

Contested Concepts: Children's Participation Rights in Family Law

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Overview of the research

- Aimed to examine how **children's participation rights** and domestic abuse are addressed during the **Children (Scotland) Bill's** passage through Parliament.
- Use discourse methods to analyse **how in written evidence, constructions of children and their participation rights were invoked and used by policy makers to create discourses and advance particular interests and arguments**
- Funded by the Carnegie Trust, Co-Is Kay Tisdall (University of Edinburgh) and Jane Mair (University of Glasgow)

What is the problem represented to be?

- How are children and young people's participation rights represented? How is domestic abuse represented? What are the different understandings? What does this tell us about how children and their rights are understood?
- Intends to unsettle how problems are constructed, a key objective for this research

Bacchi, C., 2009. *Analysing policy: What's the problem represented to be?*. Pearson.



Underlying ideas of children's participation rights in family law

- Particular constructions of children and childhood:
 - vulnerability¹
 - (in)capable²
 - the influenced or manipulated child³
 - *...a human being with rights?*



Archard, D., 2014. *Children: rights and childhood*. London: Routledge.

Tisdall, E.K.M., 2018. Challenging competency and capacity? Due weight to children's views in family law proceedings. *International journal of children's rights*, 26 (8), 159–182

Tisdall, E.K.M., Morrison, F. & Warburton, J. (2021) Challenging undue influence? Rethinking children's participation in contested child contact, *Journal of Social Welfare and Family Law*, 43:1, 8-22

Morrison, F., Tisdall, E.K.M., and Callaghan, J., 2020. Manipulation and domestic abuse in contested contact: threats to children's participation rights. *Family court review*, 58 (2), 403–416

What were the problems the Children (Scotland) Bill aimed to address?

POLICY OBJECTIVES OF THE BILL

The overarching policy objectives of the Bill were to:

- ensure the views of the child are heard in contact and residence cases;
- further protect victims of domestic abuse and their children;
- ensure the best interests of the child are at the centre of contact and residence cases and Children's Hearings; and
- further compliance with the United Nations Convention on the Rights of the Child (UNCRC) in family court cases.

Children (Scotland) Bill Policy Memorandum

CHILDREN (SCOTLAND) BILL

FINANCIAL MEMORANDUM

INTRODUCTION

1. As required under Rule 9.1.1 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Children (Scotland) Bill, introduced to the Scottish Parliament on 2 September 2019.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 12-EN);
- a Policy Memorandum (SP Bill 12-PM);
- statements of legislative competence by the Presiding Officer and the Scottish Government (SP Bill 12-LC).

3. This Financial Memorandum has been prepared by the Scottish Government to assist the work associated with the measures introduced by the Bill. It does not form part of the Bill and has not been considered by the Parliament.

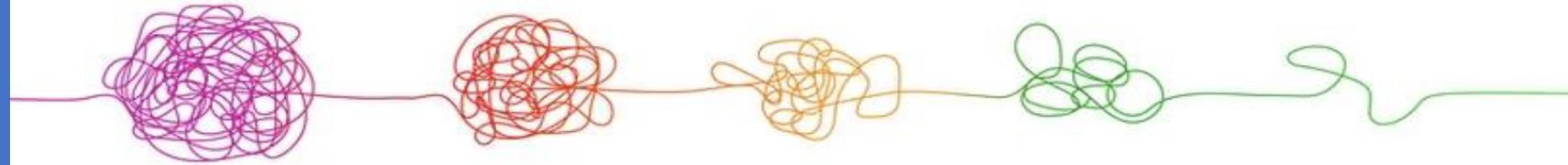
THE BILL

4. The Children (Scotland) Bill is informed by the outcome of the consultation on the Review of Part 1 of the Children (Scotland) Act 1995 (the 1995 Act), Part 1 of the 1995 Act covers parental responsibility and rights and contact and residence cases relating to children whose parents are no longer together. The consultation responses have been published, along with the Scottish Government's response to the review, in the Scottish Government's consultation analysis report¹.

5. The Bill focuses on a number of key themes, covering the views of the child in contact and residence cases, protecting victims of domestic abuse, establishing a regime of Child Welfare Reports (CWRs), regulation of child contact centres and parental responsibility and rights (PRRs).

¹ The consultation and response, where the Scottish Government has permission to publish them as of the date below: <https://consult.gov.scot/family-law/children-scotland-act>
<https://www.gov.scot/publications/consultations/consultation-analysis/children-scotland-act-2019/>

Complexity is
overshadowed
by manipulation

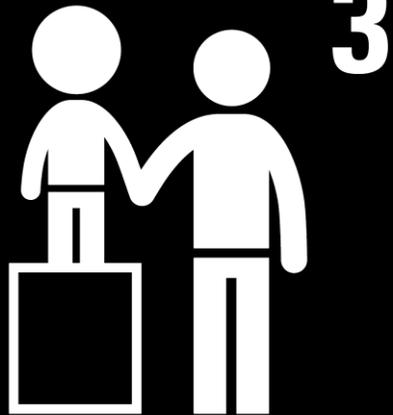


What are 'children's views'? A recurring perception that children's views are merely a reflection of adults' views.

“Children often find it **difficult to express their views for fear of repercussions. They fear upsetting one or other parent.**” (Psychologist, expert witness)

“It will be appreciated that often the question is **not what is expressed by the child but whether that view has been unduly influenced by one parent**” (Sheriffs Principal)

A human being with rights?



**BEST INTERESTS
OF THE CHILD**



**RESPECT FOR
CHILDREN'S VIEWS**

Children as objects to be
battled over:

“The aim of Child Welfare hearings is for the judge and the parties, with or without their solicitors, to **discuss the ways of resolving disputes over children**, in a relatively informal way.” (Summary Sheriffs Association)

“We welcome this change of funding as a positive measure of promoting more equal access to justice and **parity of arms** in a legal case.” (Clan ChildLaw)



- Children (Scotland) Bill had overarching objectives to further children's rights
- However, the problems the Bill explicitly aimed to solve were not always the same ones constructed by stakeholders when they sought to influence the Bill