

Child Contact, Domestic Abuse and Children's Rights in Scotland – Closing the Implementation Gap

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This briefing draws on our ongoing research programme examining children's rights in Scotland's family law.

Scotland is in a strong position - the legislative framework is in place and international obligations are clear. Commitment to children's human rights, through incorporating the UN Convention on the Rights of the Child (UNCRC) into Scots law, has been a landmark development. However, research consistently points to a gap between rights frameworks and children's experiences of contact proceedings.

We raise six areas where action would make a significant difference:

1. **Implementing child advocacy provisions from the Children (Scotland) Act 2020¹** - the single most direct step available to uphold children's rights in contact proceedings, enabling their rights to participation, to protection of their welfare and from violence, and to contact when it is in their best interests
2. **Establishing routine disaggregated data collection on domestic abuse and participation rights in contact cases** - to support and monitor obligations under the UNCRC and Istanbul Convention
3. **Harmonising the treatment of domestic abuse across criminal, civil, and family law**, so that the same abuse cannot be a criminal offence in one proceeding and an invisible factor in another running in parallel
4. **Investing in ongoing professional training** on domestic abuse as a core function of family proceedings - for judiciary, solicitors, child welfare reporters, and panel members
5. **Reviewing legal aid provision** in family proceedings - to ensure that structural barriers to representation do not render rights frameworks inoperable in practice
6. **Supporting longer-term reform to reconstruct family law around children's rights** - moving from a system that makes decisions about children to one that makes decisions with them, with children's rights as the organising principle from the outset

¹ [Section 21](#) requires Ministers to ensure the accessibility of advocacy services for children involved in parental disputes like child contact and residence.

A. Legal Framework

Domestic abuse underlies the majority of disputed child contact cases (see Domestic Abuse Commissioner, 2025 for evidence on England and Wales). Yet persistent concerns surround how these cases are handled (Scottish Law Commission, 2024). Research consistently points to ways in which proceedings fail to uphold the rights of both children and non-abusing parents (Burman et al, 2023; Birchall and Choudhry, 2018; Morrison et al, 2020a; Tisdall et al, 2021; Hunter et al, 2020) breaching obligations under the UNCRC and the Istanbul Convention. Scotland has a strong legislative framework: the problem is not a lack of law, it is a failure to implement the legislation we have.

UNCRC Incorporation (Scotland) Act 2024 - public authorities must not act in a way that is incompatible with children's rights, in relation to power/duties that stem from Scottish Parliament Acts²

Children (Scotland) Act 2020 - children's participation rights are amended to more closely follow the UNCRC³, but the provisions for child advocacy are not yet enacted nor have the provisions around the regulation of Child Welfare Reporters

Domestic Abuse (Scotland) Act 2018 - criminalises coercive control and explicitly recognises the impact of domestic abuse on children

Family Law (Scotland) Act 2006 - establishes domestic abuse and parental cooperation as considerations for determining children's welfare

Children's Hearings (Scotland) Act 2011 - a ground for referral is a child having a close connection with a person who has carried out domestic abuse

UNCRC and Istanbul Convention

Scotland is committed to two overlapping international frameworks, each essential to understanding how family courts should address children's rights in relation to child contact and domestic abuse.

The **UNCRC**, now incorporated into Scots law, recognises children as rights-holders. Key rights for contested family law proceedings are: children's best interests (Article 3), ensuring due weight to a child's views (Article 12), and protection from all forms of violence (Article 19).

The **Istanbul Convention** addresses violence against women and its consequences for children. It requires that children's safety is prioritised in contact and residence decisions (Article 31), professionals working with victims are trained and adequately resourced (Article 5), and disaggregated data on violence against women - including its impact on children - is routinely collected (Article 11).

Together, these frameworks are mutually reinforcing. Children's safety is connected to their mothers' safety. When women's rights under Istanbul are undermined, children's rights under the UNCRC are undermined with them. Family law must work with both frameworks.

² Recent cases have used *United Nations Convention on the Rights of the Child (Incorporation)(Scotland) Act 2024* in courts decisions e.g. *Glasgow City Council v Stringfellow* [2026] CSOH 19 and *X, Petitioner* [2026] CSOH 15

³ Key aspects of the UN Committee on the Rights of the Child's [General Comment on Article 12](#) are now integrated into Scots child and family law, offering a framework to implement these rights in both law and practice. For example, [Section 1\(4\)](#) of the Children (Scotland) Act 2020 requires the court to give the child the opportunity to express their views in a manner they prefer, or in a way that is suitable to the child unless it would not be reasonable to accommodate the child's preference or the child has not expressed a preference. It requires the court to presume that the child is capable of forming a view, unless the contrary is shown. [Section 20](#) of the Act requires the court to explain its decisions to the child in a way the child understands, with some qualifications. [Section 31](#) also requires Ministers to review the impact of the legislation on children's ability to effectively participate in decision-making within five years of the Act receiving Royal Assent.

B. Children's rights in parental disputes about child contact

When domestic abuse is present, children involved in family court proceedings face a distinct set of risks to their rights:

Legal aid leaves the non-abusing parent and child under-represented

Children are rarely parties to contact proceedings - they rely on parental representation to ensure their circumstances, experiences, and rights are brought before the court. Yet access to appropriate legal aid provision in family proceedings is chronically inadequate. Women affected by domestic abuse routinely receive little time with a solicitor before proceedings, meaning solicitors are ill-equipped to effectively represent either women's or their children's situations. This means that domestic abuse goes unraised, children's experiences go unexplored, and proceedings take place as though domestic abuse is not a factor (see Scottish Law Commission, 2024 and Scottish Women's Aid, 2025).

Domestic abuse is systematically under-explored

Research shows that solicitors routinely advise non-abusing parents against raising domestic abuse in contact proceedings, on the grounds that it will be characterised as obstructing contact (Baker, 2023 and Hunter et al, 2020). This has serious consequences for realising children's rights: their Article 12 right to participation, their Article 3 right to have their best interests treated as paramount, and their Article 19 right to protection from violence.

The system struggles to implement children's participation rights

Family law proceedings are ill-equipped to implement children's Article 12 rights in domestic abuse cases. Rather than being treated as independent rights-holders, children are often viewed through the lens of parental conflict (see Morrison et al, 2020b). Concerns about protecting children from parental conflict risk their views being not heard⁴. The Children (Scotland) Act 2020 introduced child advocacy provisions specifically to address this, giving children independent support to exercise their participation rights in complex proceedings. These provisions have not been enacted. Without advocacy in contact disputes, children in domestic abuse cases have no reliable route to be heard in decisions being made about their lives.

Data gaps - we cannot monitor what we do not measure

Data are not routinely collected or reported on court outcomes in disputed contact cases in Scotland. We do not know how often domestic abuse is raised, how often 'parental manipulation' is alleged alongside it, what contact/residence orders are made, how best interests and the welfare of children is considered, or whether and how children's Article 12 rights are being implemented (see Burman et al, 2023, Morrison and Tisdall, forthcoming). Without this data, it is impossible to assess whether Scotland is meeting its obligations under the Istanbul Convention - either the duty to prioritise child safety in contact decisions (Article 31) or the duty to collect disaggregated data on violence against women (Article 11) - or to monitor children's rights realisation under UNCRC incorporation.

⁴ See *SM v JD* [2026] SC FOR 7 and *Re Y (Experts and Alienating Behaviour: The Modern Approach)* [2026] EWFC 38 for recent judgments that grapple with this.

C. What Needs to Change: Six Urgent Actions

1. **Implement child advocacy provisions from the Children (Scotland) Act 2020 without further delay.**

Children who have experienced contested contact proceedings repeatedly state that child advocacy would make the most difference to realising their rights in proceedings (Morrison et al, 2020a; YELLO!, 2019, Every Day Heroes, 2018). Where children's views are absent, their best interests cannot be properly assessed (Article 3) and their right to protection from violence goes unrecognised (Article 19). Independent advocacy is not a participation measure alone - it is foundational to the realisation of children's rights in these proceedings.

2. **Establish routine data collection** on domestic abuse in contact proceedings - including outcomes, use of manipulation allegations, and children's participation - to comply with Istanbul Article 11 and enable monitoring of UNCRC rights under incorporation.

3. **Harmonise the treatment of domestic abuse across criminal, civil, and family law.** Without harmonisation, the same abusive behaviour can be treated as a serious criminal matter in one proceeding and go unacknowledged in another running in parallel (Hester, 2012; see also Cairns & Callander, 2022, on the inadequacy of criminal law in recognising children as victims of domestic abuse in their own right). An illustration is the reluctance of criminal courts to grant non-harassment orders where contact arrangements are a live issue, meaning that protection available in criminal law is withheld because of anticipated family court proceedings; this leaves children and non-abusing parents without safeguards in either system (Houghton et al, 2023).

4. **Invest in professional training** to embed domestic abuse competency as a core function of family proceedings, not an optional or peripheral consideration. Domestic abuse is the norm in the majority of disputed contact cases, not the exception. Courts, judiciary, solicitors, child welfare reporters all require expertise on: the nature and dynamics of domestic abuse, including post-separation abuse; its impact on children, their welfare and rights; the interrelationship between women's and children's rights; and implementing Article 12 participation rights in domestic abuse contexts.

5. **Review legal aid provision** in family proceedings to ensure adults and children affected by domestic abuse have adequate representation from a solicitor. Without this, domestic abuse cannot be effectively raised, children's experiences cannot be conveyed, and rights frameworks become meaningless in practice.

6. **Supporting longer-term reform to reconstruct family law around children's rights.** The actions above address failures of implementation, but the deeper problem is structural. Family law is built around parental responsibilities and rights, with children's participation added on. We believe a longer-term reform agenda should ask a more fundamental question - not what rights parents need to fulfil their responsibilities, but what rights children have and what structures are needed to realise them. This means moving from a system that makes decisions *about* children to one that makes decisions *with* them, centring Article 12 participation, Article 3 best interests, and Article 19 protection as the organising principles of proceedings from the outset. This also means taking seriously Article 6 (the right to development) and Article 39 (the right to recovery from harm), recognising that children who have lived with domestic abuse have rights to healing and support. Children would not be peripheral to proceedings; they would be central participants whose rights frame what the system delivers.

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