POLICY NOTE

THE CHILDREN (SCOTLAND) ACT 2020 (COMMENCEMENT NO. 3 AND SAVING PROVISION) REGULATIONS 2025

SSI 2025/157 (C. 14)

The above instrument was made in exercise of the powers conferred by section 34 of the Children (Scotland) Act 2020. The instrument is laid before the Scottish Parliament.

Summary Box

These Regulations bring into force section 1(1) and (2) and section 30, except for subsection (2), of the Children (Scotland) Act 2020. Section 1(1) just introduces the remainder of the section. Section 1(2) amends section 6 of the Children (Scotland) Act 1995 on parents, and others with parental responsibilities and rights, taking major decisions in relation to children and obtaining children's views. Section 30 amends certain enactments concerning some cases relating to children, to provide that the court and the children's hearings system is to have regard to any risk of prejudice to the child's welfare of delay in the proceedings.

Policy Objectives

The Children (Scotland) Act 2020 ("the 2020 Act") is a wide ranging piece of legislation. Its main aim is to improve how civil court cases in relation to children are heard and to improve how children's views are taken.

Section 1(2) amends section 6 of the Children (Scotland) Act 1995 ("the 1995 Act"). Section 6 makes provision so that a person with parental responsibility reaching a major decision about a child has to have regard to the views of the child and of any other person with parental responsibilities and rights (PRRs).

To be more in line with the United Nations Convention on the Rights of the Child, section 1(2) repeals a presumption that a child aged 12 or over is capable of expressing views and adds a presumption that the child has capacity to express views.

Section 1(2) also makes provision on taking the child's views in the manner that the child prefers (which could, for example, be by oral discussion, or using technology, or by use of more pictorial methods for younger children, or through a third party if the parent and child do not have a great relationship).

The Regulations contain a saving provision that a person reaching any major decision in accordance with section 6(1) of the 1995 Act is not required to comply with the additional requirements contained in section 1(2) of the 2020 Act where the person has obtained the child's views before 21 September 2025 or the child did not wish to express views. This ensures that the person does not ask the child twice for views in relation to the same decision.

The Scottish Government will seek to raise awareness of the changes made by the commencement of section 1(2) by providing information on its commencement to

organisations representing parents and children. The Scottish Government will also consider if more information could be added to the Parent Club website[1] on parents taking decisions about children and obtaining children's views.

Section 30 amends provisions of the 1995 Act, the Adoption and Children (Scotland) Act 2007 ("the 2007 Act") and the Children's Hearings (Scotland) Act 2011 ("the 2011 Act"). The provisions require a court or the children's hearings system, when considering a child's welfare, to have regard to any risk of prejudice to the child's welfare that delay in proceedings would pose. This can be as part of a decision by a court about an order under section 16 of the 1995 Act, in relation to adoption cases under section 14 of the 2007 Act, or for children's hearings or court proceedings under section 25 of the 2011 Act.

As indicated above, these Regulations do not commence section 30(2) of the 2020 Act. Subsection (2) amends section 11ZA of the 1995 Act which is inserted by section 1(4) of the 2020 Act.

The Scottish Government's intention is to commence section 1(4) and section 30(2) in a further set of commencement regulations to be laid before Parliament later in 2025. Section 30(2) relates to delay in cases under section 11 of the 1995 Act, on matters such as PRRs, and child contact and residence. In this area, the Family Law Committee of the Scottish Civil Justice Council has developed court rules on case management[2]. One of the aims of these rules is for cases to be resolved more quickly.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

The 2020 Act was subject to parliamentary scrutiny[3] as part of the parliamentary process. The Policy Memorandum[4] for the Children (Scotland) Bill ("the Bill") that preceded the 2020 Act outlined the results of the public consultation exercise on the review of the Children (Scotland) Act 1995 held in 2018. As these Regulations bring into force provisions of the 2020 Act, no further consultation has been carried out in relation to this instrument.

Impact Assessments

No specific Impact Assessments have been prepared for these Regulations. However, the Scottish Government published when the Bill was introduced:

- A Business and Regulatory Impact Assessment (BRIA)[5]

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[1] https://www.parentclub.scot/topics/childrens-rights
[2] https://www.scottishciviljusticecouncil.gov.uk/news/2022/10/03/act-of-sederunt-(ordinary-cause-rules-1993-amendment)-(case-management-of-defended-family-and-civil-partnership-actions)-2022
[3] https://www.parliament.scot/bills-and-laws/bills/s5/children-scotland-bill
[4] https://www.parliament.scot/-/media/files/legislation/bills/s5-bills/children-scotland-bill/introduced/policy-memorandum-children-scotland-bill.pdf
[5] https://www.gov.scot/publications/final-business-regulatory-impact-assessment-children-scotland-bill/

- An Equality Impact Assessment[6]:
- A Child Rights and Wellbeing Impact Assessment (CRWIA)[7]
- An Islands Communities Screening Assessment[8]
- A Fairer Scotland Duty Impact Assessment[9]
- A Data Protection Impact Assessment[10]:

Under section 23 of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, a CRWIA is not required for an instrument which brings into force a provision of an Act of the Scottish Parliament. A specific CRWIA has not been prepared for these Regulations.

Financial Effects

A BRIA was completed for the Bill.

The Scottish Government does not consider that there are financial implications arising from these Regulations In relation to commencing section 1(2) of the 2020 Act, parents and others with PRRs should already be seeking children's views on major decisions. On section 30, the courts are already aware of the need to avoid delay when dealing with cases involving children.

Scottish Government
Justice Directorate

May 2025

[6] https://www.gov.scot/publications/equality-impact-assessment-record-children-scotland-bill/
[7] https://www.gov.scot/publications/child-rights-wellbeing-impact-assessment-children-scotland-bill/
[8] https://www.gov.scot/publications/islands-communities-screening-assessment-children-scotland-bill/
[9] https://www.gov.scot/publications/fairer-scotland-duty-impact-assessment-children-scotland-bill/
[10] https://www.gov.scot/publications/data-protection-impact-assessment-children-scotland-bill/