



T: 0131-244 3322  
E: [simon.stockwell@gov.scot](mailto:simon.stockwell@gov.scot)

Mariel Kaney  
Deputy Legal Secretary to the Lord President  
Lord President's Private Office  
Parliament House  
11 Parliament Square Edinburgh  
EH1 1RQ

By email: [REDACTED]

Our ref: A 26739703

10 January 2020

Dear Mariel

## SCOTTISH CIVIL JUSTICE COUNCIL: FAMILY LAW COMMITTEE: CHILD WELFARE REPORTERS

1. This letter and the attached paper are **open** and can be published on the Family Law Committee website.
2. Paragraph 7 of the minutes of the Family Law Committee meeting on 11 November 2019<sup>1</sup> record that "The Committee indicated it would be helpful to have a discussion about the Child Welfare Reporter provisions in the Bill at the Committee's next meeting". To help inform this discussion, the Scottish Government has prepared the attached paper, outlining the history of work and discussions in this area.
3. The Scottish Government would find it helpful at the meeting of the Committee on 27 January to discuss the appointment of local authority officers as Child Welfare Reporters. You will be aware that Ordinary Cause Rule 33.21A currently makes specific provision when a local authority officer is appointed.
4. I am copying this paper to Kelly Jack, SCJC Secretariat; to Nicola Anderson of the SCTS and to Catriona Whyte of the Scottish Legal Aid Board.

Yours sincerely

SIMON STOCKWELL

<sup>1</sup> The minutes are at <https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/flc-meeting-files/flc-11-november-2019-meeting-papers/20191111-flc-approved-minutes---november-2019.pdf?sfvrsn=2>



**INFORMATION PAPER BY THE SCOTTISH GOVERNMENT  
FAMILY LAW COMMITTEE OF THE SCOTTISH CIVIL JUSTICE COUNCIL**

**CHILD WELFARE REPORTERS**

**Introduction**

1. This is an **open paper** by the Scottish Government.
2. It outlines:
  - the provisions on Child Welfare Reporters<sup>2</sup> in the Children (Scotland) Bill (“the Bill”) currently before the Scottish Parliament;<sup>3</sup>
  - the research carried out previously in this area<sup>4</sup>;
  - the outcomes of the Working Group on Child Welfare Reporters<sup>5</sup>;
  - the relevant material on Child Welfare Reporters in the consultation<sup>6</sup> which led to the Children (Scotland) Bill currently before the Scottish Parliament;
  - the reasons for the approach taken by the Scottish Government in the Bill as introduced.

**The provisions on Child Welfare Reporters in the Bill before Parliament**

The register

3. The Bill contains a number of provisions on Child Welfare Reporters.
4. Section 8 of the Bill inserts section 101A into the Children (Scotland) Act 1995 (“the 1995 Act”). Section 101A provides that the court may only appoint as a child welfare reporter a person who is included in a register established by the Scottish Ministers.
5. Section 101A further provides that the Scottish Ministers must establish such a register and empowers the Scottish Ministers to make regulations, subject to the negative procedure, on matters such as:
  - Training and qualifications;
  - Adding and removing people from the register;
  - The process by which a person on the register is selected to be a Child Welfare Reporter in a particular case;
  - The remuneration of Child Welfare Reporters;
  - The operation and management of the register.
6. The Scottish Ministers could either operate the register in-house or contract it out. If operated in-house, the Scottish Government would intend that the Unit carrying out the day to day work would be separate from the policy Unit which works on family law.

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<sup>2</sup> This paper refers throughout to “Child Welfare Reporters”. The earlier name was “Bar Reporters” but this was changed as one of the outcomes of the Working Group.

<sup>3</sup> The Bill is at <https://www.parliament.scot/parliamentarybusiness/Bills/112632.aspx>

<sup>4</sup> In particular, please see the study published in 2011:

<https://www.webarchive.org.uk/wayback/archive/20180514221657/http://www.gov.scot/Publications/2011/01/07/142042/0>

<sup>5</sup> The papers from the Working Group are at <https://www2.gov.scot/Topics/Justice/law/17867/reporters>

<sup>6</sup> The consultation is at <https://consult.gov.scot/family-law/children-scotland-act/>

7. The Scottish Government intends to consult fully on draft regulations under section 101A before making them.

#### Other provisions on Child Welfare Reporters

8. Section 15 of the Bill makes provision on explanation of court decisions to the child and inserts section 11E into the 1995 Act. The new provision lays down that one option for the court to explain decisions to the child is to arrange for that to be done by a Child Welfare Reporter.
9. Section 16 of the Bill makes provision on failure to obey orders and inserts section 11F into the 1995 Act. Section 11F makes provision on the court seeking to establish the reasons for a person's failure to obey an order under section 11 of the 1995 Act and provides that the court may appoint a Child Welfare Reporter to investigate and report to the court on the person's failure, or alleged failure, to obey the order.
10. Section 14 of the Bill makes provision on local authority reporters. It makes provision so that any local authority personnel appointed to act as a Child Welfare Reporter must be on the register.

#### Provision on curators *ad litem*

11. Section 13 of the Bill makes provision on the appointment of curators *ad litem* in cases under section 11 of the 1995 Act and inserts section 11D and section 101B into the 1995 Act on establishing a register of curators *ad litem*. Section 101B provides that the court may only appoint a curator *ad litem* if satisfied it is necessary to do so to protect the child's interests; may only appoint a person on the register; must give reasons for the appointment and is to reassess the appointment every 6 months. The register is on the same lines as the register for Child Welfare Reporters.

#### **The research**

12. Policy work on Child Welfare Reporters has been on-going for some time. In 2009 and 2010, the Scottish Government carried out "Child Welfare Hearings: A Scoping Study of the Commissioning, Preparation and Use of Bar Reports." This work was published in January 2011.
13. Key points from this work are:
  - Paragraph 5.5 noted that "The creation and operation of the list of bar reporters, based on the interviews conducted with solicitors across Scotland, appears not to be uniform". The Scottish Government also found this when seeking information on how lists are established for the consultation which led to the current Bill.
  - Paragraph 5.9 noted that "there is no formal guidance to the courts setting out the minimum experience or qualifications a bar reporter should demonstrate." This remains the case.
  - Paragraph 5.10 noted that "Based on the interviews with bar reporters, none were asked about their qualifications when appointed to their local sheriff court list."
  - Paragraph 5.12 noted that "It appears from the interviews that when a solicitor is appointed to the list or pool of bar reporters that due consideration is not currently given to the need to ensure that individuals who have regular contact with children do

not have a known history of harmful behaviour”. Paragraph 5.13 went on to say that “During the course of the research, Disclosure Scotland concerns were raised by a number of the bar reporters interviewed.” This was a priority area addressed after the research became available and the SCTS took steps to ensure that Child Welfare Reporters do have the necessary Disclosure Scotland clearance.

- Paragraph 5.32 noted that “The question of “quality” was raised by others interviewed and often it was linked to the potential cost of the report. The majority of bar reporters interviewed stated that they would like feedback from the sheriffs about their reports. They expressed a deep desire to ensure that they were addressing the correct issues and providing the facts and information in a useful and practical way for the sheriff to make his or her decision.” Paragraph 5.33 went on to note that “there are no formal criteria to assess quality.”
- The research noted [paragraph 5.35 and Table 5] “the close correlation between the recommendations set out by bar reporters and the orders made by sheriffs in the cases reviewed.”

14. The recommendations of the research (at paragraph 5.40) were:

- Transparency over appointment to the list of bar reporters.
- A consistent and uniform appointment process across all sheriffdoms with clear lines of responsibility to ensure adherence to national approach.
- Clarity over the required qualifications and experience that bar reporters should possess in order to be appointed.
- Although Disclosure Scotland certificates may now be required for those recently appointed to the list of bar reporters, all bar reporters irrespective of length of experience should be required to provide Disclosure Scotland certificates. This should apply even to those lists that are currently closed.
- The qualifications and experience of the bar reporter should be narrated in the bar report.
- The right of parties to challenge statements in the bar report should be more clearly specified.
- Guidance on the standard structure of the bar reports should be provided.
- Feedback on bar reports should be provided by sheriffs to ensure that high standards are maintained and to enable the delivery of appropriate training.
- Clarity over the use and role of the bar report should be provided to ensure that the system retains public confidence.

### The Working Group

15. The Working Group on Child Welfare Reporters was established in 2013. It was established and chaired by the Scottish Government, following an approach by Sheriffs Principal. Key outcomes of the Working Group were:

- A public facing guide.
- Non-statutory instructions to Child Welfare Reporters.
- Changes to court rules.
- A proposed scheme on the training which should be required to be a Child Welfare Reporter.

16. Under the court rules:

- a court should only appoint a Child Welfare Reporter to carry out investigations when satisfied that the appointment is in the best interests of the child, and will promote the effective determination of the issues.
  - If the court is satisfied that ordering a report is an appropriate step to take, the rules then require consideration of the terms of the remit to the reporter, the issues which require to be dealt with in the report and the enquiries which the reporter should undertake.
  - the court must specify certain matters in the interlocutor appointing the reporter. The court must also prescribe the nature of the enquiries to be undertaken, make orders to facilitate the discharge of the reporter's functions, make directions in relation to provision of copy documents lodged in process and give the reporter directions about the discharge of the function. In order to assist the court in dealing with such issues, a pro forma checklist may be attached to the interlocutor appointing the reporter which determines and limits the nature of the enquiries to be undertaken.
  - a presumption was added that, so far as meeting the costs of a child welfare report were concerned, parties would share in this equally unless cause could be shown to do otherwise
  - interlocutors must specify a date by which the report must be submitted to the court. This should normally be no less than three working days before the hearing at which the report is to be considered. The interlocutor must also make directions as to fees and outlays incurred.
17. In 2017, the Scottish Legal Aid Board submitted a report to this Committee following the change in the Rules<sup>7</sup>.
18. On the proposed training scheme, the Scottish Government wrote to the Lord President and the Sheriffs Principals<sup>8</sup>. The Lord President's Office replied noting that the Lord President had concerns on establishing the scheme on an administrative basis. Following on from that, it became clear that primary legislation was needed in relation to Child Welfare Reporters.

### The consultation leading up to the Children (Scotland) Bill

19. The consultation discussed two possible options for the Regulation of Child Welfare Reporters. The consultation said:

“ 2.66 The first possible approach would be the creation of new arrangements that would manage and provide training for child welfare reporters. This could involve arrangements similar to what happens now in relation to safeguarders in the Children's Hearings System. In 2013, responsibility for safeguarder recruitment, appointment and administration was transferred from local authorities to the Scottish Ministers. A national voluntary organisation, Children 1st, was awarded the contract to administer a national Safeguarders Panel.

2.67 The second possible approach would build more on existing arrangements. Under this option:  The proposed primary legislation would contain powers for the Lord President and the Sheriffs Principal to appoint people to the lists so they can carry out the functions of a child welfare reporter when asked to do so by the court;  When appointing persons to the lists, the Lord President and the Sheriffs Principal would have to be satisfied that the

<sup>7</sup> The SLAB report is at <https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/flc-meeting-files/flc-meeting-papers-23-october-2017/paper-4-2---report-by-slab---child-welfare-reporters.pdf?sfvrsn=2>

<sup>8</sup> This correspondence is at <https://www2.gov.scot/Topics/Justice/law/17867/reporters/letters-judiciary-Sep-16>

reporters met standards [eg qualifications, experience and training] laid down by regulations; and □ The Lord President and the Sheriffs Principal could then remove people from the lists if they cease to meet the standards or if, for example, a person dies, retires, asks to be removed or is no longer a fit and proper person to be a child welfare reporter.”

20. Respondents had mixed views, as recorded in the analysis of the consultation responses<sup>9</sup>. The quantitative results were:-

	Number	Percentage
A new set of arrangements should be put in place that would manage and provide training for child welfare reporters	71	28%
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 lists if the reporters cease to meet the necessary standards	60	24%
There should be no change to the current arrangements	8	3%
Another option	35	14%
Not answered	80	31%
Total	254	100%

21. The Scottish Government concluded that a new system was needed to regulate Child Welfare Reporters rather than building on the existing system and leaving the lists to be run by the Lord President and the Sheriffs Principal. There are a number of reasons why the Scottish Government reached this conclusion:

- The research published in 2011 and inquiries made by the Scottish Government for the consultation showed that the creation and operation of the list of reporters is not uniform. Keeping the lists at local level could mean that the procedure for getting onto the lists would remain variable across the country.
- Greater standardisation of the process for getting onto local lists could increase the administrative burden for the Scottish Courts and Tribunals Service.
- At the moment, persons not on legal aid are having to pay for Child Welfare Reports ordered by the courts. A centralised system, as envisaged by the Bill, would ensure that persons privately funding a case do not have to pay for Child Welfare Reports ordered by the courts.

## Conclusion

22. The Family Law Committee is invited to note this paper.

<sup>9</sup> The analysis is at <https://www.gov.scot/publications/analysis-consultation-responses-consultation-review-children-scotland-act-1995/pages/3/> Please see section 3.4.

**Scottish Government  
January 2020**

