived experience of domestic abuse and court ordered contact in the development, implementation and reviewing of provisions made in this Bill regarding the regulation of Child Welfare Reporters and contact centres. We also acknowledge that full public consultation is planned for relevant secondary legislation in both of these areas.

Amendment 20, lodged by Ash Denham: WE SUPPORT
(20) After section 9, insert— <Referrals by solicitors to contact services (1) The Children (Scotland) Act 1995 is modified as follows. (2) After section 101C (which is inserted by section 9(3) of this Act) insert— "101CA Contact services: referrals by solicitors (1) A solicitor must not— (a) refer a person to a contact service that is not a regulated contact service, or (b) allow another person to do so on the solicitor's behalf. (2) If a solicitor fails to comply with subsection (1), that failure may be treated as professional misconduct or unsatisfactory

professional conduct. (3) In this section, "contact service" and "regulated contact service" have the meanings given in section 101C(5).".>

We are supportive of this amendment in order to ensure children are as safe as possible while contact arrangements are taking place. We refer members to our comments above about the need to ensure adequate attention is given to the quality of contact that takes place in contact centres and children's experiences of it.

Group 7: Promotion of contact between children and others

Amendment 43, 44 & 45, lodged by Rona Mackay: WE SUPPORT
(43) In section 10, page 19, line 1, leave out from <(including> to <whole-blood)> in line 2
(44) In substitution for amendment 23— In section 10, page 19, line 6, at end insert— <( ) For the purposes of subsection (1A), two people are siblings if they have at least one parent in common.".>
(45) In section 10A, page 19, leave out lines 19 to 27 and insert <any person mentioned in subsection (4) with whom the child does not reside. (4) The persons referred to in subsection (3) are— (a) a relevant person in relation to the child, (b) a sibling of the child, (c) any other person with whom the child has resided and with whom the child has an ongoing relationship with the character of a relationship between siblings. (5) For the purposes of subsection (4), two people are siblings if they have at least one parent in common.".>

We support this change in language, which better reflects how children and young people view their familial relationships.

Amendment 22, lodged by Liam McArthur: WE DO NOT SUPPORT
(22) In section 10, page 19, line 6, at end insert <, and
( ) individuals who are important to the child (such as former foster carers of the child).".>

This section of the Bill is very clearly addressing the important concerns highlighted by our colleagues across the sector who have shared the experiences of children and young people affected by contact arrangements that do not take into account their right to maintain relationships with their siblings if they wish to. We think it is important that this section of the Bill focuses on addressing that with urgency rather than introducing other areas. Promoting or including presumptions of a child's contact with specific adults undermines a child rights-based approach. For this reason, we do not support this amendment.

Group 8: Alternative methods of dispute resolution

Amendment 24 & 25, lodged by Ash Denham supported by Margaret Mitchell: WE SUPPORT
(24) Leave out section 11A; (25) Leave out section 11B

Our organisations support the removal of these sections of the Bill, for the reasons outlined in our briefing at Stage 2.

Amendment 32, lodged by Ash Denham supported by Margaret Mitchell: WE SUPPORT
(32) <Alternative dispute resolution Funding for alternative dispute resolution (1) The Scottish Ministers must—(a) set up a scheme to make assistance available so that individuals can meet the costs of alternative dispute resolution procedures in relation to a dispute of the kind described in subsection (2), or (b) arrange for assistance to be made available from the Scottish Legal Aid Fund so that individuals can meet those costs. *(Not reproduced in full due to length of amendment).*

As a result of the different services the organisations offer, Children 1st and Scottish Women's Aid have particular points they wish to express in response to this amendment.

Children 1st, in line with their written and oral evidence and the recommendations of the Independent Care Review[14], believe that families should be given early help and support before these issues reach the courts. In particular they highlight the value of Family Group Decision Making (FGDM) (also known as family group conferencing) which Children 1st pioneered in Scotland and offers, in partnership with families, an important option to help resolve conflict and help families find solutions to their own problems, where it is safe, appropriate and possible to do so. They strongly welcome the introduction of a scheme to ensure assistance is available for individuals who want to access alternative methods of dispute resolution, including Family Group Decision Making (FGDM), when it is safe and appropriate.

Scottish Women's Aid are clear that alternative methods of dispute resolution (ADR) are not appropriate for cases involving domestic abuse. Their view is that ADR approaches assume equality in power between its participants, an equality that does not exist in cases of domestic abuse. In this context, therefore, Scottish Women's Aid believe that, in recognition of the power dynamic imbalance and risk to children, neither pre- nor post- separation mediation in family matters where domestic abuse is an issue is appropriate. Scottish Women's Aid have gone into further detail on this matter elsewhere.[15] For cases not involving domestic abuse, they welcome consideration of alternative methods of dispute resolution (ADR), in the context of this Bill, with the reminder that most families living with domestic abuse do not disclose to police, courts, or social work.

Together, our organisations believe that lengthy and complex court processes are rarely in children's best interests. Research calls for radical reform to family law that shifts the legal conceptualisation of contested child contact from an adult dispute to one where concerns about contact are about and inclusive of children, realising all of their human rights—including their participation rights.[16]

While we are supportive of increasing access to alternative methods of high- quality, evidence-informed dispute resolution **where it is safe and appropriate to do**, we are concerned about the practical implementation of this amendment and amendment 33 and consider that there is further work to do, if they are passed, to safeguard children's rights and the rights of survivors of domestic abuse and to ensure their safety. We welcome this amendment's proposal to offer a different funding mechanism for ADR than via legal aid, as per its current provision in the Bill. The provision as it stands creates an inequality of access to justice by providing that legal aid for ADR would be made available without meeting the financial and merits tests that other legal aid applicants would have to pass. We consider this amendment's aim to protect the legal aid fund for all, and to ensure eligibility tests do not favour applications for ADR over applications for other legal interventions, to be wholly appropriate.

[14] https://www.carereview.scot/
[15] https://womensaid.scot/wp-content/uploads/2018/02/SWA-Evidence-on-ADR.pdf
[16] Morrison, F, Tisdall, E. K. M., Warburton, J., Reid, A, Jones, F (2020) Children's Participation in Family Actions – Probing Compliance with Children's Rights Research Report https://bit.ly/2WMWqhl;

Our organisations are of the view that wholesale "system change" is needed, in line with the recommendations of the Independent Care Review, to consider how children's rights can be realised through early help and support including FGDM where safe and appropriate. We welcome clear reference in this amendment to the importance of the views of the child, given the ambitions of this Bill to comply with the UNCRC. We agree with the Justice Committee that more could be done to ensure that ADR forms a fundamental part of our civil justice system but think this requires further careful thinking. If this amendment is passed we look forward to working with the Government to ensure the successful and safe implementation of this scheme.

Amendment 33, lodged by Ash Denham supported by Margaret Mitchell
(33) After section 16, insert— <Pilot scheme for mandatory alternative dispute resolution meetings (1) The Scottish Ministers must arrange a pilot scheme under which a court, in proceedings to which the scheme applies, may only make an order under section 11(1) of the Children (Scotland) Act 1995— (a) where the parties to the proceedings have attended a meeting at which the options available to resolve the dispute giving rise to the proceedings are explained, or (b) if the terms of the scheme allow, where the court has decided on cause shown that it would not be appropriate to require the parties to attend such a meeting. *(Not reproduced in full due to length of amendment).*

As we state in our briefing at Stage 2, we do not believe that it would be helpful to have a mandatory requirement for ADR meetings as it detracts from the aim it seeks to achieve. ADR (such as FGDM) aims to put families in the driving seat for making positive changes to their lives. FGDM is a process that builds on family strengths and encourages families to find solutions to their own problems, drawing on their extended family network where it is safe and appropriate to do so. Making ADR mandatory removes the essential components of **consent, control and choice** for families. This would mean that the process, far from being voluntary and participative, would start off from a position where an 'intervention' is 'imposed' upon families by a court. This runs counter to the ethos of FGDM where families enact their rights to access strengths-based services, seeking to address fundamental power imbalances between families and professionals and ensure that children's views and best interests are prioritised.

Additionally, we have serious concerns that in some places there are not adequate resources or infrastructure to identify if domestic abuse is a concern, and to then 'screen out' such cases. We know from Scottish Women's Aid's network of specialist domestic abuse services that, in some cases, women are advised by their solicitors to not disclose domestic abuse in the civil courts due to the solicitor's belief it could harm their case. In other situations, domestic abuse has been discounted, minimised or simply dismissed. If domestic abuse is not disclosed, it is unlikely it would be identified by the criteria for excluding individuals as set out in this pilot, thus placing survivors of domestic abuse at risk of having to attend mandatory information meetings with their abusive ex-partner and enduring continued abuse.

Legal representatives involved must be required to have an appropriate level of understanding of domestic abuse to enable them to positively 'gate-keep' and keep adult and child survivors safe. At present there are significant training needs amongst legal personnel to ensure that the rights of adult and child survivors of domestic abuse are upheld.

Our organisations would prefer for this provision in the Bill to be removed altogether. However, in the event that members do not agree we prefer the provisions in this amendment as drafted.

Group 9: Duty to ensure availability of child advocacy services

Amendment 27-30, lodged by Ash Denham: WE SUPPORT

(27) In section 15A, page 23, line 30, leave out <11E (which is inserted by section 15(2) of this Act)> and insert <100>

(28) In section 15A, page 23, line 31, leave out <11EA> and insert <100A>

(29) In section 15A, page 23, line 33, leave out <proceedings for an order under section 11(1)> and insert <relevant proceedings>

(30) In section 15A, page 23, line 37, leave out <proceedings under section 11(1).".> and insert <relevant proceedings, "relevant proceedings" means proceedings in which the court is considering making an order under section 11(1).".>

We strongly support these amendments, which seek to close a legal loophole which may otherwise prevent some children and young people from accessing the advocacy services provided for in the Bill. The amendments seek to ensure that in any proceedings raised which involve the court having to consider making an order under section 11(1), the child will have access to appropriate advocacy services.

Group 10: Duty to ensure system of redress

Amendment 47, lodged by John Finnie: WE STRONGLY SUPPORT

(47) After section 16, insert— <Duty to ensure system of redress (1) The Children (Scotland) Act 1995 is modified as follows. (2) After section 11F (which is inserted by section 16 of this Act) insert— "11FA Duty to ensure system of redress (1) The Scottish Ministers must by regulations make such provision as they consider necessary and expedient to establish an effective, child-sensitive redress scheme for children who are the subject of proceedings where the court is deciding whether an order should be made under section 11(1). (2) The regulations must include provision to ensure redress where duties and obligations under this Act to the child in question in relation to— (a) participating in court proceedings, (b) the process by which an order under section 11(1) is made, (c) expressing views in regard to court proceedings, (d) breach of duty to provide feedback to the child, (e) any other matter that the Scottish Ministers consider necessary or appropriate, have not been complied with. (3) The regulations must include provision to ensure that the person making a decision about redress is able, when considering whether duties and obligations have been complied with, to take into account whether actions have been taken for the purpose of securing the child's best interests. (4) Regulations under subsection (1) are subject to the affirmative procedure. (5) For the avoidance of doubt, the scheme referred to in this section does not affect any right of appeal under this Act.".>

The UN Committee on the Rights of the Child states in General Comment 5 that there must be access to effective remedy to children for their rights to be meaningful.[17] The Scottish Government[18] acknowledged that available remedies for breaches of rights were 'vital' in their consultation on incorporating the UNCRC into domestic law. The Bill must include child-friendly opportunities for remedy and redress when children's human rights have been breached for it to comply with the UNCRC. This is a recommendation made in both our written evidence[19] and our recently published research.[20] Our organisations therefore strongly support this amendment.

[17] https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f5&Lang=en, para 24

[18] https://www.gov.scot/publications/childrens-rights-consultation-incorporating-uncrc-rights-child-domestic-law-scotland/

[19] https://www.parliament.scot/S5_JusticeCommittee/Inquiries/JS519CH26_Morrison_Friskney_Tisdall.pdf

[20] https://dspace.stir.ac.uk/bitstream/1893/31100/1/Childrens%20Participation%20in%20Family%20Actions.pdf

While there is an existing process for appeals about disputed contact, this is designed for and by adults and is not accessible to children. At present, if a court report is written about a child, the child has no way to disagree with the decision. If a child had not been given the choice to give their views they find it very hard to reverse that decision.

Children and young people who have experienced domestic abuse highlight the need to be able to raise issues during the court process, in their written evidence on the Bill.[21] In discussions regarding this amendment, members of the young expert group Yello! highlighted the importance to children of having their experiences in the courts recognised by adults in power, particularly if their rights have been breached.

A system of redress would signal a sea change for children's human rights in Scotland—it would introduce a mechanism of accountability and afford children's participations rights a greater status. Children's rights would be less likely to be treated as discretionary or to be at the behest of adults. Without an accessible system of redress, children may struggle to claim their rights and participate in the major decisions affecting their lives that are made by civil courts. We have written more about the importance of this amendment in this blog.

Although there will need to be significant conversations about the mechanisms of this new system after the Bill passes, we believe it is critical for the implementation of children's rights. We urge members to support this amendment.

Group 11: Children's Hearings: opportunity to participate

Amendment 34, lodged by Ash Denham: WE SUPPORT
This amendment specifically relates to Children's Participation in the Hearings. We have not replicated it in this briefing due to its length.

Our organisations recognise the importance of ensuring that children can maintain relationships with their brothers and sisters, where it is safe and appropriate. We strongly support the work of our colleagues Clan Childlaw and the Stand Up for Siblings coalition and refer to their briefings on this amendment.

In line with their comments, we believe that this amendment begins to address the call to action identified in The Promise relating to brothers and sisters. Although we note that the right to appeal is disappointingly not included in this amendment we are confident that passing this amendment is an important step forward towards realising children's rights in this area. We recognise the need to work on the practical implementation of these amendments and in particular to be clear that the child at the centre of the Hearing must agree to the inclusion of anyone covered by this amendment.

[21] YELLO! (2019) Written response to the call for views on the Children (Scotland) Bill. https://bit.ly/3bOz8Mv