

EQUALITY IMPACT ASSESSMENT RECORD

Title of policy/ practice/ strategy/ legislation etc.	The Assistance by Way of Representation (Proceedings for Recovery of Documents) (Scotland) Regulations 2017	
Minister	Minister for Community Safety and Legal Affairs	
Lead official	Denise Swanson	
Officials involved in the EQIA	name	Team
	Rhona Brown Sadif Ashraf Peter Conlong	Access to Justice SGLD Justice Analytical
Directorate: Division: Team	Justice: Civil Law and Legal System: Access to Justice	
Is this new policy or revision to an existing policy?	New policy	

Screening

Policy Aim

Legal aid is currently available for a wide range of proceedings in Scottish Courts. We propose amending the Advice and Assistance (Scotland) Regulations 1996 and Advice and Assistance (ABWOR) (Scotland) Regulations 2003 to make publicly funded legal assistance available for people seeking to make representations about the recovery of medical or other sensitive documents in criminal proceedings. This will replace the general determination made by Scottish Ministers under the Legal Aid (Scotland) Act 1986 that has been in place since 1 March 2016, which makes legal aid available for any person seeking to oppose the recovery of medical or other sensitive documents in criminal proceedings, and puts the amendments on a permanent legislative footing. Further detail can be found in the policy note accompanying these regulations.

The availability of legal aid will be non-means tested as the person whose records or other sensitive documents are being

sought has no power over the decision to seek access to records other than participation in the criminal proceedings.

The policy objective of this instrument is to put the legal aid provision, currently made by a determination, on a permanent legislative footing by:

- Making available Advice and Assistance (A&A) and Advice by Way of Representation (ABWOR) available in recovery proceedings in the Sheriff Court.
- Specifying fees for representation in recovery proceedings are to be paid at the criminal rate.
- Ensuring the representation by solicitors is not limited only to those solicitors who are registered with the Scottish Legal Aid Board (“the Board”) to undertake criminal work.
- Making A&A and ABWOR available without means-testing the applicant.
- Requiring solicitors to seek prior approval from the Board before making ABWOR available.
- Granting ABWOR is subject to the Board being satisfied that legal representation is required to allow the client to participate effectively in proceedings.

The legal aid system contributes to the “Safer and Stronger” Strategic Objective. In particular, it contributes to the national outcome of “strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others” by ensuring that individuals can enforce their own legal rights through the effective function of the courts.

This proposal is aimed at putting the legal aid provision, currently delivered by way of a determination, on a permanent legislative footing.

Who will it affect?

The policy will impact directly on those individuals (including complainers who are seeking representation in relation to an application for recovery of documents in connection with criminal proceedings in which the documents sought are medical or other sensitive documents relating to that person.

It will also affect the solicitors providing publically funded legal assistance to those individuals mentioned above in the Sheriff court and will specify clear fees for this work.

What might prevent the desired outcomes being achieved?

No barriers were identified that might prevent the desired outcomes being achieved.

Stage 1: Framing

Results of framing exercise

Policy colleagues responsible for legal aid spoke with Justice Analytical Services to discuss a framing exercise on these regulations in February 2017.

There are expected to be positive impacts on anyone (including complainers) who may now have access to legal aid where they previously did not before the determination was in place.

The low number of applications (seven) made to the Board for this type of assistance under the current determination impacts on the ability to model the number of possible applications in the future. As such, we are not able to assess whether there are any positive or negative impacts based on any protected characteristic.

The policy will give those individuals (including complainers) access to publically funded legal representation which will allow them to ensure their views are heard in the court proceedings.

Amendments to publicly-funded legal assistance will allow both civil and/or criminal law solicitors to be paid for representing clients in recovery proceedings.

Extent/Level of EQIA required

The framing exercise was restricted to aspects relating to policy on publically-funded legal assistance.

Assessment of the level of EQIA required was that, given the absence of specific negative impacts and as funding was being extended, only a high level EQIA was required.

Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

Characteristic ¹	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
AGE	<p>Ages of Solicitors undertaking legal aid work</p> <p>Data gathered for April 2010 to March 2011 in relation to the age of applicant for Criminal Legal Aid</p> <p>Age of general population in Scotland</p>	<p>Scottish Legal Aid Board</p> <p>Scottish Legal Aid Board</p> <p>2011 Census</p>	
DISABILITY	<p>Households with at least one person with long-standing illness, health problem or general disability</p> <p>General population with a long-term activity-</p>	<p>Scottish Household Survey 2012 – http://www.scotland.gov.uk/Resource/0044/004442767.pdf</p> <p>2011 Census</p>	

¹ Refer to Definitions of Protected Characteristics document for information on the characteristics

	<p>limiting health problem or disability</p> <p>Solicitors undertaking legal aid work who consider themselves to have a disability</p> <p>Recipients of Criminal Legal Aid who consider themselves to have a disability</p>	<p>Scottish Legal Aid Board</p> <p>Scottish Legal Aid Board</p>	
SEX	<p>Gender of solicitors undertaking legal aid work</p> <p>Gender of the general population in Scotland</p> <p>Data gathered from April 2010 to March 2011 in relation to the gender of applicants for Criminal Legal Aid</p>	<p>Scottish Legal Aid Board</p> <p>2011 Census</p> <p>Scottish Legal Aid Board</p>	
GENDER REASSIGNMENT	<p>Solicitors who consider themselves transgender</p> <p>Recipients of Criminal</p>	<p>Law Society of Scotland</p> <p>Scottish Legal Aid Board</p>	

	Legal Aid who consider themselves transgender	NRS Registration Division	
	National entries on the Gender Recognition Register		
SEXUAL ORIENTATION	Sexual Orientation of Solicitors	Law Society of Scotland	
	Sexual Orientation of general population	Stonewall, and Integrated Household Survey 2013	
	Sexual Orientation of recipients of Criminal Legal Aid	Scottish Legal Aid Board	
	Number of Civil Partnerships	2011 Census	
RACE	Ethnicity of solicitors undertaking legal aid work	Scottish Legal Aid Board	
	Ethnicity of general population	2011 Census	
	Ethnicity of recipients of Criminal Legal Aid	Scottish Legal Aid Board	
RELIGION OR BELIEF	Religion of solicitors	Law Society of Scotland	

	<p>Religion of the general population</p> <p>Religion of recipients of Criminal Legal Aid</p>	<p>2011 Census</p> <p>Scottish Legal Aid Board</p>	
<p>MARRIAGE AND CIVIL PARTNERSHIP (the Scottish Government does not require assessment against this protected characteristic unless the policy or practice relates to work, for example HR policies and practices - refer to Definitions of Protected Characteristics document for details)</p>			

AGE AND GENDER

General population

Data from the 2011 Census shows that, in the general population in Scotland, 16% are aged 0-14; 13% are aged 15-24; 13% are aged 25-34; 14% were aged 35-44; 15% were aged 45-54; 13% were aged 55 to 64; and 17% were aged 65 or above.² The census also showed that 48.5% of the Scottish population were male and 51.5% were female.

We have limited information from SLAB on applicants that have made an application for publically funded legal assistance through the determination. There is no evidence to suggest that this group of people will be impacted any more than any other group.

Solicitors

In SLAB's solicitor survey of 2010, of the 415 respondents who specified their age: 14% were aged 25-34; 33% were 35-44; 36% were 45-54; and 17% were 55 or above. One partner doing civil work did not disclose their age group. Most respondents, therefore, fell in the middle age bands (ages 35-54). The majority (70%) of those dealing with civil work were split evenly between those aged 35-44 and 45-54.³ This represents a higher proportion compared to distribution in the general population within the 25 to 64 age group, for which 23% are 25-34, 53% are 35-54; and 23% are 55-64.

Of the 416 respondents, 65% were male and 35% were female. Women represented a better proportion (44%) of civil respondents, and non-partners overall were relatively evenly split between males and females. However, a greater proportion of males made up the samples of partners (79%)⁴.

Comparing the gender data of solicitors to that of the general population, a higher proportion of solicitors are men than in the general population, although this is less marked for civil work.

² <http://www.scotlandscensus.gov.uk/documents/censusresults/release1a/re11asbtablea1.pdf>

³ http://www.slab.org.uk/export/sites/default/common/documents/about_us/research/documents/FinalReporttoSLAB.pdf

⁴ *ibid*

DISABILITY

General population

The Scottish Household Survey 2012⁵ shows that about one-third (34%) of households in Scotland contain at least one person with a long-standing illness, health problem or disability. This figure covers all members of the household including children. As would be expected, households comprised of older people are more likely to contain someone with a long-standing health problem or disability, with over half of 'older smaller' (53%) and 'single pensioner' (56%) doing so. In contrast, only 17% of small family households contain someone with a long-standing illness, health problem or disability.

Data from the 2011 census shows that 19.6% of the population in Scotland have a long-term activity-limiting health problem or disability.⁶

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Solicitors

Of the 410 respondents in the Solicitors survey who answered the question, 6 respondents (1%) considered that they have a disability.⁷

When asked how they would describe their disability, responses included visual impairment, hearing impairment, physical co-ordination difficulties, chronic asthma and dyslexia. This suggests fewer solicitors may have or consider that they have a disability than in the general population.

⁵ <http://www.scotland.gov.uk/Resource/0044/00442767.pdf>

⁶ <http://www.gov.scot/Resource/0044/00446638.pdf>

⁷ http://www.slab.org.uk/export/sites/default/common/documents/about_us/research/documents/FinalReporttoSLAB.pdf

GENDER REASSIGNMENT

General Population

In 2011, there were 24 entries in the Gender Recognition Register, 6 more entries than in 2010⁸. This represents 24 people in an overall population of 5,295,400.

We have limited information from SLAB on applicants that have made an application for publically funded legal assistance through the determination. There is no evidence to suggest that this group of people will be impacted any more than any other group.

Solicitors

The Law Society of Scotland's *Profile of the Profession 2013: Demographics and work patterns of Scottish solicitors* found that fewer than 1% of respondents considered themselves to be transgender.⁹ This is broadly in line with the general population.

SEXUAL ORIENTATION

General population

Although the Census does gather data on those in same-sex civil partnerships, it does not ask about sexual orientation. A case was put forward for a question on sexual orientation to be included in the 2011 Census. This resulted in a small-scale postal survey in Scotland as a first step to understand public attitudes to a sexual orientation. The overall response rate for the survey was only 31%. Overall, only 2.2% of respondents declared non-heterosexual sexual orientation. 6% of

⁸ NRS Registration Division

⁹ <https://www.lawsco.org.uk/media/226958/profile%20of%20the%20profession%202013.pdf>

those responding did not answer the question, and a further 8.5% of respondents selected “prefer not to answer”. The survey results call into question the accuracy of data gathered by such a question and hence the utility of any such data.¹⁰

Stonewall estimates that between 5% and 7% of the population are homosexual. The latest experimental statistics published from the Integrated Household Survey January – December 2013 shows that the number of people who self-identified as lesbian, gay or bisexual in Scotland was 1.3%.¹¹ In 2011 there were 7,000 people in a registered same-sex civil partnership in Scotland.¹²

We have limited information from SLAB on applicants that have made an application for publically funded legal assistance through the determination. There is no evidence to suggest that this group of people will be impacted any more than any other group.

Solicitors

The Law Society of Scotland’s 2013 solicitor survey¹³ found that the majority of respondents indicated they were heterosexual (94%); while 3% indicated they were lesbian, gay, bisexual or other (i.e. LGBT), and the remaining 3% declined to answer the question. 5% of male respondents indicated that they were gay, while 1% of females indicated that they were lesbians.

The available data suggests that solicitors may be slightly more likely to self-identify as gay, lesbian or bisexual than the general population.

RACE

General population

¹⁰ <http://www.scotlandscensus.gov.uk/documents/research/sexual-orientation-in-the-census.pdf>

¹¹ <http://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/sexuality/bulletins/integratedhouseholdsurvey/2014-10-07>

¹² <http://www.scotlandscensus.gov.uk/documents/censusresults/release2a/rel2asbtable1.pdf>

¹³ <http://www.lawscot.org.uk/media/226958/profile%20of%20the%20profession%202013.pdf>

Data from the 2011¹⁴ Census relating to ethnicity in the Scottish population showed:

All people	5,295,403
White	96.0%
Mixed or multiple ethnic groups	0.4%
Asian, Asian Scottish or Asian British	2.7%
African	0.6%
Caribbean or Black	0.1%
Other ethnic groups	0.3%

We have limited information from SLAB on applicants that have made an application for publically funded legal assistance through the determination. There is no evidence to suggest that this group of people will be impacted any more than any other group.

Solicitors

SLAB's solicitor 2010 survey shows that (96%) indicated that they considered their ethnic background to be White; this was made up largely of those who considered themselves to be either Scottish or British. A further 3% of respondents did not disclose their ethnic background, leaving only 1% spread across other ethnic minority backgrounds.¹⁵

This compares with the general population where 96% considered their ethnic background to be White, suggesting that the racial diversity of solicitors broadly reflects that of the general population, as shown in the table above.

RELIGION OR BELIEF

General population

¹⁴ Source: National Records of Scotland, © Crown copyright 2013

¹⁵ http://www.slab.org.uk/export/sites/default/common/documents/about_us/research/documents/FinalReporttoSLAB.pdf

The analysis of religion in the 2011 Census shows the proportion of the population identifying with various religions as: 32.4% Church of Scotland; 15.9% Roman Catholic; 5.5% Other Christian; 0.2% Buddhist; 0.3% Hindu; 0.1% Jewish; 1.4% Muslim; 0.2% Sikh; 0.3% Another Religion; 36.7% No Religion; 7.0% Not Answered.¹⁶

We have limited information from SLAB on applicants that have made an application for publically funded legal assistance through the determination. There is no evidence to suggest that this group of people will be impacted any more than any other group.

Solicitors

The Law Society of Scotland's 2013 survey¹⁷ on the whole of the legal profession showed that 46% considered they had no religion/faith; 47% reported themselves to be Christian (30% Church of Scotland, 11% Roman Catholic, 6% other Christian); 2% reported being one of the other main named faiths (Muslim, Buddhist, Sikh, Jewish or Hindu); approximately 2% reported "other"; and 3% chose not to answer the religion question.

This suggests that solicitors are more likely to consider they have no religion than the general population, and slightly less likely to consider themselves Christian.

¹⁶ <http://www.gov.scot/Publications/2015/03/8716/4>

¹⁷ <http://www.lawscot.org.uk/media/226958/profile%20of%20the%20profession%202013.pdf>

Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	Policy provisions are designed to ensure availability of appropriate levels of legal aid for recovery of documents for all eligible parties. This includes all age groups.
Advancing equality of opportunity			X	No specific positive or negative impacts on this group for anyone (including complainers) have been identified.
Promoting good relations among and between different age groups			X	

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			x	No specific positive or negative impacts on this group for anyone (including complainers) have been identified.
Advancing equality of opportunity			x	
Promoting good relations among and between disabled and non-disabled people			x	

Do you think that the policy impacts on men and women in different ways?

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	No specific positive or negative impacts on this group for anyone (including complainers) have been identified.
Advancing equality of opportunity			X	
Promoting good relations between men and women			X	

Do you think that the policy impacts on women because of pregnancy and maternity?

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	No specific positive or negative impacts on this group for anyone (including complainers) have been identified.
Advancing equality of opportunity			X	
Promoting good relations			X	

Do you think your policy impacts on transsexual people?

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	No specific positive or negative impacts on this group for anyone (including complainers) have been identified.
Advancing equality of opportunity			X	
Promoting good relations			X	

Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	No specific positive or negative impacts on this group for anyone (including complainers) have been identified.
Advancing equality of opportunity			X	
Promoting good relations			X	

Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	No specific positive or negative impacts on this group for anyone (including complainers) have been identified.
Advancing equality of opportunity			X	
Promoting good race relations			X	

Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	No specific positive or negative impacts on this group for anyone (including complainers) have been identified.
Advancing equality of opportunity			X	
Promoting good relations			X	

Do you think the policy impacts on people because of their marriage or civil partnership?

	Positive	Negative	None	Reasons for your decision
Marriage and Civil Partnership ¹⁸				
Eliminating unlawful discrimination				

¹⁸ In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

Have positive or negative impacts been identified for any of the equality groups?	Publically funded legal assistance will be extended to allow more people access to representation in respect of recovery of their medical or other sensitive records but there are no specific positive or negative impacts on any of the equality groups.
Is the policy directly or indirectly discriminatory under the Equality Act 2010 ¹⁹ ?	No
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	N/A
If not justified, what mitigating action will be undertaken?	N/A

Describing how Equality Impact analysis has shaped the policy making process

The Scottish Government does not believe that the regulations will cause any adverse impact upon groups with protected characteristics as defined in the Equality Act 2010. As a result of the EQIA, the policy remains unchanged.

Monitoring and Review

The Scottish Legal Aid Board has a continuing programme of research analysis relating to both the supply of and access to legal aid, and factors which may affect such supply and access.

¹⁹ See EQIA – Setting the Scene for further information on the legislation.

Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes No

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g. in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes No

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:

Yes No Not applicable

Declaration

I am satisfied with the equality impact assessment that has been undertaken for “The Assistance by Way of Representation (Proceedings for Recovery of Documents) (Scotland) Regulations 2017” and give my authorisation for the results of this assessment to be published on the Scottish Government’s website.

Name: Jan Marshall

Position: Deputy Director, Civil Law and Legal System

Authorisation date: May 2017