

SCOTLAND

WIN SOME, LOSE SOME, BUT NEVER GIVE UP

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Abstract

2014 will go down in the history books as the year of the referendum on Scottish independence but, for chroniclers of family law, it will be notable as the year that Scotland finally embraced same sex marriage. This chapter explores how that particular reform has been effected by the Marriage and Civil Partnership (Scotland) Act 2014 and some of the challenges that remain in the context of adult relationships, before we turn our attention to significant developments in child law, many brought about by the Children and Young People (Scotland) Act 2014, the other main family law statute passed by the Scottish Parliament in this momentous year.

I INTRODUCTION

International observers might be forgiven for thinking that the only thing that happened in Scotland in 2014 was the referendum on Scottish independence. Certainly, it was a momentous event and, while those favouring independence did not prevail, the result and the debate that preceded and followed it will change the constitutional future of Scotland and the United Kingdom irrevocably. Late in 2014, the Smith Commission¹ reported with recommendations on further devolution of power to Scotland and these recommendations remain the subject of on-going discussion at the time of writing.² Since Scotland has always had its own distinct

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¹ *Report of the Smith Commission for further devolution of powers to the Scottish Parliament* (The Smith Commission, Edinburgh, 2014): <https://www.smith-commission.scot/>

² Draft proposals for legislation implementing the Smith Commission's recommendations were published in January 2015: see, Scotland Office, *Scotland in the United Kingdom: An enduring settlement*, Cm 8990, 2015: <https://www.gov.uk/government/publications/scotland-in-the-united-kingdom-an-enduring-settlement>

system of family law, administered by Scottish courts,³ and legislative competence on most family law matters had already been devolved to the Scottish Parliament, further devolution may have less immediately obvious impact on that area of the law than it will on a number of others. The proposed changes in respect of state benefits and taxation may, however, affect families quite radically.

However, the constitutional future of the United Kingdom is not the focus of this chapter,⁴ since we are concerned with developments in Scottish child and family law and, for chroniclers of it, 2014 will forever be notable as the year that Scotland finally embraced same sex marriage. This chapter examines how that particular reform was effected by the Marriage and Civil Partnership (Scotland) Act 2014 and some of the challenges that remain in the context of adult relationships, before we turn our attention to significant developments in child law, many brought about by the Children and Young People (Scotland) Act 2014. First, brief mention will be made of the context in which Scots child and family law operates.

Regular readers of the *International Survey* will be familiar with the concern voiced in previous chapters from Scotland over access to the law and legal services.⁵ The point has been made – but it bears repeating – that no matter how fine the principles encapsulated in the law, its value is diminished if all members of the community do not have ready access to it and to the remedies it offers. There continues to be reason for disquiet on all aspects of accessibility in Scotland. The law is spread over a multitude of statutes and secondary legislation and understanding it requires constant cross-referencing. This is time-consuming and frustrating for lawyers and makes the task of lay advisers all but impossible. With the passing, in 2014, of the Marriage and Civil Partnership (Scotland) Act, the Children and Young People (Scotland) Act and other statutes, the picture has only become more complex and the case for codification of child and family law is now all the more pressing. Then

³ Appeals lie to the United Kingdom Supreme Court (formerly, the House of Lords), which sits as a Scottish Court when hearing appeals, and the European Court of Human Rights provides a further avenue of challenge.

⁴ Of particular relevance is the proposal to extend the franchise in Scotland to 16 and 17 year-olds, discussed at III(a)(iii), below. It is also worth noting that the regulation of assisted reproductive technology and abortion is likely to be devolved to the Scottish Parliament.

⁵ See particularly, Elaine E Sutherland 'Scotland: Can Family Law Be Rendered More Accessible?' in B Atkin (ed) *The International Survey of Family Law 2013 Edition* (Jordon Publishing, Bristol, 2013) 333.

there is the matter of access to legal aid and the various schemes that help those who cannot afford to pay for legal advice without help. Given that most members of the public cannot hope to negotiate their way through the legal quagmire unaided, many will need high quality legal advice to assist them in establishing what the law provides and how it applies in their particular case. Anecdotal evidence suggests that it is getting more difficult to secure legal aid for clients and this is supported by empirical evidence from the Scottish Legal Aid Board's most recent annual report which notes that children's legal assistance fell by 10% and civil legal aid fell by 2.4%.⁶ Since family law cases make up 62% of awards and 61% of the total civil legal aid expenditure, that represents a considerable drop in provision. For litigants, there is the question of access to the courts. As a result of court closures, countless litigants have to travel further in their quest for justice and the remaining courts are taking longer to deal with cases.⁷

II ADULT RELATIONSHIPS

In 2013, the last full year for which statistics are currently available, 27,547 marriages took place in Scotland, some 9.8% fewer than in 2012, while 217 male couples and 313 female couples registered civil partnerships, an overall drop of 7.7% on the previous year.⁸ These figures reflect the dual nature of what was available in terms of formal relationships, with marriage being the different sex option and civil partnership being introduced in 2004 to provide a broadly-equivalent status for same sex couples.⁹ Since simple cohabitation, an option available irrespective of the gender of the parties, requires no formalities for its formation, it is not possible to provide comparative statistics for its incidence. All that was before the advent of same sex marriage, of course, and the discussion below begins by examining the

⁶ *Scottish Legal Aid Board Annual Report 2013-2014* (SLAB, Edinburgh, 2014): http://www.slab.org.uk/common/documents/Annual_Report_2013_2014/A_-_Annual_Report_2013-14.pdf

⁷ 'Figures show court closures have slowed justice system' *Scottish Legal News*, 22 December 2014: <http://us5.campaign-archive1.com/?u=91cb73bca688114fefed773f2&id=955464aed9#1>

⁸ General Register Office for Scotland, *Scotland's Population 2013: The Registrar General's Annual Review of Demographic Trends* (Scottish Government, Edinburgh, 2014), chapter 6. 6,200 (23%) marriages involved couples coming from abroad to get married in Scotland ('tourism marriages') and, of course, Scots going abroad to marry do not show up in domestic statistics. To put these figures in context, the Scottish population in 2013 was 5,327,700, the highest ever.

⁹ Civil Partnership Act 2004. See further, Elaine E Sutherland, *Child and Family Law* (2nd ed, W Green, Edinburgh, 2008) chapter 12.

significant changes introduced by the Marriage and Civil Partnership (Scotland) Act 2014, before moving on to other recent legal developments.

(a) Marriage

Scotland became the 17th country¹⁰ in the world to allow persons of the same sex to marry, signalling commitment to the ideals of equality and respect for diversity that underscore what it means to live in a modern democracy. That is not to say that the reform was uncontroversial and the Marriage and Civil Partnership (Scotland) Act 2014 sought to ensure respect for the legitimate rights of those who oppose the change.

Different sex marriage in Scotland requires satisfying the usual triumvirate of requirements: that the parties have capacity to marry (and to marry one another); that they consent to do so; and that they have complied with the requisite formalities. As far as capacity and consent are concerned, the requirements are identical for same sex marriage. The 2014 Act made a number of changes in respect of formalities for all marriages. Registrars may now require the parties to submit 'specified nationality evidence' along with certain other documents when giving notice of intention to marry¹¹ and the period of notice that must be given prior to the ceremony taking place has been increased from 14 to 28 days.¹² These requirements are designed to combat both sham and forced marriages.

Hitherto, couples could choose between a civil ceremony, performed by a registrar (a government employee), and a religious ceremony, performed by a celebrant associated with a specific religion. There are different rules governing the approval of different religious celebrants: that is, not all religions are treated equally.¹³ That

¹⁰ That depends on how one defines 'country'. In 2014, 16 states already provided for same sex marriage, as did some parts of Mexico and the United States. Within the United Kingdom, the relevant legislation applying in England and Wales, the Marriage (Same Sex Couples) Act 2013, came into force on 13 March 2014 and the first same sex marriages took place on 29 March 2014. The Scottish legislation came into force on 16 December 2014 and the first ceremonies took place on Hogmanay, 31 December 2014. Same sex marriage is not available in Northern Ireland.

¹¹ Marriage (Scotland) Act 1977, s 3, as amended by the Marriage and Civil Partnership (Scotland) Act 2014, s 17.

¹² 1977 Act, ss 6, 7 and 19, as amended by the 2014 Act, s 18.

¹³ 1977 Act, s 9, as amended by the 2014 Act, s 13.

broad division remains in place, but the 2014 Act added 'belief' celebrants to the mix.¹⁴ In addition, a religious or belief body must 'opt in' to performing same sex marriages,¹⁵ allowing for those groups opposed to same sex marriage to have nothing to do with it. The distasteful distinctions drawn in the approval process for different religious celebrants and the issue of opting in could have been avoided by making the solemnisation of marriage a wholly civil affair (as is the case, for example, in France), leaving couples free to have a religious, belief or secular celebration afterwards if they wished.¹⁶ The Scottish Government chose not to adopt that eminently sensible expedient.

A marriage may be void for a variety of reason, like non-age or the fact that the parties are too closely related,¹⁷ and the same rules apply to all marriage. However, the only ground on which a marriage is voidable, in Scotland, is that one of the parties was incurably impotent at the time of the ceremony. When civil partnership was created, the legislators showed a distinct aversion to acknowledging the sexual dimension of same sex relationships¹⁸ and that aversion has continued in the marriage context since the 2014 Act provides that only marriages between persons of different sexes may be voidable on the ground of impotence, that remedy not being available to same sex couples.¹⁹

¹⁴ A 'religious or belief body' is defined in the 1977 Act, s 26(2), as amended by the 2014 Act, s 10(2), as: 'an organised group of people – (a) which meets regularly for religious worship; or (b) the principal object (or one of the principal objects) of which is to uphold or promote philosophical beliefs and which meets regularly for that purpose.'

¹⁵ Even before this amendment, 'other' groups like the Humanist Society Scotland and the Pagan Federation (Scotland) were permitted to perform civil marriage ceremonies. The first same sex pagan wedding took place in January 2015: Katrine Bussey, 'Day of joy for witches married in city cellars', *The Scotsman*, 20 January 2015 (article not available online).

¹⁶ Elaine E Sutherland, 'Giving the state sole jurisdiction over marriage would simplify the law', (2013) 58(4) *Journal of the Law Society of Scotland* 5: <http://www.journalonline.co.uk/Magazine/58-4/1012446.aspx>

¹⁷ Other grounds are that one of the parties is already married or civilly enpartnered, was incapable of understanding the nature of marriage or of consenting to it, was in error as to the identity of the other party or the nature of the ceremony or gave consent under duress: 1977 Act, ss 1, 2 and 20A.

¹⁸ The Civil Partnership Act 2004 makes no provision for a voidable Scottish civil partnership, albeit there is recognition of voidable foreign equivalent relationship.

¹⁹ 2014 Act, s 5(1).

Similarly, while a different sex spouse may seek a divorce on the basis of a partner's adultery, a same sex spouse is given a curiously-restricted option.²⁰ The 2014 Act amended the Divorce (Scotland) Act 1976 to provide that, for same sex couples, 'adultery has the same meaning as it has in relation to marriage between persons of different sexes'.²¹ Due to the very limited definition of adultery in Scotland,²² the result is that a wife in a same sex marriage may seek a divorce based on adultery if her partner has sexual intercourse with a man, but not if she has sexual relations with another woman. The distinction will be of no practical effect, since same sex spouses will be able to divorce due to sexual infidelity using the behaviour ground.²³ However, this unnecessary hair-splitting could have been avoided by removing adultery as a ground of divorce altogether and leaving all sexual infidelity to be addressed under the behaviour ground. Despite being urged by some to do so, the Scottish Parliament chose not to take that path.

(b) Civil partnership

When civil partnership was created as the marriage-equivalent exclusively available to same sex couples several years before marriage was possible for them, the legal systems in the various parts of the United Kingdom were following a pattern familiar in many other jurisdictions.²⁴ However, that was not the only model adopted and in the Netherlands, for example, the relationship that paralleled marriage, registered partnership, was always open to all couples.²⁵

²⁰ Divorce (Scotland) Act 1976, s 1(3A), added by the 2014 Act, s 5(2). The distinction will be of no practical effect, since same sex spouses will be able to divorce due to sexual infidelity using the behaviour ground.

²¹ Divorce (Scotland) Act 1976, s 1(3A), added by the 2014 Act, s 5(2).

²² *MacLennan v MacLennan* 1958 SC 105, at 109 ('the carnal connexion of a married person with any other person than him or her to whom she or he is married ... this obviously means carnal connexion with a person of the opposite sex').

²³ Divorce (Scotland) Act 1976, s 1(2)(b).

²⁴ This was the approach taken in the Nordic countries. See, Ingrid Lund-Anderson 'The Nordic Countries: Same Direction – Different Speeds' in Katharina Boele-Woelki and Angelika Fuchs (eds) *Legal Recognition of Same-Sex Relationships in Europe* (Intersentia, Cambridge, 2012) 3.

²⁵ Wendy Schrama 'Marriage and alternative status relationships in the Netherlands' in John Eekelaar and Rob George *Routledge Handbook of Family Law and Policy* (Routledge, London, 2014) 14 at 16.

With the introduction of same sex marriage in Scotland, the question arose of what to do about civil partnerships.²⁶ Existing civil partnerships remain valid.²⁷ Anticipating that some civil partners would want to marry, the 2014 Act provides procedures for converting a civil partnership into a marriage or for civil partners to marry.²⁸ Thus, same sex couples are given a choice between two kinds of formal relationship: civil partnership or marriage.

The difficulty with the current law is that civil partnership continues to be available to same sex couples only, so the same choice is not available to different sex couples. At the very time one form of invidious discrimination was being removed, another was being created²⁹ and many of us argued in favour of extending civil partnership to different sex couples. The other option would be to follow the example of the Nordic countries that have introduced same sex marriage and abolish civil partnership for the future.³⁰ Yet retaining civil partnership and making it available to all has a benefit. Marriage is unappealing to some couples for a variety of reasons, including its patriarchal or religious associations. For couples who would like to formalise their relationship, but find marriage objectionable, civil partnership offers that opportunity. There will be further consultation in Scotland on the issue in the future.

(c) Forced marriage

For some time, there has been evidence of individuals being forced into marriage, either in Scotland or by being taken out of the country for the ceremony. Any

²⁶ The 2014 Act makes various amendments to the Civil Partnership Act 2004, perhaps the most significant of which is the possibility of a civil partnership being registered by a religious or belief celebrant: 2014 Act, s 22, adding new sections 93A, 94A-E and 95ZA to the 2004 Act. It also addresses such matters as forbidden degrees (new Schedule 10), the waiting period (now 28 days), place of registration and other matters – and these parallel the provisions in relation to marriage.

²⁷ Another solution adopted in some US states is to convert registered partnerships into marriages on a specific date unless they have been dissolved before then. See, for example, Wash. Rev. Code §26.60.100 (2014). The objection there is that registered partners consented to enter a particular kind of relationship and the imposition of another by legislative fiat may not be consistent with their intention.

²⁸ 2014 Act, ss 8-11.

²⁹ The Equality and Human Rights Commission Scotland was alert to this issue when, shortly after the 2014 Act was passed, it consulted on its future guidance: Equality and Human Rights Commission Scotland, *Consultation on draft guidance relating to equality and human rights implications for the Marriage and Civil Partnership (Scotland) Act 2014* (2014), no longer available online.

³⁰ See, Lund-Anderson 'The Nordic Countries: Same Direction – Different Speeds' in Boele-Woelki and Fuchs (eds) *Legal Recognition of Same-Sex Relationships in Europe* (Intersentia, Cambridge, 2012) 3 at 4.

'marriage' in Scotland secured by duress is void,³¹ as is such a marriage of a domiciled Scot anywhere in the world.³² Some, but not all, of the increasingly stringent immigration rules seek to combat forced marriage.³³

However, it was felt that further preventative measures were required and, in 2011, the forced marriage protection order was created.³⁴ This enables the victim (the 'protected person') or someone else to seek a civil court order requiring a third party to refrain from certain conduct, like attempting to force the protected person to enter a marriage, or to do something, like surrendering a passport. Breach of such an order is an offence rendering the offender liable to up to two years imprisonment.

Debate followed on whether attempting to force a person into marriage should constitute a criminal offence in itself. On the one hand, it was argued that such an approach signalled clear condemnation of the practice and would have a deterrent effect. On the other hand, there was concern that criminalisation might deter victims (and others) from seeking official help. In the event, those supporting criminalisation prevailed and in 2014 a new offence of coercing a person to enter a marriage or practising deception in order to lure a person abroad for the purpose of forced marriage was created.³⁵ Conviction may result in up to seven years imprisonment.

(d) Domestic abuse

Domestic abuse remains a significant problem in Scotland despite concerted legislative and other efforts to combat it.³⁶ Since 1981, one spouse has had the right to live in the family home regardless of the fact that the other is the owner or tenant of it and to have a violent partner excluded from the home.³⁷ Civil partners receive

³¹ Marriage (Scotland) Act 1977, s 20A. See, for example, *Sobrah v Khan* 2002 SC 382.

³² *Singh v Singh* 2005 SLT 749.

³³ Not every such requirement passed muster when it was subjected to human rights scrutiny: *R. (on the application of Aguilar Quila) v Secretary of State for the Home Department* [2012] 1 AC 621.

³⁴ Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011.

³⁵ Anti-social Behaviour, Crime and Policing Act 2014, s122.

³⁶ See, most recently, *Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls* (Scottish Government, Edinburgh, 2014): <http://www.scotland.gov.uk/Resource/0045/00454152.pdf>

³⁷ Matrimonial Homes (Family Protection) (Scotland) Act 1981.

equivalent protection³⁸ and similar, more restricted, provision is made for cohabitants.³⁹ In addition, a range of court orders and criminal offences is designed to protect spouses, civil partners and cohabitants from abuse⁴⁰ and to protect victims of harassment and stalking, more generally.⁴¹ A specialist domestic abuse court was established in Glasgow, Scotland's largest city, in 2004 and others have followed. Sadly, the Glasgow court is in danger of becoming a victim of its own success with a backlog of cases and lengthy waiting times.⁴² Late in 2014, two pilot projects were set up, one in the City of Aberdeen and the other in rural Ayrshire, to test out the Scottish Disclosure Scheme for Domestic Abuse, known colloquially as 'Claire's Law', which enables individuals to seek information from Police Scotland about a partner's violent past.⁴³

III CHILDREN AND YOUNG PEOPLE

Commenting on the bill that became Children and Young People (Scotland) Act 2014, Aileen Campbell, the Minister for Children and Young People,⁴⁴ expressed the view that, 'With the bill, we have set out our ambition to make Scotland the best place in the world to grow up in'.⁴⁵ The phrase 'best place in the world to grow up in' is repeated with (irritating) regularity in government publications, presumably on the basis that, if one says something often enough, its veracity will be accepted. In truth, there is a very long way to go before this ambition is realised.

³⁸ Civil Partnership Act 2004, ss 101-112 and 135.

³⁹ Matrimonial Homes (Family Protection) (Scotland) Act 1981, s 18.

⁴⁰ Protection from Abuse (Scotland) Act 2001 and Domestic Abuse (Scotland) Act 2011.

⁴¹ Protection from Harassment Act 1997, Protection from Abuse (Scotland) Act 2001 and the Criminal Justice and Licensing (Scotland) Act 2010.

⁴² 'City court's domestic abuse backlog', *The Herald*, 1 September 2014: <http://www.heraldscotland.com/news/home-news/city-courts-domestic-abuse-cases-backlog.25212017>

⁴³ 'Scottish "Clare's Law" pilot areas announced', 18 August 2014, Police Scotland website: <http://www.scotland.police.uk/whats-happening/news/2014/august/scottish-clares-law-pilot-areas-announced>

⁴⁴ While Ms Campbell is on maternity leave, her post will be filled by Fiona McLeod. Women in Scotland are entitled to statutory paid leave and employment protection during pregnancy and for a period of time thereafter under legislation applying throughout the whole of the United Kingdom. There is provision for parental leave to enable fathers and other second parents to participate more fully in early child rearing.

⁴⁵ *Official Report, Education and Culture Committee*, 8 October 2013, col 2944, at: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=8550&mode=pdf>.

While not providing a separate ranking for Scotland, some indication of the relative wellbeing of Scottish children can be gleaned from the 2013 UNICEF Office of Research *Innocenti Report Card 11* which offers a comparative overview of the wellbeing of children in 29 of the world's advanced economies. The United Kingdom ranked 16th overall, securing 10th place on housing, 16th on health and safety and a shocking 24th on education.⁴⁶ *Report Card 11* also provided results on children's subjective wellbeing – what the young people themselves had to say – and overall, the United Kingdom ranked 14th.

There is abundant evidence that significant numbers of children live in poverty in Scotland.⁴⁷ While this affects their overall wellbeing, it leads to social exclusion, poorer academic achievement,⁴⁸ something of a sense of hopelessness amongst impoverished young people⁴⁹ and the continuation of the cycle of poverty.⁵⁰ The extent to which children and their families experience food insecurity was highlighted recently in a report on the extent of reliance on food banks,⁵¹ albeit, the phenomenon has been known to government for some time.⁵² Tackling child (and adult) poverty

⁴⁶ *Innocenti Report Card 11: Child Wellbeing in Rich Countries: A comparative overview* (UNICEF Office of Research, Florence, 2013): <http://www.unicef.org/media/files/RC11-ENG-embargo.pdf>

⁴⁷ Hannah Aldridge, Peter Kenway and Tom MacInnes, *Monitoring Poverty and Social Exclusion in Scotland 2013* (Joseph Rowntree Trust, 2013): <http://www.jrf.org.uk/publications/monitoring-poverty-scotland-2013>; Jim McCormick, *A Review of Devolved Approaches to Child Poverty* (Joseph Rowntree Trust, 2013): <http://www.jrf.org.uk/publications/devolved-approaches-child-poverty> See also the Child Poverty Action Group in Scotland website: <http://www.cpag.org.uk/scotland>

⁴⁸ Edward Sosu and Sue Ellis, *Closing the attainment gap in Scottish education* (Joseph Rowntree Trust, 2013): <http://www.jrf.org.uk/publications/closing-attainment-gap-scottish-education>, reporting that the gap between children from low-income and high-income households starts early. By age 5, it is 10–13 months. Lower attainment in literacy and numeracy is linked to deprivation throughout primary school. By age 12–14 (S2), pupils from better-off areas are more than twice as likely as those from the most deprived areas to do well in numeracy. Attainment at 16 (the end of S4) has risen overall, but a significant and persistent gap remains between groups.

⁴⁹ A report, based on interviews with 2,311 16-to-24-year-olds from across the UK, found that one in four of those from deprived homes believe that 'few' or 'none' of their career goals to be achievable, compared to just seven per cent of those from affluent families; one quarter of young people from poor homes (26 per cent) felt that 'people like them don't succeed in life'; and young people growing up in poverty are significantly less likely to imagine themselves buying a nice house or even finding a job in the future. See, *Broke, not broken* (The Prince's Trust and RBS, Edinburgh, 2011): http://www.princes-trust.org.uk/about_the_trust/what_we_do/research/broke_not_broken.aspx

⁵⁰ Kerris Cooper and Kitty Stewart, *Does Money Affect Children's Outcomes?* (Joseph Rowntree Trust, 2013): <http://www.jrf.org.uk/publications/does-money-affect-childrens-outcomes> (meta study of 34 others exploring the range of ways in which poverty affects children adversely).

⁵¹ Marc Ellison, 'Record numbers use Scottish food banks' BBC News, 16 January 2015: <http://www.bbc.co.uk/news/uk-scotland-30832524>

⁵² Filip Sosenko, Nicola Livingstone and Suzanne Fitzpatrick, *Overview of Food Provision in Scotland* (Scottish Government Social Research, Edinburgh, 2013): <http://www.scotland.gov.uk/Resource/0044/00440458.pdf>

presents a massive challenge, of course, but strategies are available and government, both in Scotland and the UK, has expressed commitment to do so.⁵³

The picture is not wholly negative, however, and considerable support is available to children, young people and their families in Scotland. All children are entitled to free medical treatment⁵⁴ and education⁵⁵ and a range of state benefits, including those aimed at securing housing, are designed to help families to stay together and meet their basic needs. Extensive legislation governs the responsibilities parents owe to their children and the resolution of disputes between parting and never-together parents (and other family members).⁵⁶ A sophisticated system aims to protect all children and young people from abuse and neglect and to ensure that, when it occurs, it is addressed timeously and appropriately.⁵⁷

Numerous state-funded initiatives were introduced or expanded in 2014, many of them by the Children and Young People (Scotland) Act 2014,⁵⁸ and they are discussed below. Other steps have been taken to address a range of problems that affect children directly or indirectly, including homelessness,⁵⁹ drug and alcohol misuse⁶⁰ and human trafficking.⁶¹ The estimated 10,000 young carers in Scotland – defined as ‘a child or young person aged under 18 who has a significant role in

⁵³ *Child Poverty Strategy for Scotland – Our Approach – 2014-2017* (Scottish Government, Edinburgh, 2014): <http://www.scotland.gov.uk/Resource/0044/00445863.pdf> and *Child poverty strategy 2014 to 2017* (Department of Education, London, 2014): <https://www.gov.uk/government/publications/child-poverty-strategy-2014-to-2017> See also, Lindsay Judge, *Ending Child Poverty by 2020: Progress made and lessons learned* (Child Poverty Action Group, London, 2012).

⁵⁴ For adults, medical treatment is also ‘free at the point of service’ but, of course, many of the adults pay substantial taxes to fund the system.

⁵⁵ State-funded education continues beyond childhood and, for example, students in Scotland do not pay fees for their first university degree.

⁵⁶ See, primarily, the Children (Scotland) Act 1995, Part I.

⁵⁷ See, below, Section III(b).

⁵⁸ For further details, see, the Scottish Family Information Service: <https://www.scottishfamilies.gov.uk/>

⁵⁹ See, generally, <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/homeless>

⁶⁰ See, generally, <http://www.scotland.gov.uk/Topics/Justice/policies/drugs-alcohol>

⁶¹ The Criminal Justice (Scotland) Act 2003 (offences relating to trafficking for the purposes of exploitation by way of prostitution), the Asylum and Immigration (Treatment of Claimants etc) Act 2004 (offences of trafficking for labour and other forms of exploitation) and the Criminal Justice and Licensing (Scotland) Act 2010 (offences relating to holding someone in slavery or servitude, or requiring a person to perform forced or compulsory labour). See, generally, <http://www.scotland.gov.uk/Topics/Justice/policies/reducing-crime/human-trafficking>

looking after someone else who is experiencing illness or disability⁶² – are receiving greater recognition and support.⁶³ Considerable effort has gone into developing strategies to help combat bullying⁶⁴ and parents are being offered online classes to enhance their ability to protect their children from threats posed by the Internet.⁶⁵ New regulations, designed to protect children and young people who participate in public performances, are in place.⁶⁶

In the remainder of this section, we will explore the impact (or lack thereof) of the Children and Young People (Scotland) Act 2014 on various aspects of child law alongside other legislative and case law developments.

(a) Children’s rights

(i) The United Nations Convention on the Rights of the Child

A turning point in international recognition of children’s rights came in 1989 when the Convention on the Rights of the Child was adopted unanimously by the General Assembly of the United Nations. The United Kingdom ratified the Convention in 1991 and has ratified two of the three optional protocols to it, those on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. It is unlikely to ratify the third optional protocol on the communications procedure, which, essentially, gives children the right to make complaints directly to the UN Committee on the Rights of the Child. 2014 marked the submission by the United Kingdom of its *Fifth Periodic Report to the United Nations Committee on the Rights of the Child*.⁶⁷

⁶² *Getting it Right for Young Carers: Young Carers Strategy for Scotland 2010-2015*, Scottish Government, Edinburgh, 2010): <http://www.scotland.gov.uk/Resource/Doc/319441/0102105.pdf>, p 6.

⁶³ *Ibid.* The Scottish Government has been consulting on its plans for legislation designed to support all carers, including those at the younger end of the scale. See further the ‘Unpaid carers’ section of the Scottish Government website: <http://www.scotland.gov.uk/Topics/Health/Support-Social-Care/Unpaid-Carers>

⁶⁴ *A National Approach to Anti-Bullying for Scotland’s Children and Young people* (Scottish Government, Edinburgh, 2010): <http://www.scotland.gov.uk/Resource/Doc/330753/0107302.pdf>

⁶⁵ ‘Parents get cyber-savvy in 2015’, Scottish Government website, 29 December 2014: <http://news.scotland.gov.uk/News/Parents-get-cyber-savvy-in-2015-1405.aspx>

⁶⁶ Children (Performances and Activities) (Scotland) Regulations 2014, SSI 2014/372.

⁶⁷ CRC/C/GBR/5.

When the Children and Young People (Scotland) Act 2014 was making its way through the Scottish Parliament, there were calls to incorporate the Convention on the Rights of the Child into Scots law, just as the European Convention on Human Rights was incorporated into the law of the various parts of the United Kingdom by the Human Rights Act 1998. In the event, those of us advocating for incorporation did not prevail and, instead, rather feeble, lacklustre provisions place the Scottish Ministers under statutory obligations to promote awareness of children's rights, to 'keep under consideration' whether there is more they could do to give effect to the UN Convention and to report on their progress every three years.⁶⁸ Public authorities are subject to a similar reporting requirement in respect of the steps they have taken, within their areas of responsibility, to 'secure better or further effect' of the UN Convention.⁶⁹ This was the first of the missed opportunities in the 2014 Act and it reflects poorly on the Scottish Government's much publicised claims of serious commitment to children's rights.

(ii) Scotland's Commissioner for Children and Young People (SCCYP)

The Commissioner for Children and Young People in Scotland (SCCYP) plays a key role in ensuring respect for children's rights in Scotland since the SCCYP has a statutory obligation to promote and safeguard the rights of children and young people, including the duty to foster awareness of children's rights; review law, policy and practice; and support research.⁷⁰ One of the crucial tools in the SCCYP's arsenal is the power to investigate whether a service provider has had regard to the rights, interests and views of children and young people in making a decision that affects them.⁷¹ It was a shortcoming of the original legislation that this power was confined to cases affecting groups of children and, in a welcome move, the 2014 Act has extended that power to allow the SCCYP to investigate individual complaints.

⁶⁸ Children and Young People (Scotland) Act 2014, s1. The awkward phraseology is found in the statute.

⁶⁹ 2014 Act, s 2 and Schedule 1.

⁷⁰ Commissioner for Children and Young People (Scotland) Act 2003, ss 4 and 6.

⁷¹ 2003 Act, s 7.

(iii) Votes for 16 and 17 year-olds

The referendum on Scottish independence was the first time that 16 and 17 year-olds had the opportunity to vote in a country-wide election and even cynics were impressed by their level of engagement with the democratic process.⁷² As a result, there is considerable support for extending the franchise to these young people in all future Scottish elections. The Smith Commission recommended reform to that effect⁷³ and the most recent draft of legislative proposals contains the relevant provision.⁷⁴ This development has had a knock-on effect throughout the United Kingdom, of course, and the Prime Minister, David Cameron, has indicated a willingness to discuss the matter in a wider United Kingdom context.⁷⁵

(b) Child protection

Scotland has long had a sophisticated system in place aimed at protecting children from abuse and neglect⁷⁶ and it has been overhauled on numerous occasions, often in response to shortcomings identified when the system failed.⁷⁷ That the system continues to fail, on occasion, is illustrated by the findings of a fatal accident inquiry (FAI) into the preventable death of Declan Hainey who lived for a little over a year.⁷⁸ His mother and sole carer, whose history of drug and alcohol abuse and mental health issues was known to the authorities, was convicted of his murder initially, but her conviction was overturned on appeal. The precise cause of Declan's death remains unascertained because it was some time before his body was discovered at home in what can only be described as deplorable conditions. Finding that his

⁷² Scottish Independence Referendum (Franchise) Act 2013, s 2.

⁷³ *Report of the Smith Commission for further devolution of powers to the Scottish Parliament* (Edinburgh, the Smith Commission, 2014), p 5.

⁷⁴ Scotland Office, *Scotland in the United Kingdom: An enduring settlement*, Cm 8990, 2015, Annex A: Draft Clauses, clause 5.

⁷⁵ David Maddox, 'PM open to under-18 debate', *The Scotsman*, 8 January 2015, p 8.

⁷⁶ See particularly, the Children (Scotland) Act 1995, Part II, the Children's Hearings (Scotland) Act 2011 and the Children and Young People (Scotland) Act 2014. Revised guidance on implementing the system was published in 2014: *National Guidance - Child Protection in Scotland 2014* (Scottish Government, Edinburgh, 2014): <http://www.scotland.gov.uk/Publications/2014/05/3052/0>

⁷⁷ See, for example, *The Report of the Inquiry into the Removal of Children from Orkney in February 1991* HC Paper No 195, Session 1992-93, leading to the Children (Scotland) Act 1995, Part II.

⁷⁸ *Fatal Accident Inquiry into the death of Declan Hainey*, 2014FAI25. The full report is available at: <http://www.scotcourts.gov.uk/search-judgments/judgment?id=bc1a7a6-8980-69d2-b500-ff0000d74aa7>, with a summary being available at: <http://www.scotland-judiciary.org.uk/10/1308/Fatal-Accident-Inquiry-into-the-death-of-Declan-Hainey>

mother's neglect of him undoubtedly contributed to his death, the FAI highlighted a catalogue of failures in the operation of the system designed to protect children like Declan, including inadequate information gathering and poor inter- and intra-agency communication. As a result, intervention was not triggered at crucial stages. What is so frustrating is that the findings of the FAI read like so many other reports into the avoidable deaths of children at the hands of family members that have gone before. Yet again, there were claims that the agencies involved had learned from their mistakes and improved procedures – and we all moved on until the next time.

(i) Providing services for children

Most of the Children and Young People (Scotland) Act 2014 is devoted to the provision of services to children and their families and child protection and much of it builds on and amends existing legislation – yet another example of the need for codification of the law. One feature of the 2014 Act is its fondness for jargon with new terminology, like 'wellbeing',⁷⁹ 'child with a wellbeing need'⁸⁰ and 'corporate parent'. 'Wellbeing' has a respectable pedigree, not least because it features, in hyphenated form, in article 3(2) of the United Nations Convention on the Rights of the Child. It has its roots in the social sciences, yet social scientists admit that it is notoriously difficult to define,⁸¹ making it questionable that it has a place in legislation. The Scottish attempt at definition simply layers on the ambiguity since it defines wellbeing by reference to what are known as the SHANARRI indicators, being the extent to which the child is **s**afe, **h**ealthy, **a**chieving, **n**urtured, **a**ctive, **r**espected, **r**esponsible and **i**ncluded.⁸² Perhaps the real point is that Scots law has long experience of interpreting the term 'welfare', itself sometimes criticised for its ambiguity, and there really was no need to add another term to the mix.⁸³

⁷⁹ 2014 Act, s 96.

⁸⁰ 2014 Act, s 33(2).

⁸¹ See, for example, Gaëlle Amerijckx and Perrine Claire Humblet 'Child Wellbeing: What Does it Mean?' (2014) 28 *Children and Society* 404 and Asher Ben-Arieh 'Social Policy and the Changing Concept of Child Wellbeing: The role of international studies and children as active participants' (2014) 60(4) *Zeitschrift Für Pädagogik* 569.

⁸² 2014 Act, s 96.

⁸³ Interpretation of the term 'relevant person' (broadly a parent or parent-like person) continues to present a challenge despite the fact that it was first introduced in the Children (Scotland) Act 1995. See, most recently, *MT & AG v Gerry* [2014] CSIH 108.

The Act does, however, have some excellent features, particularly in terms of services. There is provision for 600 hours per year of early learning and day care for all 3 and 4 year-olds⁸⁴ and free lunches for all children in P1-P3 (5 to 7 year-olds) attending state schools.⁸⁵ A whole range of provisions address local authority obligations to children, information-sharing between agencies and inter-agency co-operation.⁸⁶ Kinship care, whereby a child is looked after by relatives other than the child's parents, will receive greater recognition and support.⁸⁷ Young people who are being looked after by the state at the age of 16 or thereafter are now entitled to have that care continue until they are 21, with further assistance being available until they reach 26.⁸⁸

Possibly the most controversial of the innovations in the 2014 Act is the provision of a 'named person' for almost every child and young person in Scotland.⁸⁹ The named person is an identified individual (usually a health care professional for pre-school children or schoolteacher for older children) whose function it is to advise, inform or support the child or young person or his or her parent; help the child or young person or his or her parent to access services; or discuss or raise a matter about the child or young person with a service provider or relevant authority.⁹⁰ The perceived benefit of the innovation is that it will provide a single contact point for children and parents and should ensure that no child 'falls through the cracks'. However, there has been widespread opposition to the whole notion of such an office and to specific aspects of the scheme, with opponents ranging from (often religious) conservative parents, who see it as an interference with their right to raise their children as they see fit, to human rights activists who view it as a violation of article 8 of the European Convention on Human Rights, guaranteeing the right to respect for private and family

⁸⁴ Two year-olds are also eligible where their parents are in receipt of certain state benefits, they are 'looked after' (in state care), in kinship care or have a parent appointed guardian.

⁸⁵ Education (Scotland) Act 1980, s 53, as amended by the 2014 Act, s 93. See further, 'Free school meals', Scottish Government website, 5 December 2014: <http://news.scotland.gov.uk/News/Free-school-meals-12f6.aspx>

⁸⁶ 2014 Act, ss 33-45. Many of the obligations were previously contained in guidance and they are now given greater authority by virtue of being included in legislation

⁸⁷ Children and Young People (Scotland) Act 2014, ss 71-74. See further, *In the family way: Five years of caring for kinship carers in Scotland* (Citizens Advice Scotland, 2014), at: <http://www.cas.org.uk/system/files/publications/kinship%20care.pdf>

⁸⁸ Children (Scotland) Act 1995, Part II, as amended by the Children and Young People (Scotland) Act 2014, ss 66 and 67.

⁸⁹ 2014 Act, ss 19-32. Young people serving in the reserve or regular armed forces are excluded: 2014 Act, s 21(4).

⁹⁰ 2014 Act, s 19(5).

life. In addition, there are concerns over whether named persons are sufficiently independent of the local authority to advocate for children effectively in respect of local authority obligations and the fact that the scheme dissipates resources by applying to all children, rather than focusing on those where there is a demonstrable need for intervention. At the time of writing, a petition for judicial review, challenging the named person provisions was refused in the Court of Session⁹¹ in what most probably marks only the beginning of protracted litigation.

(ii) *Misconceptions, inertia and omissions*

Attempts to protect children from the vast array of dangers they may face are well intentioned, but good intentions alone are not enough, as the first two examples below illustrate. The third example demonstrates the fact that, when it comes to children, other interests sometimes prevail.

In the attempt to discourage 13- to 15-year-olds from engaging with each other in what would be consensual sexual activity but for their age, the Scottish Parliament has rendered the conduct of the young people themselves criminal.⁹² While most children will have their case referred to a children's hearing, the fact of having committed a sexual offence is something that must be reported later in life and may have serious adverse consequences for the individual.

While female genital mutilation (FGM) has been a crime in the United Kingdom since 1985 and there has been specific Scottish legislation rendering it illegal since 2005,⁹³ it was not until 2014 that the first prosecution took place in England⁹⁴ and there have, as yet, been no proceedings in Scotland.⁹⁵ Yet it is widely accepted that the practice

⁹¹ *Christian Institute & Others, Petitioners* [2015] CSOH 7 (Lord Penrose).

⁹² Sexual Offences (Scotland) Act 2009, s 37.

⁹³ Prohibition of Female Circumcision Act 1985, repealed and replaced, in England and Wales, by the Female Genital Mutilation Act 2003 and, in Scotland, by the Prohibition of Female Genital Mutilation (Scotland) Act 2005.

⁹⁴ 'First prosecutions for female genital mutilation', Crown Prosecution Service website, 21 March 2014: http://www.cps.gov.uk/news/latest_news/first_prosecutions_for_female_genital_mutilation/

⁹⁵ Kevan Christie 'No FGM prosecutions, police admit' *The Scotsman*, 8 August 2014, p 20.

is carried out across the country and, following the publication of a report highlighting the problem,⁹⁶ a more proactive official response can be anticipated in the future.

It remains the case that parents in Scotland are free to hit their children provided they stick within the permitted limits.⁹⁷ Politicians are remarkably reluctant to address this issue, largely due to a fear of offending their (adult) constituents and in its most recent report to the United Nations Committee on the Rights of the Child, in 2014, the United Kingdom government was unapologetic about its stand.⁹⁸ As more countries around the world acknowledge that all violence against children is unacceptable and outlaw parental chastisement, it is disappointing that this was not done in Scotland in the course of passing the Children and Young People (Scotland) Act 2014. Campaigners will take the opportunity presented by the Criminal Justice (Scotland) Bill,⁹⁹ currently making its way through the Scottish Parliament, to seek to bring Scots law on this issue into line with that in the civilised nations of the world.

(iii) *The ultimate authority*

In disputed cases in Scotland, it is the courts that make the final decision about who may see a child and when. That is so whether the dispute is between the child's parents or between a parent and the State agencies charged with child protection. Officials of the State, like everyone else, are bound by these determinations and it is *prima facie* contempt of court for them to ignore court orders. Yet social workers have an obligation to protect the children for whom they are responsible and the dilemma they can face was highlighted in a recent case, *A and B Petitioners*.¹⁰⁰ There, a children's hearing (a tribunal that deals with child protection cases) had reduced the amount of contact between a mother and her two sons who were in

⁹⁶ Julie Bindel *An Unpunished Crime: The lack of prosecutions for female genital mutilation in the UK* (The New Culture Forum, London, 2014).

⁹⁷ Criminal Justice (Scotland) Act, 2009, s 51.

⁹⁸ *The Fifth Periodic Report to the United Nations Committee on the Rights of the Child: United Kingdom*, CRC/C/GBR/5, chapter III, para 11 ('The UK Government does not condone any violence towards children and has clear laws to deal with it. Our view is that a mild smack does not constitute violence and that parents should not be criminalised for giving a mild smack.') Were that an accurate assessment, then everyone in the UK would be free to administer 'light smacks' to each other without fear of prosecution for assault.

⁹⁹ SP Bill 35 (2013).

¹⁰⁰ [2015] CSIH 25. At the time of writing, the decision is available only at:

<http://www.scotcourts.gov.uk/search-judgments/judgment?id=63d8cea6-8980-69d2-b500-ff0000d74aa7>

foster care from weekly to monthly. The mother appealed against that decision and a sheriff (a legally-qualified judge) ordered weekly contact to be reinstated, a course of action that had been opposed by the social work department responsible for the boys' care. Weekly contact resumed for a period and was then terminated by the children's social worker because she believed that the distress caused to the boys was causing them emotional harm. She was supported in her decision by her supervisor and they referred the case back to a children's hearing. Had the children's hearing acted expeditiously, the matter might have gone no further. However, for reasons that need not detain us here, it did not.

When the sheriff learned that her decision was not being implemented – and amid considerable controversy¹⁰¹ – she found the social workers to 'have shown disrespect for and disregard for the decision of this court and interfered with the administration of justice' and to be in contempt of court, albeit she imposed no further penalty.¹⁰² That finding of contempt was overturned when the social workers challenged it in the Court of Session.¹⁰³ The Court was at pains to emphasise the importance of obeying court orders. However, in the light of the social workers' obligation to protect the boys' welfare and the fact that they had sought to have the situation reviewed further by a children's hearing, it did not find that their conduct reflected the requisite 'deliberate lack of respect for or defiance of the authority of the court'¹⁰⁴ to constitute contempt.

It would be difficult to disagree with the Court's observation that 'there may be circumstances when a social worker requires to take immediate and decisive action on her own account.'¹⁰⁵ Similarly, it was reasonable to assert, as it did, that 'in the absence of some very good reason grounded in clear evidence and findings to the contrary [social workers] are entitled to the presumption that ... they were motivated and had the best interests of the children as their sole concern.'¹⁰⁶ Where does that

¹⁰¹ Kenneth Roy, "The long ordeal", *The Scottish Review*, 30 March 2015: <http://www.scottishreview.net/KennethRoy8a.html>

¹⁰² *Contempt of court proceedings in respect of M and L* 2014 SLT (Sh Ct) 21, at [115].

¹⁰³ *A and B Petitioners* [2015] CSIH 25. The social workers' challenge was taken by means of petition to the *nobile officium*, the equitable jurisdiction of the Court of Session to provide a remedy where no other exists.

¹⁰⁴ [2015] CSIH 25, at [29].

¹⁰⁵ [2015] CSIH 25, at [31].

¹⁰⁶ [2015] CSIH 25, at [32].

leave parents who prevail in court but are thwarted by social workers whom they believe are biased against them? Where does it leave a parent who is at loggerheads with the child's other parents and is convinced that acting in breach of a court orders is justified by his or her perception of the child's best interests?¹⁰⁷ For the time being, the answer may well be that they are in a precariously ambiguous situation.

(c) Financial support for children

Parents in Scotland have always been obliged to support their children and most do. However, allocation of the responsibility for a child's financial support between separated or never-together parents can be a contentious issue and the most recent legislative response is less than helpful in resolving conflicts.

The long-running and sorry tale began, in 1991, when the traditional system of aliment,¹⁰⁸ applied by the courts, was replaced by a system of child support, administered by a succession of government or quasi-governmental agencies on a UK-wide basis.¹⁰⁹ Vestiges of the old system of aliment remain,¹¹⁰ but the thrust of the child support system is to remove the jurisdiction of the courts in support disputes between the child's parents.¹¹¹

From the outset, the child support system was something of a disaster and there have been numerous attempts to salvage it. The main flaws were the complexity of the original system and the fact that it was expensive to administer – and administered badly. The first of these problems was addressed when the

¹⁰⁷ Counsel for the mother raised the issue of parents who were in dispute and the Court simply dismissed the analogy: [2015] CSIH 25, at [32].

¹⁰⁸ Family Law (Scotland) Act 1985, s1.

¹⁰⁹ Child Support Act 1991. In *Child Maintenance and Enforcement Commission Child Support Agency v Roy* [2013] CSIH 105, a party litigant (self-represented) father was unsuccessful when he sought to challenge the validity of the Child Support Act 1991 on the basis that it was in breach of the Union with England Act 1707 and the European Convention on Human Rights 1950, art 7.

¹¹⁰ Aliment continues to apply to the liability of the child's parents for payments in excess of the formula, for additional educational expenses, relating to a child's disability, in respect of children over the age when child support applies (broadly, 16, but can be up to 20), where one of the parents is habitually resident abroad and in respect of the liability of the parent with whom the child lives: Child Support Act 1991, ss 8 and 44. The liability of persons other than the child's parent is also determined by the law on aliment: Family Law (Scotland) Act 1985, s 1.

¹¹¹ Child Support Act 1991, s 8.

complicated set of interlocking formulae used to calculate the 'maintenance assessment' was replaced by the 'maintenance calculation', basing it on a percentage of the payer's gross income.¹¹² The latest and, arguably, most radical reform came into effect in 2014 and it attempts to address administrative errors and cost, and reflects a change in philosophy since it 'encourages' parents to make their own arrangements for support of their children. Only if they are unable to do so is it anticipated that they will turn to the latest agency created to hold this poisoned chalice, the Child Maintenance Service (CMS). The incentive for parents to reach agreement lies in the cost of using the CMS. A new applicant for assessment will pay a flat fee of £20 to use the service. Thereafter, the CMS will charge the payer an additional 20%, and the recipient 4%, of the maintenance calculation.¹¹³

In just over twenty years the whole system for resolving parental disputes over financial support for children has been turned on its head. The jurisdiction of the previous court-based system, where many parents were assisted by a lawyer, often funded by legal aid, has been removed. It has been replaced by an administrative system which leaves parents to their own devices, regardless of their inequality of bargaining power, unless they are prepared to pay, in which case it takes a substantial amount of money from people who often have very limited resources. That may make sense to government accountants, but it makes none whatsoever in terms of serving the interests of the children involved.

VI CONCLUSIONS

Our views on the regulation of personal relationships are shaped by our individual moral, ethical, political, economic and, sometimes, religious beliefs. As a result, child and family law often generates fierce controversy and those seeking to reform it have learned that securing a particular advance is likely to require sustained effort and steely determination.

¹¹² Child Support, Pensions and Social Security Act 2000, amending the Child Support Act 1991. Since it is in the nature of families that they present a range of factual situations, there is also provision for special cases, variations and reviews: Child Support Maintenance Calculation Regulations 2012, SI 2012/2677.

¹¹³ Child Support Fees Regulations 2014, SI 2014/612.

A degree of patience is also called for, since reaching the desired goal may only be possible through an incremental process that sometimes requires accepting temporary compromises. So it was with same sex marriage. It took decades of campaigning and accepting the compromise of civil partnerships before the final goal was achieved. Yet that process of compromise can bring unforeseen benefits. Civil partnership may have been created as a compromise solution for same sex couples but, now that it is on the statute book, there is the opportunity to make it available to all couples, offering an option to those who would like to formalise their relationship but find marriage unattractive.

The incremental process is at an earlier stage in respect of numerous other issues and many of the current compromises are far from satisfactory. It will take sustained effort if we are to achieve the goal of eradicating the so-called right of parents to hit their children and steely determination will be called for in securing the incorporation of the United Nations Convention on the Rights of the Child into Scots law. Like those seeking independence for Scotland, family law reformers have shown the requisite tenacity in the past and will continue to do so.