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# Contact between grandparents and their grandchildren

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This briefing aims to support MSPs with constituency casework relating to contact between grandparents and their grandchildren. It explains the current law in Scotland and highlights some possible sources of support for grandparents.



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# Executive Summary

Grandparents can experience difficulties in relation to contact with their grandchildren in a range of situations.

A common example is where parents separate or divorce acrimoniously and the children continue to live wholly or mainly with one parent. In these circumstances, the grandparents on the other side of the family can find maintaining contact challenging.

It can be very upsetting for grandparents to experience difficulties in their relationships with their grandchildren. However, the law says grandparents do **not** have an automatic right of contact with their grandchildren.

Instead, the [Children \(Scotland\) Act 1995](#) (the 1995 Act) applies when a grandparent is in dispute with a child's parent, or parents, over contact with that child.

The 1995 Act sets out a range of parental responsibilities and rights (PRRs) in respect of children living in Scotland. One PRR relates to who has contact with a child on a day-to-day basis.

It is usually best to try to settle any dispute about a child amicably with a child's parents. It can be helpful in some circumstances to [use a mediator or solicitor to support this process](#).

If a dispute about contact cannot be settled amicably, [section 11 of the 1995 Act](#) enables a grandparent, or anyone else with an interest, to apply to the sheriff court for a **contact order** in his or her favour. If a contact order is granted by the court, the order will set out the legally binding arrangements under which contact should happen.

Under the 1995 Act, courts reaching decisions in any dispute about PRRs will have regard to several key principles. The **welfare of the child is the paramount consideration**, that is to say the most important and overriding one.

Another key principle is that a child is given an opportunity by the court to express their views. The court must also consider (although not necessarily follow) any views the child expresses.

The [Children \(Scotland\) Act 2020](#) makes changes to the 1995 Act. **Some key changes are not expected to come into force until 2023.**

The 2020 Act does not depart from the fundamental principles on which courts currently reach their decisions. However, it does set out a range of changes which aim to improve how the system operates, including how decisions are made by the courts in individual cases.

# What this briefing covers

This briefing is focused on the situation where grandparents are experiencing difficulties in maintaining contact with their grandchildren. The briefing:

- [explains the current law](#) in this area, as set out in the [Children \(Scotland\) Act 1995](#)
- [summarises the changes to that law](#) which will be introduced by the [Children \(Scotland\) Act 2020](#)
- [signposts to possible sources of support for grandparents.](#)

SPICe is aware that MSPs also receive enquiries from constituents relating to the specific situation where grandparents are looking after their grandchildren on a full-time basis (**kinship care**). This complex area of law and policy is not covered by this briefing.

Please note that SPICe can only provide general information relating to the law of Scotland. If a constituent wishes to receive legal advice in relation to the circumstances of his or her individual case, he or she should contact a solicitor. [More details on how to find a solicitor appear later in the briefing.](#)

# A note on terminology

First, there is a preliminary point worth highlighting on terminology. Day to day, people still tend to talk about **access** and **custody** in relation to disputes about children. This is in keeping with the legislation which preceded the [Children \(Scotland\) Act 1995](#).

However, the terms found in the 1995 Act are actually **contact** and **residence**. These are the terms solicitors will typically use when advising their clients.

**Residence** relates to who the child lives with and **contact** relates to the child's relationship with family members living apart from him or her.

# Parental responsibilities and rights (PRRs)

This section of the briefing describes the law which applies to family disputes about contact.

This section also explains who has legal rights and responsibilities in relation to children, what these rights and responsibilities are, and for how long they last. Understanding this broader legal framework is likely to be helpful to grandparents.

An important point is that a grandparent does **not** have an automatic right to see his or her grandchild. The 2020 Act will not change this aspect of the law.

## What are PRRs and how long do they last?

The [Children \(Scotland\) Act 1995](#) (the 1995 Act<sup>i</sup>) sets out a range of **parental responsibilities and rights** (PRRs) in respect of all children living in Scotland.<sup>i</sup>

Parental responsibilities exist where practicable and in the best interests of a child. Parental rights exist to enable those with parental responsibilities to fulfil their responsibilities.

Some examples of issues covered by PRRs are:

- who a child lives with (**residence**), which can be with one or both parents
- who the child sees in their day to day life (**contact**)
- the responsibility to safeguard and promote a child's health, development and welfare
- the right and responsibility to direct or guide a child's upbringing in an age appropriate way.

Consequently, a wide range of decisions about a child's life fall within the scope of PRRs.

Most PRRs end when the child or young person **reaches 16 years old**. The exception to this is the parental responsibility to provide guidance (which ends at 18).

## Who has PRRs?

People who have PRRs in respect of a child include:

- the child's mother

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<sup>i</sup> The 1995 Act, sections 1 and 2.

- the child's father, if he was married to, or in a civil partnership with, the child's mother when the child was conceived, or subsequently. He does not have to stay married to her, or in a civil partnership with her, for this rule to apply.
- the child's father if, **on or after 4 May 2006**, he is registered as a father of the child, meaning he is named as the child's father on the birth certificate<sup>ii</sup>
- the child's father, if he entered into a legal agreement with the child's mother to acquire PRRs<sup>iii</sup>
- someone who has acquired PRRs by court order (for example, a parent or other relative). This can be as a result of an application to the court under [section 11 of the 1995 Act](#) or under other legislation, [such as adoption legislation](#).

The above description (in bullet points) of who has PRRs assumes, to some extent, that the child has a mother and a father. However, the child's parents may be in, or have previously been in, a same sex relationship with each other.

The law on PRRs for same sex parents is very similar to that already described in relation to mixed sex parents. [It is set out in more detail on the Scottish Government's website](#).

Anyone with PRRs, including a parent or other relative, can also **lose some, or all, of the PRRs** if a court decides this should happen. Its decision might be as a result of an application to the court under [section 11 of the 1995 Act](#) (for example, by one of the child's parents). The court also has relevant powers to remove PRRs under child protection legislation.

When courts are reaching decisions about PRRs under the 1995 Act, they must follow certain key principles, [discussed in more detail later in the briefing](#). The **welfare of the child** is the paramount consideration, that is to say, the most important and overriding one.

## The system in practice

It is thought a very small minority of disputes about PRRs get as far as court. Most are resolved before that stage - sometimes with [the help of solicitors or family mediators](#).

When cases do go to court, they are usually considered by [the local sheriff court](#), which hears a wide range of different types of civil and criminal cases.

Few court cases relating to section 11 of the 1995 Act get as far as **proof**, that is to say a full hearing where witnesses give evidence and are cross-examined. Instead most are resolved (by court order) at a **child welfare hearing**, or a number of such hearings. These are relatively informal proceedings, held in private.

A court-appointed official called a **child welfare reporter** (previously a 'bar reporter') may make a report about a child at the centre of the dispute to assist the court. The report sets

ii The 1995 Act, section 3

iii The 1995 Act, section 4

out what the child welfare reporter considers the views of the child are or what he or she thinks furthers the welfare of the child.

# How the 1995 Act applies to grandparents

This section of the briefing considers the 1995 Act in more detail, with a focus on how it applies to grandparents.

## Applying for a contact order

If a dispute about contact cannot be settled amicably, [section 11 of the 1995 Act](#) enables a grandparent (or anyone else with an interest) to apply to the sheriff court for a **contact order** in his or her favour.

If a contact order is granted by the court, the order will set out the legally binding arrangements under which contact should happen.

## What the court must consider when reaching its decision

In considering whether to grant a contact order (or any other type of court order [under section 11](#)) the court will have regard to three principles. These are:

- The welfare of the child is the paramount consideration.
- The child must be given an opportunity to express his or her views. The court must consider (although not necessarily follow) any views expressed. These principles apply so far as is practicable and taking account of the child's age and maturity.
- The court will not make a court order unless it considers that to do so would be better for the child than making no order at all.

In relation to the taking of a child's views, the 1995 Act says **a child aged 12 years or older** is presumed to be of sufficient age and maturity to form a view.

In practice, the courts do receive the views of children younger than 12. [For reasons explained later in the briefing, this is likely to become much more common in future.](#)

Since 2006, the court has also been required to consider **various statutory factors** associated with abuse (or the risk of abuse) when making court orders.<sup>iv</sup> The policy aim of this change was to better protect families affected by domestic abuse.

Courts also take into account a range of factors when assessing the welfare of child not explicitly set out in legislation. A solicitor can advise on this in more detail.

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iv [Family \(Scotland\) Act 2006](#), section 24, which amended section 11 of the 1995 Act.

## Failure to obey a contact order

A person who fails to follow the requirements of a contact order (or any other court order under section 11) is referred to as being **in breach** of the order. A person in breach can be held in **contempt of court**, with the possibility of being **fined** or **imprisoned** (or both).

Courts are reluctant to imprison parents with whom children live, but it does happen in a small number of cases each year.

It is also possible for a court to vary the terms of an existing court order in response to a breach of a contact order. However, [the key principles discussed earlier will be used by the court to determine any decision this regard.](#)

# The Children (Scotland) Act 2020

The [Children \(Scotland\) Act 2020](#) ('the 2020 Act') sets out significant reforms to the 1995 Act. A handful of its provisions came into force in January 2021 and further provisions relating to the child protection system are due to come into force in July 2021.

A range of its key provisions, affecting parents and grandparents in contact cases, **are not expected to come into force until 2023**. A summary of these provisions is included in this section of the briefing to show the changes to the law expected in the future.

## Unsuccessful campaigning for further reforms

Note that during the parliamentary passage of [the Bill which became the 2020 Act](#), arguments were made by [Grandparents Apart](#) and some other affected individuals [that the law relating to grandparents should be reformed beyond what was proposed by the Scottish Government in the Bill](#).<sup>1</sup>

Specifically, that children should have **an automatic right of contact** with their grandparents or, alternatively, there should be **a presumption** (a starting point for the courts) in favour of that contact. However, others, including legal professionals and children's organisations, argued against these proposals.

[Relevant non-Government amendments were lodged at Stage 2 of the Bill's parliamentary passage](#).<sup>2</sup> These were ultimately defeated, and so no associated changes incorporated into the 2020 Act.

## Children's participation in decisions about them

The 2020 Act sets out changes to the 1995 Act (and other legislation) to help children to participate in decisions about them.<sup>v</sup>

It aims to encourage the court to hear the views of younger children (under 12s) before reaching its decision. Another aim is to explain (most) court decisions to (most) children.

## How courts reach their decisions - new statutory factors

The 2020 Act restates, and adds to, [the statutory factors the court must consider when deciding an individual case about PRRs](#).

In particular, the 2020 Act says the court should look at the impact of any court orders on the child's relationships with a) his or her parents; and b) other important people in the child's life.<sup>vi</sup>

v The 2020 Act, sections 1-3 and 20.

vi The 2020 Act, section 16.

Although grandparents are not mentioned explicitly in the 2020 Act, the second factor may turn out to have particular relevance in the context of grandparents seeking contact orders.

However, how much the substance of courts' decisions alters in future remains to be seen. The courts, when assessing the welfare of the child, already take into account factors not explicitly set out in statute, such as the child's relationships with his or her wider family.

## Regulation of child contact centres and child welfare reporters

The 2020 Act also contains various reforms to the 'machinery' associated with the 1995 Act, with the aim of making it work better for users of the system.

For example, the 2020 Act makes provision for the **regulation of child contact centres**, neutral venues where parents, and other relatives, can meet with children.<sup>vii</sup> A contact order can include a stipulation that contact takes place at a child contact centre.

The 2020 Act also introduces **a regulatory regime for child welfare reporters**, [whose role in the current system is discussed earlier](#).<sup>viii</sup>

Before the passage of the 2020 Act, the lack of regulation of both these aspects of the system were a matter of some policy controversy.

In March 2021, the Scottish Government published [a consultation document on the proposed details of the regulatory scheme for child welfare reporters](#), as well as [a separate consultation document on the same topic for child contact centres](#).

## Failure to obey a court order

When someone fails to obey a court order, the 2020 Act imposes a new statutory duty on the court to investigate why this has happened. This duty could be carried out by the court itself or by a child welfare reporter on behalf of the court.<sup>ix</sup>

## Delay in court cases

The 2020 Act says that, in various family cases, including those under the 1995 Act, the court must consider the risk to the child's welfare that delay would pose. Delay is an ongoing issue of concern in family cases.<sup>x</sup>

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vii The 2020 Act, sections 10-12.

viii The 2020 Act, section 9.

ix The 2020 Act, section 22.

x The 2020 Act, section 30.

# Where grandparents can get support, advice and information

This section of the briefing considers some possible sources of support, advice and information for grandparents.

## Support organisations

There is one specific support organisation for grandparents, [Grandparents Apart UK](#). This Scotland-based, but UK-wide, organisation aims to help grandparents stay in contact with their grandchildren. It also campaigns on the issue of grandparents' rights.

[Shared Parenting Scotland](#) (previously known as 'Families Need Fathers Scotland') provides support for parents, children and other close family members of families dealing with the effects of divorce or separation. The organisation is active in working with grandparents. Its services include [group meetings in which group members can share their experiences](#). Grandparents are welcome to attend.

## The Charter for Grandchildren

Grandparents may find it helpful to look at the [Charter for Grandchildren](#), first published in 2006, and updated by the Scottish Government in 2018 in advance of the recent statutory reforms.

Information about the Charter is now included in the [guidance for parents who live apart on making a \(voluntary\) Parenting Plan for the future care of their children](#).

The Charter aims to highlight the role of the wider family in raising children. However, it is a statement of the Scottish Government's policy intentions in this area, rather than a document with legal consequences.

## Family mediation

Family mediation is when an independent and impartial person discusses a problem with two or more people who are in dispute to try to find a solution.

Sometimes a court in a family case will refer those in dispute to mediation, but it is also possible to decide to use it in other circumstances, for example, as an alternative to starting court proceedings. Here both sides in any dispute must be willing to participate for it to work.

The cost of mediation depends on what mediation service is used and the type of problem a person has. Anyone considering mediation should ask about the potential costs when they contact a mediation provider.

There are various ways to find a mediator in Scotland:

- The network of [Relationships Scotland](#) provides family mediation services across Scotland. See [Relationships Scotland's webpage on family mediation](#) for more details.
- You can find a local mediation service [using the search facility on the Scottish Mediation website](#).
- [CALM Scotland](#) offers mediation services from experienced lawyer-mediators that can help with ways of resolving disputes and problems associated with parents separating.

## Getting legal advice

Some solicitors are family law specialists. If someone needs help finding a solicitor, [the Law Society of Scotland has an online search facility](#). You can search by specialism, by geographical area and identify solicitors, or firms of solicitors, who take on legal aid cases.

In addition, the [Family Law Association](#), a membership organisation for family law specialists, [has a similar online search facility](#).

[Clan Childlaw](#) provides free legal services for children and young people. [The Clan Childlaw helpline offers information about how the law affects children and young people in Scotland](#).

The [Scottish Child Law Centre](#) also provides advice and information about children's rights and child law. [If you are a child or young person under the age of 21, there is a helpline](#).

## The impact of the Coronavirus (COVID-19) pandemic

The ongoing Coronavirus (COVID-19) pandemic has had an impact on families where parents live apart. It has also affected children's relationships with their extended family. It has necessitated changes to the way the courts responsible for family cases operate, for example, with an increased use of remote hearings, carried out by telephone or video conferencing.

The impact of the pandemic is a continually evolving situation. Rather than describing current law and guidance, which may later change, you can refer to [the ParentClub webpage on the pandemic and shared parenting](#), supported by the Scottish Government. This is a good source of (regularly updated) information on how the law and guidance on the pandemic affects families.

# Bibliography

- 1 Justice Committee. (2020, May 1). Stage 1 Report on the Children (Scotland) Bill, paras 249-258. Retrieved from <https://digitalpublications.parliament.scot/Committees/Report/J/2020/5/1/Stage-1-Report-on-the-Children--Scotland--Bill#Contact-with-grandparents>
- 2 Harvie-Clark, S. (2020, July 31). Children (Scotland) Bill: consideration prior to Stage 3, SPICe Briefing SB 20-48, pp 22 and 23.. Retrieved from <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2020/7/31/Children--Scotland--Bill--consideration-prior-to-Stage-3#Grandparents-and-shared-parenting--section-12->



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