



Information regarding children, families and separation proceedings in Scotland

FAQs

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| <p>What is ‘Your Parenting Plan’?</p> | <p>The Your Parenting Plan is a Scottish Government guide to making practical arrangements for your children if you live apart or are separating. Whether you're a parent, grandparent, or support a parent or separating family, this guide can help you make sure good arrangements are made for the children's needs and wellbeing.</p> <p>A Parenting Plan is a voluntary agreement between parents that also reflects the wishes of their children. It can help parents who live apart to work together to make sure that their children’s needs are met in the best way possible.</p> <p>As outlined in the guide, it’s often better to reach an agreement with the other parent without going to court. Going to court is expensive and stressful for everyone involved, including your children. Voluntary arrangements that are mutually agreed tend to work better and last longer. In Scotland, it is possible to draw up a separation agreement and register it in the Books of Council and Session.</p> |
| <p>Is there an indicative length of time for proceedings?</p> | <p>The length of proceedings will depend on the individual circumstances of each case.</p> <p>When a dispute reaches court and an order is sought under section 11 of the Children (Scotland) Act 1995, which is the key legislation on contact, residence and parental responsibilities and rights in Scotland, a child welfare hearing will usually take place. Child welfare hearings are generally held in private with both parties being present. They are intended to be informal procedures that allow the sheriff to speak to the parties directly, identify the issues and establish how the issues are to be dealt with.</p> <p>There may be a number of child welfare hearings. During this time the sheriff may put interim orders in place with temporary arrangements regarding where your child will live, who your child will see, and when contact will be. The sheriff may request further information and evidence, including a child welfare report (further details below). The sheriff may also put the case on hold, or “sist” the case, in order to monitor interim arrangements.</p> <p>The court may order that contact between the child and the parent they don’t live with must take place at a child contact centre. Child contact centres are safe locations for conflict-free contact between children and parents or other people in</p> |



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| | <p>the child's life. The court may order contact to be supervised in the constant presence of an independent person who observes the contact and provides a report to the court.</p> <p>In order to make a final order the case will go to a full hearing, sometimes called “a proof”, where the court will consider all of the evidence. The complexity and timescales of cases will vary, but it could take 6 months or more before the court makes a final decision, and some cases could be in court for a number of years. In some cases, the parties may settle out of court and so a final order may not be required.</p> <p>Shared Parenting Scotland have produced a guide on Representing Yourself in a Scottish Family Court, which contains a range of very useful information on court processes, timescales and the approach of the courts.</p> |
| <p>Who is usually involved in proceedings?</p> | <p>This will depend on the individual circumstances of each case.</p> <p>The parties to the proceedings will usually be the parents or carers of the child. The child at the centre of the case is unlikely to be a party to the proceedings, although in some cases they may wish to be.</p> <p>Parties will normally have legal representatives in the proceedings, but parties can choose to represent themselves and may wish to refer to the guidance referred to in the previous section from Shared Parenting Scotland.</p> <p>The court may appoint a child welfare reporter to seek the views of the child or report on the child’s best interests. As well as speaking directly with your child, the reporter may be asked by the court to speak to the parents, wider family members, or other people that are important in your child’s life. The reporter may also be asked to carry out checks with bodies such as the police or your child’s school.</p> <p>The court may also appoint a ‘curator ad litem’¹ to safeguard and promote the interests of your child, if necessary, in a particular case.</p> <p>If the case goes to a full hearing, sometimes called “a proof”, relevant witnesses may be called to give evidence.</p> |
| <p>Would my children be involved at any stage?</p> | <p>Children are not usually parties to the proceedings so they wouldn’t be expected to take part in a child welfare hearing. However, the court must – taking into account the child's age and maturity – have regard to any views the child wishes to express.</p> |

¹ A representative appointed by the court to represent the interest of those who are not of legal age or capacity to make decisions for themselves.



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| | <p>There is no equivalent to CAF/CASS² in Scotland, but the court may appoint a child welfare reporter to seek your child's views or report on the best interests of your child. The reporter will usually arrange to speak with your child directly. Child welfare reporters are often family lawyers, but some reporters are from other professional backgrounds, such as social work or child psychology.</p> <p>The Scottish Government has produced guidance for children on speaking to a child welfare reporter.</p> <p>The court will specify who the child welfare reporter should speak to. As well as your child, the reporter may speak to the parents, wider family members, or other people that are important in your child's life. The reporter may also be asked to carry out checks with bodies such as the police or your child's school. The reporter may need to speak to your child more than once depending on the particular circumstances of the case.</p> <p>Information from this work, is reported to the court in order to help the court make a decision on what is in the best interests of your child. You will have a chance to consider the report with your solicitor, if you have representation, before the next child welfare hearing. The child welfare reporter should send their report to the court and the parties at least three clear working days before the hearing.</p> <p>The court may also appoint a 'curator ad litem' to safeguard and promote the interests of your child, if necessary, in a particular case.</p> |
| <p>What information is an order based on?</p> | <p>Ultimately, it is for the court to determine the weight to be given to the information and evidence presented and reach a decision about whether to make an order under section 11 of the Children (Scotland) Act 1995, and if so, what order to make. The court will consider all the information before it, including any child welfare report, and the information, evidence and representations made by the parties. After taking all of the information into account, the court may decide to make an order under section 11. When doing so, the welfare of the child must be the court's paramount consideration.</p> <p>Under section 11 of the Children (Scotland) Act 1995, the court must – taking into account the child's age and maturity – have regard to any views the child wishes to express. The court is also required to have regard to the need to protect the</p> |

² The Children and Family Court Advisory Support Service



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| | <p>child from any abuse, or the risk of any abuse, which affects or might affect the child.</p> <p>The court may appoint a child welfare reporter to seek your child's views and report back to the court, or to report on the best interests of your child.</p> <p>If the court has ordered that contact between the child and the parent they don't live with must take place at a child contact centre, the child contact centre may provide a report to the court on how contact has progressed.</p> |
| <p>Is there a review or appeals process once a final order is made?</p> | <p>The way to challenge the decision of a court is to appeal. If a parent is unhappy with the court order, they may wish to seek independent legal advice on the options available to them. You can find a solicitor in your area in Scotland through the Law Society for Scotland website.</p> <p>It may also be helpful to contact the Scottish Child Law Centre. They provide a free confidential legal advice service on all aspects of Scots law relating to children and young people.</p> <p>If there has been a material change in circumstances, or if a person believes the court order has not been obeyed, either party can bring the matter back to court to seek a variation of the final order.</p> |
| <p>Where else can I go to get information?</p> | <p>Shared Parenting Scotland are an organisation providing advice, assistance and other support to parents experiencing difficulties in having contact with their children. Their document on 'Representing yourself in a Scottish the Family Court' sets out useful guidance on how information and evidence should be presented to the court and how to put forward a case.</p> <p>Shared Parenting Scotland also provide a new ways for families training programme for separated parents to teach the skills necessary to effectively resolve co-parenting disagreements while remaining calm and protecting their children from the conflict.</p> <p>Scottish Women's Aid provide support to women who have experienced or are experiencing abuse. If you wish to speak to someone at Scottish Women's Aid for help and advice, the Scottish Domestic Abuse and Forced Marriage Helpline can be contacted 24 hours a day on 0800 027 1234.</p> <p>The Scottish Women's Rights Centre may be able to provide advice through their free and confidential legal helpline on 0808 801 0789. They have an understanding of the complexities of domestic abuse. They have also produced a guide on child contact and residence in the context of domestic abuse.</p> |



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| | <p>Relationships Scotland provide services such as family mediation and “parenting apart” classes, which can help parents reach agreement without going to court. Relationships Scotland are also the largest provider of child contact centres in Scotland.</p> <p>Where a party is legally represented they may qualify for financial assistance through legal aid. The Scottish Legal Aid Board is responsible for the administration of the legal aid system in Scotland and they have eligibility estimators available on their website.</p> <p>The Scottish Government has produced guidance and information on a number of topics that may be helpful:</p> <ul style="list-style-type: none"> • Parental responsibilities and rights • Divorce, separation and living apart • Legal advice and legal aid • Instead of going to court |
| <h2 style="color: #800040;">Suggestions and resources</h2> | |
| <p style="text-align: center;">MOD suggestions</p> | <p>The MOD suggests:</p> <ul style="list-style-type: none"> • that you have contact details of your Commanding Officer (CO) ready to provide at the earliest possible point. • that you approach your CO to explain that they will be contacted. • that you consider requesting a letter from your CO detailing your work commitments. |
| <p style="text-align: center;">Scottish Government suggestions</p> | <p>The Scottish Government suggests:</p> <ul style="list-style-type: none"> • that you consider the out of court options before seeking an order from the courts, as referenced above. • that when seeking an order from court that you consider obtaining independent legal advice. |
| <p style="text-align: center;">MyGov.scot</p> | <p>Resources from the Scottish Government:</p> <ul style="list-style-type: none"> • Parental responsibilities and rights • Divorce, separation and living apart • Legal advice and legal aid |



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| | <ul style="list-style-type: none">• Your Parenting Plan |
| Shared Parenting Scotland | <ul style="list-style-type: none">• Training course on co-parenting skills• Representing Yourself in a Scottish Family Court |
| Scottish Legal Aid Board | <ul style="list-style-type: none">• Scottish Legal Aid Board website |
| Scottish Women's Aid | <ul style="list-style-type: none">• Scottish Women's Aid website |
| Scottish Women's Rights Centre | <ul style="list-style-type: none">• Scottish Women's Rights Centre website• Child Contact and residence guide |
| Relationships Scotland | <ul style="list-style-type: none">• Relationships Scotland website |
| Law Society for Scotland | <ul style="list-style-type: none">• Law Society for Scotland website |
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